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Summary records of meetings of the First Committee
3rd meeting

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the exploitation of the minerals of the area would be prejudicial to the developing countries which extracted those same raw materials from the earth and depended upon the export revenue which they yielded. The General Assembly and the United Nations Conference on Trade and Development had already stated their views on that point, and it was essential to establish guidelines to ensure that such cases did not occur. The criterion of the "complimentarity approach" to which the Secretary-General referred in his report (A/CONF.62/25) could be useful in tackling that question.

53. His delegation reserved its right to state its views in greater detail on that point at the appropriate stage, and wished only to add that the draft convention which had been considered and revised in second reading by the working group clearly reflected the main problems to be solved. The first concerned the powers of the Authority, which the developing countries—as well as scientists, intellectuals and various bodies that had studied the question—felt should be broad, under a strong régime.

54. In connexion with those powers, the question arose as to who would exploit the area and how it would be exploited: the developing countries had replied that they wished the Authority itself to assume responsibility for exploitation, either directly or by some other means to be determined by the Authority itself, but still under its control; and they had declared themselves to be in favour of the "enterprise" to which he had referred. At the same time, the question had arisen as to who would control the Authority. Finally, certain delegations had sought to resolve in advance the problem of rules governing the relations between the Authority and those who would undertake the exploitation of the resources of the area—a question which should not be tackled until the fundamental problems had been settled.

55. He considered that the Conference should concentrate on approving the principal articles of each question defined by the chapter headings, for those articles provided the outline of a plan for an international political solution or "package deal".

56. Except for the problem of limits, which should be settled when the recommendations of the Second Committee were available, the part of the convention dealing with the sea-bed could be the subject of independent negotiations without the need to wait until other questions had been settled.

57. In conclusion, he recalled that the problem of the resources of the area had arisen when those possessing the economic and technical means for exploring and exploiting them had sought to protect their activities by means of a legal framework that would guarantee the security of their investments and enable them to obtain loans and insurance. They were powerful companies which had spent hundreds of millions of dollars in studies and research and were ready to undertake exploitation as soon as an international régime permitted them to do so. They were not only ready but impatient: the Conference had been given to understand that any undue delay in establishing a régime, or the establishment of a régime regarded as contrary to those interests, might lead to the illegal exploitation of the area. Nevertheless, the international community had had the wisdom to refrain from taking hasty measures detrimental to coming generations, and had worked with an eye to the future and to international solidarity, so well expressed in the concept of the common heritage of mankind. Within that framework—which was provided by the Declaration of Principles—it should be possible to fashion an instrument that would be acceptable to all; if it was not, there could be no valid solution for the developing countries.

The meeting rose at 12.35 p.m.

3rd meeting

Friday, 12 July 1974, at 11 a.m.

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

Statements on the international régime and machinery (*continued*)

1. Mr. THOMPSON FLORES (Brazil) said that the third reading of the draft articles would provide an excellent basis for the negotiations the Committee would have to engage in.

2. The main questions to be settled were those related to the powers of the Authority and those related to its structure and to the composition and powers of its various organs.

3. His delegation thought it most important that the convention should be based on the concept of the common heritage by vesting the authority with full responsibility for all activities to be undertaken in the area. That was the only way to obtain full information on all aspects of exploitation, which was essential for the responsible regulation of production, the distribution of revenues between the Authority and any exploiting enterprise and, later, among States themselves. He hoped that all members of the Committee would be prepared to recognize the Authority as the juridical body entrusted with the responsibility of administering the area and utilizing its resources.

4. It would then be necessary to state some of the conditions under which contracts for exploration and exploitation or association with natural or juridical persons would be concluded. Those conditions should ensure a reasonable tenure and return on investments made, and should also provide for rational management of the resources with a view to: avoiding adverse consequences of the exploitation of sea-bed minerals on the economies of countries with land-based production of the same minerals, without resorting to a system of compensation which his delegation felt was inappropriate, ensuring an effective transfer of technology to developing countries enabling developing countries to participate in exploitation in the future and safeguarding the area against pollution from activities in the sea-bed.

5. Although the Authority should be given the necessary powers to enable it to explore and exploit the area itself, it was clear that, at least in the beginning, it would have to call on companies or consortia which had the financial resources and technological expertise to undertake those activities. Under those circumstances, the Authority's contribution to any joint venture would be the capital, in the form of the resources themselves, and its role would be to control directly, and to participate in, all activities, including exploitation.

6. The intention would not be to place any unreasonable difficulty in the way of those who were ready to operate in the area, but to ensure that mankind as a whole would benefit. That was why, in his opinion, no veto system could be accepted in any organ of the machinery.

7. Mr. FIGUEREDO (Venezuela) recalled that his country had been a member of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of Na-

tional Jurisdiction since 1971 and had participated in the discussions, negotiations and search for solutions that reflected the concern of a number of developing countries over the expansion of a new sector of industrial activity based on the use of modern technology. As such technology was often very expensive, it was beyond the scope of most developing countries. Measures should therefore be taken to deal with that situation, for otherwise the objectives of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction[1] would never be attained.

8. That was why Venezuela and 12 other Latin American countries had, in their joint working paper A/AC.138/49,[2] stressed the fact that the area could never be subject to appropriation and that exploitation of its resources should be planned rationally, with special regard to possible consequences for the exports of developing countries. Subsequently, in a draft declaration (A/AC.138/L.11/Rev.1)[3] submitted by several countries from the Group of 77, Venezuela had reaffirmed the same principles for the benefit of certain large industrial enterprises which, disregarding the fact that the area was a common heritage, were trying to begin exploiting the resources immediately simply because they had the technological resources to do it and the unilateral permission of the State of which they were nationals.

9. His delegation was well aware of the difficulty of establishing a new international régime for the rational exploitation of the resources of such a large area. In addition, some way must also be found to close the gap between rich and poor countries, if it was not to be proved once again that it was impossible, at the economic level as at the political level, to involve the developing countries in building a new international order based on economic and social justice. He was sure, however, that there was a large area of agreement, and he hoped that efforts would be redoubled to establish principles based on the widest possible agreement.

10. Turning to various aspects of questions the Committee would have to consider, he said, that since the fact had been accepted that the area was the common heritage of mankind, efforts should now be made to take a global approach to international ocean space and to keep a balance between the various uses the international community might envisage for it; formulae should be found to reconcile the traditional uses of the high seas with the new concepts of co-operation between all nations. It was difficult to conceive of an innovative régime for the seabed while the régime of the superjacent waters based on outdated rules and national egoism was retained; that was why the Authority should have the necessary powers to ensure the conservation of the marine environment and of its biological resources.

11. The document presented by the 13 Latin American countries proposed the fundamental principles which would govern the activities of an Authority and give it wide enough powers to play an important part in the new field of international co-operation, particularly by authorizing direct exploitation of the resources of the area, and by giving it wide powers to intervene to prevent conflict or unfair competition between those who had the technological resources and those whose only hope for the future was a more equitable international society.

12. He stressed that the machinery to be created must be democratic and representative enough to ensure that the solutions it found would not favour a small group. The Authority should find ways of managing the exploitation of the international area which would be acceptable to all and in which all would participate, under joint control and for the benefit of all; that basic objective could be attained only through some international public enterprise.

13. Mr. THOMAS (Trinidad and Tobago), after congratulating the Chairman on his election and Mr. Pinto on having been chosen to guide the informal meetings of the Committee, said that his delegation fully endorsed the programme of work proposed by the Chairman. His delegation considered that the time had come for the First Committee to confront the focal issues before it.

14. The fundamental issue before the Committee was the question of who should explore and exploit the international sea-bed area beyond the limits of national jurisdiction; the successful resolution of that issue would provide the basis for resolving all other issues pertaining to the international régime and machinery. To grasp fully the thrust of that question, it should be placed in its proper perspective by a consideration of how the international area could be explored and exploited in the interest of the international community whose heritage it was; and from that consideration would logically follow the question of who might explore and exploit the area. There were two conceptual approaches to that issue: the first envisaged a strong International Authority with comprehensive powers, which would govern and control the area and would by itself or in association with others, ensure the exploration of the area and the exploitation of its resources in the interest of the international community; the second provided for an intergovernmental organization with administrative status through which States and private enterprises could explore and exploit under contractual arrangements.

15. The draft submitted by 13 Latin American countries (A/AC.138/49), which the Trinidad and Tobago delegation had introduced in the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction at Geneva in 1971, embodied the first approach and was currently receiving increasing support from a majority of developing countries. That approach sought to keep control over all activities undertaken in the international area and over all benefits from the area in the interest of the international community; that did not, however, exclude outside co-operation with the Authority. The other approach provided for a relinquishing of control by the international community to States or private entities, thus subordinating common benefit to private interests. It would be very difficult to reconcile the implementation of a common heritage with profits—derived from that heritage—accruing to a small number of States and private entities. The main difference between the two approaches was the consideration of the locus of control and the extent of control for all activities deriving from the exploration and exploitation of the international area.

16. It had been said at a previous meeting that the international régime should contain certain safeguards. First, there should be no discrimination against any Member State in terms of the benefits derived from the exploration and exploitation of the area. Secondly, there should be no individual State sovereignty over the area or part of the area. Thirdly, all States should have the same rights of exploration and exploitation. Fourthly, the interests of developing countries should be taken into account in the exploration and exploitation of the area. Fifthly, no State or group of States should derive one-sided advantages from the benefits of the international area. His delegation considered those conditions indispensable to the implementation of the principle of a common heritage and felt that the fifth condition should apply to private entities and institutions whose advanced technology had always worked to the advantage of developed countries. In fact, the United Nations, in its resolutions on the question, and especially in resolution 2749 (XXV), had recognized the need to take special account of the interest of developing countries. In the light of

[1] General Assembly resolution 2749 (XXV).

[2] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21*, annex I, sect. 8.

[3] *Ibid., Twenty-seventh Session, Supplement No. 21* and corrigendum, annex I, sect. 1.

the technological advantages of certain States, the implementation of those safeguards and conditions would be difficult to guarantee without control by an International Authority. It was perhaps in those very safeguards and conditions that the fundamental differences could be resolved. Any régime providing the necessary safeguards to subordinate the interests of individual States, groups of States, private entities and institutions to the interests of the international community would be consistent with the concept of the common heritage.

17. He suggested that the Committee should shift its perspective to a consideration of those fundamental safeguards and conditions in an attempt to resolve the question of who should exploit the international sea-bed area. He proposed that delegations holding divergent views should meet and try to find common ground, basing their discussions on those fundamental safeguards which would preserve the principle of the common heritage. The proponents of a particular system would then indicate how they thought their system would provide such safeguards.

18. He thought that two other questions would gain increasing importance in the course of the Committee's discussions: first, the structure of the International Authority, in so far as the composition and status of its principal organs were concerned, and secondly, the over-all structure of the Authority. The former question had already been studied in depth, so he would limit himself to a few comments on the latter.

19. Certain delegations were in favour of an institutional structure parallel to that of the United Nations. That did not seem a wise course, since the International Authority would be concerned not merely with the administration of the area but also with commercial activities, and its structure should therefore be adapted to that aim. Moreover, the concept of such an Authority was novel and therefore offered a challenge for new initiatives. Lastly, it offered to developing countries, for the first time, an opportunity to contribute fully to the creation of an organization which would be most likely to promote their own economic interests and those of future generations. Undue imitation of the United Nations system would not fully achieve that goal, and furthermore there was the risk of perpetuating the defects of the United Nations system, which was not designed to promote the type of comprehensive economic undertaking that the International Sea-Bed Authority promised.

20. He expressed concern with respect to three proposals by certain delegations—the implied veto in the council's operations, weighted voting, and considerations of geographic size and population of countries in determining their political strength in the organization. Such manoeuvres were essentially political and should find no place in the genuine pursuit of the economic development of developing countries; they might conceivably even do violence to the implementation of the common heritage. To entrust the management of the common heritage to developed countries, however benevolent, was illogical and unjust and was merely a perpetuation of the United Nations system with all its inherent defects, a return, indeed, to the *status quo*.

21. The CHAIRMAN said he proposed to call on the representative of the International Ocean Institute and, if there were no objections, he would consider that the Committee accepted that proposal.

It was so decided.

22. Mrs. MANN BORGESE (International Ocean Institute) said that the non-governmental organization which she represented had been established two years previously in co-operation with the Royal University of Malta and the United Nations Development Programme. It was governed by an international Board of Trustees, whose Chairman was Mr. Amerasinghe of Sri Lanka. The Institute's work was conducted by an international planning council, a number of whose members were present as delegates to the Law of the Sea Conference. Their work had been strongly influenced by the concept of the ecological unity of the world ocean system, the implications of technological advance and the growing interactions of all uses of ocean space and the exploitation of its resources. The Institute was convinced of the need for a new and systematic approach to ocean affairs.

23. Having regard to the Institute's experience, to General Assembly resolution 2749 (XXV) and the Committee's terms of reference, she wished to stress the need to create not merely an Authority which would be occupied purely with the sea-bed but an organization which would concern itself with ocean space in general. As the Conference appeared to be moving towards a consensus in favour of the creation of an economic zone or patrimonial sea, the question of the International Sea-Bed Authority should be approached from a different angle, as the common heritage of mankind was not the same as it had been in 1970, when the Declaration of Principles had been adopted. At that time it comprised more than three quarters of ocean space and constituted a very considerable economic potential which would have enabled the poorer nations to derive significant financial benefits from operations in the international zone. The size and resources of the area would also have made possible effective international measures for the control of marine pollution, and for independent research leading to effective scientific and technological transfers. The Sea-Bed Authority now envisaged was entirely different; to some delegations it seemed that its single function, at least for the next few decades, was the mining of manganese nodules. Further, not more than half-a-dozen countries and scarcely more than a dozen companies had the capability to engage in nodule mining, the revenue from which might be expected to vary between 50 and 200 million dollars a year, a revenue not much larger than would be required to cover the operating costs of the future authority, and certainly insufficient to effect any significant distribution of financial benefits. Consequently, the Conference should not envisage complex and costly machinery, in the operation of which the developing countries would have very little to say, and which would be incapable of fulfilling effectively the functions of scientific and technological transfer which were desired by many countries; in other words the Sea-Bed Authority which they were discussing could in no way embody the principles adopted in 1970, and would be incapable of filling the jurisdictional and managerial vacuum in the law of the sea.

24. However, there was no cause for pessimism or for any departure from the Declaration of Principles. If the International Authority governing the area beyond the limits of the economic zone was to be economically viable, if it was to be useful to the international community, if the developing nations were to have their share in decision-taking and receive their share of the financial benefits, they must pass from the concept of a single-purpose sea-bed régime to that of a multi-purpose ocean-space régime and machinery. There were further reasons why the extension of the concept of a sea-bed régime was the logical and inevitable consequence of the adoption of the concept of the economic zone. In the technologically more advanced countries new forms of coastal management were evolving in order to co-ordinate and harmonize all uses of national ocean space, to integrate ocean-based ecology and economy with land-based ecology and economy, thus creating new forms of co-operation between local, regional and national government and between scientific, industrial and administrative organs. It would seem meaningless that such a "coastal management" should be confronted with an array of fragmented organizations and competences in international ocean space. The two sectors, national and international, would not integrate. Sectoral and overlapping competences, as well as

competence gaps, would render the international sector totally ineffective.

25. The extension of the concept of a common heritage of the sea-bed to one of ocean space did not mean that the preparatory work had been wasted, as all provisions adopted and agreements reached could be incorporated in a wider framework.

26. She would deal on a future occasion with the question of the structure of the organization and the functions it should have to enable it to interlink effectively with the coastal management system regulating the interaction of all uses of national ocean space and resources.

The meeting rose at 12 noon.

4th meeting

Monday, 15 July 1974, at 10.45 a.m.

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

Statements on the international régime and machinery (*continued*)

1. Mr. SUGIHARA (Japan) stated that the Committee had to find solutions to three essential questions: how to derive the greatest possible benefit from the common heritage in the interest of all mankind, how to ensure the equitable participation of all countries in those benefits, and how to carry out operational activities.

2. It followed from the notion of the common heritage that the resources of the sea-bed should be exploited in the most efficient and profitable manner possible. For that reason, the international organization which would be created should grant licences to contracting States which, in turn, would authorize physical or juridical persons, irrespective of their nationalities, to explore and exploit mineral resources in that part of the sea-bed area specified by the licences. Such a licensing system would make full use of the efficiency which characterized private entities and would be free of the disadvantages inherent in the bureaucracy that would develop if the exploitation were carried out directly or indirectly by an international organization. Moreover, in terms of the organization's budget, that system would be satisfactory. The choice of a system which granted the proposed enterprise exclusive exploitation rights would inevitably entail setting up a costly organization, which would make the programme less profitable and would not serve the best interests of the international community as a whole.

3. To derive the maximum benefit from the common heritage of mankind its resources must also be protected, since they could be exploited over a longer period of time if that activity were carried out in a rational manner. For that purpose the international area could be subdivided into equal areas like the squares of a chessboard. Thus the areas which seemed to be most profitable would not be the only ones to be exploited.

4. All those measures would be of no avail if the benefits, financial or otherwise, derived from the exploitation of the sea-bed were to be monopolized by one State or a small number of States or private entities. The Japanese delegation agreed with the proposal that the revenues obtained from exploiting mineral resources should be equitably distributed among the developing countries, taking into account in particular the needs of land-locked and other geographically disadvantaged States. All States should participate in exploitation activities, for the technical and managerial competence thus acquired would be a great asset for the economic development of all interested States.

5. The alternative of an enterprise having a monopoly on exploitation, run by experts from the developed countries, would not be conducive to that kind of situation. Individual States would be able to acquire the necessary competences only by engaging in exploitation activities either directly or in association with the technologically advanced States or companies from those States. A State would be authorized to request only a limited number of licences over a specified period of time.

6. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had devoted itself to the working out of provisions relative to the régime applicable to the sea-bed beyond the limits of national jurisdiction, the powers and functions of the international organization and the composition of the respective organs. For those provisions to be put into effect, supplementary principles were needed relating, for example, to the areas to be exploited, the duration of the licences or contractual arrangement which would be entered into with the international organization, the phases of exploration and exploitation activities, and the kinds of payments to be made to the organization. Those questions remained essential no matter what system of exploitation was adopted. The Conference had to lay down, at the least, the fundamental principles regarding the actual conduct of exploration and exploitation activities.

7. There still remained a number of problems to be solved, such as determining the limits of the international area, but the committee should not perhaps proceed to an examination of that item until the Second Committee had reached a conclusion on the matter.

8. With regard to the variants and bracketed texts to be eliminated from the report of Sub-Committee I of the sea-bed Committee, some of them had been proposed for over-cautious tactical reasons and should be eliminated from the very start of the informal meetings; nevertheless, it would not be possible to deal with every case in the same way since a great many questions still required more precise definition.

9. Mr. D'STEFANO PISSANI (Cuba) stated that the adoption of legal rules relating to the international régime and machinery which, in the final analysis, depended on economic, political, social, scientific, technical and other factors, posed a number of problems.

10. One problem concerned the close link between economic and social progress and the goal to be pursued, namely, that the resources which would be obtained from the sea-bed would serve all mankind and, in particular, those nations that were still under-developed. The resources of the area would not, however, cure all ills of under-development. They might, on the contrary, provoke new ills if appropriate measures for the distribution of resources were not taken.

11. A second problem arose out of the fact that any consideration of the area had to take into account its increasing uses. The sea, which until recently had been used only for communications and fishing, now offered an immense variety of possibilities for exploitation of the sea-bed, with all its possible conse-