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

SUB-COMMITTEE II

SUMMARY RECORDS OF THE TWENTY-FOURTH TO THIRTY-SECOND MEETINGS

Held at Headquarters, New York,
from 1 to 30 March 1972

Chairman:	Mr. GALINDO POHL	El Salvador
Rapporteur:	Mr. KASSEM	Egypt

The list of representatives appears in documents A/AC.138/INF.6 and Add.1-7.

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SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Held on Wednesday, 1 March 1972, at 11.15 a.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

The CHAIRMAN welcomed the new members of the Sub-Committee and suggested that, since several of its officers were absent temporarily, pending their return they should be replaced by members of their respective delegations, as had been done on various occasions in the past. Thus, Mr. Diggs (Liberia) and Mr. Kostov (Bulgaria) would act as Vice-Chairmen and Mr. Kassem (Egypt) as Rapporteur of the Sub-Committee.

It was so decided.

The Chairman invited Mr. Kassem to take the Rapporteur's seat.

The CHAIRMAN reminded the Sub-Committee that the previous summer at Geneva it had been unable to complete its primary task, which was to prepare a comprehensive list of subjects and issues relating to the law of the sea and to draft articles on them, as specified in paragraph 87 of the plenary Committee's report to the General Assembly (A/8421). The Sub-Committee's task was defined in subsequent paragraphs of the report, notably in paragraph 99 in which it was stated that the preparation of the list should be undertaken with a certain flexibility. He therefore suggested that the Sub-Committee should not prepare a new programme of work. The old programme should be considered in the light of the explanations provided in paragraphs 93, 98 and 99 of the Committee's report (A/8421), which were drawn from the Sub-Committee's report. It was clear that the general debate had been concluded and that the Sub-Committee should proceed to prepare the comprehensive list of subjects and issues relating to the law of the sea.

In order to save time, he suggested that the Sub-Committee should continue to follow the programme of work adopted at Geneva, as specified in paragraph 92 of the report.

Mr. BEESLEY (Canada), speaking as Chairman of the working group composed of the representatives of 11 delegations which had submitted working papers, recalled that at Geneva, the group had been given the task of facilitating agreement on a comprehensive list of subjects and issues relating to the law of the sea. Contrary to what had been hoped, the group had not been able to agree on a list before the end of the twenty-sixth session of the General Assembly.

(Mr. Beesley, Canada)

However, negotiations had since been taking place between the Latin American and the Afro-Asian groups. Before it decided on its programme of work, the Sub-Committee should be informed of the progress of those negotiations. He also pointed out that some delegations which had not submitted working papers had expressed a desire to participate in the deliberations of the working group.

Speaking as the representative of Canada, he said he feared that there might be some doubts as to the Sub-Committee's effectiveness if it did not act more expeditiously in accomplishing its mandate. He hoped the list requested of it would soon be ready.

Mr. OLSZÓWKA (Poland) said he shared the concern expressed by the representative of Canada and pointed out that the Sub-Committee had only a limited amount of time at its disposal. He expressed the opinion that the working group established at Geneva should resume its work without delay. It would be a good idea for representatives of other interested countries which were not at present members of the working group to be allowed also to participate in its discussions. The work being carried out by the group would not prevent other States from holding consultations, and an effort should be made to agree on a list of subjects and issues. He felt that the working group's mandate extended beyond the Geneva session, and he was ready to make a formal proposal to that effect if necessary.

Mr. INGLES (Philippines) said that the Group of 77 had continued to meet to draw up a joint list and that it hoped to agree on one shortly.

Mr. BEESLEY (Canada) said it would be advisable to await the results of the negotiations between the two regional groups most concerned before setting a date for another meeting of the working group. While it would be desirable for the group to meet fairly soon, it would be a mistake to move too quickly. The Group of 77 should be given time to obtain results.

Mr. ARIAS SCHREIBER (Peru) said that, if the Afro-Asian and Latin American groups were to submit a document which could serve as the basis for the Sub-Committee's work, they should be given an opportunity to hold consultations. The preparation of a joint list of subjects and issues on the law of the sea, of a general and objective nature, would be in the interest of all delegations, which would be free to submit their views on the matter. The representative of Poland

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(Mr. Arias Schreiber, Peru)

had expressed the wish that the membership of the working group should be left open. His own delegation had no objection to an open membership, although it feared that delays would ensue if the Group of 11 members were converted into a group of the whole.

Mr. STEVENSON (United States of America) said that, in general, he supported the views expressed by the representative of Canada. He hoped that, even if they did not become members of the working group, delegations not represented on it would be given an opportunity to participate in its meetings.

Mr. TUNCEL (Turkey) said that the working group should not be made a group of the whole; however, those delegations which were not represented on it should be allowed to participate in its work. The proposal to establish a working group composed of delegations which had already submitted proposals had been made during the session held in the previous summer at Geneva, with a view to preparing a joint list. It was too early to ask the group to resume its activities, since a joint list of subjects and issues relating to the law of the sea to replace the proposals and drafts contained in the annexes to the Committee's report (A/8421) could not be drawn up until it was known which proposals were still valid and which were not being maintained. His delegation shared the view expressed by the representative of Canada, while reserving its position as to whether the membership of the working group should be enlarged or kept the same.

The CHAIRMAN said that, if there were no objections, he would take it that the programme of work suggested at the beginning of the meeting was accepted.

It was so decided.

The CHAIRMAN said that a number of different opinions had been expressed as to the working group's resumption of activities and that the matter could be considered later. He would hold informal consultations with the other groups and would inform the Sub-Committee of the results. He stressed the importance of compiling a list of subjects and issues relating to the law of the sea at the current session. He hoped the Sub-Committee would meet again at the beginning of the following week.

The meeting rose at 12.05 p.m.

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held on Wednesday, 15 March 1972, at 10.45 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971

The CHAIRMAN invited the Sub-Committee to hear a statement by the representative of Canada on fisheries and thereafter a report by several representatives of working groups entrusted with preparing a list of subjects and questions relating to the law of the sea.

Mr. BEESLEY (Canada) recalled that fishermen in a number of countries were encountering problems resulting from the growing tendency towards over-exploitation and over-capitalization. The growing demand for fish, coupled with advances in technology, might reduce fish stocks to extinction. Meanwhile, international regulations were still oriented more towards the freedom to fish than towards the need for conservation. More rational fishery management was urgently needed. However, different species required different methods of management. Some, such as the sedentary species, were already being managed under national régimes. The exploitation of pelagic species and marine mammals, on the other hand, had to be governed by an international authority, while anadromous fish constituted a special case. Non-sedentary coastal species could be effectively managed only by a system under which coastal States assumed responsibility for their conservation as custodian for the international community under internationally agreed principles. Such a system would give the coastal States, not exclusive fishing rights but only preferential rights in particular circumstances.

As had been emphasized by the Intergovernmental Working Group on Marine Pollution at its November 1971 meeting at Ottawa, the exploitation of fisheries resources should be considered as a part of the broader concept of the management of the marine environment. According to the Group, the marine environment was of vital importance to humanity and must be so managed that its quality and resources were not impaired. The capacity of the sea for self-purification was not unlimited, and it was essential to prevent and control marine pollution. The FAO Technical Conference on Marine Pollution had also stressed the interrelationship between the protection of the marine environment and the conservation of its living resources. Those concepts formed the basis for the principles his delegation wished to outline.

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(Mr. Beesley, Canada)

Coastal States had a special interest in and responsibility for the conservation of the living resources of the sea adjacent to their coasts and should have the authority required to manage those resources accordingly and be entitled to preferential rights in that respect. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas had given a degree of recognition to those special interests, but the limitations and restrictions it contained made it impossible to use the Convention as a basis for an effective system of management by the coastal States. Further development of the principle was essential because fishing operations by distant States undermined the economic base of coastal communities. In addition, the interests of coastal States must be given further recognition in the light of the responsibility imposed on them by the relationship between land and sea. The waters bordering the continents were among the richest in the world, and in them was concentrated the production of food organisms many of which were dependent on the coast or on factors such as estuarial mechanisms and the local upwelling of cold waters. The coastal State therefore must protect that environment. Thus, it had to take measures, sometimes at considerable cost, against marine degradation resulting from land activities (stream pollution, dumping of refuse, industrial activities and the like). Such actions could benefit resource productivity well beyond the traditional limits of exclusive fishing rights, and hence the coastal State should have a right to protect its investment and a preferential share of the returns on it.

In exercising its management authority, the coastal State would have to take account of certain biological principles. Firstly, each population within a species had its unique characteristics and, with the exception of large pelagic species and marine mammals, normally inhabited well-defined areas. In theory, it should be managed as a separate entity, but that was undesirable because restrictions on fishing in one locality resulted in the diversion of fishing efforts to other places. Secondly, the production of new age groups in fish populations should be kept at a maximum, since otherwise stocks might be reduced to a level at which fishing was no longer economically possible. Thirdly, fish should not be taken at too small a size, and each age group should be fished at a time when additions in weight due to growth were balanced by natural losses. To that end, fishing must be carried on according to a planned strategy. Lastly, it

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(Mr. Beesley, Canada)

was essential to maintain the quality of ocean waters and prevent contamination that would be detrimental to other links in the food chain (including humanity). In a few short decades, marine pollution might cause serious damage to the resources of the world ocean.

Fish management in coastal waters should also take account of certain economic principles. Firstly, the resources of a fishery should be allocated to the various participants on the basis of some appropriate formula, so as to permit each participant to obtain his share on the most advantageous basis. In an unregulated fishery, competition might be advantageous to some, but in the long run everybody would lose: there would be over-exploitation, the spawning stock would diminish and the cost of fishing operations would increase. Furthermore, access to fisheries should be controlled on the basis of some appropriate formula to ensure that the optimum rate of catch was not exceeded and that the fish were taken without wasteful investments of capital and manpower, certain social factors being, however, taken into account.

In order to put both the biological and the economic principles into effect, general principles of management might be applied. Management must be based, first of all, on widely recognized and internationally acceptable scientific and socio-economic criteria. The coastal States must act in accordance with objective guidelines, and the international community must have objective standards by which to assess their action. Increased fishing operations might bring a temporary increase in yields but would impair the capacity of the stock to reproduce and might lead to long-term imbalances in the marine environment with unpredictable consequences. Thirdly, all fish caught should be utilized and species taken incidentally to the species sought should not be discarded, since they might be valuable to other fishermen. Fourthly, management of an internationally exploited fishery must include accountability to the international community. The authority of the coastal State would be unchallenged, but the exercise of that authority would be subject to appropriate procedures for the settlement of disputes. Lastly, all the countries participating in an internationally exploited fishery should co-operate with the designated management authority and contribute their fair share of management costs, in

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(Mr. Beesley, Canada)

proportion to the returns they obtained; that contribution might take the form of research programmes. They should also provide information on catches, statistics and the like.

The various principles he had outlined were applicable to any rational management system. However, only the coastal State could effectively implement them for coastal species. Only the coastal State could take prompt conservation measures as needed, since it was in the best position to do so. Present international management systems were inadequate. The various fishery commissions provided an opportunity for the analysis of information, promoted research programmes and established regulations, but not all their members participated actively in the work, and some participants in the fishery were not even represented on the commission. Thus far the commissions had been unable to control fishing and formulate effective regulations, owing to the rapid expansion of fishing operations. In short, they did not have sufficient authority to manage. Their decisions required ratification and unanimous agreement and were often difficult to enforce. Moreover, they were not responsive to the special interests and needs of coastal States.

Under the system of coastal-State management for coastal species envisaged by Canada, the commissions would continue to play an important role, advising the coastal States and collecting and analysing the necessary data, but management authority would rest solely with the coastal States. That authority itself would be unchallenged, but its exercise would be subject to review based on internationally agreed principles. In practice, the nationals of coastal States might sometimes be granted exclusive rights to fish for certain species of particular socio-economic importance to the coastal population, while in other cases they would simply enjoy preferential treatment. Coastal States might receive a share of the returns from fishing without themselves engaging in it; such an arrangement could be made for developing countries, which would receive a fee in respect of fishing operations.

Anadromous species such as salmon represented a special case. The amounts expended by Canada for Atlantic salmon conservation were greater than the income that it derived from its commercial catch. Such fish attained their maximum weight

(Mr. Beesley, Canada)

only on their return to their rivers of origin. Coastal States should therefore have the sole right to harvest salmon bred in their own rivers.

The principles that he had outlined could provide the basis for internationally agreed principles of fisheries management, and he hoped that they would be discussed in the Sub-Committee. Furthermore, consideration should be given to the desirability of convening a technical conference of fishery experts to work out principles of fisheries management which would then be referred to the conference on the law of the sea. The technical conference could consider the practical and scientific aspects of fisheries and formulate proposals for their solution, taking into account the technical assistance needs of the developing countries and the means of providing such assistance.

It was necessary to find an accommodation between the interests of coastal States and those of other countries, but if recognition was not given to the needs of the former, the decline in resources would lead to fiercer competition from which the whole world would lose.

ORGANIZATION OF WORK

Mr. INGLES (Philippines) said that the groups engaged in consultations had encountered difficulties which had slowed down their work. If they could arrange to hold one full meeting, they would be able to agree on a final list. There were in fact only a few questions still to be resolved.

Mr. STEVENSON (United States of America) thanked the groups for their efforts. He regretted, however, that an agreed list had not yet been placed before the Sub-Committee. Half the session had already passed and it was high time for the Sub-Committee to begin its substantive debate on questions clearly within its mandate. The question of fisheries had been referred to at the previous session. The very clear review just given by the representative of Canada made it easier to assess the problem. The Chairman of the Sub-Committee should appoint a working group to study the question of fisheries and to draw up draft articles for consideration by the Sub-Committee. If some delegations wished to submit other proposals on the subject of fisheries, a short debate could be held prior to the

(Mr. Stevenson, United States)

formation of the working group. The work of the Sub-Committee should be pursued in accordance with its terms of reference and must not be delayed simply because the list of subjects and issues relating to the law of the sea was still being worked on.

Mr. TUNCEL (Turkey) said that the statement by the representative of the Philippines was hardly encouraging. In view of the remaining difficulties, it could scareely be expected that the complete list would be ready before the end of the current session. In such circumstances, the Sub-Committee must speed up its own work and, as suggested by the representative of the United States, it should select now one or two specific issues and begin to consider them. His delegation would prefer the question of limits to be considered as a matter of priority, given the importance of that question and the work already carried out by Sub-Committee I.

Mr. ARIAS SCHREIBER (Peru) said his delegation shared the concern of the representative of Turkey but, in view of the complexity of the issues and the multiplicity of the points of view and lists proposed, it was scarcely possible to reach speedy agreements between the different groups. If an effort was not made beforehand to narrow the divergences between the different groups, there was a risk that the debates would produce as many proposals as there were participants. That was why the delegations that were taking part in the informal meetings had sought to reduce the existing divergences. It was hoped that they would be able to reach the agreeemnt desired by all. The Sub-Committee should heed the request made by the representative of the Philippines and allow the groups the necessary time to complete the list.

Mr. KOSTOV (Bulgaria) said that, while he had been interested to hear the Philippine representative's report to the Sub-Committee, he saw no reason why the informal groups had had insufficient time to complete their work. The Sub-Committee had thus far held only two meetings, although it had already reached the middle of the session. His delegation had not objected when the Sub-Committee had decided to give the three regional groups time to meet, but it had had misgivings from the beginning and had felt that consultations should be concurrent with rather than

(Mr. Kostov, Bulgaria)

replace the work of the Sub-Committee. Furthermore, two regional groups were not participating in the consultations and it would be necessary to consult them later. It would clearly have been better if all groups had participated in the consultations from the outset. The Sub-Committee should proceed to work immediately, without waiting for a complete list of issues. He was ready to accept any proposal that would have the Sub-Committee begin without delay the consideration of the items on which there was already general agreement.

Mr. KOLESNIK (Union of Soviet Socialist Republics) said he was aware of the difficulties encountered by those who were taking part in the informal consultations. The work of the Sub-Committee should not, however, be made dependent on the results of those consultations. Its functions were to draw up a comprehensive list of subjects and issues relating to the law of the sea and to prepare relevant draft treaty articles. His delegation took the view that it was in no way mandatory that the first of those tasks should precede the second. There were already many draft lists submitted either officially or informally by States or groups of States, but almost nothing had been done thus far to produce a joint list. As the Bulgarian representative had said, the informal consultations currently being held would have to be followed by a second series of talks in which all regional groups would participate.

There were certainly ways of speeding up the Committee's work, but the preparation of the list must be undertaken on the basis of the procedures normally followed in the United Nations. It would have been well to refer all formally submitted proposals to a working group. The group would then have been able to analyse and compare the proposals and draw up a list for consideration by the Sub-Committee.

(Mr. Kolesnik, USSR)

The preparation of draft treaty articles was a very important matter that, together with the preparation of the list, fell within the competence of the Sub-Committee. During the previous session, exchanges of views had already been held on such questions as the maximum breadth of the territorial sea, straits and the limits of the continental shelf. Those were very complex questions that could not be bypassed. Their solution would determine the success or failure of the next conference on the law of the sea.

While it was useful to hold informal talks in which the interests of all members must be respected, such talks should not be allowed to hinder the Sub-Committee's work. His delegation hoped that the Sub-Committee would resume its deliberations and that the Working Group would meet again to take up without delay the consideration of questions of substance.

Mr. ESSEN (Belgium) said he understood both the difficulties presented by the preparation of a list of subjects and the disappointment of certain delegations at the slow progress made in the informal talks. While awaiting submission of the list, the Sub-Committee had not tackled other questions. But it had the task of studying certain fundamental issues - particularly the limits of national jurisdiction - that determined all the others and should therefore be considered as a matter of priority.

Mr. KHANACHET (Kuwait) observed that the method adopted since the beginning of the session - that of informal consultations - had proved itself in the past and had produced positive results in, for example, the preparation of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, later adopted by the General Assembly in its resolution 2749 (XXV). Hence there was no reason to abandon it.

The Sub-Committee should set out from the principle that the document to be submitted constituted a whole and that all the subjects, whatever their degree of importance in the eyes of a particular delegation, formed an integral part of it. The cohesion of the text should not be sacrificed to mere considerations of time, particularly since the consultations currently taking place, by eliminating the difficulties, would subsequently enable the Sub-Committee to enter a productive phase of work.

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Mr. RIPHAGEN (Netherlands) favoured the establishment of a working group to consider the questions of fisheries, on which several delegations had already stated their position. Until the list now being prepared was ready, the Sub-Committee might usefully study that question.

Mr. BEESLEY (Canada) found it understandable that delegations should be impatient at being unable to proceed with their work. At the same time, the Sub-Committee could decide to hold official meetings while the private consultations were proceeding.

The idea of establishing working groups reflected a justifiable concern to expedite the Sub-Committee's work. Nevertheless, it would be a somewhat premature step because none of the subjects which such groups might be called upon to examine had as yet been thoroughly discussed.

It appeared that serious negotiations were proceeding with regard to the preparation of the list of subjects and issues relating to the law of the sea. If they did not result in the compilation of a single list, the issues might be referred back to the Sub-Committee.

Mr. CASTANEDA (Mexico) said that he, too, was concerned by the slowness of the negotiations concerning the list of subjects and issues relating to the law of the sea. If the Sub-Committee was unable to redeem the situation, it might lose the confidence placed in it.

Having regard to the nature of the work, it should not be so difficult to reach agreement. In the first place, the list was to be simply a working basis and not a specific programme; it would be neither restrictive nor binding and not all the subjects included in it would necessarily be the subject of treaty articles. Furthermore, the differences which had emerged should not be insurmountable because they were concerned with form rather than substance. Some members, for example, wanted to draw up a list of the criteria to be used in defining the extent of the continental shelf whereas others would prefer a more general approach. Those were questions of detail which it should be possible to settle quite easily.

The negotiations might be expedited if the Chairman of the Sub-Committee presided at the working sessions of the negotiating groups and if a time-limit were set for the completion of the negotiations. The latter had apparently progressed

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(Mr. Castaneda, Mexico)

sufficiently in recent days to allow the preparation of a single list by the end of the week. Otherwise, the various proposals outstanding could be submitted to the Sub-Committee for examination.

The difficulty with regard to the establishment of working groups lay in deciding which subjects should be assigned to them. For example, the question of fisheries proposed by the United States delegation, could not be separated from that of the limits of national jurisdiction, suggested by the Belgian delegation. In the circumstances, it would be better to proceed by grouping questions which were interdependent.

Mr. OGISO (Japan) also thought that the negotiating groups could finish their work before the end of the week; for example, by Friday morning. If they had not reached agreement by then, representatives of the groups could explain their difficulties to the Sub-Committee and, in particular, to members of delegations which had not taken part in the negotiations.

It would be premature to establish working groups because the questions with which they were to deal had been taken up only in the general debate.

Mr. HAYATOU (Cameroon) said that the private negotiations ought not to hinder the work of the Sub-Committee. It was, however, essential to prepare the list of subjects and issues relating to the law of the sea. It would be a tiresome waste of time for the Sub-Committee's next meeting to be again devoted to procedural questions. It might be wiser for the Sub-Committee to cancel its Thursday meeting to allow the negotiating groups to complete their private consultations and then report thereon to it.

Mr. JAYAKUMAR (Singapore) said that it was perfectly understandable that the negotiations should progress slowly; it took time to reconcile different viewpoints. The Sub-Committee should resume its work on questions of substance - the most urgent being that of the limits of national jurisdiction - although without thereby disrupting the negotiations. The Bureau might prepare a work programme to take account of that twofold need.

Mr. HARRY (Australia), Mr. PARDO (Malta), Mr. SHITTA-BEY (Nigeria) and Mr. TRAORE (Ivory Coast) asked for details of the item to be placed on the agenda of the Sub-Committee's next meeting devoted to substantive questions.

Mr. TUNCEL (Turkey) proposed that the Bureau should meet the following day to draw up a work programme.

The CHAIRMAN pointed out that the Sub-Committee's terms of reference did not specify an order of priority for the questions to be discussed. In the circumstances, he could not take it upon himself to decide that one question should be taken up before another. On the other hand, any member of the Sub-Committee could ask for the floor on any question he chose.

The meeting rose at 1.25 p.m.

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Held on Friday, 17 March 1972, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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ORGANIZATION OF WORK (continued)

The Chairman announced that the Sub-Committee's officers had met at length the previous day to consider the state of its work and had discussed various ways of furthering the completion of its task.

With regard to the preparation of draft treaty articles, the Sub-Committee might collate all information and suggestions placed before it by delegations in connexion with specific subjects.

As to the preparation of the comprehensive list of subjects and issues relating to the law of the sea - the main purpose of the current session - the Sub-Committee could continue with the approach which it had adopted so far and wait for the submission of the final draft list or it could examine the draft lists submitted by delegations. Informal consultations among the various groups could be held simultaneously. Another possibility would be to reactivate the working group established at Geneva or to appoint a new group.

Mr. TUNCEL (Turkey) said that the three regional groups should be allowed time to complete the preparation of the list of subjects and issues. For the consideration of the various lists that would be presented with the view to the establishment of a single list, his delegation would prefer the Geneva group to be reactivated and supplemented by new members.

Mr. ENGO (Cameroon) considered that it would not be advisable to establish a formal working group while informal negotiations among the three regional groups were continuing. If those negotiations were successful, fruitless discussion of the list would be avoided. For the time being, the delegations engaged in the negotiations should be encouraged to complete their work as soon as possible.

Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) again expressed regret that the Sub-Committee had still not begun its work on the draft treaty articles and that agreement had yet to be reached on a list acceptable to all. The Chairman had proposed various solutions with regard to the draft articles: that the Sub-Committee should formally examine the draft lists already submitted, that the informal negotiations among the regional groups should be continued,

(Mr. Zavorotko, Ukrainian SSR)

that the Geneva working group should be reactivated or that a new working group should be established. His delegation's view was that the Sub-Committee could either examine any issues which delegations might raise or concentrate on specific issues with a view to obtaining more positive results. The previous year, delegations had made specific proposals regarding fisheries and the maximum breadth of the territorial sea. Those issues were closely interrelated, as they were also with the question of straits. Another specific issue was the limits of the continental shelf. It would be well to examine those problems and thereafter to formulate draft articles, without waiting for the definitive list of subjects and issues.

Mr. CASTANEDA (Mexico) thought that the Sub-Committee should not confine itself to purely informal negotiations. As soon as the three regional groups had reached agreement, the suitably representative working group of 11 countries, which had functioned the previous year at Geneva, should be reactivated. There was no need to enlarge the group.

Mr. PARDO (Malta) said that he was extremely disappointed to note the lack of progress in the Sub-Committee's work. It was inadmissible that so much time should be lost on procedural questions. It would be inadvisable to establish a new working group or to reactivate the Geneva group. Furthermore, the informal discussions among the regional groups were of little value because their outcome could only be provisional proposals which would have to be examined by the Sub-Committee. It would therefore be better for the Sub-Committee itself to consider the list of subjects and issues. It might decide that the list should be shortened.

As for the preparation of draft treaty articles, the Chairman believed that one course which the Sub-Committee might adopt would be to collate as much information and as many suggestions as possible. It should resign itself to doing so, however, only as a very last resort. Another possibility would be to consider specific issues, in particular fisheries, although the study of separate questions might cause much controversy.

His delegation believed that there was a third possibility; the Sub-Committee could begin its work, after the list had been submitted, by considering the

(Mr. Pardo, Malta)

general norms established in the 1958 Geneva Convention on the High Seas. It should not be too difficult to bring certain of those norms up to date or to prepare new ones in order to reflect scientific and technological advances. In that way, the Sub-Committee would be able to undertake constructive work immediately, even without waiting for the preparation of the final list of subjects and issues.

Mr. STEVENSON (United States of America) said he hoped that the Sub-Committee would begin consideration of specific issues as soon as possible. It would be useful, for example, if delegations stated their views on the question of fisheries.

Mr. ENGO (Cameroon) said that, like the representative of Mexico, he thought that the Geneva working group could usefully be reactivated so that the various regional groups could state their views.

The Maltese representative had said that it would be possible to shorten the list of subjects and issues; yet that would raise considerable difficulties, because it would jeopardize what had been achieved through lengthy negotiations.

Mr. MIRCEA-TUDOR (Romania) said that he appreciated the difficulty of the task assigned to the Sub-Committee, which was called upon to consider matters for which no provision, or insufficient provision, had been made in the rules established to date and which had political, economic, legal and other implications. In addition, questions relating to the sea were closely interconnected and should be studied as a whole.

There might be differences of view as to the question whether the two tasks entrusted to the Sub-Committee - namely, the preparation of a comprehensive list of subjects and issues relating to the law of the sea and the preparation of draft treaty articles - could be undertaken simultaneously. It seemed, however, that most members thought that the list should have priority.

As to the possibility of establishing a working group or reactivating the Geneva group, the experiment tried during the previous session did not appear to have had positive results. On the other hand, the debates which had taken place during meetings had been useful in that they had made it possible to take stock of the problems to be settled. Admittedly, the Sub-Committee could not be expected

(Mr. Mircea-Tudor, Romania)

to take decisions or formulate conclusions but it could provide Governments with indications of the positions of the various countries.

Mr. HACHEME (Mauritania) said that the establishment of a new group, at that stage, could only complicate the work of the Sub-Committee in view of the fact that there were already several groups engaged in negotiations. While awaiting the outcome of the latter, the Sub-Committee would be well advised to continue consideration of the substantive issues.

Mr. BEESLEY (Canada) said that the situation did not appear to have changed since the Sub-Committee's previous meeting, apart from the fact that the Group of 77 appeared to be near agreement on the list.

In the circumstances, the Sub-Committee could begin discussion of the question of fisheries while, simultaneously, the Group of 77 continued its consultations and then submitted its list to the regional groups for their consideration. If, however, the Group of 77 was unable to reach agreement the Sub-Committee could resort to the establishment of working groups, which should be composed according to the principle adopted in the case of the Geneva group whereby delegations which had sponsored proposals formed groups that might be supplemented by other interested delegations.

Mr. ARIAS SCHREIBER (Peru) saw no reason why the Sub-Committee should not hear any delegations which had statements to make on substantive issues.

Furthermore, as the Group of 77 had reached agreement on the list, except for a single point, it was reasonable that the next stage should be negotiation with the regional groups. If the difficulties continued to be insurmountable, other methods could be considered.

Mr. GERVILLE-REACHE (France) said that it was important that the groups involved in negotiations should be allowed all the time necessary. Nevertheless, that should not prevent the Sub-Committee from continuing its examination of certain substantive issues; in particular, the question of fisheries would undoubtedly appear in some form in the list to be prepared. His own delegation intended to make a substantive statement on that important question.

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Mr. HOLDER (Liberia) agreed that the Sub-Committee should proceed to discuss substantive issues while waiting to receive a list commanding the unanimous support of not only the Group of 77 but also all the regional groups. That would enable the Sub-Committee to determine which problems were of particular interest to a given country.

As to the establishment of working groups, it was of little moment whether the Geneva group was reactivated or whether a new group was established, provided that their membership was balanced and that all views could be represented.

Mr. JAYAKUMAR (Singapore) thought that it would be wiser not to establish new groups. He favoured discussion of substantive issues, particularly the question of fisheries, which could proceed simultaneously with the negotiations

Mr. SHITTA-BEY (Nigeria) thought that, with a view to the orderly conduct of the debate, it would be well to know what questions were to be taken up during the Sub-Committee's future meetings.

The CHAIRMAN pointed out that it was not for him to decide that question. The Sub-Committee could meet at the request of any delegation which wished to make a statement on a relevant question.

The meeting rose at 12.40 p.m.

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SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Held on Wednesday, 22 March 1972, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)

Mr. OLSZOWKA (Poland) said that Poland attached particular importance to problems relating to sea fisheries and felt that it was a major task of the Sea-Bed Committee to find a reasonable solution accommodating the legitimate interests of all States. The matter was one of concern, whether immediate or future, to almost all countries of the world, coastal and non-coastal, developing and developed, those which possessed a fishing industry and those planning to develop one. A system should be established to protect and promote the fishing interests of developing coastal States, mainly through increased co-operation, based on the principle of mutual benefit, between countries with developed fishing industries and those without them. Poland had made a sustained and costly effort to build its fishing industry and was thus in a position to understand the needs and aspirations of developing countries. It also expected those countries to understand its own needs as a medium-sized country with limited food resources and rapidly growing consumption.

The international system to be established should avoid cut-throat competition and should be based on the principle of co-operation for the benefit of all parties. It should secure the vital interests of States which had coastal fisheries as well as those which engaged in distant water fishing. It should also promote the development of distant-water fishing by developing States with no abundant and valuable fish stocks along their coasts.

The system would provide for the optimum rational exploitation of the fish resources of all seas and oceans, for which purpose it would be necessary to strengthen measures to conserve the living resources of the sea, on the basis of the results of scientific research, and to solve the acute problem of irregular distribution of fishing activities by, inter alia, rendering accessible fishing grounds which were presently under-exploited. In order to ensure the effectiveness of such a system, it was necessary to broaden the powers and authority of regional fishery organizations.

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(Mr. Olszowka, Poland)

His delegation wished to propose the following principles as a useful basis for the Committee's further deliberations on the problems of sea fisheries:

Firstly, the problems concerning fisheries on the high seas (i.e. beyond the limits of the territorial sea and fishing zone of a State, the total breadth of which should not exceed 12 nautical miles measured in accordance with the provisions of the 1958 Convention on the Territorial Sea and Contiguous Zone) should be solved in such a way as to accommodate to the fullest possible extent the interests of all States concerned. Secondly, in view of the special needs of developing coastal States and, in particular, of the dependence of some of them on fish resources, developing coastal States should have preferential fishing rights in areas of the high seas adjacent to their territorial sea or fishing zone. Thirdly, where the fishery resources of those areas were of such magnitude that all interested States could take their maximum attainable catch without thereby reaching the level of the maximum sustainable yield, all States could engage in fishing according to the generally recognized principle of freedom of fishing on the high seas, subject only to the measures necessary for the conservation of living resources.

Fourthly, where the fish resources of those areas were limited, interested States should accordingly restrict their fishing activities in order not to exceed the maximum sustainable yield. The following guidelines concerning those areas would be applied: (a) the necessary catch limitations and/or other means of protecting fish stocks would be agreed upon within the relevant regional fishery organizations, in which all interested States, coastal and land-locked, would be represented, (b) the regional fishery organizations would in such cases assign fishing quotas, taking into due account the needs of certain States and their recent catch performance. Where the size of the stock was not sufficient to satisfy fully the justifiable needs of all interested States, the quotas of certain States would be proportionately reduced, it being understood that developing coastal States would have the right to a certain amount of the catch, in proportion to the degree to which their economies depended on coastal fisheries, up to a certain substantial percentage of the total catch. That right would not apply in the case of migratory species; coastal states would, however, have special rights to anadromous species such as salmon. In assigning the quotas, the regional fishery organizations would also take into account such factors as the fishing

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(Mr. Olszowka, Poland)

capability of States, based on FAO statistics for the preceding calendar year. (c) All interested States would apply the conservation measures necessary to maintain the fishing stock at the maximum sustainable level. The regional fishery organizations would decide what measures should be applied in their areas of competence, and to what extent. In order to ensure the application of the most effective measures, they would co-operate with other competent international bodies, particularly FAO.

Fifthly, in order to ensure that regional fishery organizations were in a position to fulfil their functions, they should be substantially developed and strengthened by, inter alia, broadening their territorial competence so that all major fishing grounds would be covered by their activities and ensuring participation by all coastal States in the region concerned as well as by all other States fishing there. Membership in those organizations must not be subject to any other conditions whatsoever. The organizations would have the power to take decisions in matters pertaining to the conservation of fish stocks, the regulation of fisheries and the establishment and allocation of fishing quotas; they would act more promptly and more decisively than in the past; their decisions would be implemented more rapidly; and they would have the power to ensure the implementation of their decisions, inter alia, through inspection and enforcement.

Sixthly, States having developed fishing industries or regional fishery organizations should help developing coastal States in the promotion and development of their national industries through technical assistance, including training and the collection of information regarding fisheries.

Seventhly, all States should have recourse to compulsory arbitration in the event of disputes.

The foregoing proposals did not necessarily represent Poland's final position. His delegation was ready to co-operate fully with others in order to find appropriate solutions for the international community, taking into account to the fullest possible extent the rights and legitimate interests of all States.

His delegation supported the Canadian proposal to convene a technical conference of fishery experts to work out principles of fisheries management which would then be referred to the Conference on the Law of the Sea. Such a technical conference would substantially facilitate the discussion of problems relating to fisheries at the Conference on the Law of the Sea.

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(Mr. Olszowka, Poland)

Lastly, his delegation wished to express its appreciation to FAO for its valuable contribution to the Committee's work in the field of fisheries. It also supported the proposal by the representative of Ceylon at the 74th meeting of the Sea-Bed Committee that FAO should be requested to prepare a supplementary paper on regional fishery bodies indicating in greater detail ways and means whereby present fishery management techniques and machinery could be improved.

Mr. SIMPSON (United Kingdom) said that he wished to refer to the question of the breadth of the territorial sea and the question of international straits. With regard to the first of those subjects, he said that the three-mile limit had long been the rule in the domestic law of the United Kingdom and was the guideline it followed in all its dealings with other countries. At the 1960 Conference on the Law of the Sea, his Government had been prepared to support proposals - eventually rejected - for a six-mile territorial sea as part of a package intended to take due account of the rights and interests of the coastal State and of those States whose vessels might be engaged in distant-water fishing. At the forthcoming Conference on the Law of the Sea, further package proposals would also be introduced, and his Government was prepared to support a provision by which coastal States would be entitled to extend their territorial seas to a maximum of 12 miles.

His delegation felt that a consensus was emerging and that it would be possible for agreement to be reached at the Conference on 12 miles as the maximum breadth of the territorial sea. That statement was not as far-fetched as it might appear at first sight. The 1958 Convention on the Territorial Sea and the Contiguous Zone defined the territorial sea as the belt of sea adjacent to the coast to which the sovereignty of the coastal State extended. Claims by States to belts of sea greatly in excess of 12 miles were sometimes found, on analysis, to be claims to rights which fell well short of sovereignty, and were therefore not necessarily incompatible with a rule that the territorial sea in the strict sense could not exceed 12 miles in width.

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(Mr. Simpson, United Kingdom)

Turning to the question of international straits, he said that his delegation did not agree that a new definition of an international strait was required. Useful guidance could be found in the judgement of the International Court of Justice in the Corfu Channel case. The Court had held that the decisive criterion was the geographical situation of the Channel as connecting two parts of the high seas and the fact that it was used for international navigation. There were few situations in the world where that decisive criterion would be difficult to apply.

That judgement was also authority for the view that the right of innocent passage, as a matter of customary international law, could be enjoyed both by warships and by merchant ships in international straits. The question whether any new or further provisions were necessary in the convention towards which the Committee was working was one to which the United Kingdom, as a State overwhelmingly dependent on sea-borne trade and as a State bordering on one of the world's most important international straits, had had to give the most careful consideration. Countries bordering on international straits had legitimate concerns about traffic safety regulations and pollution. Ships exercising the right of transit through straits must conform to internationally agreed provisions for the safety of navigation and the avoidance of pollution. The United Kingdom had been and would continue to play an active part in IMCO, the Sea-Bed Committee and other forums in the effort to work out more effective regulations which, by international agreement, might be applied in all congested sea areas. Nevertheless, it had come to the conclusion that if an extension of the territorial sea to 12 miles was generally recognized and agreed and the number of straits which were entirely territorial was thereby increased, the interest of the international community in unimpeded commerce and navigation required the acceptance of the principle of freedom of navigation and overflight for the purpose of transit through and over straits, as established in article II of the draft articles on the breadth of the territorial sea, straits, and fisheries submitted by the United States of America (A/AC.138/SC.II/L.4). That article would not exempt vessels claiming the rights it conferred from such rules as were authorized by international law to ensure safety at sea and the prevention of pollution. The interests of States in general would best be served by the adoption of that article.

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Mr. KAMENTSEV (Union of Soviet Socialist Republics) said that at a time when a large part of mankind was suffering from hunger, it was inadmissible that fish stocks rich in vital protein should be allowed to go to waste or be under-utilized. The population of the world could and must take advantage of the extensive living resources to be found in the world ocean while taking care to exploit those resources rationally and avoid over-exploitation. Although the annual fish catch was setting new records every year, experts believed that the total catch could be increased two or even threefold without damage to the normal renewability of fish stocks.

According to international fishery statistics and scientific studies, fish stocks were unevenly distributed in the world ocean. The bulk of the catch used directly for human consumption came from the northern parts of the Atlantic and Pacific Oceans. The deep sea and especially those waters which overlay great depths were appreciably poorer in fish resources than the waters overlying the continental shelf and were, accordingly, of less importance to the fishing industry. Moreover, even within a given inshore region, the distribution of fish was uneven. That being the case, a number of problems arose with regard to the rational exploitation of fish stocks, the regulation of exploitation and the conservation of living marine resources.

It appeared clear that the majority of delegations were concerned to see the problem of fisheries solved equitably, taking into account the interests of both coastal and distant-water States. His delegation shared that basic position. The Soviet Union was a coastal State off whose shores foreign fishermen plied their trade and, at the same time, a country whose vessels were engaged in distant-water fishing. In his delegation's view, those countries which advocated an extension of their territorial waters and fishing areas or the establishment of economic zones beyond the 12-mile limit as a solution to the fisheries problem were misguided. The Sea-Bed Committee bore an enormous responsibility before the nations of the world to ensure that the food resources of the world ocean would be put at the service of mankind as a whole. A few States might derive short-term advantages by extending their jurisdiction over fishing into the area of the high seas, but the interests of the majority of States would not be served by such action, which

(Mr. Kamentsev, USSR)

was indeed not in the long-range interest of the States adopting such a policy. Rational utilization of the living resources of the world ocean and conservation of fish stocks could only be achieved on the basis of broad international co-operation.

Fish did not recognize man-made boundaries; they multiplied and migrated in the ocean in accordance with the laws of nature. In order to conserve fish stocks at the level of maximum sustainable yield, it was necessary to extend the system of regulation of the fishing industry to the entire habitat of the fish population in question, and that could only be done on the basis of broad participation in such a system by all States fishing the species in question. Natural laws, not zones established by States, governed the seasonal migrations of pelagic fish, which were reckoned in distances of tens, hundreds or even thousands of miles. In regulating fishing activities, therefore, a multitude of complex factors relating to the ecological balance in the marine environment must be taken into account. A concerted effort on the part of the scientists and specialists from many countries would be required to safeguard the common interests of mankind. Rational exploitation of fish resources entirely within the coastal zone of a single State was impossible.

The Soviet Union had the longest coastline of any State in the world. A considerable proportion of its fish catch came from in-shore waters, where the distant-water fishing fleets of other States were also active. Nevertheless, the Soviet Union did not propose to extend its jurisdiction beyond a 12-mile limit although it was quite obvious that it would stand to gain appreciable advantages with regard to fishing by extending its jurisdiction. The establishment of extensive fishing or economic zones would not solve the problem of the rational exploitation of living marine resources, taking into account the interests of all States.

It was worth while pointing out that a number of coastal States in regions where fishery resources were limited, for example, States bordering on the Mediterranean or Red Seas or the east coast of Africa, would in practice gain nothing by extending their territorial waters and fishing zones. However, such States would be excluded from fishing in the in-shore waters of other States

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(Mr. Kamentsev, USSR)

which had established such economic zones even where there were major unexploited fishery resources. Certain countries of Africa and Asia with a short coastline would find themselves in a similar disadvantageous position. Moreover, the many land-locked countries would be permanently denied the possibility of deriving benefits from the exploitation of living marine resources. It was inconceivable that the interests of land-locked countries with respect to marine fishing should be disregarded because they had not previously been active in the industry. Finally, the interest of countries engaged in distant-water fishing must also be taken into account.

All countries, and in particular developing coastal States, must be given a fair opportunity to exploit fishery resources in order to meet the needs of their peoples. The Soviet Union stood ready to accommodate the interests of the developing countries. Developing coastal States should be afforded preferential rights which would guarantee them an opportunity to develop their national fisheries and to bridge the technological gap which was a result of the colonialist yoke and plundering by the imperialist Powers over the course of centuries. In particular, his delegation would have no objection to according coastal States the right to reserve for themselves each year a given share of the resources which their national fleets could harvest in the area of the high seas directly adjacent to their territorial waters or to fishing zones not exceeding 12 miles in breadth. Of course that would not affect the rights of other States to exploit the unreserved remainder of the fish stocks, on condition that stocks must not be depleted beyond their capacity for self-renewal. The proposal just outlined provided an opportunity to achieve a balanced solution in keeping with the interests of both coastal and distant-water States. That solution was based on a reasonable harmonization of the interests of the coastal States with the principle of freedom to fish on the high seas, and it would serve the legitimate interests of all countries. As the fishing fleet of a coastal State expanded,

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(Mr. Kamentsev, USSR)

the share of fish stocks reserved for it could be expanded accordingly. It should be emphasized, however, that the right of reserving a share of the fish stocks for the coastal State should be accorded only to developing coastal States.

Coastal States should have preferential rights to harvest anadromous fish bred in their own rivers. That would encourage coastal States to promote measures of conservancy and development with regard to anadromous fish stocks. The coastal State would thus be repaid for expenses incurred in respect of such measures. The position of his delegation coincided in many respects with that of the Canadian delegation as regarded anadromous fish. However, it could not agree with the Canadian position that existing international fishery commissions were incapable of dealing with certain emerging problems and that only a right of management by the coastal State could ensure rational exploitation of fish stocks. On the contrary, experience had shown that international fishery organizations provided the most effective machinery for ensuring rational exploitation of the fish stocks in the area of international jurisdiction.

His delegation supported an intensification of the activities of international organizations conducting research into fishery resources and working out recommendations for international regulation of the industry with a view to conserving those resources at a level of maximum sustainable yield. Such organizations should be open for participation by all States with fishing industries, without exception. The organizations should be enabled to function more effectively at the regional level. In particular, they should be empowered to develop ways and means of verifying compliance by fishing vessels with existing international rules. The establishment of a system of international controls over the industry's conduct would encourage strict compliance by fishing vessels of all States with the established rules and thus contribute to the conservation of fishery resources at a level of maximum sustainable yield. Such controls would also foster confidence among fishermen that regulatory measures were applied equally to all fishing vessels operating in a given region.

It should be emphasized that his proposals on the subject of fisheries stemmed from a desire to achieve a balanced solution in keeping with the interests

(Mr. Kamentsev, USSR)

of both developing countries and countries engaged in distant-water fishing. Those proposals would enable the coastal developing countries to develop a modern fishing industry while conserving the fishery resources in their coastal waters. As their industry developed, the share of the catch reserved for them would increase. On the other hand, countries engaged in distant-water fishing would be able to exploit the remainder of the fish stocks. Thus, needed fish stocks would not go to waste.

The existing systems of international regulation of fisheries and the exchange of scientific, technical and operational information among all interested countries must be constantly improved. In that connexion, his delegation supported the Canadian proposal that a technical conference on fisheries should be convened with a view to referring the results of its work to the forthcoming Conference on the Law of the Sea. Such a conference would no doubt contribute to a clarification and rapprochement of views among States and thus to the success of the Conference on the Law of the Sea. The former conference should be held adequately in advance of the latter.

Mr. JEANNEL (France) said that since Sub-Committee II was the body competent to deal with the question of the limits of national jurisdiction, his delegation wished, in the first place, to clarify the views it had already expressed concerning the area in which the competence of the coastal State was to be exercised on the sea-bed and the subsoil thereof, excluding the superjacent air and water. Members would recall that at the previous session his delegation had spoken in favour of a distance criterion but had not specified the distance as such. He was now in a position to inform the Committee that the French Government had, in principle, decided in favour of 200 miles, it being understood that adoption of that figure supposed that there would be a general consensus in favour of reasonable and realistic solutions.

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(Mr. Jeannel, France)

Turning to the question of fishing, he said that by developing considerably the means of fishing, technological advances had upset the premises on which rules applicable in the matter had been based. Unless their use was properly ordered, the improved fishing methods would result in the depletion of stocks of fish and the extinction of certain species. Furthermore, sophisticated equipment was very costly and beyond the means of the poorer countries, which accordingly ran the risk of being excluded from the benefits of activities which others carried out under their eyes and without in any way contributing to their economic development. The resulting feeling of frustration experienced by the developing countries was all the greater since the improvement of fishing vessels enabled ocean fleets not only to increase their catches but also to process them on board without entering into contact with the coastal State or benefiting it in any way. Thus, developing countries were not only prevented from exploiting the wealth on their doorsteps but were also witnessing the depletion of that wealth before they were in a position to derive any profit from it themselves. The pertinent law, as codified in 1958, should therefore be updated and supplemented.

France's fishing interests were not confined to its European coasts, but extended to other maritime areas in the North Atlantic, the North Sea and the Mediterranean and, to a lesser degree, the South Atlantic and the Indian and Pacific Oceans. It therefore attached great importance to the conservation of biological resources in all those geographical areas. It was now generally recognized that the sea was not an inexhaustible source of food protein and that stocks of the most common species of fish were gravely threatened as a result of intensified fishing activity. France's position with respect to that situation had always been very clear. It had always considered that rules based on the recommendations of competent international organizations constituted the most appropriate recourse against over-exploitation of fish stocks. It did not, however, consider that virtual appropriation by the coastal States of the waters off their coasts would provide a solution to the problem. Examination of the work accomplished by international fishery commissions showed, however, that those commissions had been only partially successful in achieving the goals assigned to them. It seemed fair, moreover, that coastal States in the fishing areas, particularly developing States, should be able to profit from the fish stocks

(Mr. Jeannel, France)

adjacent to their territory and to take any steps necessary for ample exploitation consistent with good management. His delegation was, therefore, particularly grateful to the Canadian delegation for the statement it had made at the 25th meeting of the Sub-Committee (A/AC.138/SC.II/SR.25), for it seemed to contain the elements of an accommodation between the interests of the countries to which he had just referred and those of other countries and, more generally, those of the international community. In recognizing that the coastal State, as the party primarily concerned, was best able to apply international rules to ensure the rational exploitation of fisheries, the Canadian statement took the approach favoured by the French delegation, which would support it subject to a more detailed examination of its practical implications and to the following comments on its content.

His delegation was prepared to subscribe, subject to clarification of certain points, to the principles set forth by the Canadian delegation which, it seemed, were intended to supply the basis for the regulations to be adopted. One or two comments on those principles were, however, called for. In the first place, his delegation fully endorsed the idea that it was imperative to protect the general environment and to maintain the quality of the marine environment; it felt, however, that for the purposes of good working methods, the question should be dealt with by Sub-Committee III because it was connected more with pollution, in the broad sense, than with fishing. Secondly, certain terms in the Canadian statement were ambiguous. What, for instance, was the precise meaning of the words "accountability" and "responsibility". It was difficult to see how, or to whom, a régime, in the sense of a regulatory system, could or would be accountable and responsible. Lastly, the Canadian statement made no mention of the question of priority as between fishing for human consumption and fishing for fishmeal production, in so far as the latter involved the taking of immature fish and was therefore inconsistent with the principles of good management.

His delegation was also keenly interested in the proposed international technical conference. Indeed, several, mainly technical, matters remained to be explored, such as: determination of sedentary and migratory species and their

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(Mr. Jeannel, France)

habitat areas, determination of stocks composed of a number of mixed species and of stocks situated in areas off the shores of two or more neighbouring States, the different methods of calculating fishing quotas, and collaboration with the coastal State in scientific research. Special, purely technical, studies should be made on those and other questions with a view to supplying the Sub-Committee, and eventually the proposed conference, with the background necessary for the preparation of definitive solutions. Perhaps FAO could, before the summer session, provide the Sub-Committee with the information it needed and thus obviate the need for a conference.

Subject to those comments, his delegation shared the views of the Canadian delegation on principles for the conservation of fish stocks through regulations applied by the coastal State by delegation of all countries concerned.

Mr. ANDERSEN (Iceland) said that at the previous session he had urged the Committee to maintain a flexible attitude with regard to a complete list of topics for discussion and to proceed with substantive discussions on such matters as fisheries. It was most important that all delegations should be heard on the question of claims by various States in the matter of fisheries so that a pragmatic and functional formula for a realistic solution of the problems involved could be found. His delegation had also urged that experts from the specialized agencies should be integrated into the secretariat of the Committee in order to facilitate its work and that the Committee should devote special meetings to fishery problems. If the Committee proceeded in that way, it would be able to finish the preparatory work entrusted to it in time for the Conference on the Law of the Sea. Such a work schedule would also obviate the need for a technical conference. The Committee had a clear mandate and Governments should appoint to their delegations the experts necessary to accomplish that mandate.

As it had informed the Committee at the previous session, Iceland had decided to extend, on 1 September 1972, its fishery limits to 50 miles. That decision had been confirmed by the unanimous adoption of a resolution in the Icelandic Parliament on 15 February 1972. The United Kingdom had decided to challenge that decision and refer it to the International Court of Justice on the basis of an exchange of notes of 1961. The terms of those notes had, however, been terminated

(Mr. Andersen, Iceland)

by Iceland. On the other hand, the Governments of the United Kingdom and Iceland had, since August 1971, been engaged in discussions in order to find a practical solution to the problems involved for the United Kingdom distant-water trawler fleet. Specific proposals for interim arrangements or concessions had been under consideration by both Governments and his delegation sincerely hoped that they would be successful. The comments he had made concerning the United Kingdom also applied to the Federal Republic of Germany. The reasons for the extension of the Icelandic fishery limits had been explained to the Committee at the previous session and had been supplemented by further arguments contained in the memorandum entitled "Fisheries Jurisdiction in Iceland", which had been revised and circulated to the Committee.

Reviewing the basic elements of a satisfactory solution of fishing problems, he said that the crux of the matter was to make a clear distinction between conservation and utilization of fish stocks. The conservation of fish stocks so as to provide the maximum sustainable yield was in the interests of all and conservation measures, both national and international, must complement each other if there was to be an effective universal system. National conservation measures were of the greatest importance since spawning areas and nursery grounds were, for the most part, found in shallow coastal areas. The coastal State had the greatest interest in the preservation of coastal resources and in Iceland severer standards of conservation were applied inside the fishery limits than the regional standards adopted for the area beyond those limits. Further international or regional measures were, however, necessary to prevent the over-fishing of certain stocks in the areas beyond national jurisdiction.

Another fundamental element was the utilization, or economic allocation, of fish stocks. There, recognition of the coastal fisheries as forming part of the natural resources of the coastal State within a reasonable distance from the coast provided the answer to the problem. The idea of recognizing the coastal fisheries as part of the natural resources of the coastal State in view of relevant local considerations, was constantly gaining ground. It was found, for instance, in the proposals for a 200-mile economic zone or patrimonial area, in Iceland's extension to 50 miles (in implementation of its 1948 law), and in the recent extension by Nigeria and Senegal to 40 and 100 miles respectively.

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(Mr. Andersen, Iceland)

The time had come to face the fact that obsolete postulates must be revised. It was not a question of nationalism versus internationalism or of narrow fishery limits for the coastal State and the so-called freedom of fishing beyond such limits. It was, rather, a question of recognizing the right of the coastal State to utilize and develop its coastal fishery resources for the well-being of its population. In so far as Iceland was concerned, that principle meant that Iceland's jurisdiction extended to the sea-bed and the waters of the continental shelf which, as an organic environmental whole, constituted Iceland's natural resources and without which the country would not have been habitable.

In conclusion, he said that he hoped that other countries would indicate their requirements and the reasons for them.

Mr. LEGAULT (Canada) thanked those delegations which had commented on Canada's suggestion that consideration should be given to the desirability of convening a technical conference of fishery experts. The comments had been noted and would be of value to his delegation in its further study of the matter. The French delegation's questions concerning Canada's views on fishery management had also been noted and the necessary clarifications would be provided as soon as possible.

Mr. ARIAS SCHREIBER (Peru) said that his delegation had not intended to make a statement on fishing, but some of the statements made at the meeting called for comment. It had been said, for instance, that the establishment of limits beyond 12 miles would not solve fishing problems since fish did not acknowledge man-made boundaries but multiplied in accordance with the laws of nature. Yet it was obvious that the jurisdictional limits, including those which were contrary to the rules of nature, had been proposed for observance not by fish but by fishing nations.

Reference had been made to the interests of the developing countries as if those countries were unaware of their own interests. The developing countries were grateful for delegations' concern; but delegations did not need to undertake the defence of other countries' interests, since Governments had appointed their own representatives for that purpose. The purposes of the developing countries in extending their limits was to prevent exploitation and depletion of their resources

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(Mr. Arias Schreiber, Peru)

by other, more advanced countries. In that connexion, his delegation welcomed the fact that the French Government favoured the 200-mile limit. France had always been a country which promoted justice and law. The interests of developing coastal States must be borne in mind, for only in that way would it be possible to establish a new law of the sea which would be fair to all.

Mr. ALCIVAR (Ecuador) said that some delegations had adopted a paternalistic attitude with respect to the interests of the developing countries. Those delegations should realize, however, that the developing countries were quite able to defend their own interests. His delegation, too, welcomed the very important and interesting statement made by the representative of France.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held on Friday, 24 March 1972, at 3.30 p.m.

Chairman: Mr. TUNCEL Turkey

GENERAL DEBATE (continued)

Mr. PODSEROB (Union of Soviet Socialist Republics) explained his delegation's position on the subject of straits used for international navigation that were not already regulated by international agreements. Freedom of navigation and overflight must be ensured in respect of such straits, which joined the major seas and oceans. Otherwise, the principle of freedom of the seas could not be applied in practice. Complete freedom of navigation in those straits for the vessels of any country in the world had its source in customary law and had become an international rule which was confirmed by a number of agreements, including the 1881 agreement on the Straits of Magellan, the 1857 agreement on the elimination of customs duties in the Sund and the straits of the Baltic Sea, and the agreements on the Strait of Gibraltar. In 1894, the Institute of International Law had stipulated, in its rules on the definition and régime of the territorial sea, that straits which were used for passage from one part of the high seas to another must never be closed (article 10, para. 3). Many eminent jurists had stressed the importance of straits to mankind and had said it would be advisable to establish the neutrality of the major straits between seas, to guarantee freedom of navigation through them and to prevent them from becoming subject to any authority whatsoever.

It was possible to establish a precise definition of the category of straits that had been used for international navigation for centuries. So far, those straits had been open to free passage by any vessel under the principle of the equality of all flags. That was in the interest of all, including the developing countries, many of which had begun to build up their own national fleets. The economic importance of many straits, such as the Strait of Dover, the English Channel, Gibraltar and the Strait of Malacca, was proved by the increasing number of vessels that used them.

It was wrong to claim that the Soviet Union and the other countries that had spoken in favour of free passage through the straits were trying to modify the existing régime. On the contrary, they wished to maintain the existing situation, which was in the interest of the international community. Any change in the principle of free passage could be very detrimental to international trade and increase the cost of transport and, hence, of merchandise.

(Mr. Podserob, USSR)

Those who were opposed to free passage claimed that the régime of international straits had been settled by article 16 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. Yet paragraph 4 of that article stated the following: "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State." The Convention had thus regulated the question of free passage only for straits which were already in the territorial waters of coastal States at the time it was adopted. It did not apply to international straits whose median line was in the high seas and it had not modified the régime for certain other straits that were governed by specific agreements. The extension of the breadth of the territorial sea to 12 nautical miles must not result in a change in the legal status of many international straits which had been freely used for centuries by merchant vessels and warships. Certain coastal States interpreted the term "right of innocent passage" unilaterally; if their viewpoint was applied to the main international straits, complications might arise.

His delegation felt the United States proposal on freedom of passage of ships and aircraft in straits used for international navigation between one part of the high seas and another part of the high seas (A/AC.138/SC.II/L.4, article II) could be used as the basis for an article on straits. However, passage through straits was not completely comparable to navigation on the high seas. Navigation in straits could only be free and comparable to navigation on the high seas to the extent necessary to ensure free passage through those straits. Once that principle was accepted, the Soviet Union would not oppose the adoption of appropriate measures to guarantee the security of coastal States bordering the straits and to prevent pollution and collisions. For example, warships might be prohibited from using straits for manoeuvres and the rules of navigation should be strictly enforced. However, coastal States should not oppose or delay the passage of ships or require them to stop or provide information.

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(Mr. Podserob, USSR)

If the Committee was able to settle the problem of the 12-mile limit of the territorial sea and the problem of freedom of navigation and overflight in international straits, it would greatly facilitate the settlement of other problems pertaining to the law of the sea.

Mr. WARIOBA (United Republic of Tanzania) said that under the 1958 Geneva Convention, straits were part of the territorial sea of a coastal State, but on the other hand, all vessels had the right of innocent passage. Those two concepts had to be reconciled. There were now several proposals which sought agreement on the 12-mile limit of the territorial sea. Since that would have the effect of placing within territorial waters a certain number of straits which were used for international navigation, it had been argued that it would be necessary to take measures to guarantee free passage. The most important straits were already within the territorial waters of some States. The new proposals were in fact aimed at changing the régime governing international straits to the advantage of the great maritime Powers, without taking into account the interests of the majority of countries. His delegation could therefore not support them.

He wished to elaborate on the concept of an "economic zone", according to which a coastal State would have the sovereign right to exploit all the resources (mineral and biological) of the adjacent waters and to establish a régime for pollution control. In that area, which would extend throughout the territorial waters, freedom of navigation and overflight would be preserved and the laying of pipelines would also be free.

He supported the representatives who had argued in favour of the economic interests of coastal States with regard to fisheries. He also stressed the responsibilities incumbent on those States for conservation, pollution control and the protection of fishing resources from over-exploitation. Coastal States were directly affected by the activities carried out along their coasts and they should have the right to make inspections, and to arrest and punish violators. They should also have the sovereign right to exclusive exploitation. There was no reason to deny them, with regard to biological resources, the rights that they enjoyed with regard to mineral resources. The time had come to settle those issues by negotiation in order to avoid unilateral action. The argument that coastal

(Mr. Warioba, Tanzania)

States might underutilize the resources was not valid, because there was nothing to prevent such States from arranging for those resources to be exploited by foreign countries, both for their own benefit and for the benefit of the international community. There should be one common boundary for the area under the authority of a coastal State, whether with regard to territorial waters, fishing resources or pollution control. The distance would be subject to negotiation, but it would have to be based on the special interests of coastal States.

The argument that the extension of the economic zones of coastal States would be detrimental to land-locked States was not valid, because only the resources near the coast would be placed under national jurisdiction. The resources of the deep oceans, particularly nodules, would not be affected by an extension of economic zones. Such an extension would only affect fishing resources. The people who criticized the concept of an economic zone were also opposed to placing those resources under international ownership. They wanted complete freedom in that regard, because they had powerful means. The interests of land-locked countries would be better served through co-operation with coastal States. They could make use of the latters' ports, means of transport and installations. The land-locked countries should, however, in all justice, bear a part of the relevant financial burden. In order to minimize the risks of disagreement at the bilateral level, it would be preferable for that type of arrangement to be governed by principles established at the international level.

Mr. GEORGE (India) emphasized the importance of fishing for the people of India. Data prepared by FAO showed that the per capita production and consumption of fish in India were among the lowest in the world. Although per capita consumption was only 2.8 kilogrammes annually, over a million tons of fish were caught each year. That could be explained both by the eating habits of the population and the shortage of capital and technical capabilities. His country was currently making an intensive effort to develop its resources rapidly in order to improve the lot of fishermen, to provide a new source of protein for the population and to establish an export trade to earn foreign exchange. Thus far, it had not been possible to develop fishing more than a few miles beyond the coastline. In recent years, however, thanks to the assistance rendered by

(Mr. George, India)

friendly countries and experts from FAO and other world-wide and regional agencies, India had been seeking to develop deep-sea fishing. Medium-sized vessels, (55 to 105 feet) were being used for exploratory and experimental fishing and for training. Valuable resources of deep-sea prawn and lobster had been located over the continental shelf and the continental slope. Pelagic fish accounted for almost 30 per cent of the catch. An FAO/UNDP project, now in operation, was aimed at locating shoals of fish in order to counter fluctuation in the size of catches. Fishing vessels were now being imported or built in India. Another FAO/UNDP project concerned a preinvestment survey for the construction of fishing ports. It was estimated that the annual catch could be increased fourfold. There were not yet sufficient data to estimate the maximum sustainable yield for all species, but catches of tuna and bonito, for example, could be substantially increased.

His delegation had already indicated that the question of the recognition and protection of the legitimate interests of coastal States in fishing had never been considered on a fair basis. Articles 6 and 7 of the 1958 Geneva Convention on Fishing recognized the special interests of a coastal State in the conservation of the resources adjacent to its territorial sea. However, the limits of that sea had not yet been fixed. Furthermore, since 1958, several States had fixed fishing limits beyond their territorial sea or had uniliterally claimed exclusive rights to fishing areas beyond their territorial waters. Finally, some States had felt it necessary to extend their territorial sea up to 200 miles from the coast, in order to claim exclusive rights over fishing resources.

The 1973 Conference on the Law of the Sea would have to solve those two crucial questions in a definitive manner. The best way would be to settle the two problems separately. Historically, logically or legally there was no connexion between the concept of territorial waters and that of coastal fishing rights. The concept of territorial sea focused on the extension of sovereignty over a marginal belt along the coast, wherein complete jurisdiction of the coastal State was recognized, subject only to the right of innocent passage. Beyond the territorial waters were the high seas where there was complete freedom of communication. The 1973 Conference on the Law of the Sea would be called upon to develop a legal

(Mr. George, India)

framework for the use of both living and non-living resources of the high seas. The question of a régime governing such resources should be considered separately from the question of the breadth of territorial waters.

The living resources were not inexhaustible and it was therefore wrong to claim that a legal framework was not required for their equitable distribution among the people of the world. With the rapid increase in population and developments in fishing technology, several species of fish were already threatened by over-exploitation or even extinction. A global basis for the rational distribution of fishing resources among the people of the world should therefore be established, taking into account the regional variations in species. Not all species of fish were migratory and most demersal fish inhabited the continental shelf. The concept of the continental shelf had only made its appearance in legal terminology with the problem of protecting the fishing resources of coastal States.

Since the continental shelf was recognized as the natural prolongation of a continent over which a coastal State had sovereign rights, it stood to reason that no distinction should be made between the living resources found on the continental shelf and those found in the territorial waters. It was true that fishing resources were mobile and renewable whereas mineral resources were fixed and exhaustible. However, that distinction should not be taken too far. The coastal States concerned should take steps to preserve their resources and the conservation regulations relating to certain species should be prepared jointly by the coastal States of a particular region, either by direct arrangements between the States or through the regional fishery commissions.

In conclusion, his delegation believed that the question of the exclusive fishing jurisdiction of a coastal State should be considered separately from that of the breadth of the territorial sea. The régime for the conservation and utilization of fishing resources should take into account the legitimate interests of the coastal States and the international community.

The coastal States should have complete jurisdiction over fishing resources in their exclusive fishing zones. His delegation had not yet finalized its views on the outer limits of the exclusive fishing zone. It would prefer them to be

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(Mr. George, India)

based on surfacedistance rather than depth or depth and surface distance. If the exclusive fishing zone was to be narrow, there should be an additional zone in which coastal States would have preferential rights.

Moreover, the international community of States should be free to fish anywhere in the high seas outside the exclusive or preferential zone, subject to any regulations and decisions adopted by the Conference in 1973. His delegation hoped that special attention would be given to the interests and needs of the land-locked countries.

Mr. SHEN (China) observed that the representatives of several developing countries had firmly defended their national rights over the seas and oceans and their natural resources, in opposition to the super-Powers' policies of hegemony and plunder. Those countries stood for an equitable settlement of the question of the law governing the seas and oceans. However, some countries had recently echoed the statements of the super-Powers, using their hypocritical arguments to attack the just stand of the developing countries.

At recent meetings some had tried to find justification for the super-Powers' plundering of fishing resources of other countries. They had asserted that fish did not live long and it would be an unnecessary waste not to catch them. Under cover of such arguments, they had sought to prevent the developing countries from exercising their jurisdiction over the seas beyond a limit of 12 nautical miles. They had demanded that the interests of countries carrying out distant water fishing be taken into account, in other words, that the super-Powers' fishing vessels should be allowed to continue to exploit the resources of other countries. They had maintained that the developing countries should not extend their territorial sea limits, because it might harm the interests of most States. Moreover, the same representatives had stated that fish did not recognize the borders imposed by man. However, it should be pointed out that fish did not recognize the 200-nautical-mile limit any more than the 12-nautical-mile limit.

In trying to restrict the breadth of the territorial sea and fishing zones to 12-nautical miles, the super-Powers wanted not only to facilitate their plunder of marine resources but also to spread their hegemony throughout the world. In their opinion, the first country to gain control of the sea-bed would control

(Mr. Shen, China)

the world. That was why they were sending so-called "research vessels" everywhere, stepping up production of nuclear submarines and using the sea-bed for the arms race.

Posing as protectors of the land-locked countries, they had repeatedly stated that the latter should not be deprived of the right to use marine resources. Their aim was to sow discord between the land-locked and coastal countries and sabotage the unity among the developing countries. However, those efforts were utterly futile. Despite geographical differences, the countries of the third world were bound together in opposing imperialism and colonialism and safeguarding national independence. That was borne out by the fact that, during the present session, the developing countries of Asia, Africa and Latin America had reached agreement on a common list of questions concerning the law of the sea.

In order to obtain world hegemony, the super-Powers were exerting economic pressure, making military threats and carrying on political sabotage against the developing countries. Such a course could only hasten the failure of their policy.

His delegation was prepared to co-operate with the delegations of all justice-loving countries for an equitable settlement of the question of rights over the seas and oceans.

Mr. ZOTIADES (Greece) recalled that at the July 1971 session his delegation had drawn attention to the importance of finding solutions to the problems left unresolved at the 1958 and 1960 Conferences on the Law of the Sea. Those solutions must be in harmony with two fundamental principles of international law: the principle of freedom of the high seas and freedom of navigation, on the one hand, and the principle of territorial sovereignty, on the other.

The question of the territorial sea was undoubtedly the most difficult one before the Sub-Committee. The two principles of international law that he had cited had been applied in the time-honoured principle of innocent passage in international straits. In conformity with that principle, embodied in the 1958 Convention on the Territorial Sea and the Contiguous Zone, there should be no limitation or obstacle to peaceful maritime navigation.

Under existing international law, merchant ships and warships of any State enjoyed the right of innocent passage through straits whose waters formed part of

(Mr. Zotiades, Greece)

the territorial sea of coastal States. The protection afforded for straits was even greater than for any other part of the territorial sea. In fact that right of peaceful navigation was limited only to a passage that was prejudicial to the peace, good order and security of the coastal State. On the basis of those three criteria provided for in the 1958 Geneva Convention, his delegation believed that the principle of innocent passage in no way jeopardized freedom of navigation. No strait had ever been arbitrarily closed in times of peace to international navigation. In international jurisprudence and practice there was a general presumption of innocent passage in favour of navigation through the territorial sea in general and territorial straits in particular.

It did not seem advisable, therefore, that the next Conference on the Law of the Sea should revise concepts of international law that had served the interests of navigation for centuries. His delegation agreed with those which had emphasized that any agreement on limits should not be linked to changes in existing international law and practice as far as innocent passage was concerned.

It had been argued that the concept of the right of innocent passage was ambiguous, but the Geneva Convention on the Territorial Sea and the Contiguous Zone had provided a satisfactory codification of rules in harmony with international practice. If anyone felt that the notion of innocent passage should be clarified, his delegation would have no objection and would help to prepare rules for safeguarding freedom of navigation through the straits on the basis of an elaboration of the rights and duties of both the coastal States and the sea-faring nations.

Mr. CUENCA (Spain) said that his delegation wished to make a few remarks on the subject raised by the representative of the Soviet Union, reserving the right to comment in more detail at a later time.

His delegation fully shared the USSR view that a change in the present régime of straits whose waters formed part of the territorial sea of one or more States was not in the interest of the international community and did not meet the interests of international trade. However, there were different shades of interpretation of the existing régime. To the great majority of States, the present régime was that of innocent passage. As the United States delegation had recognized, the proposals on straits which were supported today by the USSR

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(Mr. Cuenca, Spain)

representative would establish a new standard of international law. That new standard would in no way advance peaceful co-operation and trade among peoples but would, on the contrary, promote the deployment of the naval forces of the great Powers.

The USSR delegation was, in fact, indulging in wishful thinking. For example, the USSR representative had asserted, on the basis of very vague arguments, that there was a tradition of freedom of navigation and overflight in the case of the strait of Gibraltar. Apparently the USSR was unaware that the waters of the strait of Gibraltar had been part of the territorial sea of the coastal countries since 1760, when Spain had fixed the breadth of its territorial waters at 6 nautical miles.

With regard to the definition of the category of straits that would remain open to freedom of navigation and freedom of overflight, the USSR representative's statement gave the impression that freedom of navigation increased with the distance of the straits from the coast of the USSR. According to a well-known Soviet work on international law, there were four categories of straits: firstly, those which the USSR regarded as "historic straits", to which freedom of navigation and overflight did not apply; secondly, straits providing passage from an interior sea of the USSR to the high seas, to which such freedom likewise did not apply; thirdly, straits which afforded USSR vessels access to the open sea by passage through the territory of another State, which were subject to a régime of greater freedom; and fourthly, straits remote from the coast of the USSR, which were subject to a régime of absolute freedom without discrimination.

With regard to the USSR's interpretation of the principle of freedom of navigation in straits, he recalled the 1967 incident with the United States of America in respect of the Vilkitsky Strait. When two United States warships engaged in oceanographic research had requested authorization for passage, the Soviet authorities had replied that the strait was part of the territorial waters of the USSR and that under Soviet security regulations, authorization for passage must be obtained from the USSR Government through the diplomatic channel, one month before actual passage.

Mr. DJALAL (Indonesia) observed that the USSR representative had mentioned the Strait of Malacca as an international strait. On that point

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(Mr. Djalal, Indonesia)

Indonesia's position was motivated by a desire to protect both its own interests and those of the international community. He reserved the right to state that position in more detail later.

Mr. MENDOZA (Philippines) expressed his delegation's reservations with regard to the opinion that straits used for international navigation should automatically be regarded as international straits. In particular, it could not agree that the straits between the islands of an archipelago should be regarded as international. Existing international law did not establish any freedom of passage or overflight in respect of the straits of the Philippine archipelago, which were national straits.

Mr. HARRY (Australia) commented on a proposal by the Canadian delegation on the possible holding of a technical conference on fisheries and another by the United States delegation with regard to the establishment of a working group to study the fisheries question. His delegation favoured the latter proposal and believed that steps to implement it should be taken before the end of the session, in order that the group might begin its work during the summer session and experts in that field might be included in the delegations of the various States. Participation in the group should not be limited.

With regard to the Canadian proposal, on the other hand, he believed that any possible advantages of a technical conference would be outweighed by the resulting delay in the preparation of the 1973 Conference on the Law of the Sea.

Mr. STEVENSON (United States of America) said that the United States position on the question of international straits was often incorrectly quoted. A correct understanding of it could be obtained from the long statement on the subject made by the United States representative at the previous session.

He wished to state, however, that the limit of territorial waters recognized by the United States was 3 nautical miles and that consequently the United States regarded all straits more than 6 nautical miles wide as being open to free navigation.

The proposal submitted by the United States delegation at Geneva had dealt with a limited right of transit, that is to say, a simple right of passage, to the exclusion of any other activity.

Mr. VOHRAH (Malaysia) reserved the right to state at a later time his point of view concerning the comments of the USSR representative.

The CHAIRMAN said that the Canadian proposal to convene a technical conference should be submitted in a different form if the Sub-Committee wished to hold an official debate on the question.

Mr. LEGAULT (Canada) said that his delegation had merely made a suggestion and did not intend to submit a formal proposal.

ORGANIZATION OF WORK (continued)

Mr. FAURA (Peru) said he wished to explain his delegation's position regarding the organization of work, since some delegations had expressed the view that it would be advisable to consider separately certain questions, such as fisheries, limits and so on. It must be admitted that it would be unrealistic to deal with the ocean space without taking into account all of the problems involved.

It was well known that in that sphere the basic controversy centred on the two opposing positions adopted by different countries: on the one hand, those which favoured a limited zone under national jurisdiction, so as to have the greatest freedom not only for the movement of their vessels and aircraft but also for the exploration and exploitation of the resources of the sea in the various regions of the world, and on the other, those which wanted a wide zone so as to be able to exploit those resources for their own development and the benefit of their peoples, and for reasons linked to their security and the preservation of the marine environment.

It would be useless to take up the various questions one by one without having previously examined the possibility of reconciling the divergent positions. For example, a maximum limit of 200 nautical miles had been proposed for the zone under national jurisdiction; it would apply not only to biological resources but also to mineral and energy resources and related matters such as the preservation of the marine environment, prospecting and scientific research. That being so, there would be no point in formulating conclusions on one of those points without taking account of the others, since in fact they were all interdependent.

It would be more logical to consider the prospect of reaching agreement on the main question raised by the regulation of the ocean space as a whole, either by first identifying the essential rights and interests of coastal countries, without ignoring those of other States and of the international community, or by first

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(Mr. Faura, Peru)

examining rules that would ensure that the marine environment was exploited rationally for the benefit of the members of the international community, without impairing the rights and interests of coastal countries in the neighbourhood of their territories.

Since Sub-Committee I was dealing with the régime and machinery for the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, it was for Sub-Committee II to decide on the best way to study the other questions concerning the law of the sea. His delegation favoured a comprehensive examination of the basic problems, with a view to ascertaining the possibility of achieving agreement or at least a rapprochement, which would make it possible to study the various questions before the Sub-Committee in a more orderly fashion.

It had been suggested that meetings of experts should be held between the sessions of the Sea-Bed Committee to study certain specific points of the law of the sea. However, such meetings, in addition to creating serious difficulties for the delegations of developing countries, would lead to a diffusion of the work entrusted to the Sub-Committee. The assistance of experts was essential in connexion with such matters as fisheries, the exploitation of mineral resources, pollution and scientific research, but it must be provided within the framework of the Committee itself, the experts being included in delegations. The work of the Committee, which was the political body responsible for preparing for the next Conference on the Law of the Sea, should not be impeded by the organization of meetings whose purpose was difficult to understand and support.

His delegation was therefore opposed to such meetings; in its view, the Committee should leave it to its Sub-Committees and their working groups to seek a rapprochement on the subjects within their jurisdiction; the Committee could, if necessary, request the technical and scientific bodies whose representatives attended its meetings to assist it on certain specific points.

Mr. GUERREIRO (Brazil) observed that the Sub-Committee would soon conclude its discussion on the list, but had not yet decided which method of work to use in connexion with the other questions assigned to it by the General Assembly in resolution 2750 C (XXV).

(Mr. Guerreiro, Brazil)

Furthermore, the list had never been intended to establish an order of priorities, but rather to demarcate the ground to be covered in the discussions and negotiations. It was neither limitative nor obligatory and did not reflect the preferences of any specific delegation.

It must be remembered that the ultimate objective was to prepare an international legal framework that would permit the elimination of existing conflicts in the realm of legislation, practice and interests. The best way to achieve that goal was not to start with topical disputes, for that would lead to a deadlock, but rather to seek common denominators that would give hope of final success.

If the Sub-Committee were artificially to isolate narrow and specific topics it would run the risk of confining the discussion to incomplete concepts. Whether one liked it or not the problems of the sea constituted an indivisible whole. A harmonious set of principles and norms should therefore be sought. The fundamental principles and objectives would ideally cover all the ocean space and be generally applicable, which presupposed that their content would be such that they would be accepted by the generality of States. The norms derived therefrom, which would be embodied in different instruments, would necessarily be specialized - taking into account the activities to which they would apply and other factors of a geographical, economic and legal nature - and would be adapted to local conditions.

Four proposals had been made concerning the organization of work. The drawbacks of the first - to give priority to the question of limits - were so obvious that there was no need to elaborate on them. The United States had proposed that priority should be given to the question of fishing; that was certainly a very important question, but it could hardly be taken up without simultaneously discussing equally important and interdependent questions, such as scientific research, pollution control, and the rights of coastal States over the waters and the sea-bed. A third proposal, put forward by the Canadian delegation, should perhaps be given more careful consideration, namely to begin by discussing fisheries beyond the 200-mile limit, in an area where questions of the sovereignty or jurisdiction of coastal States did not arise. It should be remembered, however, that fishing was only one of the activities carried out on the high seas. That being so, the most constructive proposal seemed to be that of the Maltese delegation, which had suggested that the first step should be a review of all matters relating to the

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(Mr. Guerreiro, Brazil)

high seas. That would permit a frank and open discussion of all aspects of the subject, which would parallel the discussion in Sub-Committee I on the régime for the sea-bed beyond national jurisdiction.

However, the Sub-Committee could also explore another possibility, which had already been mentioned by his delegation, namely to identify common denominators and define the fundamental principles and objectives that would apply to the whole of ocean space and that could ultimately be embodied in a convention of very general scope.

The CHAIRMAN announced that the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea had now been distributed in document A/AC.138/66.

Mr. ANDERSEN (Iceland), Mr. MCHACHTI (Morocco), Miss BIHI (Somalia) and Mr. HACHEME (Mauritania) said that their delegations wished to be added to the list of sponsors.

Mr. GUEVARA ARZE (Bolivia) said that the proposed list was generally considered to be that of the Group of 77, although it had not been officially submitted under that title. However, no land-locked country in Latin America, Asia or Africa was included among the sponsors of the list. He therefore wished to explain the position of those countries: they had been unable to accept the list because they were not satisfied with item 8 - rights and interests of land-locked countries. They intended to submit a supplementary text on that item when the Sub-Committee began its substantive discussion of the list.

The CHAIRMAN recalled that a number of proposals had been submitted to the Sub-Committee before the preparation of the list in document A/AC.138/66. The sponsors of those proposals should inform the Sub-Committee whether they wished to maintain them or not.

Furthermore, the Sub-Committee must decide on the organization of its forthcoming meetings.

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After a procedural debate in which Mr. GUERREIRO (Brazil), Mr. PARDO (Malta), Mr. CASTANEDA (Mexico), Mr. FAURA (Peru), Mr. YANGO (Philippines), Mr. FRANCIS (Jamaica), Mr. McKERNAN (United States of America), Mr. HARRY (Australia), Mr. ALCIVAR (Ecuador), Mr. NJENGA (Kenya), Mr. JEANNEL (France) and Mr. ESSEN (Belgium) took part, the CHAIRMAN suggested that the Sub-Committee should hold a night meeting on Tuesday, 28 March, to consider the question of the list and a morning meeting on Wednesday, 29 March, to hear speakers who wished to make statements on substantive questions.

It was so decided.

The meeting rose at 6.45 p.m.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

Held on Tuesday, 28 March 1972, at 8.20 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued) (A/AC.138/66)

The CHAIRMAN said that after the list of subjects and issues contained in document A/AC.138/66 had been issued, the following delegations had submitted their names as additional sponsors: Cameroon, Cyprus, Ecuador, Guyana, Iceland, Iran, Mauritania, Morocco, Romania and Somalia. He pointed out that in accordance with the procedure adopted at the twenty-fifth session of the General Assembly, no addenda would be issued listing those delegations which had become sponsors too late to have their names included in the original document.

He had requested the Secretary of the Sub-Committee to keep two lists of speakers in connexion with the item under consideration. One list would include those delegations who wished to speak on the list in document A/AC.138/66 per se, and the other would include delegations wishing to make substantive statements on the individual subjects and issues contained in the list.

Mr. HACHEME (Mauritania) said his delegation had submitted its name as a sponsor of the list in document A/AC.138/66 three days previously, yet it did not appear in the document and had only just been announced by the Chairman. He felt his delegation was entitled to an explanation from the Secretary of the Committee.

Mr. SAPOZHNIKOV (Secretary of the Sub-Committee) said he regretted that the procedure established by the General Assembly at its twenty-fifth session precluded the preparation of addenda containing the names of new sponsors of the list of subjects and issues contained in document A/AC.138/66. However, he could assure the delegation of Mauritania that it was considered to be a sponsor of the list as of the date on which it had submitted its name as a sponsor.

Mr. YANGO (Philippines) said it was a privilege and honour for his delegation to introduce the list of subjects and issues relating to the law of the sea (A/AC.138/66) to the Sub-Committee on behalf of its 56 sponsors.

The list was the product of complicated and laborious negotiations among the contact groups from Asia, Africa and Latin America. It represented a step towards

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(Mr. Yango, Philippines)

fulfilment of the mandate given to the Sea-Bed Committee by the General Assembly in its resolution 2750 C (XXV) in connexion with preparations for the Conference on the Law of the Sea to be held in 1973.

It would be recalled that the previous summer certain delegations in the Latin American group had submitted a comprehensive list of subjects and issues in document A/AC.138/56, and a number of members of the Afro-Asian group had submitted another list in document A/AC.138/58. At the end of the summer session, an attempt had been made to produce a consolidated list from the two lists submitted but had not been successful owing to lack of time. However, the exercise begun at Geneva had been continued during the current session in New York, and the result was the list in document A/AC.138/66. As requested in General Assembly resolution 2750 C (XXV), the list was a comprehensive one and took into account that a substantial majority of Member States had expressed the view that the Conference on the Law of the Sea should be broad in scope. It had also been felt that a restrictive approach would pose serious difficulties to many delegations since the oceans actually constituted a single physical entity. The list was comprehensive in that it included subjects and issues of concern to diverse groups of States whether coastal, island, archipelagic, land-locked, shelf-locked, with narrow or broad continental shelves, developing or developed and whether big or small in military terms. It included issues which had not been resolved by previous conferences on the law of the sea and took account of recent political, economic, social, scientific and technological developments. Finally, those delegations which had worked on the list had given due consideration to all the relevant working papers and proposals submitted by other delegations.

Although the list was comprehensive, it was not necessarily complete and was intended to serve only as a framework for discussion and drafting of necessary articles until such time as the agenda of the forthcoming Conference was adopted. Its sponsors had submitted it in the hope that it could serve as a basis of further negotiations and consultations within the Sub-Committee with a view to preparing a final list acceptable to all the regional groups. The sponsors were of the view that consultations and negotiations between the contact groups of the various geographical groups should begin immediately. For the purposes of such

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(Mr. Yango, Philippines)

consultations and negotiations, the sponsors felt that the Africa, Asian and Latin American contact groups should be maintained and that the delegation of Spain should represent those sponsors from regions other than Africa, Asia and Latin America. Since the contact groups mentioned had actively participated in the discussion which had resulted in a common list, and were familiar with the issues involved, it would be appropriate for them to negotiate with contact groups from the Western and Eastern European regions concerning the adoption of a single comprehensive list of subjects and issues. It was hoped that the Western and Eastern European regional groups would designate their contact groups at their earliest convenience so as not to delay the negotiations.

Although the contact groups representing various delegations in the Group of Seventy-Seven had differed in some of their views, they had worked together in a spirit of co-operation and goodwill to produce a common list. It had been suggested that document A/AC.138/66 was not really a document of the Group of Seventy-Seven because it had not been sponsored by the developing land-locked countries. The sponsors hoped that those countries would eventually join the other members of the Group of Seventy-Seven in sponsoring the list, and the contact groups stood ready to consult the delegations concerned with a view to restoring the Group's unity.

Judging from the comments and observations made in the Sub-Committee the previous summer in connexion with the lists contained in documents A/AC.138/56 and A/AC.138/58, there were no insurmountable obstacles to the adoption of a single list. The developing countries of three regions had agreed to a common list and he was confident that it would be accepted by the other regions as well in the interests of the preparations for the 1973 Conference. His delegation fervently hoped that the list contained in document A/AC.138/66 would contribute to the success of the Conference and to the establishment of an equitable law of the sea.

Mr. KHANACHET (Kuwait) said it was his privilege to join the representative of the Philippines in introducing the list contained in document A/AC.138/66. Although the list was far from perfect, he hoped the members of the Sub-Committee would accept it as a framework for discussion and drafting of

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(Mr. Khanachet, Kuwait)

necessary articles. The list was the result of arduous negotiations among delegations which, in spite of sometimes conflicting views, had been guided by a spirit of harmony and understanding and by a willingness to accept certain political realities and each other's legitimate demands. Although vehement discussions had taken place, moderation had always prevailed, and the result was a list which, while not satisfactory to all delegations in every respect, constituted an acceptable compromise. The delegations which had prepared the list had not limited the subjects and issues included in it to those of concern to their own countries or regional groups but had endeavoured to bear in mind the terms of General Assembly resolution 2750 C (XXV) calling for a comprehensive list.

As the representative of the Philippines had said, the list was intended only as a basis for further discussions, and it was on that understanding that the sponsors submitted it. They were open to any suggestions which the other two regional groups might wish to make for its improvement. The list contained no item which was not open to negotiation, and in inviting discussion with the other delegations, the sponsors of the list were confident that goodwill and diplomacy would prevail. He shared the optimism expressed by the representative of the Philippines and held the same fervent hope that the devoted and self-sacrificing efforts which had resulted in the list contained in document A/AC.138/66 would be crowned with success.

Mr. NJENGA (Kenya), speaking on behalf of all the African sponsors of the list contained in document A/AC.138/66, associated himself with the views expressed by the two previous speakers. He pointed out that the negotiations which had resulted in the list had taken a considerable amount of time and expressed the hope that the Sub-Committee could not begin to discuss the various subjects and issues contained in the list as well as any items that might be added to it. Those delegations which had not participated in the formulation of the list should not feel that the sponsors of document A/AC.138/66 were in any way presenting them with an ultimatum. The sponsors merely asked that the list should be accepted as a framework for further discussions. The fact that a considerable amount of time had been required to produce the list should not be construed to mean that the developing countries were divided on the subjects and

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(Mr. Njenga, Kenya)

issues it contained. The existing law of the sea had been designed specifically to favour the strong countries over the weak countries, the industrialized over the poor and the developed over the developing. The developing countries were therefore united in their determination to achieve a more balanced and equitable régime, and that determination was reflected in the list under consideration. The sponsors were convinced that the list offered a framework in which all delegations could raise any subject of importance to them at the Conference. If the Sub-Committee accepted the list on that basis, it could proceed to a substantive discussion on the subjects and issues at the summer session. The fact that the list had received widespread support, not only from the developing countries but from other countries as well, was an indication that it constituted a suitable basis for discussion. The sponsors believed that their work fulfilled the mandate entrusted to the Sea-Bed Committee in General Assembly resolution 2750 C (XXV) to prepare a comprehensive list of subjects and issues relating to the law of the sea. The Committee should proceed expeditiously to the other part of its task, which was to prepare draft articles on such subjects and issues.

The sponsors believed that the list showed that the developing countries were capable of looking after their own interests. The developing countries were all aware that their share of the profits from the resources of the seas was inadequate, that the situation was becoming worse and that a radical change was needed. Thus, in 1970 the developed countries, with less than one third of the world's population, had taken 60 per cent of the world catch of fish, while only 40 per cent had gone to the developing countries. A system which permitted such inequality was clearly unbalanced and should be changed.

One of the ways by which the sponsors of the list under consideration proposed to effect a change in the system was through the concept of the exclusive economic zone. Each coastal State would have a territorial sea of 12 miles beyond which there would be an exclusive economic zone; beyond that zone would be the high seas proper. The concept of exclusive economic zone differed from that of territorial waters in that freedom of navigation and overflight and freedom to lay submarine cables would be recognized in the exclusive economic zone. On the other hand, a coastal State's exclusive economic zone would differ from the high seas in that the

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(Mr. Njenga, Kenya)

State would have exclusive jurisdiction over all living and non-living resources of the water surface, the water column and sea-bed and ocean floor. No firm decision had been taken as to the outer limits of the zone although many delegations, including his own, were in favour of a 200-mile zone. There had, however, been a consensus among the delegations concerned that the zone should not exceed 200 miles. There had also been a firm consensus that islands under colonial dependence or foreign domination or control should not be entitled to their own exclusive economic zone since it was a primary aim of the United Nations to do away with colonialism and foreign domination and control in all their forms and manifestations.

At a recent meeting, a member of the Soviet delegation had stated that his Government did not intend to claim an economic zone beyond the 12-mile territorial sea. In that connexion, it should be noted that no nation would be forced to claim an exclusive economic zone. The developing countries would, in fact, be very pleased if the developed countries decided to forgo an exclusive economic zone, since they did not need the protection which the zones would provide. A great deal of criticism had been leveled at the concept of an exclusive economic zone. Since the representative of Tanzania had amply covered such criticism at a previous meeting, he himself would confine his comments to only two of the more persistent objections to the concept. First, it had been argued that the developing countries would not have the capacity to exploit the living resources in their exclusive economic zones and that the international community would therefore be deprived of vital food supplies. However, it should be understood that while countries would have exclusive jurisdiction over their economic zones, other countries would not necessarily be precluded from exploiting the resources in those zones. It was in the interest of the coastal States to make the most of their resources, and if they were not in a position to exploit them themselves, they could license foreign operators to do so. Those who advocated the concept of exclusive economic zone were prepared to assume responsibility for the optimum exploitation of resources commensurate with rational management and conservation.

(Mr. Njenga, Kenya)

Secondly, it had been argued that although the concept of exclusive economic zone might benefit coastal States with long coasts fronting open seas, it would be detrimental to States with short coasts, shelf-locked States and, in particular, land-locked States. In that connexion, it should be pointed out that such States were seriously handicapped under the present régime and had no hope of improving their situation, whereas coastal States could always extend their territorial seas unilaterally as a last resort. Those proposing an exclusive economic zone were prepared to enter into regional arrangements - entailing preferential granting of licences and jointly undertaken activities - to alleviate the disadvantages imposed on certain countries by geography and also by colonialism and imperialism. It was only through such arrangements that all countries would be able to enjoy a fair share of the wealth of the seas. The dire predictions of certain delegations were merely an attempt to drive a wedge between the developing countries, which were fundamentally united in their desire to ensure that their resources were no longer plundered by the developed countries.

Mr. ARIAS SCHREIBER (Peru) said that the sponsors of document A/AC.138/66 had attempted to take into account the main concerns of various countries in accordance with the spirit and letter of General Assembly resolution 2750 (XXV). The list was intended to pave the way for the forthcoming Conference on the Law of the Sea where a wide range of subjects connected with the law of the sea would be dealt with and an effort would be made to establish a more stable and just international order. His delegation hoped that other countries would display a spirit of accommodation so that a comprehensive list could be adopted which would serve as a framework for further discussions. The explanatory note contained in document A/AC.138/66 stated quite clearly that the list of subjects and issues relating to the law of the sea was not necessarily complete and did not commit any State to a given position. The list was intended to identify the issues to be considered rather than to resolve them.

Mr. ANDERSEN (Iceland), speaking on behalf of the sponsors of document A/AC.138/66 outside the regional groups whose representatives had already spoken. commended the list of subjects to the Sub-Committee's attention as a helpful working document. While the list was sponsored by the majority of delegations,

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(Mr. Andersen, Iceland)

the explanatory note attached to it made it clear that it did not commit any State to a particular course of action. Furthermore, the final agenda for the forthcoming Conference on the Law of the Sea would have to be adopted by the Conference itself when the time came. In view of the short time remaining to the Sub-Committee for its discussions, he hoped that it would accept the list without further delay and proceed to devote its entire attention to substance rather than to formalities or procedures.

Mr. AN (China) said that the list of subjects contained in document A/AC.138/66, which was the result of consultations conducted among a number of Asian, African and Latin American countries over a long period of time, reflected the views of the majority of developing countries and could serve as a good basis for the Sub-Committee's discussions. It was for that reason that his delegation had become a sponsor of that document.

With regard to the views concerning the list expressed by some developing countries which had not become sponsors of it, his delegation believed that it was quite possible to settle any outstanding problems through friendly consultations on the basis of mutual understanding and accommodation. It also felt that some reasonable suggestions which those countries had made could be better reflected in the list.

In order to extricate themselves from their political isolation, one or two super-Powers were trying by every possible means to undermine the unity of the developing countries, a fact which called for serious vigilance on the part of those countries. Despite differences in geographical situation, the countries of the third world shared in the same fundamental interests and were closely united in the struggle against imperialism, colonialism and alien domination and the fight to win or safeguard national independence and defend national sovereignty. While the super-Powers were executing expansionist and predatory policies, the developing countries and other medium-sized and small countries must strengthen their unity and support and assist each other. Only in that way could they effectively safeguard their sovereignty and independence and strengthen the peace and security of the world. His delegation believed that, in the face of the growing unity of the developing countries and other small and medium-sized countries, the super-Powers would fail in all their plots and schemes.

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Mr. BENITES (Ecuador) said that while, as was stated in the explanatory note contained in document A/AC.138/66, sponsorship or acceptance of the list of subjects and issues relating to the law of the sea did not prejudice the position of any State or commit any State with respect to the items on it, his delegation had co-sponsored the list, among other reasons, because it reflected its specific interests, particularly with regard to the question of the breadth of the territorial sea. His Government had always maintained and continued to maintain that there was no uniformity of régimes concerning the breadth of the territorial sea and that economic security should be taken into account in determining the limit of territorial waters. His Government had established a limit of 200-miles which, having regard to geographical characteristics and national needs, it considered to be appropriate. International law did not limit national jurisdiction in the matter.

Mr. PARDO (Malta) said that his delegation appreciated the fact that the list of subjects contained in document A/AC.138/66 was an attempt at a comprehensive approach to the problems of the law of the sea. It also appreciated the inclusion in the list of many subjects to which it attributed considerable significance, as well as the fact that the list presumably consolidated several working papers submitted to the Sub-Committee in 1971. The explanatory note attached to the list was also a positive factor. However, the list contained certain imperfections. While it was true that the explanatory note explicitly stated that the list was not necessarily complete, the omission from a list of such length of a particular topic could be construed to mean either that the topic was unimportant or that, although it was important, it should not be discussed.

Among other lacunae, his delegation had noted the absence from the list of any reference to the protection of the interests of the international community. Those interests were not a necessary consequence of the national or group interests so amply reflected in almost every item in the list and hence required specific mention in every appropriate section of the list. If the common interests of the international community were not taken into account in the clash of national and group interests, the forthcoming Conference on the Law of the Sea would be an unmitigated disaster.

(Mr. Pardo, Malta)

While his delegation noted with appreciation the inclusion of the topic of limits in the appropriate sections of the list, it was somewhat surprised that the equally important subject of baselines for the measurement of limits was not mentioned. In recent years, there had been some rather unorthodox official interpretations of the provisions relating to baselines contained in article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

There were also several other matters which his delegation considered to be of somewhat lesser importance but which in its view could usefully be discussed. One such matter was the question of the pipelines which were currently multiplying on the sea-bed. In view of current concerns about marine pollution, his delegation felt that consideration should be given to the question of whether the freedom to lay submarine pipelines should not be subjected to some regulation of a general nature. It would also be useful to review articles 12 to 23 of the 1958 Convention on the High Seas, which related to slavery, piracy and hot pursuit. A question arose as to whether those articles were adequate or whether some amendments should be made to them. In particular, his delegation wondered whether the illicit traffic in narcotic drugs was not an activity which could be classified as a form of piracy and hence subject to international penalties.

In the light of the views which he had just expressed, his delegation intended to submit written amendments to document A/AC.138/66. While that step might be thought inadvisable in view of the informal negotiations which had been undertaken regarding certain items in the list, it did not appear that his delegation's views were being effectively brought to the attention of the prime negotiators, and for that reason it had been forced reluctantly to take the step of submitting formal amendments.

In addition to the lacunae which he had mentioned, the proposed list of subjects and issues contained a number of items the formulation of which was either unclear or inappropriate. An example of an unclear formulation was item 2.5 - Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea. An inappropriate formulation could be found in item 4.2, which was entitled "Innocent passage". In view of his delegation's general concept of what the new law of the sea should be, it had difficulties

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(Mr. Pardo, Malta)

both with the notion of "innocent passage through straits" and with that of "free passage or free transit through straits". Since his delegation did not believe that the substance of the problem could be solved on the basis of either of those expressions, it would prefer item 4.2, and perhaps also item 4.1, to be deleted.

In view of the great effort made by such a large number of delegations to produce an agreed list and in view also of the extreme urgency of beginning substantive discussion on the various subjects included in the list, his delegation was anxious to be as accommodating as possible in order not to delay the work of the Sub-Committee. However, the question could not be avoided as to whether the list contained in document A/AC.138/66, in its present form, could usefully serve as a framework for discussion and drafting of necessary articles, as was stated in the explanatory note also contained in that document. The various subitems in the list were grouped under sectional titles formulated in such a way as to make agreement on a logical order of priority for discussion extremely difficult. Furthermore, many of the sections duplicated one another or partially overlapped and thus did not facilitate meaningful substantive discussion or negotiation. Consequently, even if agreement was reached on a somewhat amended list of subjects at the Sub-Committee's current session, it could be anticipated that a long discussion would take place at the next session concerning the order in which the various items on the list should be considered. Also, the discussions on the various items were likely to be largely repetitive. Such a procedure would entail some confusion and considerable waste of time and, most importantly, would not facilitate the vital substantive negotiations which were the main purpose of an agreed list. If it proved impossible to formulate an agreed list of subjects at the current session, his delegation felt that the Sub-Committee might usefully attempt a totally new approach. Should such a new approach become necessary, his delegation intended to submit a working paper setting out an alternative type of list which would be designed to take into account the position of all delegations, reduce to a minimum subsequent discussion on priorities and repetitious debates and facilitate useful substantive negotiations. If agreement could not be reached on document A/AC.138/66 at the current session, his delegation hoped that such a

(Mr. Pardo, Malta)

working paper could be examined at the Sub-Committee's next session. The time consumed in that examination might well save much time in the later stages of the Sub-Committee's work.

Mr. RUIZ MORALES (Spain) said that the comprehensive list of subjects contained in document A/AC.138/66 accurately reflected the provisions of General Assembly resolution 2750 (XXV). Furthermore, the list was sponsored by almost two thirds of the members of the Sub-Committee and by countries from all continents. The list was not perfect and represented a compromise which was perhaps not fully satisfactory to all members: indeed, his own delegation would have preferred items 6 and 18 to be worded somewhat differently. However as was stated in the explanatory note, sponsorship or acceptance of the list did not prejudice the position of any State with respect to the items on it or to the order in which they should be considered. The list attempted to reflect the real needs of the international community, in some cases by upholding firmly established principles and in other cases by introducing new principles. It was a sound basis for the work of the Sub-Committee which his delegation hoped would be generally acceptable.

Mr. STEVENSON (United States of America) said that his delegation greatly appreciated the efforts made by the contact groups of the three regional groups in the preparation of the list of subjects and issues contained in document A/AC.138/66. His delegation together with others not participating directly in those efforts had attempted to convey its views concerning the essential requirements of any list which would be acceptable to the Sub-Committee as a whole. In that connexion, he warmly welcomed the statement of the representative of the Philippines to the effect that consultations between the contract groups of all the regional groups would take place with a view to obtaining a generally acceptable list. His delegation had conducted consultations with a number of other delegations with a view to obtaining certain changes in the list. However, not all the delegations participating in the formulation of the list had appreciated the point of view that had led his delegation to suggest that some amendments were necessary. He would merely refer to two points which

(Mr. Stevenson, United States)

were of the utmost importance if the Sub-Committee was to achieve an objective and neutral list that would facilitate productive multilateral negotiations.

As presently worded, the heading of item 6 suggested that the very important question of the economic jurisdiction of coastal States beyond the territorial sea was to be discussed solely in terms of an exclusive economic zone. While his delegation appreciated the fact that many delegations believed the establishment of an exclusive economic zone to be the most appropriate solution to the matter, its own view was that discussions should centre around the contents of the economic zone or the jurisdiction or rights of coastal States beyond the territorial sea. As the Maltese representative had observed, one of the issues on which serious discussion should be possible was the extent to which the interests of the international community as a whole needed to be taken into account. Simply in order to maintain that possibility, his delegation proposed that the title of item 6 should be amended to include, in addition to the concept of an exclusive economic zone, the concepts of economic jurisdiction or economic rights beyond the territorial sea. That would ensure that all the options were covered and that all possible solutions were presented. As a coastal State, the United States appreciated the concerns of other coastal States on the question. A forthcoming statement by his delegation on the question of fishing would show that it appreciated the problems of coastal States in connexion with the conservation and management of fishery resources.

His delegation was also concerned to obtain a fair and unbiased formulation for the issue presented by item 4 of the list. The draft article relating to the question of straits which the United States had introduced earlier (A/AC.138/SC.II/L.4) had received both support and opposition. The United States did not seek to deny other States the opportunity of maintaining that opposition and discussing all issues involved in the straits question; however, it was not willing to accept a formulation which attempted to deny it the opportunity to press vigorously for a position which it regarded as of vital importance. Item 4 included the question of innocent passage but omitted that of free transit. His delegation did not accept the view that that distinction was justified on the grounds that only innocent passage was provided for in current international law.

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(Mr. Stevenson, United States)

Many of the other items on the list called for the articulation of new international rules. His delegation could accept any of several alternative formulations for item 4, including the addition of a new subitem 4.3 reading "Free transit".

His delegation looked forward to the opportunity of holding further substantive discussions on the question of straits and of explaining how it proposed to satisfy the concerns of straits States without prejudicing its own fundamental objectives. In view of the fact that the question was of great importance to the United States, that it had already submitted a draft article on the question and that a number of other countries had supported its position on the matter, that position should be placed on an equal footing with those of other delegations. He therefore hoped that it would be possible to evolve a non-prejudicial list acceptable to all delegations that would facilitate the work of the forthcoming Conference on the Law of the Sea.

Mr. KIKIC (Yugoslavia) pointed out that in drawing up the list contained in document A/AC.138/66 the sponsors had taken account of the interests of the developing countries and of the international community as a whole, and the list consequently entailed some compromises. It was however a delicately balanced whole which did not readily lend itself to substantive change. His delegation's belief that the vital interests of the great majority of States were reflected in the list had been confirmed by the wide sponsorship of the list by countries from all regional groups. He hoped that the Sub-Committee would accept the list essentially as it stood, since major amendments could result in a serious deadlock and jeopardize or postpone for an indefinite period the convening of the Conference on the Law of the Sea.

He expressed his regret that the developing land-locked countries had not been able to join other developing countries in co-sponsoring the list; the sponsors understood their difficulties and hoped to be able to accommodate them in future discussions in order to find a mutually acceptable solution.

There were two alternative procedures that could be followed for the continuation of work on the list, namely, renewing the working group from Geneva or establishing an enlarged working group. His delegation had no strong feelings on what procedure should be followed, but felt that the most constructive approach

(Mr. Kikic, Yugoslavia)

would be to have representatives of the Western and Eastern European groups join the existing contact groups which had worked on the list. He also felt that any new working group should be open-ended and flexible in its approach so as to enable all interested delegations to participate in its deliberations. The adoption of an agreed list constituted a prerequisite for the drafting of articles and the convening of the Conference on the Law of the Sea and he hoped that the list would be adopted in good time.

Mr. ZOTIADES (Greece) appreciated the fact that the list was a compromise solution and the best possible one in the circumstances. Some items on the list were not acceptable to some States and his delegation felt that the two articles referred to by the representative of Spain could indeed be worded differently. The list was, however, a good basis for discussion and in no way prejudiced the position of any State on any of the topics listed. The list should be used as a framework for substantive discussion until the agenda for the Conference was adopted.

Mr. ZEGERS (Chile) welcomed the fact that members from all regional groups and from countries with different social and political systems had joined in sponsoring the list. The Group of Seventy-Seven had taken into consideration the views of all interested countries, including the United States, and had produced a carefully balanced list. The comprehensive list that had been drafted should serve as a basis for preparations for the Conference on the Law of the Sea. The explanatory note in his view took care of the various criticisms of the list.

Replying to the Maltese representative's comment on item 2.5, he said that a plurality of régimes did in fact exist and the list should reflect the existing state of affairs. He pointed out, in connexion with the United States representative's comments on item 6, that the topic was of great interest to many countries and had been very widely and intensively discussed; the views of the United States delegation could be accommodated under the various subitems of item 6.

He stressed that the sponsors would take a flexible approach in order to reach a consensus enabling the Sub-Committee to proceed with its substantive work.

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Mr. HARRY (Australia) appreciated the work done to draft a list that would be generally acceptable to members and stressed the importance of achieving full consensus on the list before the next session. He was concerned not with codification but with the progressive development of the law of the sea and for that a full consensus was required. He urged the sponsors of the list to be flexible and not regard any item on the list as sacrosanct. He hoped that consultations could be held between delegations from land-locked countries, Eastern European countries and all those countries that had not become sponsors of the list, to work on the small modifications that were essential if a consensus was to be reached.

Mr. OGISO (Japan) expressed his appreciation of the efforts of those who had drawn up the list. With respect to the general nature of the list, his delegation supported the United Kingdom view (document A/AC.138/57) that the list was provisional and that adoption would not imply that treaty articles would be drafted on every item or would prejudice the position of any delegation with regard to any item. He welcomed the fact that those views had been reflected in the explanatory note contained in document A/AC.138/66.

He associated his delegation with the proposal made by the United States delegation with regard to item 6. During the debate, many delegates had stressed the special status and responsibilities of coastal States in relation to fisheries and other problems, but the nature of such status and responsibilities had been interpreted differently by different delegations; for example, the USSR delegation had referred to the need for special protection of coastal States, while the Canadian delegation had viewed the coastal State as a custodian; other delegations favoured the establishment of economic zones for coastal States. In the belief that the list should not prejudice the position of any delegation, he proposed the insertion in the heading of item 6, after the words "exclusive economic zone", of the words "or preferential rights of coastal States" or else "or other economic rights of coastal States". The words "in the zone" would be deleted from subitem 6.1, and the words "of the zone" would be removed from 6.2. He felt that the question of exclusive economic zones should not be excluded, since many delegations thought it was an important point, but it should be expressed in a way that did not exclude other alternatives.

Mr. CHRISTIANI (Austria) supported the views put forward by the representative of Australia. He also welcomed the inclusion of the explanatory note and the sponsors' declaration that the list was a flexible one. Most items were acceptable to most delegations, but land-locked and shelf-locked States had special interests and concerns and they wished to make some additions to items 8 and 9. His delegation also had some difficulties with item 6.

He felt it was important to agree on a list at the current session, rather than spend more time on it at Geneva; it was also important to have a list that could be used as a basis for discussion rather than a mere catalogue of topics. He hoped that the sponsors of the list would be able to accommodate the views of the land-locked countries, without their having to submit formal amendments. The views of countries with special interests did not always coincide with the views of their regional groups, and he hoped that consultations would be held not only between the regional groups but also with countries having special interests.

Mr. STEVENSON (United States of America) explained that his difference of opinion with the representative of Chile was a very minor one; he did not wish to delete item 6, which had been endorsed by many, but had merely wished to suggest that the title of the item be amended to include some reference to other economic jurisdiction or rights of coastal States.

Mr. SASSI (Libyan Arab Republic) suggested that an item on the peaceful utilization of the sea-bed and ocean floor might be included in the list. The item was of particular concern to his country because the big Powers frequently used the Mediterranean for military activities.

Mr. AL-QAYSI (Iraq) reiterated the appeal made by the representative of the Philippines to the effect that the other regional groups should form contact groups to meet with the sponsors and iron out differences of opinion as soon as possible. He appealed to delegations to close the debate and concentrate on procedures for consultations.

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Mr. GUEVARA ARZE (Bolivia) reported that the land-locked and shelf-locked countries had already drafted a set of amendments relating mainly to differences of opinion on items 6 and 8. Regarding procedures, he urged that all regional groups should include representatives of land- and shelf-locked countries. He also felt that forming groups of countries with special interests could help to lead to a consensus.

Agreeing to suggestions from Mr. BEESLEY (Canada), Mr. PARDO (Malta) and Mr. ZEGERS (Chile), the CHAIRMAN said that he would arrange for open-ended informal discussions to take place the following day.

The meeting rose at 10.55 p.m.

SUMMARY RECORD OF THE THIRTIETH MEETING

Held on Wednesday, 29 March 1972, at 12 noon

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

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CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)

Mr. TALBOT (Guyana) said that he would refer only to the subject of fisheries.

Any arrangements devised for the regulation of world fisheries should attempt to come to grips with the more fundamental problem posed by the growing incapacity of the international legal order to cope with the uneven course of international economic development in the context of dramatic technological innovation. Any significant and enduring shift in the pattern of international economic development would require a drastic restructuring of the controlling legal norms. The fundamental question, therefore, was whether such changes as were demanded, as a matter of equity, in the law of the sea would be the result of an orderly multilateral process or of increasing unilateralism in which community interests would be subordinated to exclusive claims.

Since the world fisheries' capacity for self-renewal stood in inverse relationship to the systematic application of technology to the ocean environment, it was disconcerting to find certain distant-fishing States espousing the concepts of "maximum sustainable yield" and "optimum catch" as criteria for elaborating new arrangements to govern exploitation of the world's fisheries. It would be recalled that the Soviet delegation had questioned the competence of the third world to propose new arrangements for world fisheries, given their conspicuous underdevelopment in fisheries technology. In view of that expression of concern for scientifically informed decisions, it was difficult to understand the uncritical reliance of States with advanced fishing expertise on such pre-scientific concepts. Given the ecological unity of the marine environment, maximum sustainable yield as a biological objective must depend, inter alia, on credible scientific data about the ecological interaction of species.

In paragraph 37 of its report on regulatory fishing bodies (A/AC.138/64), FAO indicated that the inability of such bodies to cover all species of fish was in part due to the inadequacy of national research programmes, insufficient staff and financial stringencies. If that was the considered opinion of FAO in 1972, it was

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not difficult to assess what the relative state of fisheries research had been in 1955 when the concepts of "maximum sustainable yield" and "optimum catch" had gained general acceptance at the Rome International Technical Conference on the Conservation of the Living Resources of the Sea. The concept of "maximum sustainable yield", which presumed to define the optimal conditions of peaceful coexistence between technological man and his biological enemies of the marine environment, was scientifically uninformed. Yet it had been accepted by the International Law Commission and had found its way into article 2 of the Convention on Fishing and Conservation of the Living Resources of the High Seas. Its juridical bedfellow was to be found in article 1 of the Convention on the Continental Shelf which employed, inter alia, the criterion of exploitability, a continuing embarrassment to distant-fishing States in another context. Furthermore, in order to be relevant for the Committee's purposes, the concept of "optimum catch" must take into account not only biological, economic and social factors in terms of actual participants in the exploitation of fisheries but also the divergent levels of protein sufficiency in the international community, the distribution of resources on a global scale and the relationship between the world's affluent and indigent nations. Prudence would appear, therefore, to advise against the employment of the concepts of "maximum sustainable yield" or "optimum catch" in any new arrangements for the regulation of world fisheries.

It was absurd to argue that under-exploitation of world fisheries produced waste since the uncaught fish died and were lost to the international community. It would be interesting to receive from the delegations advancing that argument information regarding the ecological interaction between decaying biological organisms - in the case in question, fish - and the generation and incidence of phytoplankton on which living fish depended for their survival and proliferation. Viewed dispassionately, the concepts of maximum sustainable yield and optimum utilization of the world's fisheries resources were specious rationalizations for the continued rape of the world's oceans for the benefit of a few privileged members of the international community.

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Turning to the subject of fisheries management schemes, he said that the suggestion that the optimum exploitation of fisheries could best be achieved by making existing regional institutions more effective was unsatisfactory on several counts. Firstly, the concept of "optimum exploitation", in its strict economic signification, was inappropriate, if not entirely irrelevant, for the purposes of the immediate exercise. Secondly, past experience held out little hope that strengthening the normative and sanctioning functions of existing bodies would result in restoration of depleted stocks of fish or the conservation at optimum levels of existing stock. Thirdly, existing instrumentalities were, both in design and operation, merely devices for perpetuating a system of élitism among the exploiters of world fisheries. Reference to section 4 of document A/AC.138/64 would show that several regulatory fishing bodies were exclusive fishing clubs for a few nations while others, even through theoretically inclusive in terms of membership, were de facto exclusive. A recent development was indicative of the adequacy of regulatory fishery commissions. The International Commission for the Southeast Atlantic Fisheries had been established under the auspices of FAO. Japan, Portugal, South Africa, Spain and the USSR had ratified the convention establishing the organization. By its terms, the convention could have come into force only when a number of participating States with a catch of a specified amount had notified FAO of their ratification. Ratifications by the countries he had mentioned could meet those terms only if the total catch registered by South Africa and Portugal was regarded as legally undertaken under existing rules of international law. Yet much of South Africa's catch was undertaken in Namibian territorial waters in defiance of General Assembly and Security Council resolutions. His delegation would have thought that a permanent member of the Security Council which had consistently upheld the legality of United Nations resolutions in regard to Namibia would have declined to participate in a regional commission on terms suggestive of a derogation of authority of the United Nations.

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His delegation believed that the principle of freedom to fish admitted of two possible formulations: a positive formulation qualified by negative restrictions, as in the case of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, or a negative formulation qualified by permissive rules. Given the failure of the first formulation to meet the challenge posed by over-exploitation of world fisheries, his delegation inclined to favour the second. The legal status of existing regional commissions constituted no more than a convergence of several unilateral claims resulting in the creation of instrumentalities designed to benefit the technologically advanced distant-fishing States. Qualitatively, the status of those claims in law had no greater sanctity than the claims espoused by the technologically backward States as a means of protecting the fisheries in their adjacent ocean space. Mere absence of protest by the developing world about the structure, operation and competence of the regional regulatory commissions was not sufficient to make their status in law opposable to the rest of the international community. There was no international law of fisheries in a positive doctrinal sense, but only an evolving body of principles resulting from the interaction of claims and counter-claims. His Government was not opposed to distant-fishing nations or even land-locked nations gaining access to fishing grounds off the coasts of States generously endowed by nature, provided that such access was on terms and conditions established by the coastal States concerned. Clearly, in the case of far-ranging non-sedentary species, rational exploitation of a resource might require regional arrangements among the States with whose waters the species had a genuine link. The existence of a genuine link should serve as the criterion for participation in regional arrangements for the management of particular species. It would appear to be a much more rational and equitable criterion than the mere fact of actual engagement in the exploitation of a resource, irrespective of the geographical location of the countries of the exploiters. Such an approach to the management of world fisheries would not rule out access to a resource by distant-fishing States, since provision could be made for a delegation of competence to a distant-fishing country with whose waters a resource had no genuine link on the same conditions applicable to a participating State. In fact, international law relating to fisheries should be based on the principle that the

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coastal State had the exclusive right to exploit the living resources of its adjacent ocean space. That right was justified not only by the interrelationship of the land, its people and the adjacent ocean space but also by the costs of keeping the adjacent ocean environment in a condition conducive to the survival and generation of fish. Guyana, for instance, incurred considerable costs by storing residue from the processing of alumina rather than dumping it into the Demerara River and adversely affecting the ecology and the ocean space immediately off its coast. Equity would appear to demand that the voluntary assumption of such costs by his Government should attract a corresponding right to the disposition of the resources of the area concerned. State practice in recent times appeared to indicate that such an approach would commend itself to the majority of States as bringing into balance exclusive and inclusive claims.

Mr. Kostov (Bulgaria) took the Chair.

Mr. CASTAÑEDA (Mexico) said that in his delegation's view the questions of fishing and of the breadth of areas of national jurisdiction were inseparable. States set the breadth of their territorial sea in the light of the rights which they enjoyed beyond that area, above all with regard to fishing. The view of the majority of States, both within the Sea-Bed Committee and outside it, was that the territorial sea should have a maximum breadth of 12 miles. That figure referred to the true territorial sea, in other words the area in which a coastal State exercised full sovereignty. His delegation had already stressed that a distinction should be made between the territorial sea and other areas beyond it, in the high seas, over which coastal States had special jurisdiction for some specific purpose, such as exclusive or preferential fishing rights, conservation, or protection against pollution, but did not exercise sovereignty.

In theory, the conservation, administration and distribution of the living resources of the high seas could take place under three systems. The first was the traditional solution whereby those resources became the property of whoever caught them. Beyond the territorial sea, all nations were equal; their nationals could fish without interference, and the principle of "freedom of fishing" was limited only by voluntary conservation agreements. That system favoured the fishing Powers,

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whose greater resources gave them undoubted advantages. It was being increasingly questioned, because of its inefficiency and its unfairness, and was rapidly being abandoned. Free access and indiscriminate catching of fish operated effectively as a natural distribution system only when resources were practically unlimited in relation to demand. Until a short while ago, such had been the case. Under modern conditions, however, the system resulted in an immense waste of the wealth of the sea. Uncontrolled access to fisheries required greater capital investment and labour than could be economically justified. The increasing number of producers engaging in fishing meant that profits were spread uneconomically. Studies of the Sacramento River salmon fisheries, the Puget Sound fisheries and especially the haddock fisheries of the George Bank showed that the same catch could be obtained with half the number of vessels, or even less. The situation would be still worse in the future; the vast foreseeable increase in demand meant that stricter methods of control would have to be applied, and thus the cost of the catch would be increased, which would mean that more efficient methods of fishing would be impossible. The only rational solution would be to restrict access by producers, which would mean abandoning the principle of freedom of fishing. The situation was particularly intolerable for coastal States, which under traditional international law had no real defence against it.

The second solution would be international administration of fishing on the high seas, through the establishment of an international authority which would decide who could participate in fishing, and on what conditions, and would establish quotas. That solution would no doubt be adopted in the future, but he doubted whether the contemporary international community was ready to accept it. Such a complex undertaking would require much greater international solidarity, and more knowledge and experience. The international community had not yet organized any international authority to deal with services, resources or areas; the specialized agencies at most co-ordinated the activities undertaken by States. There were many regional agreements relating to the conservation of the living resources of the sea, but they were limited in scope and could hardly serve as a substitute for a real international fisheries authority. They did not normally establish criteria,

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or possess the means, for distributing resources by the establishment of quotas or by other methods. They were binding only on the parties to them, normally States which had traditionally fished a given region, and imposed no obligation on distant fishing, which was on the increase. In addition, regional conservation agreements had in general been concluded among developed States; those covering fishing in regions close to developing countries were fewer in number, and afforded little satisfaction to coastal States with lesser fishing and technical capabilities than distant-fishing States.

Nevertheless, such regional agreements might, and indeed did, constitute an effective way of administering some fisheries, and fully met the needs of the parties to them. Where that was the case, no change would be necessary. There was no suggestion that coastal States should be granted broad powers to administer fisheries close to their coasts in cases where another, more satisfactory solution was already available to the States concerned. A coastal State would unilaterally assume functions relating to the protection of marine resources, not only for its own benefit but also for that of all other States, when effective international machinery for the purpose did not exist. A notable case where such machinery was in operation was among the countries of the European Economic Community, which granted each other the right to fish even within each other's territorial waters. Even in that case, however, those countries might one day feel the need to establish an area of special jurisdiction excluding States from other regions. Another example existed among the parties to the North West Atlantic Agreement, which had agreed not only on conservation measures, but also on the distribution of resources under a quota system. There again, there was no problem. However, there were difficulties with regard to fisheries situated off the coasts of countries which could defend them only by establishing zones of special jurisdiction.

Accordingly, his delegation had carefully considered the third possible system, which would be to grant the coastal State the necessary authority to reserve the fisheries off its coasts for its own nationals. By restricting the catch to be taken by vessels from distant-fishing countries, it could not only meet its own needs, but would contribute to avoiding over-fishing and the possible extinction

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of the resources concerned. The coastal State would be acting in the interests of the international community, as its organ or agent. The representative of Canada had rightly insisted on that concept, which in his own delegation's view would not involve a formal delegation of functions or a legal title to act, but was merely a metaphor expressing the actual situation.

The basic justification for the special rights of coastal States to resources off their coasts was the dependence of those resources on the land. There was a complex physical and biological relationship between land and sea. The waters adjacent to continents were particularly rich. The production of nutrient organisms was concentrated in areas close to coasts, and the coastal environment was the home of many valuable species, such as shrimp. Moreover, the relationship between the actions of the coastal State and the presence of fish resources would become closer in the future, and would acquire an additional legal aspect, in that the protection measures to be adopted by coastal States within their territorial waters to prevent contamination of the marine environment would also affect areas more distant from the coast.

The dependence of the sea on the land had been referred to by States which were traditionally champions of the freedom of the seas, such as the United States. The case of fish such as salmon, which spawned in rivers and then migrated to the high seas, where they were caught, had been raised. It had been suggested that coastal States should impose restrictions on the use of their rivers for other purposes, in order not to damage the salmon spawning grounds. It had been added that there was no justification for vessels from other countries catching those fish in the high seas, since their existence was so closely linked to the territory of the coastal State. When the United States had formulated that idea in 1955, under the "abstention principle", Mexico had pointed out that the case was only one among those in which the presence of a resource was clearly and directly related to the land. There was even more reason why similar rights on the part of the coastal State should be recognized in other situations where mankind, land and sea were closely linked, for example in the dependence of the people of Iceland on fisheries for their livelihood. The classical maxim eadem ratio, eadem dispositio could well be applied in such cases.

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The idea of an area of special jurisdiction was broadly accepted by the international community. Many States had established or supported the concept of special fishing zones beyond the 12-mile limit, in which they would exercise some form of jurisdiction. Only a small number of States were totally opposed to fishing zones beyond the territorial sea. While the conditions for establishing such zones varied from country to country, it was significant from the legal viewpoint that most States supported the principle that there was an area beyond the territorial sea, in other words in the high seas, in which it could not be asserted that all States had equal rights, since the coastal State had rights with regard to fishing which were not shared by other States. The scope, breadth and means of establishing the area remained to be determined, by treaty or on the basis of custom, as did the precise nature of the special rights of the coastal State.

With regard to the nature and scope of the coastal State's rights to that area, and the area's extension, his delegation had proposed in 1971 that the coastal State should have the right to reserve for its nationals all the fish that it could catch in the areas of the high seas adjacent to its coast, and that the remainder could be taken by vessels of other States, on the understanding that the share guaranteed to the coastal State would increase as its fishing capacity increased. That would not mean any restriction on the rights of the coastal State, nor would the latter be placed at a disadvantage vis-à-vis more advanced States. In the end, whatever its rights, its catch would also be limited by its fishing capacity. The purpose of the proposal had been to avoid wastage of the resources which the coastal State could not itself catch. In reply, it had been pointed out that those resources would not be wasted, since the coastal State could grant fishing concessions to other States; the difficulty of determining its fishing capacity and the problems resulting from the necessary permanent negotiation among the States concerned with regard to their share had also been mentioned.

His delegation had therefore concluded that in practice there was no better solution than to establish an area adjacent to the territorial sea of the coastal State within which the latter enjoyed identical rights with regard to fishing as those it enjoyed in its territorial sea. The maximum breadth of such an area should

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be 200 miles. However, the breadth could be set at that maximum only when geographical conditions, availability of resources, the situation with regard to regional agreements and other relevant considerations so permitted. A clear demonstration of the fact that the breadth of the area would be adjusted to local conditions was Iceland's recent decision to establish an exclusive fishing area 50 miles in breadth, which coincided approximately with the breadth of the continental shelf on which Iceland's major fisheries were located.

Nevertheless, it must be recognized that the problem was a difficult one, and that many aspects of it required study. The representative of Canada had recently stated the essential requirements for the administration of fisheries by the coastal State, almost all of which could also be applied in the case of fisheries administered by a number of States, since their essential object was conservation of resources. However, the major problem remained the distribution, rather than the conservation of resources, and that was in part a political question. It would be interesting to know the views of the representative of Canada on the means of dividing resources between the coastal State and other States. He had among other things referred to the need to make a distinction between coastal, migratory and anadromous species.

In 1971, the representative of Venezuela had given a very adequate description of the area of special jurisdiction (A/AC.138/SR.64). After suggesting as the first element in a universal agreement a territorial sea of 12 miles, he had added that an economic zone, called the patrimonial sea, not more than 200 miles in breadth from the base line of the territorial sea should be established. In that zone, there would be freedom of navigation and overflight but the coastal State would have an exclusive right to all resources, either on the sea-bed and in its subsoil or in the superjacent waters.

There were two aspects of that area which should be stressed. As its establishment would in some regions entail a change in traditional fishing practices. it would be desirable to provide for a transitional period during which the fleets of distant-fishing countries could continue, under certain conditions, to fish in the area. Secondly, in order that food resources should not be wasted, to the

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detriment of all, it would be desirable for coastal States not fishing the resources close to their coast to grant concessions to vessels of other nationalities. To do so would normally be in the interest of the coastal State, but a formula should be devised which would prevent that State from refusing to grant concessions without valid reason. There were already cases in which coastal States benefited from the exploitation of the resources of the high seas off their coast by other States. The extreme case was that in which States received benefits simply from agreeing to refrain from participating in such exploitation. The Convention on the Protection of Fur Seals provided that only the United States and the Soviet Union would take fur seals; the other two States parties to the Convention, Canada and Japan, would each receive 15 per cent of the total catch, simply on the ground that they had exploited the resources in the past and could continue to do so if they wished.

His delegation would refrain at the present stage from discussing the legal formulation of the suggestions which it had made, since it did not believe that the current session of the Sub-Committee offered a favourable atmosphere for discussing specific proposals.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Held on Wednesday, 29 March 1972, at 8.30 p.m.

Chairman: Mr. KOSTOV Bulgaria

CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)

Mr. ESSONGHE (Gabon) said that Gabon, with its 1,000 kilometres of coastline and rich fishing zone, was particularly interested in questions relating to the law of the sea and the breadth of the territorial sea. The concept of a territorial sea was based on three fundamental ideas: a coastal State should have exclusive possession of its coast and control over the approaches to the coast in order to ensure its security; a coastal State should have control of ships sailing off its shores in order to ensure respect for its commercial, fiscal and political interests; and lastly, it should have a monopoly to exploit the resources of the sea and the coast with a view to the subsistence of the coastal inhabitants. The territorial sea was generally recognized as important; it was specially important for developing countries whose main aim was to achieve stability, prosperity and peace. For those reasons Gabon had extended the breadth of its territorial sea to 25 miles, and in view of recent developments, in an Ordinance of February 1971, to 30 miles.

Some delegations had spoken in favour of the 12-mile limit, but they had not explained that in supporting that limit they were defending the interests of their countries, and that the Convention on the Territorial Sea and the Contiguous Zone was now largely outdated since many new States had appeared since 1958. If the Committee's work by any chance led to a convention prejudicing Gabon's interests by denying the rights it had acquired, Gabon would affirm its sovereignty.

His delegation felt that the Convention on the Territorial Sea and the Contiguous Zone contained a monumental error - it had not taken into account geographical factors. It was clearly neither just nor realistic to impose the same territorial limit for all States, for example, for States bordering on the Mediterranean and States bordering on the Indian Ocean. He recommended that the next convention should avoid that mistake by laying down a maximum limit for coastal States bordering on seas taking into account their restricted surroundings, and a maximum limit for coastal States bordering on oceans taking into account their more extensive surroundings.

He welcomed the position taken by the French delegation with regard to the breadth of the territorial sea.

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Mr. OGISO (Japan) said that his delegation attached great importance to the question of fisheries, which had traditionally been one of Japan's most important industries. Because of its limited agricultural potential, Japan had long relied on fish as an indispensable source of food and protein for its large population and the traditional dependence on fish was so firmly established in the country's dietary habits that it could not easily be changed. Consequently, the importance of fisheries to Japan would not diminish, despite the country's over-all economic development. That was why his delegation attached particular importance to the Sub-Committee's work in further developing a sound régime for fisheries which would ensure an equitable accommodation of the interests of all States.

The problems the international community now faced in regulating fisheries on the high seas had been described by many delegations. In recent years the world's total catch of fish had been increasing at a rate unknown in the past and had more than doubled in the course of the previous decade; there were reasons to believe that that trend would continue in the future. Although the over-all increase in the world's total catch had been made possible, to a great extent, by the discovery of unexploited fishing grounds and the development of new and more efficient fishing techniques, it was also important to remember that it had been achieved not as a result of unregulated competition but in large measure because it had been accompanied by the necessary restraint and co-operation on the part of participants for the purpose of the conservation and prudent utilization of fishery resources. For example, his country was concerned to protect marine resources not only in coastal waters but on the high seas as well, and, even in the absence of an international convention for conservation, the domestic law of his country made Japanese nationals engaged in fishing in the high seas subject to governmental supervision to ensure rational utilization and effective conservation of the living resources of the high seas. But, as recognized by the international community, unco-ordinated efforts by individual countries were clearly not sufficient.

One manifestation of international co-operation in the field was the impressive network of international or regional fishery commissions. According to the report attached to document A/AC.138/64, there were at present 22 fishery commissions responsible for the conservation and management of fisheries. They covered

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practically all important waters of the world and practically all fish stocks which were taken by different nationals and therefore called for international regulation. Thus, there were nine fishery commissions for regulating various stocks of fish in the Pacific Ocean, such as, the Inter-American Tropical Tuna Commission (IATTC), which had recently set a global catch quota for yellow-fin tuna in the Eastern Pacific for six member countries including Japan and had succeeded in maintaining yellow-fin stock at a stable level. The International North Pacific Fisheries Commission involving Japan, the United States and Canada had for nearly 20 years studied fish stocks to recommend joint conservation action in the North Pacific. As a result of the activities of the Japanese-Soviet Fisheries Commission, the combined salmon catch of those two countries had been stable in recent years. The International Pacific Halibut Commission of Canada and the United States had succeeded in maintaining a high level of catch from the halibut stocks in the Pacific. In the Atlantic area, there were seven fishery commissions, including the International Commission for the North-west Atlantic Fisheries (ICNAF), which had carried out studies and research and proposed action for stock conservation through such measures as closed areas and seasons, limitation of mesh size and catch limits. There was also in that area the International Commission for the Conservation of Atlantic Tunas. In the Indian Ocean, the Indian Ocean Fisheries Commission undertook, inter alia, the promotion of programmes of fishery development and conservation and the examination of management problems with respect to various resources in the area. Of the 22 existing fishery commissions, Japan was at present a member of 12, the United States 11 and Canada and the USSR eight. His Government had consistently supported international activity for the rational utilization and effective conservation of the living resources of the sea and had accordingly pursued a policy of international co-operation through international fishery commissions as well as through the Food and Agriculture Organization and its subsidiary bodies.

At the Sub-Committee's 25th meeting, the representative of Canada had referred to various shortcomings and weaknesses in existing international fishery commissions and pointed to their general inability to meet effectively the requirements of conservation and management of fishery resources. He had also mentioned special interests and responsibilities of coastal States with respect to

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coastal species. He had appeared to minimize the role of fishery commissions, relegating them essentially to a secondary function, that of an advisory body vis-à-vis the coastal State in the discharge of the latter's management functions. His own delegation found it difficult to agree with that view. Fishery commissions had played an important role and provided forums in which fishing activities of countries concerned could be co-ordinated in a practical manner.

However, as had been pointed out by the Canadian representative, the existing fishery commissions did suffer from certain weaknesses in ensuring effective conservation measures. For example, not all countries active in a fishery were necessarily members of the relevant commission. That problem could be overcome by requiring all such countries to become members or at least to comply with the conservation measures taken by the commission. IATTC, for example, had solved the problem by convening intergovernmental meetings outside the Commission so that non-members could also become involved in the Commission's regulations.

It had also been said that the commissions had been unable to control fishing efforts. His delegation believed that the problem was not so much related to the limited functions of the commissions as to the difficulties inherent in the actual control of fishing efforts owing to the various economic and technical factors involved. The existing commissions did not lack the necessary powers to control fishing efforts, although his delegation did not believe that the objective of the commissions could always be achieved by means of such control. For example, in the IATTC, the members and other States concerned were scheduled to discuss the problem of limitation of fishing efforts in order to find an appropriate solution. In the ICNAF, national quotas were allocated to meet more effectively management requirements based not only on scientific but also on economic factors. It had been said, too, that regulations had often been too few and too late because it was difficult to obtain acceptance of scientific evaluations. That problem derived partly from the desire to agree on measures based on complete scientific data. His delegation believed that the effectiveness of the commissions' work in that regard could be improved by incorporating in the general principles of conservation the principle that conservation measures

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must be adopted on the basis of the best evidence available and that no State could be exempted from the obligation to take conservation measures on the ground that sufficient scientific findings were lacking.

As to the remarks made by the Canadian representative concerning the interests of coastal States, he pointed out that if the coastal State had special interests and responsibilities with respect to coastal species, distant-water fishing States also had interests and responsibilities in that regard. Coastal species had a relationship not only with the adjacent land but also with the entire ecosystem of the seas of which they formed a part. Not only coastal States but also distant-water fishing States might be economically dependent on fishing coastal species. He had already described his country's special dependence on fish and fish products caught in coastal as well as in distant waters and believed that other countries also had their own special concerns, each different from those of others. Disagreements were bound to arise over allocations of resources when there were two or more participants engaged in fishing common but limited resources. Despite those problems, however, fishery commissions had provided appropriate forums in which all members had somehow managed to arrive at reasonable solutions.

Although the activities of the fishery commissions had been limited, it should be pointed out that efforts were being made to assign them an increased role in the effective conservation and management of the resources of the sea. His delegation believed that it was by strengthening and supplementing the functions of such commissions that the real interests of the international community could be served. To minimize their role seemed to go against the current direction in which the international community was moving, namely, towards the assumption of greater responsibility in conservation and management by fishery commissions.

His delegation had said so far that international and regional fishery commissions provided, in principle, appropriate forums for conservation of resources and their rational utilization. It had also said that it would be necessary to strengthen and supplement certain aspects of their work if their operation was to be more satisfactory. To that end, it would be useful to lay down certain rules and principles which could serve as basic guidelines in fishery negotiations among States if no such commission existed. In that

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connexion, he had already referred to some aspects of the problem related to conservation. He wished now to refer to another aspect of the problem which could properly be discussed in depth in the Sub-Committee. While expressing the readiness of his Government to support the international agreement on the maximum permissible breadth of the territorial sea at 12 miles, his delegation had suggested at the previous session the line of approach that might properly and reasonably be taken to tackle the very complex and difficult problem of fisheries in the area of the high seas adjacent to the 12-mile limit in order to bring about an equitable accommodation of diverse interests. His delegation had stated that the concept of "protection" had no place in the present legal régime concerning fisheries. And yet it should be recognized that the infant coastal fisheries, particularly of developing countries, were seldom in a position to compete on equal terms with the distant-water operations of developed countries. It should therefore be recognized, as a general principle, that developing coastal States would be entitled, in the waters adjacent to the 12-mile limit from the coast, to preferential rights which would ensure them an allocation of resources in terms of the maximum annual catch that was obtainable on the basis of their individual fishing capacity.

The representative of Poland had said at the 27th meeting that there was no need to recognize such preferential fishing rights for coastal States which were developed countries. Those countries usually possessed the necessary financial and technological means of making internal adjustments, including the modernization of their fishing fleets. In such cases, such protection might even encourage over-investment in inefficient fishing industries with the result of imposing unjustifiable sacrifices on the legitimate interests of distant-water fishing States. In general his delegation shared that view. However, it recognized that coastal fisheries conducted on a small scale, mostly by small vessels, were such that they were not amenable to adjustment and were vulnerable to competition from outside and therefore needed protection. Under those circumstances, his delegation considered that preferential fishing rights should be recognized for developed coastal States in terms of the minimum annual catch required for the continued operation on the existing scale of clearly and precisely defined small-scale coastal fisheries.

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In conclusion, it was the considered view of his delegation that the international community could not afford to adopt any simplified solution to the complex problem of fisheries, simplified in the sense that a limited number of States with long coastlines and a further limited number of States having the privilege of being adjacent to rich fishing grounds benefited from exclusive and monopolistic enjoyment of marine living resources in the vast areas of the high seas. The interests of other States, especially those which depended heavily upon fisheries, which had little or no coastline at all, which did not have ready access to rich fishing grounds or which had a potential for distant-water fishing as part of their economic development programmes, should also be respected and taken into account. Many countries in the developing world were dependent on fish for food and were making efforts to expand their activities and some of them had already successfully developed them for fishing in distant waters. It was surely not consistent with the interests of those States that their pursuit of fishing should be made subject to the capricious will of the coastal State.

Secondly, the accommodation of diverse interests of States could best be achieved on the basis of international co-operation and in principle within the framework of international fishery commissions. States concerned should endeavour to strengthen the functions of existing fishery bodies and co-operate with each other and with the relevant international organizations in establishing new bodies whenever desirable and feasible.

Finally, preferential fishing rights should be recognized for the coastal States to help to promote expansion of the fishing industry in developing countries and also to minimize or redress certain disruptive socio-economic effects of competition on the small-scale coastal fisheries of developed coastal States.

Mr. MBOTE (Kenya) said the debates in the Committee during its last two sessions left no doubt that most States had a great interest in utilizing and conserving the living resources of the sea. The fisheries issue would therefore be of main concern during the forthcoming Conference on the Law of the Sea. Information provided by FAO showed that in 1970 the world catch of marine fish and other animals had amounted to about 70 million tons, worth over $10,000 million, but also that a major part of the catch benefited only a few States. As populations, particularly those of the developing countries, grew,

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more and more States were looking to the seas for their essential protein supplies, and their right to exploit the seas to ensure such supplies had to be recognized.

From the statements made in the Sub-Committee so far, it would appear that there was broad agreement on the need for a régime providing for an equitable exploitation of the living resources of the sea and for their proper management and conservation. It was also widely recognized that coastal States had a special interest in and responsibility for conserving the living resources of the waters adjacent to their coasts. A number of delegations had made suggestions concerning fishery régimes to ensure the orderly and equitable exploitation of the living resources of the sea. Concepts such as "custodianship" advanced by Canada, "trusteeship" advanced by the United States of America and "intermediate zone" recently revived by the Netherlands were a few examples. His delegation had already expressed its opposition to the latter two concepts, but it felt that the Canadian concept merited further consideration, particularly if clarification were provided as to the limits of the "custodianship zone" and as to the basis on which shares in a given fishery would be allocated to participants and access to the fishery would be allowed.

With regard to the need for proper management and conservation of the living resources of the sea, his delegation found it gratifying that there was a regulatory fishery body for practically every ocean and sea. It should be noted, however, that due to certain limitations placed on them, most international and regional fishery bodies had not been entirely successful. The FAO circular submitted to the Committee as document A/AC.138/64 attributed the failure of most regulatory bodies to the fact that they were not empowered to enforce compliance even with generally accepted fisheries management principles. His delegation felt that regional or international fishery bodies were the organs best suited for regulating fisheries in the high seas and for formulating general fisheries management policies. It therefore recommended that the Committee should work with the other United Nations bodies concerned to review the instruments establishing various regulatory fishery bodies with a view to making them more effective.

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With regard to the coastal States' interests in and responsibilities for the conservation of the living marine resources, the FAO atlas of the living resources of the seas indicated that coastal waters produced more phytoplankton and zooplankton than any other waters. Thus, the richest fisheries were to be found near the coasts, and most marine animals spent at least part of their lives in the inshore waters of coastal States. Furthermore, since a major proportion of marine pollutants were land-generated, the co-operation of the coastal States in regulating land-generated pollutants had to be enlisted if marine anti-pollution measures were to be effective. Since responsibility for conserving the living resources of coastal waters and controlling land-generated pollution would inevitably result in certain expenditures by the coastal States, those States were therefore entitled to special or preferential rights over marine living resources.

One issue on which the Sub-Committee appeared to be divided was that of the extent of the area of exclusive jurisdiction beyond the limits of the territorial sea. His delegation had always firmly advocated an economic zone extending 200 miles from the coastal base-line, the first 12 miles of that zone to be regarded as the territorial sea. A coastal State should be entitled to exploit or to control the exploitation of the living and mineral resources of the water column and sea-bed of its economic zone. Coastal States would work together in exercising that right and would be free to license other States or private individuals or firms to explore or exploit any of its resources. A coastal State could regulate its economic zone to protect itself from pollution generated in the high seas and could take any other steps needed to conserve the living resources of its zone. A number of delegations, particularly those representing countries with distant-water fishing fleets, had openly opposed the extension of territorial waters or fisheries jurisdiction beyond 12 miles. It was their hope that the Committee would endorse the existing arrangement under which the activities of distant-water fishermen were to a large extent uncontrolled, with the result that profits received from the exploitation of resources belonging to all mankind were inequitably shared. His delegation felt that it was for the Committee and the forthcoming Conference on the Law of the

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Sea to bring order to fishing on the high seas and to ensure an equitable distribution of the profits realized from the exploitation of the living resources of the sea. In that connexion, the Committee might request FAO to submit to it a detailed report indicating which international waters were being fished and by whom, and the species and quantities of fish caught.

The USSR representative had recently expressed the view that coastal States adjacent to waters whose fishery resources were limited would gain little or nothing by expanding their fisheries zones. If that were so, he wondered why the Soviet delegation should be concerned. The Soviet representative had gone on to say that if the coastal States extended their fishery zones, narrow coastal and land-locked States would forfeit any opportunity of ever being able to utilize living marine resources. His delegation disagreed with that view and felt that it was only through regional or bilateral arrangements that the problems of the land-locked States could be amicably solved.

The question of training and exchange of marine technology was extremely important to his delegation. In recent years, the General Assembly had spent much time debating the question of establishing bodies to control or manage the exploration and exploitation of the living and mineral resources of the sea beyond the limits of national jurisdiction. It should be borne in mind, however, that no international or regional organization would be of any use unless all its members were in a position to participate actively in its functions. At the present time, most States Members of the United Nations were not in such a position owing to a lack of trained personnel and sophisticated technical equipment. His delegation would therefore like to reiterate a request it had made at the previous session to the effect that the Committee should recommend that the General Assembly adopt a resolution requiring the relevant United Nations technical bodies to commence or accelerate training programmes in marine technology for personnel from the developing countries and to facilitate a freer exchange of marine technology and information between the developed and the developing countries. The resolution should also request developed States to take the same kind of action as that required of the relevant technical bodies.

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If the Conference on the Law of the Sea was to be held as scheduled, it was unlikely that there would be enough time to organize the technical conference proposed by the representative of Canada. Furthermore, his delegation felt that in preparing the necessary legal framework for the Conference on the Law of the Sea, the Committee would not require information of a highly technical nature. It should therefore not delay its work in an effort to acquire such information, especially since the Conference on the Law of the Sea might have to be postponed if a technical conference were held. His delegation suggested that consideration should be given to setting up working groups within the relevant Sub-Committees of the Sea-Bed Committee to deal with such technical and scientific questions as fisheries, scientific research, pollution, training and the transfer of technology, conservation of the living resources of the sea and exploration and exploitation of marine mineral resources. Such working groups should function during the normal sessions of the Committee, but if absolutely necessary, they could also meet between sessions.

Mr. McKERNAN (United States of America) said that he wished to make it clear to the representative of Kenya that, at the previous session, his delegation had not advocated an intermediate zone for fisheries in the water column. In fact, the United States draft article on fisheries (A/AC.138/SC.II/L.4) was based on a species approach, i.e. on the principle that the management and harvesting of fisheries should be governed by the biological distribution and migration of fish stocks, rather than by arbitrary jurisdictional boundaries. International or regional organizations should be established on a non-discriminatory basis to assure the conservation and equitable allocation of particular species or groups of species. They should gather information to determine the allowable catch and develop sound conservation regulations to ensure the maximum sustainable yield.

Recognizing the problem of protecting the economic interest of coastal States in coastal and anadromous fish stocks harvested on the high seas, his delegation had proposed that the management organization should apply a rule giving preferential treatment to the fishermen of the coastal State. That rule of

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allocation, based on the actual fishing capacity of the coastal State, would provide for a coastal State preference over coastal and anadromous fish stocks expanding with the State's capacity to fish. In that way, the United States hoped to accommodate the desire of the developing countries to expand their fishing industries in the future. In that connexion, his delegation had expressed the view that reasonable arrangements regarding traditional fisheries of distant-water States in areas adjacent to the coastal States should be included in an ultimate treaty. It had also proposed that a coastal State should not have the power to prevent or encumber fishing by other nations for portions of the stock that were not allocated to the coastal State, so as to avoid reducing the production of protein from the sea.

The draft article had proposed that, if the States concerned with a particular fishery failed to agree on the establishment of a regional organization, or thought such an organization unnecessary, the coastal State should be empowered to set up its own regulatory system. His delegation had favoured the international regulation of fisheries, but if that failed, the coastal State would be responsible. It was to be hoped that the provisions covering failure to agree would no longer be required when the new treaty had been in effect for some time.

His delegation had exempted highly migratory oceanic stock from the provision for coastal State regulation and preferences in view of the fact that such species appeared briefly off the coasts of a large number of nations.

His delegation still believed that the species approach was the soundest way of managing fish stocks in order to maximize the yield. Of course, maximum yield was only one of the objectives of fisheries management. Equitable allocation of the yield among participating States was equally important. Both factors, it seemed to his delegation, dictated the adoption of the species approach.

Since regulation of only a portion of the fishing for a stock was ineffective, whatever conservation régime was applied to obtain maximum yield from a stock should be applied to the entire area in which the stock was fished. Indeed, regulation of only a portion of the fishing effort, which would result if the

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conservation régime were applied in an arbitrary zone not related to the distribution of the stock, could be counter-productive, since fishermen in one area would be unfairly penalized, while fishermen in other areas would be unregulated.

Again, for equitable allocation of the yield, the régime should also apply to the entire area in which the stock was fished. A preference for coastal State fishermen would have little meaning if a large part of the stock could be caught by other fishermen in waters outside the area in which the preference rule applied, as would probably be the case if it were applied in an arbitrary zone not related to the distribution and migratory habits of the stock.

Thus, for both biological and economic purposes, the management régime should apply to the entire range of the fish stock involved. Neither purpose required application of the régime to waters beyond the range of the fish stock. It would be wrong to apply the régime unnecessarily, since the common purpose of the Sub-Committee was to create only necessary limitations on the use of the seas. In virtually all cases, an arbitrary zone would be either too narrow, and thus fail in its objective, or too broad, and thus impose unnecessary limitations on the use of the seas.

In his delegation's view, highly migratory oceanic species could only be managed effectively through international organizations. Many such species migrated widely through the world's oceans, for example tuna and tuna-like fish. A single coastal State could not possibly control such species or their environment. Tuna were already the object of effective international management arrangements under several international commissions. If jurisdiction to manage and conserve those species were delegated to coastal States, they would only regulate particular stocks within their jurisdiction for a short part of each year, during certain phases of the life cycle of the fish. When the stock was in mid-ocean, another regulatory mechanism would presumably apply. However, such a fragmented approach to the problem would make meaningful conservation impossible.

The Sub-Committee should also consider that a substantial economic fishery for tuna generally required a mobile fleet, because of the migratory nature of the stock. Thus, the very migration of those species provided a basis for

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accommodating the economic interests of distant-water and coastal fishing States in a manner that did not, in any practical sense, affect the development of coastal fisheries.

His delegation agreed with the representative of France that the Canadian statement on fisheries during the current session was particularly helpful to the Sub-Committee's work. Having learned about the concerns of other States, his delegation had reconsidered its initial position on fisheries, in response particularly to the economic and social needs of coastal States. It was prepared to consider a greater role for coastal States with respect to coastal and anadromous fish stocks, within the framework of the species approach. His delegation appreciated the economic and social interests of coastal States and coastal fisheries and the need to take prompt and effective action to ensure the management and conservation of such stocks. Coastal stocks were resident species which remained within the capabilities of the coastal State to study and manage. Coastal States were often economically dependent on coastal stocks because their vessels were too small to move to distant fishing grounds. His delegation agreed with the view expressed by the Canadian delegation that the coastal State had a particular interest in anadromous fish, such as salmon, and that they should regulate fish bred in their own rivers. The fate of entire populations of anadromous fish was dependent on the continuation of restrictions imposed by the coastal States on competing uses of its own rivers and lakes. The coastal State must make costly investments to maintain the quality of the fresh-water environment and enforce conservation measures, often at the expense of its own fishermen. If such stocks were substantially exploited during the oceanic phase of their life cycle, the coastal State of origin would be hard-pressed to justify continuing such investments or preventing competing uses of the river environment which were detrimental to the survival of the species.

His delegation was accordingly ready to consider whether responsibility for conservation and management of coastal and anadromous species could rest primarily with the coastal State, subject to agreed international standards and review. Nevertheless, it still believed that if States concerned with a particular species of fish desired to work through an international or regional organization they should be encouraged to do so and that their joint management

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of the stocks should be facilitated. Specifically, his delegation was prepared to consider whether the coastal State should have clear regulatory authority over coastal species adjacent to the State's coast and anadromous species throughout their migratory range on the high seas. That could include the coastal State's right to assess a reasonable non-discriminatory management fee on foreign fishing vessels, in accordance with the criteria set forth in the treaty. In the case of lateral migrations of those stocks from the waters off one State to waters off an adjacent State, the countries involved would have to arrive at agreements for the management and allocation of the catch from that stock. Non-discriminatory access to coastal stocks on the part of distant-water fishermen should not preclude reciprocal and other special arrangements among States in a region.

He wished to correct a misunderstanding regarding his delegation's views on traditional fishing for coastal and anadromous species. The United States draft article on fisheries might appear to contain a contradiction in that it advocated a preference for the coastal State based on its capacity to harvest, but also contemplated the continuation of distant-water fishing. His delegation had sought to indicate that the extent to which the coastal State preference should diminish traditional distant-water fishing, or vice versa, was a matter to be negotiated between the coastal States and distant-water fishing States in the Sub-Committee and the Conference. The agreement produced at the Conference should establish criteria for settling the matter. There was a broad range of negotiable formulae that might serve as a basis for agreement at the Conference and that would take into account short-term and long-term economic needs of both the coastal and distant-water fishing States involved. The problem of reconciling traditional fishing interests with an expanding coastal State fishery was certainly not unique to the species approach but would require attention in connexion with any fishery régime.

His delegation remained strongly committed to the view that a special commission was needed for compulsory settlement of fishery disputes. Others had pointed out, however, that a stock of fish might be endangered if the implementation of coastal State regulations was suspended by the commission during arbitration of a matter. At the same time, distant-water fishing States should be afforded protection against the imposition of substantial and unnecessary economic harm. Recognizing the potential for long-term damage to the resources if timely measures

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were not taken, and the economic concern of the distant-water fishing States, his delegation was prepared to consider appropriate limitations on the power of a commission to suspend the implementation of those coastal State regulations dealing with conservation matters during the period of arbitration.

His delegation suggested that the Sub-Committee consider the establishment of an international register of fisheries experts to assist countries, at their request, in designing and carrying out fishery management programmes. Such an arrangement could be financed, for example, by allocating a percentage of the management fee collected by coastal States. Such measures could provide developing coastal States with the expertise whereby they themselves might effectively exercise their responsibilities for managing coastal and anadromous species.

His delegation wished to stress that it was dealing with the content of an ultimate agreement on fishing as part of an agreed over-all law of the sea settlement at the Conference to protect other uses of the high seas, including navigation. It was still opposed to unilateral claims of fisheries jurisdiction beyond the recognized 12-mile fisheries zone and other unilateral assertions of jurisdiction over ocean space, both on legal grounds and because such action inherently failed to reflect the international nature of the problems involved. Unilateral action could not adequately accommodate the divergent interests of States in the ocean and would inevitably lead to conflict between States. It was therefore essential to solve such problems multilaterally in a timely and constructive manner that reflected and sought to harmonize the divergent interests involved. He went on to outline the broad pattern of the regulatory system his delegation was prepared to consider, in order to dispel any doubt on the matter.

The world could best bring about effective management of the living resources of the sea and secure the maximum yield from the living resources of the ocean through a species approach to fisheries management, rather than through the establishment of artificial national jurisdictional boundaries.

Three quarters of the world's marine fish catch was composed of coastal and anadramous species. Effective management and conservation of such species might be provided by granting coastal States clear and effective control over all such species, in the context of protecting other uses of the high seas. Such a concept included inspection and arrest authority. The control exercised by the coastal

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States would follow such stocks as far off-shore as they ranged. The coastal State could reserve to itself that portion of the allowable catch that it could utilize. The remaining portion of the allowable catch would be open to harvest on a non-discriminatory basis by fishermen of other nations, but would be subject to the coastal State's non-discriminatory conservation measures, and reasonable management fees fixed in accordance with an international standard. The extent to which the coastal State preference should diminish traditional distant-water fisheries - or vice versa - would be dealt with under a reasonable compromise provision in the treaty. His delegation was opposed to the creation of a zone of exclusive coastal State jurisdiction beyond 12 miles. On the other hand, oceanic fish stocks must be regulated by quite different arrangements, dictated by the highly migratory characteristics of such fish. Those fisheries would be managed by competent international organizations, in which all fishing and interested coastal States could participate. The treaty would contain agreed international standards and provisions for the compulsory settlement of disputes.

His delegation hoped that, with the interventions made by other delegations, its suggestions would make it possible for the Sub-Committee to move rapidly into the negotiating phase of its work. Although his delegation appreciated the reasons given by the Canadian representative for consideration of a technical conference of experts on fishereis, the United States delegation considered that the Sub-Committee was the proper forum for work on the matter. With the comprehensive background documentation already furnished by the FAO and such supplementary information as might be requested of that organization for the next session, his delegation proposed that, in lieu of such a technical conference, a working group on fisheries be established immediately in order to enhance the chances for substantial progress at the forthcoming Geneva session. Participating delegations should include fishery experts.

Finally he suggested that FAO be asked to prepare supplementary technical background information for the Sub-Committee's forthcoming session, including (a) various ways to establish the allowable catch and its apportionment, (b) the extent of present co-operation between countries in the field of research into the living resources of the seas, (c) determination of the extent and nature of the intermingling of various species of fish and (d) determination of stocks located in areas off the coasts of two or more neighbouring coastal States.

Mr. DJALAL (Indonesia) said that the statements made in the Sub-Committee by certain delegations made it necessary for his delegation to reiterate its position with regard to passage through its national waters. His delegation could not accept the view that the principle of innocent passage, which was an established principle of international law and of the Geneva Conventions of 1958, was no longer adequate where passage through so-called "straits" was concerned. The question had arisen not so much because coastal States had set up obstacles to passage as because some delegations were seeking a way to circumvent rules and regulations enacted by coastal States for certain categories of ships. Such rules and regulations had been enacted to ensure national security and the maintenance of peace and public order and also to facilitate smooth and safe passage. Coastal States were, after all, concerned that ships should pass through their waters as rapidly and as safely as possible so as to reduce the possibility of accidents that might result in pollution, blockage of lanes and international incidents.

The right of innocent passage was exercised by various categories of ships, including merchant vessels, fishing vessels, tankers and warships. Under the existing rules, merchant vessels could exercise the right of innocent passage without notifying the coastal States concerned. Since trade was very important for developing countries like Indonesia, it was in his Government's own interest to do everything in its power to facilitate the safe passage of merchant ships through Indonesia waters. So far, there had been no difficulties or complaints in that regard, and his delegation accordingly did not understand why some delegations should suddenly claim that the existing rules with regard to innocent passage had become detrimental to the interests of the international community.

While fishing vessels were permitted to pass through national waters without interference, they were required to conform to certain rules which had been established not as a barrier to their passage but as a means of preventing them from fishing in national waters. Those rules were in conformity with existing rules of international law and with the Geneva Conventions of 1958.

Where tankers were concerned, there were admittedly no clear provisions with regard to super tankers, perhaps because there had been few super tankers prior to the conclusion of the Geneva Conventions. Super tankers were getting larger all

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the time, and their passage through the shallow and narrow Straits of Malacca and Singapore was posing greater and greater difficulties. His country's fishing industry in the Straits was already dying, yet so far his Government had done nothing to prevent the passage of super tankers although the possibility of accidents was a cause of great concern to it. Should a supertanker develop a leak while passing through the Straits, the coastal States would be immediate victims. By allowing the passage of super tankers, the coastal States were taking a great risk and receiving no benefits. The three coastal States bordering on the Straits of Malacca and Singapore had agreed that problems of safety of navigation in the Straits were their common responsibility.

It was the passage of warships, including submarines, which his delegation believed to be the real issue. The concept of "free transit" had been invoked to guarantee the unhampered and secret movement of warships and submarines, without regard for the passage of merchant vessels, fishing vessels or tankers. Traditional international law and the Geneva Conventions of 1958 provided certain rules for the passage of warships of countries through the territorial seas of other countries. Submarines, for example, were required to move on the surface and to display their flag. His delegation foresaw no difficulties in connexion with the passage of warships and submarines through Indonesian waters provided that the rules laid down in the Geneva Conventions were respected. However, it would object to a system under which warships and submarines had complete freedom to utilize its national waters. Such a system could turn Indonesian waters into an area of confrontation and conflict between opposing naval Powers in which the only part played by Indonesia would be that of victim. In view of the geographical location of Indonesia, such a development would be a real possibility. His country was a peace-loving nation, which needed peace and security in order to develop. It could not be party to the formulation of provisions which endangered its own national security and also the security of its region and of the world. It could therefore not accept the concept of "free transit" or "freedom of navigation" through its national waters.

It should also be noted that the passage of warships, including submarines through the waters of a country affected that country's political stability. The history of his own country showed that foreign warships and submarines could be

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used for such subversive activities as smuggling arms to dissident groups within its territory. In fact, the mere presence of foreign warships and submarines in Indonesian waters could set off domestic political reactions. If warships, especially submarines, were found to be in Indonesian waters without the Government's knowledge, the reaction would be extreme and the Government would be unable to explain their presence to the people in the area concerned.

Some delegations had expressed the view that States extending their territorial seas to a distance of 12 miles must accept the "free transit" concept since by adopting a 12-mile limit, they would be taking possession of waters belonging to the international community. His delegation neither understood nor agreed with that contention. Since States which had adopted a 12-mile limit outnumbered those which adhered to a 3-mile limit, there seemed to be no reason to assume that the 3-mile limit was still a rule of international law. In his delegation's view, it had never been a rule of international law since a general international convention providing for it had never been accepted by all States and since it had never been practised by all States. Since the 12-mile rule was at present more generally accepted than the 3-mile rule, he did not see why countries should be expected to compensate the international community for having adopted it. The Soviet Union, which had been one of the first countries to adopt a 12-mile limit, had not yielded anything when it had adopted it. There was therefore no justification for asking developing countries which had decided to observe the same limit to pay for their decision by accepting the concept of "free passage", especially since the concept of "innocent passage" had provided satisfactory and adequate safeguards of the legitimate interests of the international community.

Certain delegations advocated the application of the principle of "free transit" or "limited right of free transit" to what they called "international straits". His delegation was not entirely clear as to the meaning of the term "international straits". His country was an archipelago, and the waters between and around the islands comprising that archipelago were Indonesian national waters. "Free transit through international straits" might therefore well signify free transit through Indonesian national waters. In the view of his delegation, the concept had been devised by the great maritime Powers to serve their own purposes.

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In advocating the adoption of the concept, those Powers were more concerned with national considerations and with their own global policies and strategies than with the true interests of the international community. Some representatives had expressed the view that the concept of "free transit through international straits" should be guaranteed by an international convention lest coastal States adhering to the principle of "innocent passage" took arbitrary measures to suspend passage. Thus, it would seem that there were doubts as to the sincerity of certain coastal States, such as his own. In his delegation's view, it was the sincerity of the protagonists of "free transit through international straits" which was open to question. The time had come to accept coastal developing countries, such as Indonesia, as responsible members of the international community and, in consideration of their sovereignty, to acknowledge their right and freedom to regulate passage through their national waters in such a way as to protect their own interests while not interfering with the legitimate interests of the international community.

Finally, he did not see why the question of overflight over "international straits" should be included in the law of the sea. In the first place, it was a matter of the law of the air, which was covered by the Chicago Convention of 1944. Secondly, he wondered whether the concept of overflight included overflight by military aircraft. If so, he did not see how his Government could be expected to allow uncontrolled flight of military aircraft over straits which, as he had already shown, constituted its own national waters. Overflight by military aircraft would certainly pose security problems for the subjacent States. Moreover, they would have to be given certain regulatory powers in order to avoid collisions between commercial flights and military flights in their national air space. Some of the delegations which advocated recognition of the concept of free overflight of "international straits" were from countries whose Governments had established a so-called air defence identification zone above the high seas to protect their own national interests. He wondered how such delegations could ask other delegations to allow free overflight by military aircraft over their national waters.

Mr. MAY (Canada) recalled that, in its statement at the 25th meeting, his delegation had stressed the view that fisheries management must be considered in the context of the broader question of management of the marine environment as a whole.

(Mr. May, Canada)

At the 27th meeting, the representative of France had appeared to agree with that view but had suggested that the question of protection of the marine environment should be left to Sub-Committee III in order to maintain proper working procedures. His delegation completely agreed with the French delegation on that matter. The point which his delegation had been making was simply that the protection of environmental quality was basic to any régime for management of the living resources of the sea and that any effective régime of fisheries management must take that principle into account.

In its statement at the 25th meeting, his delegation had also put forward the principle that any régime for the management of an internationally exploited fishery must be responsibile and accountable to the international community. The representative of France had suggested that that principle was somewhat ambiguous and had asked for clarification of the terms "responsibility" and "accountability". In the view of his delegation, the coastal State must be responsible and accountable to the international community for the management of coastal species in two fundamental ways: firstly, the coastal State's management must be based on internationally agreed principles and criteria, expressed in treaty form, along the lines mentioned in the Canadian statement at the 25th meeting; secondly, the coastal State's exercise of management authority must be subject to appropriate dispute-settlement procedures in the event that other States with a direct interest - namely, other States participating in a fishery under the management of the coastal State - should consider that the coastal State was violating an obligation to them under the internationally agreed principles and criteria to which he had referred. The essence of the concept of custodianship was that the coastal State's rights and powers - whether they were sovereign rights and powers or what his delegation had described as delegated rights and powers - must be balanced with responsibilities and thus take into account vital community interests in the use of the sea. The coastal State's rights and powers would not themselves be subject to examination, revocation or review by an international agency or tribunal, but the exercise of such rights and powers, including in particular the duties of custodianship, would be subject to appropriate dispute-settlement procedures.

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(Mr. May, Canada)

In its statement at the 27th meeting, the delegation of France had suggested a further principle of fisheries management to be added to those already enumerated in the previous Canadian statement, namely that priority should be given to fisheries for human consumption as distinct from fisheries for production of fish meal, to the extent that the latter fisheries involved the catching of small and immature fish. That point was perhaps partly covered by one of the biological principles expounded in the Canadian statement at the 25th meeting - that each age group of a species should be fished at the time when its biomass was greatest. The Canadian delegation agreed that where a demand existed for utilization of a species to provide food strictly for human consumption, priority should be given to fisheries intended to meet that demand, although account should be taken of special circumstances such as the socio-economic needs of States conducting the fisheries. It was conceivable that such a demand could be met by reduction not for fish meal but for fish protein concentrate, which could be used directly for human consumption as a food additive.

His delegation would be pleased to provide clarification on questions raised by other delegations concerning the Canadian approach to the management of the living resources of the sea at the Sub-Committee's forthcoming summer session.

With regard to his delegation's earlier suggestion regarding the possibility of convening a technical conference on fisheries, he wished to allay the concern expressed by other delegations that such a conference might delay the convening of the forthcoming Conference on the Law of the Sea. His delegation believed that it would be possible to hold a technical conference within the existing time-table. It envisaged the proposed technical conference as taking place in about one year's time and lasting for some two weeks. His delegation felt that the major responsibility for organizing such a conference could be assumed by FAO, and indeed it understood that the provisional agenda for the forthcoming meeting of FAO's Committee on Fisheries contained an item on that subject. The proposed conference would in no way touch on political or juridical issues: it would be a technical and scientific conference where fisheries technical experts would address themselves to the practical and scientific principles essential to world fisheries management, taking into account particularly the need for technical

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assistance to developing countries and the means of providing such assistance. The proposed technical conference would provide the scientific and technical foundation for the fisheries aspects of the Conference on the Law of the Sea.

He wished to emphasize that whatever régime or régimes might emerge from the Conference on the Law of the Sea would have to be founded on certain basic scientific and management principles. For instance, whether the management authority to emerge from the Conference was that of coastal States or some international authority, it was necessary to have a management system and one that was founded on sound scientific and economic principles. For those reasons, the proposed technical conference, by providing an up-to-date assessment of the methods and requirements for fisheries management and development, would be extremely valuable in laying the groundwork for the Conference on the Law of the Sea. Since the technical conference would not deal with legal or political matters, it would in no way prejudge the outcome of the Conference on the Law of the Sea on the question of the breadth of the territorial sea or the question of whether or not fisheries jurisdiction of the coastal State was to be exercised in an exclusive fishing zone, economic zone, patrimonial area or management zone.

Some delegations had questioned the desirability of tackling certain aspects of the fisheries problem in isolation from the other interrelated issues and outside the framework of the Sea-Bed Committee itself. However, the technical conference would not and could not separate the question of fisheries from the total range of issues relating to the law of the sea since it would not address itself to juridical questions and would not attempt to draft treaty articles on fisheries problems. His delegation hoped that such a technical conference would provide a practical scientific basis for approaching fisheries questions at the Conference on the Law of the Sea, would produce internationally agreed scientific and management principles and help the Conference to devise, on the basis of scientific realities, the most appropriate régime or régimes for the management and development of the living resources of the sea for the benefit of mankind.

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(Mr. May, Canada)

While appreciating the motives which had led the United States representative to propose the establishment of a working group on fisheries within the Sub-Committee, he believed that it might be premature to establish such a group at the present stage. In any event, his delegation did not view such a working group as an alternative to a technical conference of fishery experts. While the proposed technical conference would not deal with such legal and political issues as the breadth of the territorial sea or the nature and scope of national jurisdiction, the proposed working group could hardly fail to deal with such matters. Indeed, its basic function would be to take up and resolve legal and political questions. The need for a conference to pave the way for the resolution of issues relating to the law of the sea had been borne out by the United States suggestion that FAO should carry out further technical studies. His delegation agreed that there was a need for such studies but believed that a technical conference would provide the best opportunity for considering the matter. His delegation could support the establishment of a working group of the kind proposed by the representative of the United States when the time was ripe.

Mr. SIMPSON (United Kingdom), recalling that his delegation had made a general statement on fisheries at the previous session, said he would comment on the central problem of the allocation of quantities between different States when catch limitation was necessary for conservation reasons. His delegation, along with many others, attached great importance to the preservation of the freedom of all States to fish in the high seas, a right currently enjoyed under international law in waters outside the 12-mile limit. He recognized however that the freedom to fish might need to be regulated to ensure that it was not exercised by individual States in a way prejudicial to the legitimate interests of others, and in particular the interests of coastal States and developing countries. Agreeing with the representative of India, he said the main task of the Sub-Committee was to build up a régime for the conservation and utilization of the fishery resources of the sea in such a manner that the legitimate interests of coastal States and the international community of States as a whole was balanced in a fair way.

(Mr. Simpson, United Kingdom)

There were three schools of thought on how the present system of international law relating to fishing should be developed. The first favoured an extension of the zone in which coastal States had exclusive jurisdiction over fisheries; various formulae had been suggested, but they all meant bringing most of the fish resources of the world within the exclusive control of coastal States. The FAO country profiles showed that the catches of different countries varied consideraly. In general the countries already best endowed because they happened to be situated near the richest fishing grounds would gain most from an extension of limits, while some shelf-locked States would virtually cease to exist as fishing nations. The result would be not merely to perpetuate, but to enlarge existing disparities.

The second school of thought also proposed an extension of the area within which coastal States would manage fisheries, but it envisaged that the management should be carried out in accordance with guidelines and that the coastal State would in some sense be acting as the agent of the international community. His delegation did not oppose in all circumstances the unilateral exercise of powers by coastal States and was party to the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas which in certain circumstances authorized coastal States to introduce conservation measures in adjacent areas of the high seas. Such powers however should be entrusted to individual States only where the principles or guidelines governing their exercise were clearly defined, where other States concerned had failed to act in accordance with those principles, and where there was a right of appeal to an independent arbitrator. His delegation would see great objection to conferring powers of unilateral action on States before the possibilities of multilateral action had been explored. It was also doubtful whether once the right to act had been conceded to particular States they would necessarily continue to respect indefinitely the obligations to abide by the criteria laid down and, in the event of dispute, to submit to the decisions of an independent arbitrator.

The third school of thought, to which his delegation subscribed, was that maintenance of control by the international community over the fishery resources of the world would be best secured by vesting such control in regional organizations, which were far more representative of the world community than any individual

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(Mr. Simpson, United Kingdom)

State could be. However extensive the jurisdiction of coastal States might be, there would remain many species and stocks whose management could be undertaken only by international action; and if regional organizations were to be entrusted with the management of some species and some stocks it was not apparent why they should not be entrusted with it for all. Existing regional organizations had been criticized on some occasions, but he did not feel that a dispassionate examination of their record showed they were not the best foundation on which to build a system of world management. In that connexion he referred to a positive evaluation of those bodies in the paper entitled "Conservation problems with special reference to new technology" (A/AC.138/65, para. 14). Even where fishery commissions had failed, their failure was not to be explained in terms of a conflict of interest between coastal and other States, who had a common concern in safeguarding the stocks on which their fisheries depended. He felt that the existing organizations should be strengthened, rather than weakened by transferring their responsibility for fishery regulation elsewhere.

A discussion of the respective claims of States or regional bodies to the management of fishery resources was handicapped by the fact that the principles or guidelines to be followed had not been discussed. If the principles were clear it might be easier to decide upon the mechanism of their application. Since the principles could not be considered in isolation from the technical problems involved, he agreed that there was a need for a study of those problems. He doubted however whether a technical conference would be the best means of doing so, and suggested that such a study could perhaps be most usefully undertaken by a technical subsidiary organ or working group of the Sub-Committee on which delegations could be represented at the technical level.

Mr. BAZAN (Chile) said that, in his delegation's view, freedom of fishing should not have been placed on the same footing as freedom of navigation, freedom to lay submarine cables and pipelines and freedom to fly over the high seas in the 1958 Convention on the High Seas. Some delegations had sought to establish a socio-economic basis for the principle of freedom of fishing, arguing, among other things, that it was unacceptable for fishing resources that could be used to relieve hunger to go to waste because States extended their jurisdction over broader areas of the sea. That argument was based on a false premise, namely that

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(Mr. Bazan, Chile)

such areas would be lost to production. There was nothing to prevent coastal States from granting fishing concessions in areas of the sea under their jurisdiction, thereby ensuring maximum and continuous utilization of the fishing resources found therein. However, such States would later acquire the capacity and means to exploit those resources themselves. Many developing countries which had declared their exclusive jurisdiction over a broad area of sea adjoining their coasts had made prodigious progress in fishing. Since declaring exclusive sovereignty over a 200-mile area in 1947, Chile had increased its annual catch from 50,000 tons to 1 million. Peru had made even more notable progress, and many other examples could be cited.

The theory that freedom of fishing would solve the problem of food shortage faced by some countries had only a semblance of truth. Freedom of fishing would not benefit the countries with a food problem, which were developing ccuntries lacking the capacity to fish intensively, but rather certain highly developed countries which possessed the techniques and capital to fish, over-fish and even exterminate a species, countries where no hunger problem existed. Accordingly, the fact that some countries faced food shortages, far from justifying freedom of fishing, was an argument in favour of the extension of areas of maritime jurisdiction. Relieved of the burden of foreign competition, those countries could fully satisfy the needs of their population. Chile itself faced a food shortage and would be forced to supplement local food resources with costly imports until such time as it attained maximum utilization of its abundant fishing resources. In the circumstances, it was only just that Chile should have exclusive rights to fish in a 200-mile area and that distant countries which had no need for Chile's marine resources should be debarred from exploiting themm.

Freedom of fishing in the high seas had not oeen legally recognized by Chile, which was not a party to the 1958 Convention on the High Seas or to any of the other three Geneva Conventions. In his delegation's view, freedom of fishing could not be classified as an international custom, since according to the Statute of the International Court of Justice and prevailing theory, international custom was a general practice accepted as law. However, fishing in distant waters, far from being a general practice, was a practice peculiar to some six or seven fishing Powers which possessed the necessary advanced equipment and means. The great majority of coastal States fished only in the waters immediately adjacent to their coasts and had never fished in foreign waters. Nor had the freedom to fish

(Mr. Bazan, Chile)

in foreign waters ever been accepted as law. Foreign vessels had only been admitted into foreign waters because of the tolerance of coastal States. However, as soon as those States had become aware of their rights, that tolerance had changed to opposition and protest, and many countries had now proclaimed their exclusive jurisdiction or sovereignty over the resources of the seas adjacent to their coasts.

In their attempt to secure acceptance for the notion of freedom of fishing in the high seas, certain countries had invoked the writings of Grotius. However, Grotius had made the error of supposing that fishing resources were inexhaustible and adequate to satisfy the requirements of all peoples. It was now known that that was not the case: fishing resources were not adequate for all needs and could become exhausted - indeed, some species had been completely extinguished. His delegation therefore believed that freedom of fishing in the high seas was not justified from the point of view of the interests of the peoples denied the full enjoyment of their own marine resources and had an extremely shaky legal basis.

Certain delegations had offered to go beyond the modest concessions granted to coastal States by the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas and had declared themselves ready to recognize certain preferential rights. It had been said that such a formula would ensure that the interests of the international community were harmonized with those of the coastal States. While appreciating the motives underlying such suggestions, his delegation feared that, instead of solving the problem, they would merely entail repetition of the error committed in 1958 and 1960. At that time, a few solutions and measures had been adopted, the question of establishing basic definitions had been postponed and the main problem had been evaded, with the result that the recently concluded Geneva Conventions already required modification. In order to avoid a similar outcome and to ensure that the forthcoming Conference on the Law of the Sea produced a more stable and just régime, it was essential to adopt more effective solutions. The developing countries needed to be able to exploit the resources of the sea adjacent to their coasts over which, as had been stated in the Declaration of Lima, they enjoyed certain inherent rights. The freedom of fishing in the high seas had originated in error, had been allowed to subsist from sheer tolerance and was incompatible with the spirit of justice which prevailed in the modern world.

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(Mr. Bazan, Chile)

For that reason, his delegation believed that partial or compromise solutions would not resolve the substantive issue with which the forthcoming Conference would have to deal. What was required was a final solution, and for that to be achieved freedom of fishing in the high seas must be limited, regulated and, of course, completely prohibited in the 200-mile offshore zone the resources of which would come under the sovereignty or exclusive jurisdiction of coastal States.

He expressed appreciation to FAO for the valuable material which it had submitted to the Sub-Committee. In connexion with the requests made by the representatives of Kenya and the United States for the execution of further studies by FAO, his delegation also had some suggestions to make. FAO might be requested to indicate which areas and species were being over-fished and also study the effect on stocks of certain modern fishing methods, particularly those involving the use of electrical devices. FAO might also provide details of the biological and economic advantages likely to result from the regulation of fishing in the high seas.

Mr. ALCIVAR (Ecuador), speaking in exercise of the right of reply, said that his delegation would make a statement on fisheries at the next session refuting the fallacious arguments of the big Powers. The United States representative had referred to tuna as though it were the only migratory species in existence, possibly because it affected United States economic and commercial interests. Ecuador had established its territorial limit at 200 miles and United States non-recognition of that limit was irrelevant to it. Ecuador did not prohibit fishing in its waters; it merely required that such fishing should be in accordance with its laws. Ecuador could clearly not permit large fleets to come in and remove all of its marine resources.

He pointed out that 95 of the current 132 Members of the United Nations were developing countries; the big Powers should understand that international law was now intended to defend the developing world and not, as formerely, the imperialist Powers.

Mr. AKYAMAC (Turkey) expressed his appreciation to FAO for the valuable reports and studies it had produced. FAO had not prepared fishery country profiles for all countries, but had offered to prepare a profile for any country that requested one. His delegation wished, through the Chairman of the Sub-Committee, to request FAO to prepare a profile on Turkey.

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Mr. BEASLEY (Canada) reported on the informal consultations, over which he had presided that morning, between the representatives of the sponsors of document A/AC.138/66 and other delegations that had made proposals or had a special interest in some of the items in the draft list of subjects and issues relating to the law of the sea. The situation was still in flux and delegations were still reacting to the list. It seemed clear that there were a number of minor problems, reflected in the amendments submitted, which could be cleared up without much trouble. There were also major problems, such as the questions of straits, the economic zone and the problems of land-locked and shelf-locked countries. For that reason it seemed unlikely that agreement could be reached on a list at the current session. Delegations were however willing to negotiate, and he suggested that informal consultations should be continued the following morning.

The CHAIRMAN informed the Sub-Committee that the sponsors of the list in document A/AC.138/66 had requested that 12 noon of the following day should be set as a deadline for the submission of amendments to the list.

Mr. McKERNAN (United States of America) said that his delegation rejected any deadline for the submission of amendments until the list had been adopted.

Mr. YANGO (Philippines) reported on the meeting of the sponsors of the list which had been held that afternoon. They had agreed to hold consultations on the list with other delegations at the contact group level. Another meeting would be held to decide the mandate of the sponsors' contact group. He therefore requested that a deadline should be set for amendments so that the sponsors could give a mandate to their contact group.

Mr. FALL (Senegal) suggested that, owing to lack of time, the Sub-Committee should consider adopting the list and using square brackets for items on which there was no agreement. The list could then be discussed further at the next session.

Mr. ZEGERS (Chile) strongly supported the views of the representative of the Philippines regarding a deadline for amendments. A deadline was essential if there was to be agreement on the list, and agreement was necessary for the Sub-Committee to proceed to the vital second stage of its work.

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Mr. YANGO (Philippines), replying to a question from Mr. STANGHOLM (Norway), said that the deadline for submitting amendments would also apply to the next session, so that agreement on the list could be reached as soon as possible then.

Mr. HARRY (Australia) suggested that those delegations which wished to submit amendments should submit them before the deadline. If, however, agreement on the list was not reached at the current session, further amendments should be allowed at the next session.

Mr. ENGO (Cameroon), supported by Mr. IMAM (Kuwait), suggested that those delegations which intended to submit amendments should announce that fact immediately. The Sub-Committee would thus learn what the actual state of affairs was and that knowledge could help it decide whether negotiations should continue.

The CHAIRMAN urged all members of the Sub-Committee who intended to submit amendments to do so as soon as possible in order to facilitate the negotiations and the task of the sponsors.

The meeting rose at 11.50 p.m.

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Held on Thursday, 30 March 1972, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF MATTERS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)

Mr. HACHEME (Mauritania) said that the fishing industry was vital to the Mauritanian economy and that substantial investments had been made by foreign investors and the Mauritanian Government to expand processing and related facilities. By extending the breadth of its territorial waters in 1967 from 6 to 12 miles, the Mauritanian Government had brought under its control most of the fishing grounds off Noadhibou. It had taken that step because the large international fleet had been over-fishing, depleting the exploitable marine resources of the area. There had been a trend towards the establishment of a 12-mile limit for the territorial sea since the 1960 Conference on the Law of the Sea, prompted no doubt by the support given to the proposal to that effect as part of a package designed to achieve international agreement on the territorial sea.

In view of the considerable economic importance of off-shore fishing resources to many States, it was vital that the zone of national jurisdiction should be extended to 200 miles to ensure the conservation of fishery resources. However, existing international law was vague and gave no protection to coastal States in that regard. The Preparatory Committee for the Codification Conference (The Hague, 1930) had recommended that a coastal State might exercise jurisdiction over the high seas adjacent to its territorial waters to prevent interference with its security by foreign ships. It had been acknowledged that the Geneva Conventions did not prohibit States from exercising extra-territorial jurisdiction with regard to fishing. However, it was essential to determine the outer limits of such jurisdiction - a task which would have to be undertaken by the forthcoming Conference on the Law of the Sea.

The Conference should establish an international régime based on the principle of universality and reflecting the desire for international co-operation based on justice and equality. Many States which would participate in that Conference had not taken part in the 1958 or 1960 Conferences. The decisions to be taken by the international community must therefore take into account the special needs of developing countries.

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(Mr. Hacheme, Mauritania)

The envisaged treaty should provide that States should notify the international sea-bed authority of the limit of the area under national jurisdiction - which would be subject to verification by the authority - as defined by co-ordinates of latitude and longitude and evidenced by appropriate large-scale maps. States should be able to vary the area, within limits prescribed by the authority. Nothing in the treaty should affect any agreement or prejudice the position of any contracting party with respect to the delimitation of boundaries of sea-bed areas between opposite or adjacent States. Treaty articles should also be drafted incorporating paragraphs 2, 3, 5, 6 and 7 of the Declaration of Principles in General Assembly resolution 2749 (XXV).

The list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea contained in document A/AC.138/66 was comprehensive. All the subjects mentioned would have to be taken into account in any consideration of the features of the sea-bed régime and the provisions of the proposed draft treaty, and the Committee should adopt the list without major modifications.

With regard to the right of innocent passage, his delegation considered passage innocent so long as it was not prejudicial to the peace, good order or security of the coastal State. Consequently, the sovereignty of the coastal State over the territorial waters in which such passage took place must be respected. He drew attention to the Lausanne Convention of 1923 relating to the Régime of the Straits, which limited the passage of naval vessels through straits and had permitted Turkey to take defensive measures against enemy ships in time of war, and to the Montreux Convention of 1936 regarding the Régime of the Straits under which Turkey had regained sovereignty over a part of its territory. Many States, when ratifying the Convention on the Territorial Sea and the Contiguous Zone, had expressed reservations asserting the right of coastal States to require warships to seek authorization before passing through their territorial sea. Customary law was vague regarding the right of warships to innocent passage. His delegation considered it inadmissible for any sovereign State at war with another State to allow enemy ships the right of passage through its straits or airspace.

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(Mr. Hacheme, Mauritania)

The prevailing dissatisfaction with the existing law of the sea underscored the need for the development of a new body of international law applicable to all States and based on the principle of territorial sovereignty and the existence of other interstate relations.

Mr. TUNCEL (Turkey) pointed out that the Lausanne Convention relating to the Régime of the Straits had been superseded by the Montreux Convention on the same subject; he urged the Mauritanian representative to study the latter instrument in greater detail.

Mr. REBAGLIATA (Argentina) said that his delegation was sponsoring the list of subjects and issues relating to the law of the sea contained in document A/AC.138/66, on the understanding that sponsorship did not prejudice the position of any State with respect to the items on it or to the order, form or classification according to which they were presented.

The fact that "historic waters" were classified under the heading "Territorial sea" did not mean that those waters were the same as the territorial sea, but rather that, according to existing international law, they had been described as falling within a State's internal waters. The basic purpose of that classification was to indicate that the inner limit of the territorial sea must coincide with the outer limit of the historic waters.

With regard to the item entitled "Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea", he said that the plurality of régimes arose from the fact that there were two areas over which the coastal State exercised sovereignty: one was the territorial sea in the strict sense of the phrase, covering a relatively narrow belt off the coast, where the right of innocent passage existed; the other area, adjacent to the first, was relatively broad in comparison and was also under the sovereignty of the coastal State, but was subject to the principle of freedom of navigation and overflight. In the case of Argentina, the latter zone extended to 200 miles. The rights and interests of coastal States were more adequately accounted for, while the necessary freedoms of the international community were preserved, by the

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(Mr. Rebagliata, Argentina)

application of that dual concept than would be the case if the concept of the exclusive economic zone beyond the territorial sea was applied, for in the latter the coastal State merely exercised jurisdiction concerning such specific matters as natural resources, pollution and scientific research.

With regard to straits, he recognized that that was a problem in which there was a convergence of the interests of the coastal States bordering those straits, of the international community as a whole, and of the States which needed to use those straits for reasons which the Committee had heard many times. The last but not the least important of those three categories included those States where geographical position made it necessary for them to enjoy a régime of free navigation and overflight in the straits. Their territorial proximity to such straits, which linked two parts of the high seas, meant that the maintenance of peace, order or security was not always a problem for the coastal States bordering the straits alone but also to some extent for other neighbouring States and for the international community as a whole.

As the International Court of Justice had pointed out in the case of Corfu, what was important was not the volume of traffic or what role the straits played in international navigation, but their geographical position, i.e., the fact that they provided a link between two parts of the high seas. The major task would be to reconcile that whole gamut of interests in a liberal régime of navigation and overflight that would include or complement the existing norms relating to the safety of navigation, whether by sea or by air, and pollution, which were questions of special concern to the coastal State and - why not say so? - to the international community also. He shared the view that the solution of that problem would greatly facilitate the settlement of other problems that were of great concern to the Committee.

Turning to the question of applicable criteria for determining the outer limit of the continental shelf, he said that no single, universally valid criterion could be adopted. In accordance with international law, Argentina claimed sovereignty over the sea-bed and subsoil of the submarine areas adjacent to its territory to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters permitted the exploitation of the natural resources of the said area. Argentina also acknowledged the existence of an international area of the sea-bed which was the common heritage of mankind and considered that existing international law granted coastal States sovereign rights over the whole submerged

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(Mr. Rebagliata, Argentina)

continental territory, in other words up to the lower far edge of the continental margin. The geomorphological criterion was supported by judicial precedent, particularly the judgement of the International Court of Justice in the North Sea continental shelf case. Nevertheless, his delegation was aware that a combination of criteria, including that of distance, would be required to accommodate various positions. Delegations of countries with narrow shelves had every right to seek solutions which would compensate for that fact of geography; however, the rights and interests of States with broad shelves must also be taken into account if a satisfactory and acceptable agreement was to be reached. Accordingly, the law governing the continental shelf would have to be pluralistic since nature itself was pluralistic.

The same considerations applied to the criteria for fixing the limits of the area of the sea-bed within national jurisdiction. The rights and interests of the coastal State in respect of submerged territory and its subsoil were best protected if they were considered to be sovereign and if their direct relationship with the aforementioned concept of the continental shelf was acknowledged.

The rights and interests of land-locked countries would also have to be considered, in conjunction with those of the international community and particularly of coastal States bordering such countries. Special arrangements between the countries concerned would be necessary to give land-locked States access to the high seas and the international area of the sea-bed. Moreover, provision would have to be made for the equitable distribution of the benefits deriving from the exploitation of that area, taking into account the special needs of all developing countries, whether coastal or land-locked.

Turning to the régime of islands under colonial dependence or foreign domination or control, he said that it was imperative to prevent the consolidation of colonial domination by rejecting all claims to ocean areas by Powers administering such islands, particularly where the Powers would be sharing with the independent State closest to those islands that State's sovereignty or jurisdiction over any portion of the sea, the sea-bed or the subsoil thereof. The anti-colonial position of the United Nations and the principle of territorial integrity which the Organization upheld militated against such situations.

Mr. MIGLIUOLO (Italy) said that his Government's basic views on the issues under consideration had been stated already, particularly during the discussions

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(Mr. Migliuolo, Italy)

which had led to the adoption of General Assembly resolution 2749 (XXV) and that they stood firm. His delegation wished, however, to comment on one aspect of the Sub-Committee's debate. It believed that to attempt to regulate all straits in a uniform manner would be wrong and unrealistic, since the situations involved were not all identical. Some straits could be regarded as national, in that they were narrow, lay between two areas of territory belonging to a single State and constituted navigable routes of only secondary importance. In such cases, the national interests of the coastal State must be preserved to the maximum possible extent, while the interests of the international community hardly required special protection. Freedom of passage through such national straits would be incompatible with the needs of security, public order and public health, as well as with the financial and commercial interests of coastal States.

On the other hand, other straits constituted a natural and necessary route for international navigation and, if passage through them were impeded, some seas would become practically "closed seas" from a legal viewpoint. Obviously, in such cases the interests of the international community must prevail, and coastal States must accept the subordination of their own national interests to adequate satisfaction of the legitimate interests of all other nations. Such straits should therefore be open to free international navigation.

Between those two extremes, there were many other cases in which an equitable balance must be found between the interests of the international community and those of the coastal State concerned. In his delegation's view, the formulation of the item concerning straits in document A/AC.138/66 was sufficiently broad to allow full consideration of its views on the question, with the aim of reaching agreement on a special régime for straits of limited width and predominantly national interest.

The remainder of the items listed in that document, considered in the light of its explanatory note and taking into account the amendments proposed by various delegations, provided a valuable basis for discussion. His delegation believed that some of the items should be reworded, and that others could be combined or changed. It would discuss the amendments submitted by other delegations when all the texts were available. It had noted with interest the amendments submitted by the delegation of Malta in document A/AC.138/67. It had itself submitted, in document A/AC.138/69, an amendment to item 18 of the list. Subitem 18 (a), which was general in nature, reflected views widely spread among members of the Committee,

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(Mr. Migliuolo, Italy)

including his own delegation; on the other hand, subitem 18 (b) appeared unnecessary, in that it might be confusing and could be interpreted as prejudging the solution of certain problems. The easiest solution would be to delete both subitems, so that item 18 would read simply "Régime of islands".

Mr. PODTSEROB (Union of Soviet Socialist Republics) said that the authors of the list in document A/AC.138/66 had acted positively in including items reflecting different approaches. However, the list included many items which reflected the view of only certain delegations or groups of delegations, and were formulated in such a way as to prejudge matters. It was also apparent that not all the groups of States represented in the Committee had participated in the preparation of the list; consequently, it could not fully reflect the views of the entire membership. The task before the Committee was to compile a generally acceptable list which would reflect all the different viewpoints equally. Accordingly, his delegation would in its future work on the list strive for co-operation with all delegations.

It was clear from the title of the Sea-Bed Committee that one of its basic tasks was to prepare proposals for an international legal régime governing the use of the sea-bed and the ocean floor for peaceful purposes. Accordingly, the list of subjects and issues should include an item relating to peaceful uses of the area.

In connexion with item 2 of the list, he drew attention to General Assembly resolution 2750 C (XXV), which stressed that the problems of ocean space were closely interrelated and needed to be considered as a whole, and stated that agreements on the questions to be discussed by the forthcoming Conference on the Law of the Sea should seek to accommodate the interests and needs of all States and that the function of the Conference would be to deal with the establishment of an equitable international régime, including an international machinery, for the sea-bed and other related questions. His delegation therefore felt that neither the Committee nor the Conference could or should discuss items aimed at dividing up the international régime. The list should not reflect the multiplicity of régimes applied in different areas of the oceans of the world, and the Committee should not concern itself with the drafting of regional criteria and norms, which should be derived from an international legal régime based on an organic interdependence of the norms regulating the use of ocean space as a whole. Accordingly, his delegation proposed in document A/AC.138/71 that the wording of subitems 2.1, 2.3.2 and 2.5 should be amended to exclude provisions which might

(Mr. Podtserob, USSR)

induce the Committee to recognize a multiplicity of régimes and draft regional norms rather than universal international legal norms. It also had doubts as to the references in subitem 2.3.2 to open seas and oceans and enclosed seas, since item 2 as a whole dealt with the territorial sea; moreover, those questions were already dealt with elsewhere in the list.

The wording of the items should be objective and neutral. In that connexion, his delegation fully endorsed the amendment to item 4 proposed by the delegation of Malta (A/AC.138/67), deleting subitems 4.1 and 4.2. With that amendment, the wording of the item would become neutral and acceptable to all.

In order to retain objectivity and avoid a wording which might to some degree influence the subsequent work on the drafting of treaty articles, his delegation proposed that the wording of item 6 should be amended so that it referred in general terms to preferential rights of coastal States beyond the territorial sea. Under such a heading, various approaches to the problem could be discussed. In addition, the items included in the list should correspond to the concepts of the current international law of the sea. In view of the importance of a united effort by all States with regard to co-operation on problems of fishing and conservation of living resources, his delegation proposed a new version of subitem 6.9.

Article 2 of the 1958 Geneva Convention on the High Seas contained a classical list of the generally accepted freedoms of the high seas. Accordingly, his delegation proposed the rewording of subitem 7.2 in such a way that it would not exclude any of those recognized freedoms.

Scientific research in the oceans of the world was now being conducted on a broad scale by a considerable number of States, and involved hundreds of research vessels, laboratories and institutes. Co-ordination of national scientific effort at the international level was thus becoming increasingly important. Accordingly, his delegation proposed that subitem 12.2 should be amended to read "co-ordination of scientific research".

His delegation doubted the need to include item 13 in the list. The matters if referred to were within the competence of the specialized agencies and other international organizations, rather than that of the Sea-Bed Committee. His delegation also wished to propose the deletion of item 14, concerning regional arrangements. An international conference on the law of the sea should not deal with regional questions but should concentrate on questions of a universal nature.

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(Mr. Podtserob, USSR)

His delegation attached great importance to the search for solutions which would ensure peace and security. The Sea-Bed Committee should make a contribution to that search. The use of the seas and oceans for peaceful purposes could and should be a subject of discussion at the forthcoming Conference on the Law of the Sea. His delegation accordingly proposed that item 21 should be reworded in a more general and comprehensive manner, and should not reduce the peaceful uses of ocean space to the establishment of zones of peace and security which, although important, far from exhausted the subject.

Since the documents prepared by the Committee should accommodate the needs and interests of all States, including the need for a universally acceptable international régime for the sea-bed, its task would involve completing the work on the codification of the law of the sea undertaken at Geneva in 1958. Accordingly, his delegation wished to propose the addition to the list of an item relating to measures which must be taken to ensure the universal participation of States in the Conventions adopted at Geneva.

The delegations of certain land-locked countries had made specific proposals with regard to the list, reflecting the special interests of those countries. His delegation agreed that the interests of land-locked countries were inadequately reflected in the list; in particular, some countries might have an interest in participating in the practical uses of various marine resources situated beyond the limits of the territorial waters of coastal States, or on the sea-bed beyond the limits of the continental shelf.

His delegation had commented on only a limited number of the items contained in the list. It would no doubt have had more comments if the authors of that list had consulted it earlier. However, since the explanatory note made it clear that acceptance of the list did not prejudice the position of any State, or commit any State with respect to the items on it or to the order, form or classification of those items, his delegation would not comment in detail on the remainder of the list. The Soviet Union supported the norms of international law governing ocean space, in particular those contained in the Geneva Conventions of 1958. It was convinced that the progressive development of international law must take place on the basis of generally accepted norms and principles, through agreements which took into account the interests of all countries and not through unilateral action by individual States or groups of States. International law should be universal, and not divided into different bodies of law for the various geographical regions.

Mr. GUEVARA ARZE (Bolivia) noted that it was generally agreed within the Sub-Committee that the forthcoming Conference on the Law of the Sea should discuss all matters concerning ocean space, including any existing Conventions. A proposal to that end had been made by the Group of 77, and it was stated in General Assembly resolution 2750 C (XXV) that "the problems of ocean space are closely interrelated and need to be considered as a whole". The list of subjects for discussion at the Conference should, therefore, be comprehensive, neutral and flexible.

It was thus to be regretted that the reference to "costal States" in subitem 6.1 of the list in document A/AC.138/66 seemed to exclude land-locked countries from participation in the proposed exclusive economic zone. The list should recognize the geographical reality of the presence of land-locked countries close to the proposed zone.

There was further discrimination against land-locked countries in the title of item 8 of the list, which made no mention of universally accepted principles relating to the rights and interests of such countries. It was important for land-locked countries to have a chance to express their views on the need for such principles, but that would not be possible if the present wording were retained. Furthermore, the reference in subitem 8.1 to "free access to the high seas" imposed a limitation which was not apparent in the 1958 Convention on the High Seas or the 1965 Convention on Transit Trade of Land-locked States, both of which recognized the right of free access to the seas in general. If a land-locked petroleum-exporting State had access only to the high seas, it would have to extend its pipelines to the limits of national jurisdiction of the coastal State, with all the adverse economic effects and other dangers which that implied. Subitem 8.1 was a clear attempt to prejudge the issue before any decision had been taken by either the Sub-Committee or the Conference on the Law of the Sea. It was thus a further illustration of the need for inclusion in the law of the sea of specific measures to protect the interests of land-locked countries, which accounted for 25 per cent of the membership of the United Nations.

The Conventions to which he had referred provided inadequate protection and could not be considered truly universal. Article 3 of the Convention on the

(Mr. Guevara Arze, Bolivia)

High Seas specified that "States having no sea-coast should have free access to the sea", but that such access should be subject to the agreement of the coastal State and in conformity with existing international conventions. If the coastal State was unwilling to grant access or did not recognize the conventions, the land-locked country was powerless to protest. That same principle was reaffirmed in the Convention on Transit Trade of Land-locked States, which had, furthermore, been ratified by only 22 States, of whom no more than four were transit States. Principle V of the latter Convention established that "The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind." That and other provisions showed that far too much reliance was placed on the goodwill of the coastal State.

It was clear, therefore, that there was at present no principle which could be considered as having universal validity and which would permit land-locked countries to have free access to the sea, let alone to the sea-bed. It was unjust that all international measures so far adopted should seek to protect the coastal States, when the land-locked countries were in a minority and plainly represented no threat to the sovereignty of their coastal neighbours, but were instead at their mercy. The establishment of legal measures to protect the rights and interests of land-locked countries should, therefore, be discussed at the Committee's summer session.

Mr. ARIAS SCHREIBER (Peru) explained that the representative of Bolivia had attended meetings at which the lists of subjects and issues relating to the law had been drawn up, and had known of the existence of that list since the 1971 session at Geneva. It was to be regretted that he had waited so long before making any comment. His own delegation had frequently demonstrated its concern for the position of the land-locked countries. He hoped that the Bolivian representative would co-operate with the sponsors of the list in document A/AC.138/66 to reach a mutually satisfactory solution.

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Mr. STEVENSON (United States of America), supported by Mr. SADLER (Australia), said that the substantive work of the Sub-Committee would be facilitated by the establishment of a working group on fisheries. He formally proposed the creation of such a group, which should begin its work prior to the next session of the Sub-Committee or at the same time as the working group established by Sub-Committee I.

Mr. GUEVARA ARZA (Bolivia), replying to the comments by the representative of Peru, said that the small size of his delegation, and in particular the shortage of specialists, had prevented it from participating in the discussions at Geneva. The remainder of the statement by the representative of Peru merely confirmed his own argument that access of land-locked countries to the sea depended entirely on the goodwill of coastal States, which could not be compelled to conclude agreements providing for such access. There was no principle of international law relating to the matter, and land-locked countries had no recourse if access to the sea was denied them.

Mr. FARHANG (Afghanistan) said that his delegation had been unable to co-sponsor document A/AC.138/66, and had expressed its apprehensions and reservations with regard to a number of the items on the list to many of the sponsors. Those reservations were shared by all the developing land-locked countries which were members of the Committee. His delegation had participated in the negotiations leading to the amendments in document A/AC.138/72, and in general endorsed them, in particular those relating to item 8. In view of the fact that no agreement had been reached which would enable it to co-sponsor the main list, it wished to announced its intention of co-sponsoring the amendments in that document. His delegation was also authorized to announce that the delegation of Nepal intended to become a sponsor of the amendments.

Mr. MBOTE (Kenya) said that, at the Sub-Committee's previous meeting, his delegation had referred to a suggestion by the Canadian delegation concerning the organization of a technical conference on fisheries. It did not believe that there was sufficient time before the Conference on the Law of the Sea for such a conference to take place, and accordingly agreed with the representatives of the

(Mr. Mbote, Kenya)

United States and Australia that it would be desirable for the Committee to establish a working group on fisheries; there had been considerable general discussion of the subject, and further progress could be made only as a result of more detailed study.

Mr. FEKETE (Hungary) said his delegation fully endorsed the amendments in document A/AC.138/72, and wished to co-sponsor them.

Mr. WEHRY (Netherlands) said that his delegation had participated actively in the drafting of the amendments in document A/AC.138/72, which it fully endorsed, except for the one relating to item 6.6.5. That exception was all that prevented it from becoming a sponsor of the amendments.

Mr. ARIAS SCHREIBER (Peru) thought that the establishment of a working group should be left until the Committee had an agreed list of subjects and issues. It could then decide which of the subjects would require the establishment of working groups.

Mr. THOMPSON-FLORES (Brazil) agreed. The point was not merely that no agreed list had been arrived at, but also that there was no understanding as to the priorities to be given to the various items or the manner in which they should be dealt with. It must, for example, be decided whether the question of fisheries should be discussed alone, or in relation to the territorial sea or the high seas. As the discussions had so far been general in scope, it would be premature to establish a body to undertake detailed studies. His delegation would have serious reservations with regard to the establishment of any working group, and particularly one to deal with the question of fisheries.

Mr. BEESLEY (Canada) said his delegation had no substantial objection to the United States proposal. However, it was in no way a substitute for the Canadian suggestion, which had concerned a purely technical conference of fisheries experts, convened under the auspices of FAO to deal with the scientific, technical and economic problems of fisheries management. Nevertheless, the two ideas were complementary, and the suggestion of establishing a working group, although it might be premature, should be given sympathetic consideration.

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Mr. STEVENSON (United States of America) pointed out that the question of fisheries was obviously an important one, since every proposal for a draft list of subjects and issues had referred to it. His delegation's suggestion was precisely that a working group should be set up as soon as possible, in order that progress could be made; he hoped that discussion of what was essentially a procedural question would not take up too much of the Committee's time at its summer session.

Mr. ARIAS SCHREIBER (Peru) said his delegation was not disputing the inclusion of fisheries in the agenda for the forthcoming Conference. The question was rather the manner in which the subject should be discussed. Very few delegations in the Sub-Committee had referred to fisheries, and he did not believe that a working group should be established to deal with the substance of the matter until a broader range of views had become available. It did not seem appropriate to establish a working group which might even go so far as to draft treaty articles, when only about a third of the Sub-Committee's members had expressed their views with regard to fisheries. Moreover, his delegation had suggested that, before any specific subjects were discussed at the summer session, there should be a general debate on problems relating to the law of the sea, in order to provide a context for the discussion of specific items.

Mr. MONCAYO (Ecuador) said that it would not be desirable to establish a working group before the debate on fisheries was completed, especially since such a group would be of restricted membership, so that not all delegations would have the opportunity to speak on the subject.

The CHAIRMAN said there appeared to be no consensus in the Sub-Committee with regard to the proposal to establish a working group. Accordingly, no decision could be taken on the proposal at the present stage.

Considerable efforts had been made to reconcile the various positions of delegations with regard to the list of subjects and issues. However, those efforts had been inconclusive. Many delegations had stated that the number of amendments

(The Chairman)

submitted was too great to allow them to take any immediate decision. In view of that situation, all that could be done was for the various groups engaged in negotiations to report to the afternoon meeting of the plenary Committee on the progress they had made.

He said that the Sub-Committee had thus completed its work for the current session.

The meeting rose at 1.30 p.m.