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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 THIRTY-THIRD TO FORTY-SEVENTH
MEETINGS

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

<u>Acting Chairman:</u>	Mr. TUNCEL	Turkey
<u>Chairman:</u>	Mr. MARTÍNEZ MORENO	El Salvador
<u>Rapporteur:</u>	Mr. ABDEL-HAMID	Egypt

The list of representatives appears in documents A/AC.138/INF.7
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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
ICAO	International Civil Aviation Organization
IMCO	Inter-Governmental Maritime Consultative Organization

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

held on Monday, 17 July 1972, at 4.20 p.m.

Acting Chairman: Mr. TUNCEL Turkey

Chairman: Mr. MARTÍNEZ MORENO El Salvador

ELECTION OF THE CHAIRMAN

The ACTING CHAIRMAN called for nominations for the office of Chairman, which had become vacant through the absence of Mr. Galindo Pohl (El Salvador).

Mr. CASTAÑEDA (Mexico) nominated Mr. Martínez Moreno (El Salvador), a member of the same delegation as Mr. Galindo Pohl.

Mr. GARCES GIRALDO (Colombia) seconded the nomination of Mr. Martínez Moreno and proposed that he should be elected by acclamation.

Mr. Martínez Moreno (El Salvador) was elected Chairman of Sub-Committee II by acclamation and took the Chair.

ORGANIZATION OF WORK

The CHAIRMAN invited delegations to make proposals concerning the organization of work.

Mr. ARIAS SCHREIBER (Peru) recalled that Sub-Committee II, under its terms of reference, was required to prepare a list of subjects and issues relating to the law of the sea and to prepare draft treaty articles thereon.^{1/} It had not yet reached agreement on such a list, but it had before it a draft list submitted by 56 countries (A/AC.138/66 and Corr.2) at the first 1972 session. He suggested that the Sub-Committee should hold consultations through contact groups, with a view to negotiating a final decision by the end of the week.

Mr. BEESLEY (Canada) asked the Peruvian representative to explain whether he was suggesting that delegations should engage in informal negotiations instead of consultations within the framework of the formal meetings of the Sub-Committee, or whether on the contrary he thought that informal negotiations could take place on the list of issues while the Sub-Committee was simultaneously holding formal meetings to consider other questions, as had been done at the first 1972 session. In the second case, the Canadian delegation would hope that the Sub-Committee could begin discussion of the question of fisheries during the first week.

Mr. ARIAS SCHREIBER (Peru) said he saw two possible ways of proceeding. The Sub-Committee could, for example, attempt during informal negotiations to define the controversial problems and take a decision at the end of the week; that method would involve creating a framework for the discussions, without thereby preventing delegations which so wished from raising any matter they thought relevant. Again, the

^{1/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), para. 19.

Sub-Committee might proceed by taking a vote if certain delegations insisted, against the views of other delegations, that a particular subject should be retained. He himself would prefer the first method, namely, the establishment of a list through negotiations, and he thought that a time-limit should be fixed for such negotiations.

Mr. ALCIVAR (Ecuador) felt that a time-limit should be fixed both for the submission of amendments to the draft list and for the negotiations designed to produce the final list. The Sub-Committee could then organize its work, adopting the appropriate methods.

Mr. CASTANEDA (Mexico) agreed with the Peruvian and Ecuadorian representatives and joined them in suggesting that the Sub-Committee should follow the procedure adopted at the first 1972 session. The Sub-Committee would consider certain subjects during its meetings, and at the same time informal negotiations would be held on the list of issues to be adopted. As discussion of the list had already been under way for two years, it should if possible be completed before the end of the week, for example by Thursday midnight. The Sub-Committee would reserve the two meetings on Friday for establishing the list of issues, either through negotiations, or by taking a vote if necessary; the discussion of matters of substance could then begin on the following Monday. He requested the Chairman to submit his proposal to the Sub-Committee for approval.

Mr. YANGO (Philippines) recalled that at the first 1972 session the contact group for the Asian, African and Latin American countries had done everything possible to reach agreement with the other groups on the list of subjects and issues to be submitted to the Conference on the law of the sea. Agreement had almost been reached two or three days before the end of the session but lack of time had made it necessary to postpone any decision. As the main difficulty stemmed from the very large number of amendments submitted, it had been suggested that at the second 1972 session a time-limit should be fixed for the submission of amendments. The contact groups would find it very difficult to negotiate if new amendments were constantly being submitted. It had been suggested that the deadline for submitting amendments might be three days from the opening of the present session. He supported the Mexican representative's suggestion that negotiations should take place in contact groups and should end on Thursday, 20 July, at midnight, but he thought that there should also be a time-limit for the submission of amendments. If Sub-Committee II adopted such a procedure, it could very probably complete its task by the end of the week.

The CHAIRMAN asked the members of the Sub-Committee whether they were prepared to accept the Mexican representative's proposal that midnight on Thursday should be the time-limit for completing the informal negotiations on a final list of subjects and issues to be submitted to the Conference.

Mr. TUNCEL (Turkey) said he would like more information on the suggested negotiations. His delegation was one of those which had submitted amendments and which favoured a settlement by consensus. It was now proposed that the Sub-Committee should have recourse to voting. His delegation believed that the Sub-Committee should

go about its work, which had now reached a critical point, in a spirit of conciliation. The success of the Conference depended on the decisions that were to be taken. His delegation accepted the setting of a time-limit for the submission of amendments, but thought that it was too early to take a decision regarding the negotiations, since there remained too many points to be cleared up and nothing would be gained by voting if the different groups adopted rigid and opposed positions.

Mr. KOVALEV (Union of Soviet Socialist Republics) said he shared the concern of the representatives who considered it necessary to lose no time in settling the list of subjects and issues to be submitted to the Conference on the law of the sea. His delegation was ready to engage in consultations with all delegations, but it was opposed to the idea of taking too rapid decisions before all the possibilities of negotiation had been exhausted. Consensus was a widely used and well-tried method, whereas a decision taken by voting would certainly not result in the emergence of universal norms of international law in so important a field as the law of the sea. The idea of fixing a time-limit for the submission of amendments deserved consideration, but there again it would be better to reach agreement on the question of consensus rather than by voting.

Mr. HARRY (Australia) said he too thought that the Sub-Committee should do everything it could to reach agreement quickly on the list of issues. It should, however, aim at a consensus, and to that end it would have to hold negotiations in which all the States represented would have an opportunity to request the inclusion, in the list, of issues which they considered important. To proceed on the basis of a majority vote would not help to ensure the success of the Conference. The Sub-Committee had to examine all the proposed amendments and take a decision on them, but it was likely that, in order to reach agreement, it would often have to look for a compromise solution. Consequently, in his delegation's view, it would not be reasonable to establish a time-limit for the submission of amendments. His delegation was equally opposed to the suggestion of a vote in case no agreement was reached by midnight on Thursday. His delegation favoured an appeal to all delegations that had submitted a list or amendments to strive to reach agreement in the next few days and thus enable the Sub-Committee to send to the plenary Committee and to the General Assembly a list of subjects and issues established by common accord.

Mr. STEVENSON (United States of America) expressed the view that the Sub-Committee had not yet exhausted all possibilities for consultation and negotiation among the delegations that had submitted the draft list or amendments. It should not be forgotten that the list had been drawn up only a few days before the end of the preceding session and that the amendments had been submitted only two or three days later. Delegations must therefore be given time to discuss the matter in order to find a compromise and reach agreement. The Philippine representative had spoken of negotiations that would take place in contact groups. Those groups should not be regional groups; they should include not only the sponsors of the list but also the representatives of the other groups that had submitted amendments. The interests of the different countries and regions should be represented.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that everyone realized the importance of speeding up the establishment of a complete list of the subjects and issues to be submitted to the Conference. It was clear, however, from perusing the documents that they needed to be analysed carefully before any particular decision was taken. The final objective of ensuring the success of the Conference must not be lost sight of.

Different views had emerged as to the procedure which the Sub-Committee should use in speeding up its work. It had been suggested that a time-limit for the submission of amendments should be established, and that seemed logical. It had also been suggested that there should be a time-limit for negotiations and for the consideration of amendments; that seemed more difficult, since there might be a large number of amendments and the Sub-Committee should be given time to consider them. The best course would therefore appear to be to establish a time-limit for the submission of amendments and, once it had been reached, to consider, in the light of the number of amendments, fixing a time-limit for consultations and for the consideration of the amendments.

Mention had been made of the role that could be played by contact groups. Experience had shown that such groups could be useful, since their work had been instrumental in enabling the Committee and the Sub-Committees to obtain results on certain specific questions. Another possibility could be considered: last year, Sub-Committee II had set up a Working Group, and it might proceed to determine the possible role of that Working Group, which still existed officially. His delegation felt that the Sub-Committee should give considerable thought to the question before determining what procedure to follow.

The CHAIRMAN announced that the Sub-Committee would meet the following morning. He hoped that the members of the Sub-Committee would in the meantime reach agreement on a procedure for speeding up the work and enabling the Sub-Committee to carry out the task entrusted to it.

The meeting rose at 5.25 p.m.

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

held on Tuesday, 18 July 1972, at 11.25 a.m.

Chairman: Mr. MARTÍNEZ MORENO (El Salvador)

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1)

List of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea

Mr. PISK (Czechoslovakia) said that his delegation shared the majority view that the comprehensive list of subjects and issues relating to the law of the sea should be completed as early as possible, so that work could begin on the substance of the issues. He therefore supported the establishment of a deadline for the submission of amendments to the list proposed by the 56-Powers (A/AC.138/66 and Corr.2). Some time should be allocated for discussing the question of priorities, since it was important to concentrate on the most important of the issues that had not yet been settled under present international law, such as the breadth of the territorial sea, the outer limit of the continental shelf and the general régime for international straits.

His delegation would prefer a more general and flexible formulation of subjects and issues that would lead to a valuable discussion of all the aspects involved without prejudging the eventual solutions. The Sub-Committee's task was to compile a generally acceptable list that would reflect all the different viewpoints, since it was essential that the principle of consensus should be maintained. Lastly, as a practical measure to facilitate agreement on the list of subjects and issues, he wished to remind the Sub-Committee of its earlier decision to establish a working group.

The CHAIRMAN informed the Sub-Committee that it appeared from informal consultations that there was general agreement on the establishment of a deadline for the submission of amendments to the list proposed by the 56-Powers, in order to speed up the work on the comprehensive list of subjects and issues.

Sir Roger JACKLING (United Kingdom) said that, while he fully agreed with the establishment of a deadline for the submission of new proposals for amendments, he would suggest that proposals for revisions or reformulations of amendments already submitted should still be accepted after the deadline. That would facilitate the negotiations between the contact groups, in which agreement might be reached on such amendments.

The CHAIRMAN suggested that, on the understanding that revisions or reformulations of previous amendments would still be accepted, as proposed by the United Kingdom representative, the deadline for the submission of new amendments to the proposed list of subjects and issues should be 8 p.m. on Thursday, 20 July 1972.

It was so decided.

Mr. YANGO (Philippines), speaking on behalf of the sponsors of the list proposed by the 56-Powers, welcomed the establishment of a deadline for the submission of amendments. He informed the Sub-Committee that the contact groups were ready to hold consultations with the sponsors of proposed amendments as soon as possible, beginning with the group of developing land-locked countries. In order to facilitate those consultations, he proposed that all the meetings scheduled for Sub-Committee II for the rest of the week should be cancelled.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, while he welcomed the decision to establish a deadline for the submission of amendments and appreciated the need to give the contact groups sufficient time to pursue their negotiations, he felt that the possibility of a further meeting of the Sub-Committee later in the week should not be ruled out. His delegation, for example, had just submitted to the Secretariat a draft article on fishing^{2/} and would like to have an opportunity to introduce that draft article and give any explanations or clarifications that might be desired by members of the Sub-Committee.

Mr. ARIAS SCHREIBER (Peru) said that he was in full agreement with the suggestion by the Philippine delegation, which appropriately treated negotiation as the priority task of the Sub-Committee. As for the draft article which had been announced by the USSR delegation, its introduction should be deferred until the Sub-Committee had adopted a list of subjects. His own delegation would like to give its full attention to the USSR proposal, and it feared that it would not be able to do so if the proposal was introduced while the absorbing negotiations on the list of subjects were still under way.

Moreover, his delegation felt that the Sub-Committee could not embark on the study of a special subject, such as that of fishing, before discussing the basic general issues of the law of the sea.

Unless a comprehensive approach was adopted towards the whole question of ocean space, it would be necessary to arrange the subjects to be examined by the Sub-Committee in an order of priority. On that question of priorities, there were marked differences of opinion between delegations. The Czechoslovak delegation had suggested that priority should be given to the consideration of the breadth of the territorial sea and the outer limit of the continental shelf. Other delegations felt, on the contrary, that the first subject to be considered should be the régime of what was still called the "high seas", followed by the question of the exclusive economic zone, the continental shelf, archipelagoes and land-locked countries, and that the breadth of the territorial sea and the question of straits should be considered last.

In view of those differences of opinion on the question of priorities, a preliminary debate on the matter would clearly be necessary before the Sub-Committee could undertake the examination of any specific document on a particular subject.

^{2/} Subsequently circulated under the symbol A/AC.138/SC.II/L.6

Mr. JEANNEL (France) said that, as was clear from many statements made in the general debates at previous sessions, the Committee's task was truly enormous, as it involved reviewing the whole of the law of the sea. That being so, every effort should be made not to delay the work of the Committee and its subsidiary bodies; he feared that any postponement of the introduction of a specific proposal would have precisely that effect.

There was also some contradiction between the decision just taken to set a deadline for the submission of amendments and the proposed adjournment of the meetings of the Sub-Committee beyond that deadline. He realized that, following the submission of amendments, negotiations would have to take place before an agreement could be reached on a list of subjects. Nevertheless, it seemed excessive to cancel the meetings of the Sub-Committee even beyond the deadline set for submitting amendments. He therefore urged that the possibility of holding a meeting of the Sub-Committee before the end of the week should be left open.

Mr. ALCIVAR (Ecuador) supported the Philippine proposal to suspend the meetings of the Sub-Committee in order to facilitate the negotiations on a list of subjects.

He had serious difficulties with regard to the USSR proposal. The Sub-Committee was engaged in the preparation of a list of subjects, and it still did not know what the actual contents of that list would be and how the list would be organized.

As had already been pointed out by the Peruvian representative, different views had been expressed in the contact groups on the question of priorities. For his part, he felt that the first task to be undertaken related to the essential purpose of the Conference on the law of the sea, which, under the terms of General Assembly resolution 2750C (XXV), it was proposed to convene in 1973, namely, the formulation of the principles of a new law of the sea. It was only after a review of the fundamental principles of the law of the sea that it would be possible to discuss specific problems. Fishing problems were particularly complex and controversial. Besides, they were connected not with one, but with several of the subjects to be included in the list.

Mr. STEVENSON (United States of America) said that he entirely supported the establishment of a deadline for the submission of amendments, with the interpretation given by the United Kingdom representative and accepted by the Chairman.

As for the other issue which had been raised, he pointed out that, at the second 1971 session, it had been agreed that every delegation had the right to make a concrete proposal and to introduce it. His own delegation had availed itself of that right and had explained one of its concrete proposals. It therefore felt that the Sub-Committee should not go back on the earlier decision in that respect, and that other delegations should have the same right to introduce a proposal and explain it to other delegations so that it could be considered by them. As regards the discussion of a proposal, the Sub-Committee could of course decide to postpone it.

In conclusion, he urged that the Sub-Committee should adopt a work programme rather than engage in a prolonged discussion on priorities.

Mr. ARIAS SCHREIBER (Peru) said that his delegation had not intended to request the Sub-Committee to depart from the rule which enabled any delegation to submit a proposal. It had simply urged that the Sub-Committee should suspend its meetings until the important negotiations on the list of subjects were concluded.

At the same time, his delegation could not agree that a sort of de facto priority should be conferred upon a particular proposal simply because it had been introduced. The Sub-Committee would have to engage in a comprehensive debate on the whole question of ocean space, or else engage in a subject-by-subject discussion; and, in the latter case, the order in which the subjects were considered could not be left to chance.

In that connexion, priority in the consideration of items did not depend on their respective importance. Priority should be given to the subjects whose early consideration would facilitate the Sub-Committee's work.

Consideration of what was now being called the "international sea", regarded as a res communis rather than as a res nullius, would be an appropriate first step. Such a discussion would make it possible to determine to what extent the leading seafaring nations would be prepared to accept the idea that rules of international law more adapted to present-day requirements should govern the use and misuse of what had been called until now the high seas.

The CHAIRMAN suggested that, in order to take into account the various views which had been expressed on the subject of procedure, the Sub-Committee should hold its next meeting in the afternoon of Friday, 21 July 1972.

Mr. JEANNEL (France) supported that proposal.

The Chairman's proposal was adopted unanimously.

Mr. ALCÍVAR (Ecuador) said that in his view the introduction of a proposal did not prejudice the issue of the priority of the subject to which the proposal related, and could not in any way affect the manner in which the Sub-Committee would decide to conduct its work; he wished that view to be placed on record.

The meeting rose at 12.20 p.m.

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

held on Friday, 21 July 1972, at 3.30 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued)
(A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6)

Draft article on fishing (A/AC.138/SC.II/L.6)

Mr. KHLESTOV (Union of Soviet Socialist Republics) explained the reasons which had led his delegation to submit the draft article on fishing (A/AC.138/SC.II/L.6). Fishing on the high seas was a complicated problem to which it was necessary to find a concerted solution. It was linked to other questions which had been considered by the Sub-Committee and more especially to that of the breadth of the territorial sea. Most delegations, including his own, felt that the breadth of the territorial sea should be fixed at 12 miles, for that limit corresponded to contemporary international law and to the interests of the whole international community. By the rules of international law, territorial waters formed part of the territory of the coastal State and came under its exclusive jurisdiction. Thus, foreign vessels might fish in the territorial waters of a coastal State only with its permission. The idea of limiting the breadth of the territorial sea to 12 miles was gaining ground and was beginning to be accepted even by those States which had contemplated extending that limit, because it was understood that to increase that breadth beyond 12 miles would complicate shipping and world trade. Freights would be bound to rise and the interests of many countries in particular of the developing countries, would be harmed.

The question of regulating fishing beyond the 12-mile limit was extremely important. Freedom of action of all States on the high seas, including freedom of navigation and fishing, was recognized in international law. Consequently some countries, more especially developing countries, which had no large fishing fleets, were handicapped and felt that rules of international law should be formulated which would take account of their interests in areas of the high seas adjacent to their territorial sea. His country supported the claims of developing countries, which had less economic, financial and technical capacity than developed countries. For instance, it was difficult for them to establish a fishing industry at short notice, and their interests must be taken into account when new rules of international law to govern fishing on the high seas were drafted. In view of the widely-varying situations and interests of States with regard to fishing, it was necessary to seek a compromise, in order to arrive at a generally acceptable solution.

The draft article submitted by his delegation took account of the interests of developing coastal States and would enable them to exploit fishery resources beyond the 12-mile limit. It also took into consideration the interests of States, including land-locked States, which had or would have a fishing fleet. Moreover, it aimed at ensuring the rational use and conservation of fishery resources. In view of the extreme complexity of the question, the draft article called for detailed analysis. He would therefore give only a few general explanations of the article, and would go into greater detail later.

The article's main provision was the one which stated that a developing coastal State might annually reserve to itself in the areas of the high seas adjacent to its territorial sea or fishery zone (not exceeding 12 miles), such part of the stocks of fish as could be taken by vessels navigating under its flag. The draft also provided that, with the growth of the fishing fleet of the coastal State, the part of the stock of fish reserved by it might increase accordingly. The question which then arose was how to define the maximum volume of the reserve part of the catch. International experience, especially of the activities of international fishery organizations, showed that it was possible to evaluate the state of fish reserves and to fix the maximum limits of the reserved catch which would ensure the normal reproduction of the fish. In fixing those maximum limits, account would have to be taken of the capacity of vessels navigating under the flag of the coastal State, and of other objective factors. Such methods had already been successfully applied by fishery organizations.

With regard to States which possessed or would possess fishing fleets on the high seas, paragraph 3 of the draft stipulated that the part of the allowable catch of fish which was not reserved might be taken by vessels navigating under the flags of other States. It expressly extended that right to land-locked States. The interests of a developing coastal State were safeguarded by the provision that the part reserved for it would increase with the growth of its fleet. Regulatory measures must be based on scientific findings concerning fish reserves, and on the need to conserve fishery resources. Paragraph 5 of the draft provided that the coastal State might itself establish the fishing regulatory measures that should be taken in areas not covered by the measures taken by international organizations, and that such measures should not discriminate against the fishermen of other countries. Paragraph 6 provided that the coastal State might itself control the observance of the fishing regulatory measures it initiated under paragraph 5.

The international fishery organizations could supply the necessary statistical data concerning fish stocks reserves and fishing regulation. They had already made rational rules which took account of the interests of coastal and all other States. Those rules, which had proved their value, should be retained and indeed strengthened.

Paragraph 3 of the draft provided that States entitled to take an unreserved catch of fish should exercise that right without detriment to the reproduction of the fish stocks. That provision showed that account was taken of the legitimate interests of the peoples of all countries. Indeed, that part of the fish catch which was not taken by the developing coastal State must clearly be used for the benefit of the peoples of other countries, for it was unthinkable that use should not be made of the food resources in the oceans. Countries which had a large fishing fleet must fish in a rational manner, without detriment to the fish stocks. Thus the draft prohibited the irresponsible use of such resources.

The draft dealt only with fundamental questions and in particular contained no provision for the apportionment of the unreserved catch of fish among non-coastal States. Having regard to the Sub-Committee's deliberations, new articles might be inserted in the draft. In doing so, it would be advisable to take account of international practice and especially of the activities of international fishery organizations.

Paragraph 7 of the draft concerned the method of settling disputes between States. His country subscribed to the view that disputes should be settled by agreement between the countries concerned. However, paragraph 7 provided that disputes might be settled by arbitration at the request of one party to the dispute. That did not signify a change of attitude by the Soviet Union; the purpose of the provision was to arrive at a generally acceptable solution, which would obviously only be possible if every country agreed to make concessions. The provision in paragraph 7 was therefore proof of his country's desire to settle the problem to the satisfaction of all. The Soviet Union would appeal to all countries to show understanding, so as to work out a solution which would take account of the interests of all States and thereby strengthen international co-operation.

Mr. CHEN (China) said that his delegation had studied the statements made by the representatives of various countries in the Committee. It noted that the representatives of many developing and other small and medium-sized countries had affirmed their determination to defend their sovereignty and national interests, expressed their dissatisfaction at the plundering of fishery resources everywhere in the world by the super-Powers and another distant-water fishing Power and resolutely denounced their maritime hegemony. His delegation fully supported that position and wished to explain its own position on certain questions concerning sea fishing.

In recent years, the catch taken by the super-Powers and by another Power in distant seas had represented 70-80 per cent of their total annual catch, whereas the annual catch of some developing countries had been decreasing year by year. Those few Powers, disregarding the interests of other coastal States, sometimes concentrated their fishing fleets in one area for intensive catches, thus seriously endangering fishery resources. As a result, herring, cod and haddock in the North Atlantic and North Pacific had seriously decreased and a few other species had almost disappeared.

Sea fish resources were an important part of the natural resources of coastal States, and the shallow seas along their coasts were particularly important, because that was where the main species of sea fish came to spawn, seek their food and hibernate. At present, more than 80 per cent of the world's total catch was made in shallow sea waters, which comprised only 7.8 per cent of the world's total area of seas and oceans. The domination and reckless plunder by those few Powers had already caused grave damage to the economic interests and national sovereignty of many coastal States, including those of Asia, Africa and Latin America, and continued to pose a serious threat to them, leading to ever greater tension in the area of sea fishing.

It was therefore natural that, faced with that grave situation, the coastal States should take appropriate measures to preserve their fishery resources. His delegation supported those States, and particularly the developing States, in their just struggle to develop their national economy, safeguard their national sovereignty and prevent the super-Powers from plundering their resources. In his delegation's view, those countries had every right to delimit, according to their geographical situation and the needs of their national economy, certain economic zones beyond their territorial seas so as to protect their fishery resources.

A reasonable solution to the problem of fishing by other States in the sea areas adjacent to coastal States should be sought through negotiation between the countries concerned, on the precondition of non-encroachment on the sovereignty of the coastal State. Some Governments had argued that, if the fish were not caught, resources would be squandered because the fish would perish in any case, and had used that argument to justify theoretically their practice of plundering fishery resources everywhere. Such reasoning was absurd. His delegation was convinced that the coastal States were fully capable of protecting and rationally exploiting the fishery resources in their own economic zones.

The super-Powers and another distant-water fishing Power had to admit, at least in words, that coastal States might have certain preferential fishing rights beyond the limit of 12 nautical miles, but at the same time they were trying to impose all sorts of restrictions on those rights, saying, for instance, that these should be "consistent with the objectives of conservation" or "should not be misused". As everyone knew, the great majority of Asian, African and Latin-American countries had been oppressed by imperialism for a long time; their productive forces had thereby been seriously damaged and their fishing techniques and capabilities still lagged far behind those of the distant-water fishing Powers. Those were the Powers which were plundering and damaging fishery resources on a massive scale; therefore responsibility for the conservation of fishery resources rested with them. By pretending concern lest other coastal States might abuse their preferential fishing rights, they were shirking their responsibilities and diverting public attention. Similarly, when they demanded freedom of fishing "on a non-discriminatory basis", as if they were suffering some discriminatory or unfair treatment at the hands of others, it might well be wondered whether they were not confusing right and wrong and trying to mislead the public.

In order to dominate the seas and oceans, the two super-Powers were both contending and acting in collusion. On the question of delimiting fishing areas and economic zones, they had been working hand in glove. One of them had stated that it did not consider it appropriate to define broad fishing areas or economic zones, while the other had stated even more bluntly that it would continue its opposition to unilateral claims of fisheries jurisdiction beyond the recognized 12-mile fisheries zone. Those statements clearly revealed their intention to enforce their proposal for a "maximum high seas and minimum territorial waters jurisdiction", so that they might use the so-called "freedom of the high seas" to achieve maritime hegemony, to encroach upon the sovereignty of other countries, and to plunder fishery resources.

His delegation desired to state its views on the draft article on fishing submitted by the Government of the Soviet Union. Far from placing restrictions on the Powers which fished in distant waters, that draft article aimed at imposing quantitative limits on the catches of coastal States in the areas adjacent to their coasts. That was clearly turning the situation upside-down and attempting to legalize the plunder of fishery resources of other countries. His delegation considered that restrictions should be placed not on coastal States but on the super-Powers and another distant-water fishing Power; without the consent of the coastal States, those Powers had no right whatsoever to fish at will in their territorial seas and economic zones.

Under the USSR draft, coastal States could do no more than record the illegal activities of foreign fishing vessels, and only the States under whose flag those vessels sailed were empowered to punish them. That clause seemed particularly arbitrary. As everyone knew, some Latin-American countries had arrested and fined United States vessels for illegal fishing in their territorial waters, while the United States Government encouraged those acts of piracy by paying the fines and by threatening to stop "aid" to the countries concerned. It would be difficult to believe that such a Government would fairly judge and punish pirate fishing vessels on the basis of complaints made by countries which had suffered from their activities.

What was even less tolerable was that the Government of the USSR had openly stated in the explanatory note annexed to the text of its draft article on fishing that it would recognize the right of all nations to share in the benefits of the exploitation of sea-bed resources only on three conditions: first, a resolution on fishing which conformed with the views of the Soviet Union must be unanimously adopted; secondly, the breadth of territorial seas must not exceed 12 nautical miles; and thirdly, freedom of passage must be guaranteed through those straits which were used by international shipping. Thus, the Government of the USSR had assumed the right to deny to countries which did not observe its conditions any share in the benefits derived from the exploitation of the resources of the sea-bed.

His delegation was bound to take the present opportunity of declaring that the affairs of the world must be handled by the peoples of all countries together and not by any super-Power which wanted to decide everything. Any attempt by a super-Power to dictate to the world would certainly fail. The struggle of the developing countries in defence of their rights on the high seas and oceans and against the maritime hegemony of the super-Powers was becoming more intense. Through their long revolutionary struggles, the Chinese people had learnt that the independence of a country was incomplete without economic independence. In opposing economic plunder and in seeking to protect their resources, developing countries were exercising their inalienable sovereign rights as independent States. China would co-operate with all those countries that upheld justice and join in their efforts to achieve a fair and reasonable solution of the marine fishing problem.

Mr. ARIAS SCHREIBER (Peru) requested the USSR representative to clarify his draft article on fishing. He said that his own delegation maintained its view that the Sub-Committee should not hold substantive discussions before approving the list of subjects and issues and establishing priorities.

His delegation asked the USSR delegation first to specify the external limits of the area of the high seas directly adjacent to its territorial sea (or contiguous zone) referred to in paragraph 1 of the draft. There must be limits to those fishing zones, otherwise there would be conflicts over jurisdiction.

Secondly, paragraph 4 referred to areas where measures of fishery regulation were carried out through international fisheries organizations. His delegation would like it to be made clear what those areas were and what organization was appointed to regulate fishing in, for instance, the south-east Pacific.

Thirdly, his delegation would like to know what were the areas referred to in paragraph 5 which were not covered by the measures specified in paragraph 4.

Mr. KHLESTOV (Union of Soviet Socialist Republics) replied that, when his delegation was preparing its draft article, it had made enquiries on the present position in fishing and had learnt of the existence of about a dozen regional fisheries organizations operating in well-defined regions. There was one for the north-west Atlantic composed of 15 coastal States and States with fishing fleets operating in the area, and another in the south-east Pacific. On the other hand, in some regions, for instance the Indian Ocean, there were no regional organizations to regulate fishing. That was why paragraph 4 provided that in those areas where there were fishing regulatory organizations, these should be recognized and left to apply the existing regulations. On the contrary, paragraph 5 stated that where no such organizations existed it was for the coastal State concerned to regulate fishing in the high seas adjacent to its territorial sea and to apply regulatory measures.

In reply to the question concerning the delimitation of the area referred to in paragraph 5, his delegation considered that the extent of that area depended on the kind of fish which was caught there; for instance, the fishing area for herring was very large. Thus, the coastal State concerned would reserve for itself a part of the fishery resources, depending on the size of the schools of fish.

Referring to the statement of the representative of China, he welcomed the delegation of that great nation but regretted the strong terms used by its representative, who had described certain practices as "plunder". He hoped that the Chinese delegation would take part in the discussions in the traditional constructive spirit of the Committee.

Mr. M'CHACHTI (Morocco) outlined the comments which preceding speakers had prompted among members of his delegation. His country, which watched impotently its fishery resources being devastated, was interested in fishing for economic, nutritional and social reasons. Foreign vessels were fishing off Moroccan coasts, and his country could neither control their activities nor benefit from them. Furthermore, the fish caught by other countries sometimes came back after processing to compete with the Moroccan fishing industry, which could not export its products.

Some bodies responsible to FAO prepared planning measures and carried out surveys of fish stocks, but when action was needed they were ineffective. Furthermore, it was difficult for them to do efficient stocktaking, since developed countries which fished off the coasts of developing countries did not supply any statistics on the catches of their vessels; only coastal States made statistics available. Goodwill and a spirit of co-operation should be fostered in the developed countries which exploited the fishery resources of developing countries, so that steps could be taken to harness those resources. Such steps would be effective only when coastal and developing countries were able to set up fishing zones in which they would control catches, without thereby excluding the possibility of co-operating with developed countries, so as to derive benefit from their fishery resources and develop their fishing fleets.

Mr. STEVENSON (United States of America) welcomed the participation of the representative of China in the discussions on fishing, though he regretted the polemical tone of his speech. His delegation rejected some of that representative's statements

about United States activities. It declared in the first place that the United States caught 80 per cent of its fish off its own coasts. so that it was itself a coastal State rather than a State fishing in distant waters. Secondly, wherever the United States fished off the coasts of other States, it did so under bilateral agreements with those States and its catches had been within the limits of conservation measures. When it could not accept the claims of some States, it always endeavoured to reach a fair solution. Thirdly, on the multilateral level it had put forward proposals aimed at finding just solutions to the problems with which the whole international community was faced. In particular, the proposals submitted by the United States representative during the first 1971 session of the Committee had been amended in response to the many suggestions made by coastal States, in order to match their jurisdiction to the importance to them of the fish species off their coasts. His delegation hoped to submit in the course of the following week revised draft articles^{3/} taking into account the changes which seemed necessary in the light of the comments it had received. On the whole, it welcomed the opportunity of discussing the vital issue of fishing, and hoped that those discussions would be objective, considered and calm.

The meeting rose at 4.55 p.m.

^{3/} Subsequently circulated under the symbol A/AC.138/SC.II/L.9

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

held on Monday, 24 July 1972, at 3.40 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued)
(A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6)

Mr. SHEN Wei-liang (China) said that, after hearing the statements made by a number of delegations on the question of straits, his delegation noted that countries bordering on straits and many Asian, African and Latin American countries held that only innocent passage was permissible through straits within the territorial seas of coastal States, whereas the super-Powers considered that "freedom of transit" should include also the right for their warships and aircraft freely to pass through, or over, such straits. His delegation wished to state its position on that question.

The notion of the territorial sea was entirely different from that of the high seas. Every coastal State in the world had the right to define the extent of its territorial sea and to exercise its sovereign rights therein. Consequently, straits lying within the territorial waters of a coastal State still came under the national sovereignty of that State, even if they were often used for international navigation. Permitting innocent passage was not at all the same thing as closing the straits. It implied simply that foreign ships, when passing through the straits, should not disturb the peace, order or security of the coastal State and should comply with its laws and regulations. Accordingly, in his delegation's view, it was entirely justified and reasonable to require that prior consent should be obtained before foreign warships and military aircraft could pass. In demanding "freedom of transit" and "freedom of overflight" for foreign ships and aircraft, whether civilian or military, the super-Powers were seeking to treat territorial waters as the high seas, so as to ensure their maritime hegemony.

It should be pointed out that, before the Second World War, the United States of America had acknowledged that foreign warships had no right of free transit through the territorial seas of other countries. Various examples could be cited to illustrate that attitude. After the Second World War, however, the United States had intensified its expansion over the seas and the oceans, sending out innumerable warships, nuclear-powered submarines and military planes and establishing numerous naval bases all over the world. To meet the needs of its policy of expansion and aggression, it had changed its attitude on the question of the right of passage through territorial waters. For instance, at the 1958 United Nations Conference on the Law of the Sea, the United States delegation had strongly urged that foreign warships should have the right of "innocent passage" through the territorial seas of other countries, without the prior consent of the coastal country concerned. In 1960, the head of the United States delegation to that Conference had even declared, before the United States Senate Committee on Foreign Relations, that the territorial sea should be as narrow as possible in order to preserve the maximum possibility of deployment, transit and manoeuvrability on and over the high seas, free from the jurisdictional control of individual States. In a report issued in February 1972, the United States Government had confirmed that position

in even more blatant terms. In short, the United States wished to treat the territorial waters of other countries as the high seas, and demanded the right of free transit through straits within the territorial seas of coastal States. It was with that in mind that the United States had elaborated the draft articles which it had submitted in July 1971. 4/

The representative of the Soviet Union had also advocated "freedom of transit" in his statement to Sub-Committee II on 24 March 1972 (28th meeting). The position taken in that statement was quite different from the attitude which the Soviet Union had adopted in the past. For a long time, the Soviet Union had adhered to the principles of innocent passage and prior consent. It had adopted that position, for instance, in the Corfu Channel case, 5/ which had come before the International Court of Justice in 1949; the Soviet judge at that time had pointed out that warships were different from commercial ships, since they had no right of passage through the territorial seas of other States, and that, in the absence of a special convention, the right to regulate passage through straits belonged to the coastal State. Similarly, at the 1958 United Nations Conference on the Law of the Sea, the Soviet representative had referred to the sovereign right of each coastal State to insist that the passage of foreign warships through its territorial waters should be subject to an application for prior authorization. Further, the Government of the Soviet Union had made the following reservation with respect to article 23 (Rules applicable to warships) of the 1958 Convention on the Territorial Sea and the Contiguous Zone: "The Government of the Union of Soviet Socialist Republics considers that a coastal State has the right to establish procedures for the authorization of the passage of foreign warships through its territorial waters". 6/ Mention might also be made of the regulations issued in 1960 by the Soviet Government for the defence of the Soviet State frontier - regulations which limited the right of innocent passage to foreign non-military vessels, and stated that the passage of foreign warships was subject to prior authorization within a fixed time-limit by the Soviet Government. It was in application of those regulations that two United States coastguard ships had been refused passage, in August 1967, through the Vilkitsky Straits, which were within Soviet territorial waters. It was plain, from the statement made by the Soviet Union representative in Sub-Committee II on 24 March 1972, that the Soviet Government had made a complete about-face, because it was now clamouring for "freedom of transit" through straits, arguing that that principle was generally recognized in international law and international practice, and that, without it, the realization of the freedom of the high seas was practically impossible. However, it seemed unlikely that the Soviet Union would allow the warships of all countries freedom of transit through straits which were within its own territorial waters, since the Soviet representative himself had added that the extension of territorial waters to 12 nautical miles should not of itself lead to any change in the legal status of a considerable number of international straits. In other words, in order to maintain the status quo, straits in the Soviet Union which were within the 12-mile limit would remain closed to free

4/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), annex IV, p. 241.

5/ International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, 1949 (Leyden, A.W. Sijthoff) (Sales No.:15)

6/ United Nations, Treaty Series, vol.516 (1964), No.7477, p. 273.

transit. On the other hand, the Soviet Union would refuse other States the right to extend their jurisdiction to straits which had not hitherto been within their territorial waters for that would entail a modification of the status quo. Such an approach was contradictory and hegemonic. Those facts were particularly interesting, since at the United Nations Conference on the Law of the Sea in 1958 it had been the Soviet representative who had accused the United States of changing its attitude since the Conference for the Codification of International Law in 1930. yet, in 1972, the Soviet Union had unhesitatingly affirmed in Sub-Committee II that the proposal submitted by the United States in July 1971 could serve as a basis for an article on straits.

However, the course of history could neither be arrested nor reversed. The 56 countries which constituted a majority in the Committee had defined their position on the question of straits in the list of subjects and issues (A/AC.138/66 and Corr.2) which they had jointly submitted. The demand of the two super-Powers was unacceptable, because it denied the sovereignty of coastal States. In the Chinese delegation's opinion, straits within territorial waters, whether or not they were often used for international navigation, should be subject to regulation by the coastal States concerned. Foreign commercial vessels might enjoy the right of innocent passage through them, provided that they observed the regulations of the coastal States. Foreign warships, on the other hand, must obtain prior authorization. All countries must play their part in seeking a fair and reasonable solution to the question, in accordance with the principles of mutual respect for sovereignty and territorial integrity, non-aggression and non-interference in the internal affairs of States. The hegemony of the super-Powers, which were trying to partition and control the seas, must be firmly opposed.

Mr. STEVENSON (United States of America) said that he did not at present wish to prolong the discussion, since his delegation had already clearly indicated its position on the question, and hoped shortly to submit certain proposals concerning problems of traffic safety and pollution in straits which should help to allay the fears of coastal States in that respect. When the Committee came to consider the substance of the question, his delegation would revert in detail to certain points raised by the Chinese representative. At the present stage, he wished merely to make one or two brief remarks.

First, the question under discussion was linked to the question of extending the limits of territorial waters. His delegation, like others, hoped that the new limits would be fixed by an agreed decision at the international level, and not by unilateral decisions. The broadening of the territorial sea would create a new situation, because certain straits which had hitherto included a high-seas channel would no longer do so; it was to reconcile the various interests that the United States delegation had suggested the establishment of a more limited right of transit than the traditional freedom of navigation in those areas of the straits concerned which had hitherto been governed by the régime of the high seas.

Secondly, the 56 countries which had submitted a list of subjects and issues had, contrary to what the Chinese delegation thought, not adopted a position of principle on the substance of the question.

Thirdly, the discussion so far had shown that many countries had been primarily concerned with the problem of transit through straits, not only from the military standpoint but also, and above all, from the point of view of trade and the possibility - for certain consumer countries - of receiving the products they needed for their existence.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said he had listened carefully to the statement by the Chinese representative on the subject of straits and on the régime which should, in the Chinese delegation's view, be applied to them. In that connexion, the Chinese representative had raised a number of points which called for very careful study. The Soviet delegation reserved the right to verify the assertions which had been made, so as to be quite clear as to the nature of the arguments which the Chinese delegation had used to substantiate its view concerning the need to apply a particular régime to territorial waters. After careful consideration of all those arguments, the Soviet delegation would explain its own views.

At first sight, the Soviet delegation was inclined to believe that the Chinese representative had in his statement tended to confuse two notions which were nevertheless quite distinct: first, the question of straits and, secondly, the question of territorial waters. The Soviet delegation wished to point out that, whenever it spoke on the question of territorial waters in general, it always took the view that the territorial sea was part of the territory of a State, according to a principle recognized in international law, and that the applicable régime was consequently the same as that which applied to the territory of the coastal State. In that respect, the Soviet Union's views on the passage of foreign vessels did not differ greatly from those of China. On the other hand, with regard to straits, the situation was entirely different. The new rules which were being studied with a view to changing the limits of territorial waters raised a whole series of delicate questions in connexion with the changes in relation to the straits which would then be included in territorial waters. The Soviet delegation would explain its views on that subject in detail when the Sub-Committee came to discuss the substance of the question. In general, the position which the Soviet Union had often defended was that efforts should be made to seek a judicious balance between the interests of navigation in straits which were actually used by international navigation and served to promote trade, on the one hand, and the interests of coastal States, on the other hand. The most essential thing was to protect the interests of the international community and ensure freedom of trade and navigation.

The meeting rose at 4.15 p.m.

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

held on Friday, 28 July 1972, at 3.20 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued) (A/AC.138/66 and Corr.2; A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-8)

Mr. STEVENSON (United States of America) recalled that he had introduced in detail on 3 August 1971 in Sub-Committee II (8th meeting) his delegation's "Draft articles on the breadth of the territorial sea, straits and fisheries (A/AC.138/SC.II/L.4)".^{7/} He wished to reiterate that the objectives of those draft articles constituted basic elements of United States oceans policy. His delegation was now in a position to fulfil the commitment it had made, at the time when it tabled its draft, to alleviate the legitimate concern of coastal States regarding navigational safety, by submitting new proposals on that subject and on the question of liability.

It should first be emphasized that the right of free transit, which the United States was seeking to have incorporated in a treaty on the law of the sea, was one which already existed in straits which would be affected by a general extension of the territorial sea to 12 miles. It was a simple and limited right of transit, which applied to international straits as defined in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. To achieve that right, his country was willing to forgo the other high seas freedoms of navigation and overflight which it considered to exist at present in straits wider than 6 miles. When exercising the right of free transit, his Government was willing to observe reasonable traffic safety and marine pollution regulations, that is to say, regulations which were consistent with the basic right of transit. His delegation firmly believed that the safety standards to be applied in straits should be established by international agreement and should not be unilaterally imposed by coastal States. The two specialized agencies of the United Nations which, because of their long experience and expertise, were best qualified to establish the necessary international standards were IMCO in the case of ships and ICAO in the case of aircraft.

The list of IMCO achievements with regard to navigational safety was an impressive one, and the international community should continue to give that organization, and its competent committee, the Maritime Safety Committee, the primary responsibility for establishing the necessary navigational safety standards, bearing in mind the particular interests of coastal States. More specifically, the United States delegation proposed that the future treaty on the law of the sea should provide that all surface ships proceeding through areas for which international traffic separation schemes had been developed should be obliged to respect such schemes, in accordance with the rules and procedures established by IMCO and in the International Regulations for Preventing Collisions at Sea, 1960. IMCO had already developed 75 traffic separation schemes, which were in effect in areas of heavy traffic, as could be noted in the detailed

^{7/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex IV, p.241.

document on the subject which IMCO had submitted to Sub-Committee III.^{8/} While such schemes were already in effect in a number of major straits, such as those of Dover, Gibraltar and Hormuz, his delegation wanted to make it clear that its proposal applied to all areas of heavy traffic; it therefore hoped that IMCO would establish traffic separation schemes in all areas where they were necessary.

As was pointed out in the IMCO document, one important difficulty at present was that the schemes were not binding and, consequently, a single ship travelling the wrong way could endanger navigation. His delegation therefore fully supported IMCO resolution A.228(VII),^{9/} recommending that Governments of member States should make it an offence to proceed against traffic where an IMCO separation scheme was in force. It also supported the proposed new text of rule 11 of the International Regulations for Preventing Collision at Sea.^{10/} In view of the very technical nature of that subject, the Sub-Committee might wish to consider inviting IMCO experts to explain in detail how traffic separation schemes operated. His delegation was not proposing that the forthcoming Conference on the law of the sea should establish new traffic separation schemes or change existing ones, but rather that the treaty on the law of the sea should provide that the IMCO rules on traffic separation schemes should be made binding on the parties to the treaty. That approach was similar to the one adopted in the 1958 Convention on the High Seas.^{11/}

Thus, under the terms of the United States proposal, the right of free transit in straits would be guaranteed, but a coastal State would have enforcement rights with respect to violations of its laws and regulations over ships exercising their right of free transit through territorial seas in straits. Similarly, coastal States would have the right to enforce compliance with mandatory internationally agreed traffic safety schemes against any ship that did not comply with them.

With regard to the question of free transit for aircraft over international straits, and the internationally agreed safety regulations which should apply to aircraft, he said that the right of an aircraft, scheduled or non-scheduled, privately owned or State-owned, including military aircraft, to overfly the air space of a sovereign State, including the air space over its territorial sea, depended on obtaining the consent of that State. Civil aircraft already had transit rights over the national territory of other States, under the Convention on International Civil Aviation^{12/} and the International Air Services Transit Agreement,^{13/} but such rights were not available to State aircraft, either under the Convention or under the Agreement. The United States had therefore proposed that a right of free transit should be guaranteed to such aircraft when overflying international straits, but it had emphasized that States which adjoined straits need not route State aircraft over the strait itself but could establish suitable corridors over land areas. The free transit right for aircraft was similar to the transit right proposed for ships and was essential to preserve the high seas right of overflight which already existed over those straits which would be affected by the extension of the breadth of the territorial sea to 12 miles.

^{8/} IMCO, document MISC (72) 8.

^{9/} *Ibid.*, p.19.

^{10/} *Ibid.*, p.15.

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

^{12/} *Ibid.*, vol.15 (1948), No.102, p.295.

^{13/} *Ibid.*, vol.84 (1951), No.252, p.389.

With regard to air traffic safety measures, the standards established and the practices and procedures recommended by ICAO were applicable to all flights through international air space by civil air carriers of the 124 States which were parties to the Convention on International Civil Aviation, but the standards were not applicable to State aircraft, which were obliged only, in accordance with article 3 (d) of the Convention, "to have due regard for the safety of navigation of civil aircraft".

The United States Government realized that nearly every State had an interest in ensuring that aircraft navigation was normally subject to safety control. Wishing to ensure the safety of overflight of straits by aircraft exercising a right of free transit, the United States proposed that the future treaty on the law of the sea should provide that State aircraft exercising that right should normally respect the ICAO standards, recommended practices and procedures as they applied to civil aircraft over the high seas and, secondly, they should operate with due regard for the safety of navigation of civil aircraft. The State aircraft of the United States, like its ships, had always observed the highest navigation safety standards and would continue to do so.

In conclusion, his delegation believed that the proposals it had just outlined would - if they were adopted and widely observed - substantially reduce the possibility of accidents resulting in loss of life, property damage and environmental pollution. Should accidents occur, however, States damaged thereby should receive compensation. The users of straits should have a strong incentive to observe scrupulously all the safety rules proposed. To satisfy those various requirements and further to strengthen the premise that the application of internationally agreed safety standards was preferable to any unilateral coastal State regulation, the United States would like to make two specific suggestions: first, the treaty on the law of the sea should provide for strict liability for all vessels, including warships, for accidents caused by deviations from traffic separation schemes established by IMCO; secondly, the treaty should provide for strict liability for State aircraft, exercising the right of free transit, for all accidents caused by deviation from the ICAO standards, recommended practices and procedures. His Government was studying what the upper limits, if any, of liability should be, and it would be interested to hear the views of other delegations on that subject.

His delegation hoped that the proposals it had just submitted would go far to meet the legitimate concern of coastal States, and particularly those bordering straits, regarding the safety of navigation by ships and aircraft through and over straits; it was therefore prepared to take into account all the views and suggestions which members of the Sub-Committee might put forward regarding the approach it had outlined in the foregoing statement, so as to maintain a dialogue which would enable the Sub-Committee to accommodate all the interests involved.

Mr. NEEDLER (Canada) said that he would like briefly to introduce a working paper on the management of the living resources of the sea, which was to be circulated in all working languages at the Sub-Committee's following meeting under the symbol A/AC.138/SC.II/L.8, and was designed to bring into sharper focus the problems of fisheries and fishery jurisdiction.

On 15 March 1972, his delegation had outlined in Sub-Committee II (25th meeting) the principles which, in its opinion, should form the basis for a system of management by coastal States of the fisheries adjacent to their coasts. The working paper which he was submitting to Sub-Committee II during the present session set out and elaborated those principles in a form which should bring the Sub-Committee a step closer to the preparation of draft treaty articles.

The Canadian working paper was based on the functional approach to the management of the living resources of the sea. It outlined the relationship between fisheries management and the management of the marine environment as a whole. It differentiated between various species, proposed a system of coastal State management of the coastal species, and emphasized the special situation existing with regard to anadromous species, for which a right of exclusive utilization by the coastal State was proposed.

The fundamental principle advanced in the Canadian working paper with regard to the management of coastal species was that the coastal State had a special interest in and responsibility for the conservation of the living resources of the sea adjacent to its coast, and should have the authority required to manage those resources in a manner consistent with its special interest and responsibility, as well as preferential rights in the harvest of those resources. In connexion with the limits of the area over which the coastal State would exercise its management authority, the working paper indicated that they could be biological (according to the fish stocks being managed) or geographical in nature.

As the responsibility of the coastal State for the management of fishery resources in areas adjacent to its territorial sea would be matched with responsibility for the preservation of the marine environment in the area concerned, at least two forms of jurisdiction would be exercised by the coastal States in that area. Without wishing to deal at present with specific questions of jurisdictional limits, on which it would be commenting in plenary meeting, his delegation would merely observe the Canadian approach, as outlined on 5 August 1971 in the main Committee (63rd meeting), was that in a broad area adjacent to its territorial sea a coastal State should exercise in addition to its fisheries and anti-pollution jurisdiction, exclusive sovereign rights for the exploration and exploitation of the resources of the sea-bed, as well as regulatory jurisdiction with respect to scientific research. Those were, of course, the essential jurisdictional elements underlying the concept of the economic zone.

The Canadian working paper went on to elaborate a number of basic management principles as guidelines for the exercise of fisheries authority by the coastal State beyond the limits of its territorial sea. Those guidelines dealt with: first, the allocation of shares among participants in fisheries under the management of the coastal State in areas adjacent to its territorial sea, subject to the coastal State's predominating preferential rights; secondly, the coastal State's control of access to those fisheries; thirdly, the coastal State's responsibility to report on the exercise of its management authority and, fourthly, the need for appropriate procedures for the settlement of disputes. The working paper emphasized that all those guidelines were subject to the overriding principle of the safeguarding of the special interests and rights of the coastal State.

The Canadian working paper recognized that any system of fisheries management must be founded on basic scientific principles, and that was also true, of course, of the coastal State management system proposed by Canada. It must, however, be emphasized that such scientific principles could not of themselves determine the nature of the juridical and jurisdictional solutions of the problems of international fisheries. They were only tools to be used by whatever management authority might be established after those juridical and jurisdictional problems had been resolved. Hence, after proposing a solution, the Canadian working paper set forth some scientific principles which seemed to be necessary to maintain the productivity of fishery resources and the value of their yield. Scientific principles should be frequently

reviewed and updated, in the light of natural or man-made alterations in the marine environment. Such review and updating was obviously beyond the scope of the Committee, just as juridical and jurisdictional matters were beyond the scope of specialized technical agencies.

His delegation hoped that the discussions in the Sub-Committee during the present session would result in substantial progress on fisheries matters, and that at the following session an agreement would be possible on the basic form of treaty articles, particularly in the light of the growing awareness in the Committee of the broad outlines of a general accommodation on the problems of the law of the sea. His delegation would have more to say on the question of those broad outlines in the plenary Committee.

The meeting rose at 3.55 p.m.

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

held on Tuesday, 1 August 1972, at 3.30 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

ORGANIZATION OF WORK

The CHAIRMAN informed Sub-Committee II that the work of the group of 56 Powers was making good progress, and that negotiations were under way to amend the list of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea (A/AC.138/66 and Corr.2); some of the amendments were still being discussed.

Since on the following morning he had to report to the Bureau on the progress of the Sub-Committee's work, and since no representative had asked to speak, he suggested that the meeting should be adjourned, in order to enable the group of 56 Powers to resume its work without delay, provided that the Chairman of that group had no objection.

Mr. YANGO (Philippines), speaking as the Chairman of the group of 56 Powers, said that, if no representative wished to speak, the group would be glad to meet immediately, in order to resume its work.

The meeting rose at 3.35 p.m.

SUMMARY RECORD OF THE THIRTY-NINTH MEETING

held on Thursday, 3 August 1972, at 3.30 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued*) (A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-8)

Mr. BLAEHR (Denmark) said he wished to submit some preliminary comments on the principles of an international regulation of fisheries outside national fishing limits. In each of the three geographically separated parts of Denmark - namely, continental Denmark, Greenland and the Faroe Islands - the fishing industry had its own structure and characteristics. In 1970, those three parts of the country had together accounted for catches of fish totalling 1.4 million tons, placing Denmark among the ten biggest fish-producing countries in the world.

While Greenland essentially depended on coastal fisheries, most of the Faroe Islands catch came from distant-water fisheries. Continental Denmark depended mainly on fisheries in the North Sea and the waters around its coasts. The three areas thus had different interests in regard to fisheries, and those differences should be borne in mind, since they seemed to some extent to reflect the global problems facing the Sub-Committee in its work.

His delegation noted that it was generally recognized in the Sub-Committee that there was a need for appropriate control and conservation measures for the living resources of the high seas, and that coastal States should be granted additional rights in respect of fisheries in adjacent waters. His delegation had been impressed by statements made in the Committee and by the FAO documents 14/ in which it was pointed out that, on account of the movement and migration potential of fish stocks which were unevenly distributed and which were to be found at varying distances from the coast, fixed fishing limits far beyond the territorial waters would not contribute to a just and lasting solution. It shared the view of FAO that regulatory measures to conserve or manage a stock of fish should be applied to the whole stock throughout its entire range and, accordingly, that the problem would have to be tackled by a rational and functional approach at the international level.

His delegation had studied the concrete proposals submitted by the United States of America (A/AC.138/SC.II/L.9) and the Union of Soviet Socialist Republics (A/AC.138/SC.II/L.6) and the statements made by other delegations. All agreed in

*/ Resumed from the 37th meeting.

14/ See the FAO report on regulatory fishing bodies, transmitted to the Committee under the symbol A/AC.138/64, the FAO report on conservation problems, with special reference to new technology, transmitted to the Committee under the symbol A/AC.138/65, and the document of FAO entitled "An expanded and revised atlas of the living resources of the seas" (FID/C/126-Rev.1).

recognizing the need for appropriate conservation measures and most of them endorsed, in principle, the idea of granting at least to developing coastal States, the right to utilize coastal species according to their fishing capacity. In the Danish view, however, account should also be taken of the special needs of geographically isolated populations which were heavily dependent upon fisheries for their survival. To safeguard the economy of such populations, which were dependent not only on coastal fisheries but also on distant-water fisheries, arrangements should be worked out which would allow them to continue both types of fishing. In certain cases, arrangements should be worked out bilaterally between a coastal State and another State which practised distant-water fishing in its waters.

Another important question was whether the principle of granting to the coastal State preferential rights corresponding to its fishing capacity would be an appropriate solution in comparatively narrow waters such as semi-enclosed seas. In such waters, it would be more reasonable for the coastal States to work out special arrangements between themselves for the conservation and allocation of fish stocks according to the geographical conditions (see, in that connexion, the study prepared by the Secretary-General entitled "Uses of the Sea"^{15/}).

The regulation of anadromous stocks presented particular difficulties, and his delegation could not accept a rule whereby only the country in whose rivers the fish spawned would have the right to utilize the mature fish throughout its migratory range, since, according to scientific evidence, the fish increased its weight by more than 90 per cent in feeding competition with other fish species during its stay in the open sea. In its view, conservation measures and the allocation of fisheries should be agreed upon in the competent regional fisheries organizations, in line with what several delegations had proposed for highly migratory oceanic stocks. It would be contrary to the international character of the high seas to reserve the yield of a migratory species completely for particular countries.

His delegation agreed with the Canadian delegation's views expressed in its working paper on the management of the living resources of the sea (A/AC.138/SC.II/L.8) on the relationship between conservation measures and the utilization of living resources, but thought that social conditions as well as biological and economic considerations should be taken into account. Moreover, the biological and economic principles had not yet been defined precisely enough to serve as a basis for fixing limits on catches. Priorities between the biological and economic criteria would have to be established before those criteria could be applied.

The Canadian delegation took the view that the appropriate formula was to accord to the coastal State, if not exclusive fishing rights in a given stock, then at least certain preferential rights. The Danish delegation thought that where a developing coastal State - or a geographically isolated population heavily dependent upon fisheries - faced the open ocean, the key element to be taken into account should be the fishing capacity of the coastal State. Similarly, in connexion with the economic principle that States should control access to particular fisheries according to an appropriate formula, so as to ensure that the yield was taken without waste of capital and manpower, the Danish delegation wished to stress that full account should be taken of the relevant social conditions.

At the first 1972 session, the French delegation had raised the question of the priorities to be established between fisheries for human consumption and fisheries for the production of fish-meal, and had argued that the latter would be incompatible with good coastal State administration. But, as the demand for protein could be met by converting fish into protein concentrate, it would be neither feasible nor desirable to adopt priorities as to how the living resources of the sea could best be utilized to the advantage of man. Also, the price factor itself would often result in preferences for fisheries for direct human consumption.^{16/}

On the question of the management of coastal species, which, according to the Canadian working paper, would be entrusted to the coastal State, his delegation wished to reserve its position, but it would tend to favour a strengthening of the powers of international or regional fisheries organizations with respect to conservation and the allocation of fisheries among interested fishing nations. That presupposed the adoption of treaties containing clear instructions, guidelines and formulas for the implementation of such regulations. The argument that the regional organizations had not made any substantial progress in that respect was not a valid one, since the organizations had not been given the necessary powers or guidelines. For its part, his delegation would be reluctant to delegate too wide powers to coastal States.

There existed a variety of possible solutions of mixed authority or jurisdiction. It could well be imagined that coastal States might be given the right to take action where other States had failed to abide by internationally agreed principles. In all instances, provision should be made for appeal to an independent arbitrator, and specific rules should be laid down to solve the difficult question of jurisdiction to inflict penalties for infringements. In that connexion, he wished to recall the principles applied in the Convention on Conduct of Fishing Operations in the North Atlantic, signed in 1967 by 17 fishing nations, particularly the principles in articles 8 and 9.^{17/}

In conclusion, he summarized the position of his delegation at the present stage as follows: (a) effective management of the living resources of the sea could best be achieved through a species-by-species approach rather than by the establishment of wide national fishing zones; (b) conservation measures should be adopted on a non-discriminatory basis for the purpose of maintaining or restoring the maximum sustainable yield; (c) if a developing coastal State, or a geographically isolated population heavily dependent on fisheries as an essential factor in its economy, had a coastline facing towards the open ocean, it should be allocated the percentage of the allowable catch of coastal species which corresponded to its harvesting capacity; traditional foreign distant-water fishing should be regulated by negotiation between coastal States and distant-water fishing States according to criteria established by the Conference on the law of the sea; geographically isolated populations which were heavily dependent on fisheries as an essential factor in their economy should be allowed to maintain such traditional distant-water fisheries; (d) in fairly narrow waters such as semi-enclosed seas, regional arrangements based on geographical conditions should be agreed upon by

^{16/} Ibid., chap.I. section A.

^{17/} See United Kingdom, Final Act of the Fisheries Policing Conference (London, 31 March 1966 to 17 March 1967) and Convention on Conduct of Fishing Operations in the North Atlantic (London, 1 June to 30 November 1967), Cmnd.3645 (London, H.M. Stationery Office, 1968), pp.12 and 14.

the coastal States; (e) conservation measures and the allocation of fishery rights in respect of anadromous stocks or highly migratory oceanic stocks should be agreed upon in the appropriate regional fisheries organization; (f) authority to implement agreed international rules on the conservation and allocation of fisheries should be vested primarily in international or regional fisheries organizations, which might delegate clearly defined powers to coastal States; (g) agreed international standards and provisions should be established for the compulsory settlement of disputes.

Mr. GROS ESPIELL (Uruguay) said he would confine his statement to the question of the limits of the territorial sea. His delegation welcomed the adoption of the Declaration of Santo Domingo (A/AC.138/80) by the Latin American countries on 9 June 1972. It was essential to overcome the differences between national régimes and to strengthen the unanimous will of the developing countries of Latin America to define their sovereign rights over the resources of all kinds contained in the sea and the sea-bed within their national jurisdiction. The same comment applied to the conclusions in the general report of the African States' Regional Seminar on the Law of the Sea (A/AC.138/79), which had declared that the African States had the right to establish beyond the territorial sea an economic zone over which they would have an exclusive jurisdiction for the purpose of control, regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples. They also specified that the establishment of such a zone should be without prejudice to freedom of navigation, freedom of overflight and freedom to lay submarine cables and pipelines.

Those two texts constituted a valuable contribution to the elaboration of a new international law of the sea. The essential thing now was to define, in the context of international negotiations, the various maritime zones and to delimit them in a satisfactory manner. With respect to the zones over which a State exercised its jurisdiction, agreement would have to be reached concerning the precise powers to be exercised by the coastal State. His country hoped that such negotiations would culminate in an international agreement recognizing the rights of the coastal State over a vast maritime area, and paying due regard to geographical and ecological considerations, to factors affecting the resources of the sea, and to the need to ensure the welfare of the coastal countries and safeguard the sovereignty of States.

Pending the drafting and entry into force of the convention to be formulated by the Conference on the law of the sea envisaged in paragraph 2 of General Assembly resolution 2750 C (XXV), his delegation reaffirmed the legitimate right of coastal States - in the light of relevant geographical, geological, biological and national-security considerations and of their duty to protect the development of their peoples to fix unilaterally the outer limit of the territorial sea within a reasonable margin. That faculty had been recognized in Latin America since 1956, the year the Principles of Mexico on the Juridical Regime of the Sea¹⁸ had been adopted. Since there was no universally recognized norm in international law to delimit the contiguous zone, it was not contrary to international law to give the coastal State competence to determine its maritime territory and the area over which it exercised special rights, provided that it respected the same rights in the case of a third State and did not threaten the common heritage of mankind.

^{18/} See Yearbook of the International Law Commission, 1956 (United Nations publication, Sales No.: 1956.V.3, vol.II), p.249.

The affirmation of such a right could be prejudicial only to the interests of countries which used the high seas, or "mare liberum", as a field of activity for their naval power and their world-wide ambitions. The 1958 Convention on the High Seas defined the high seas negatively as being the space in which the sovereignty of States was not exercised;^{19/} as a result, that space was being used by naval powers whose warships and military aircraft had absolute freedom of movement.

The right to define a vast area over which a State exercised its jurisdiction was a corollary to the right of development, which was now recognized in international law. That right did not affect either international trade or relations between States, since, in the area within its jurisdiction, the State would recognize the right of innocent passage and, in the contiguous zone, it would respect freedom of navigation, freedom of overflight and freedom to lay submarine cables and pipelines. His Government respected that right by virtue of Uruguayan Law No.13833 of 20 December 1969, which provided that, if the territorial sea included a strait used for international navigation, the State should respect the right of innocent passage. It had been correctly maintained that the right of passage represented a delicate balance between the rights of the coastal State and the interests of the international community. That idea of the balance between various interests had been developed in the opinions expressed by two Latin American judges of the International Court of Justice in 1949 in connexion with the Corfu Channel case. In his delegation's view, recognition of the right of innocent passage through straits in no way prejudiced the interests of the international community, the legitimate rights of States, the needs of trade or freedom of navigation; in that connexion, his delegation reiterated the reservations it had expressed concerning the texts contained in the "Draft articles on the breadth of the territorial sea, straits and fisheries, submitted to Sub-Committee II by the United States of America (A/AC.138/SC.II/L.4)"^{20/} and the draft articles on straits used for international navigation (A/AC.138/SC.II/L.7), submitted by the USSR.

To conclude, he hoped that the question of the delimitation of maritime zones, which was fundamental to the elaboration of a new law of the sea that would foster peace and economic development, would be settled in an equitable manner. The forthcoming Conference on the law of the sea would be an opportunity for all States to give proof of their sense of responsibility.

Mr. MYSTEN (Sweden) said that the growing use of increasingly efficient and expensive fishing vessels and equipment had caused heavy overfishing of particular species in certain areas of the oceans, and had placed in an unfavourable position those coastal States which lacked such a fishing capacity. It therefore seemed essential to elaborate regulations designed to ensure efficient conservation, and to accommodate the conflicting interests of coastal States and States engaging in long-distance fishing. As the Mexican representative had said in Sub-Committee II (30th meeting), one possible solution would be to establish an international authority to administer fishery resources on the high seas - in other words, to decide who could participate in fishing and under what conditions; although that proposal was an attractive one, the time was perhaps not yet ripe for international action along those lines. From the point of view of the

^{19/} United Nations, Treaty Series, vol.450 (1963), No.6465, articles 1 and 2, pp.82 and 84.

^{20/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex IV, p.241.

conservation of resources, the proposal which appeared in the draft articles submitted by the United States of America contained an interesting idea (the "species approach"), but that too raised practical difficulties. For example, it was known that an anadromous species such as the Atlantic salmon could travel great distances for feeding and, when returning to its native rivers, could pass through the territorial - or even internal - waters of other States. In such a case, it was difficult to determine in which coastal State the fish had been hatched. Was it really correct to let the parent coastal State be the regulatory authority throughout the migratory range of the species?

The Swedish delegation believed that the most appropriate way of tackling fisheries problems was to draw a distinction between those relating to the conservation of stocks and those relating to the allocation of resources, due regard being given to the special interests of certain coastal States. As regards conservation - a prerequisite for the existence of stocks for allocation - there already existed several international organizations responsible for particular geographical and biological regions. His delegation was convinced that at the present time such regional organizations were the best instruments for the establishment of the necessary conservation regulations. Admittedly, there had been much criticism of the way in which those organizations had been operating; it had been said that they had proved incapable of agreeing on any far-reaching conservation measures and that when agreements were reached, they came too late to achieve their purpose. There was undoubtedly some truth in that criticism. Consequently, a prerequisite for the regional approach would be to strengthen the powers of the organizations concerned and to improve their efficiency. All States fishing in a certain region should in principle be members of the regional organization concerned, which should be given responsibility for fisheries within the region and should decide upon measures for the conservation and rational use of fish stocks. To make the regulations as effective as possible, they should be applied from coast to coast, i.e. within the national fishery limits of the region concerned. Of course, that did not mean that third States would be allowed to fish within waters under national jurisdiction without the prior authorization of the coastal State concerned.

Conservation regulations had so far consisted of rules about mesh sizes, fishing gear, closed seasons, and so on. Such measures were often insufficient. In order to restrict the total catch of fish within a particular region, it might be necessary to allocate access to fisheries among the different States of the region. There should be certain general rules which would be applied when quotas were to be allocated. Account should be taken of the extent to which fishermen from different countries had traditionally been fishing in the region, and of the fishing capacity of the States concerned. As regards anadromous species, attention should be given to the interests of the States in which the species were spawning. Other circumstances, such as the special interests of the developing countries and certain other countries whose national economies were heavily dependent on fisheries, might also have to be taken into account. Conservation and allocation regulations should be revised by the regional authority at regular intervals; special restrictions or allocations might be necessary at certain times for different species.

Fishery experts and scientists should endeavour to find better solutions than those existing at the present time for the conservation and rational use of fish stocks, so as to facilitate the implementation of just and appropriate measures by the regional organizations. His Government had welcomed with satisfaction the invitation of the Government of Canada to an international conference to be held in 1973, under the auspices of FAO, on all the technical questions relating to fisheries.

In order to implement the necessary measures, it would be necessary, as he had stated earlier, to strengthen the powers of the regional organizations. That meant that, for certain decisions, a system not of unanimity but of majority would be needed. A mutual right of inspection in areas outside national jurisdiction might be a practical way of ensuring the observance of regional regulations. Such a procedure had already been accepted in the North-East Atlantic Fisheries Commission area. The advantage of such measures for the conservation of resources was that they would not require any change with regard to access to fishing on the high seas.

On the question of the allocation of fish resources, in which the interests of certain coastal States must be taken into account, his delegation wished first of all to point out that Sweden had no long-distance fishing fleet in the proper sense of the term. Swedish fishermen were almost exclusively engaged in fishing with comparatively small vessels in waters off the Swedish coast, and their situation was thus similar to that of the fishermen of the great majority of coastal States. The fishing capacity of the developing countries was still much inferior to that of the industrialized countries and the developing countries therefore had considerable difficulties in asserting their interests in competition with the long-distance fleets. In addition, there were certain countries - developed or developing - in whose economies fishing played a decisive role. The Swedish delegation believed that the interests of those two groups of countries should be protected by special arrangements. Their interest could to some extent be taken into account in the allocations determined by the regional organizations for conservation purposes, but it would seem necessary to go a step further, especially if the problem was to be considered on a long-term basis. To that end, the Soviet Union, in the first paragraph of its draft article on fishing (A/AC.138/SC.II/L.6), had submitted a proposal to the effect that in the areas of the high seas directly adjacent to its territorial sea or fishery zone, a developing coastal State could annually reserve to itself such part of the allowable catch of fish as could be taken by its vessels. The regulations needed to implement that principle could, perhaps, be issued by the regional organizations.

A number of countries, in particular developing countries, had supported the concept of special zones extending beyond the 12-mile limit in which they would exercise jurisdiction inter alia over fisheries. If the Soviet proposal seemed difficult to implement for administrative or practical reasons, consideration might be given to wider fishery zones of that nature or other forms of national fishery jurisdiction off the coasts of the developing countries and other countries with special fishery interests, on the understanding that the extension of fishery jurisdiction would not constitute an obstacle to necessary regional conservation measures. An effort should also be made to ensure that such preferential rights did not harm the interests of the land-locked countries or other countries in an unfavourable position. With regard to the great majority of developed countries, in whose economies fisheries did not play a predominant role, there did not seem to be any social or economic motives which would warrant a change in the present order of fishery jurisdiction. In the opinion of his delegation, therefore, no change should in principle be made in fishery jurisdiction within maritime areas which were exclusively bordered by developed countries. It was, however, extremely important to settle the fishery question for the future, in order to avoid international conflicts of the kind which had occurred in increasing numbers during the past 10 years. To that end, it was essential to adopt a flexible approach which took into account the various opinions held on the question.

Mr. STEVENSON (United States of America) said that he wished once more to make clear to the Sub-Committee the nature of his delegation's views on the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the law of the sea, and the reasons for the strength with which it held them. He felt that some delegations were adopting an approach which was preventing a just and generally acceptable solution to the matter, and was threatening the very basis of the process of international law-making through the United Nations. He himself had actively sought to convince sceptics in the United States that, through a United Nations conference on the law of the sea, there were reasonable prospects of achieving, in the interests of all mankind, a generally acceptable and equitable comprehensive treaty on the law of the sea. The United States had also been one of the sponsors of General Assembly resolution 2750 C (XXV), calling for a conference in 1973. However, the number of those who, in view of the progress made to date, were questioning the desirability of holding a conference on the law of the sea in 1973 was now increasing. That fact in itself was not unduly disturbing, for it was known that once Governments had taken the political decisions required to reach a consensus, many of the technical details could be solved quite rapidly. It was, after all, only in regard to the seabed régime that a large number of completely new articles were called for, and it was in that area that the Committee was making the best technical progress. With respect to other subjects, such as the territorial sea, straits and fisheries, the relevant articles should not take long to draft once the critical policy decisions had been taken.

More serious, however, were the charges of unfairness and of a double standard which would deny the developed and maritime States an opportunity at the Conference on the law of the sea to present their proposals and views and to negotiate for an accommodation that had some prospect of becoming a consensus. The principal basis for that criticism was the procedure being followed in the consideration of the list of subjects and issues. Essentially, that involved a negotiating tactic in which a large group of countries arrived at a common position on an issue after discussions from which non-members of the group were excluded. That group then refused to make any change in its common position so long as any members of the group, however few, objected to doing so. That veto within the group prevented the exploration of many areas of potential agreement and constructive compromise. Such a negotiating tactic might have some short-term political advantages for members of the group, such as the achievement of a majority on United Nations resolutions which had a strictly recommendatory effect. However, in international law-making, that approach was self-defeating for all States, not least for the members of the group concerned. As a former practising lawyer, he was convinced that a general comprehensive treaty modernizing the law of the sea was the only solution that would prevent the unilateral partition of the oceans and avoid an escalation of international conflicts in the oceans; he saw no prospects of a favourable outcome if the negotiating tactics followed with respect to the list were continued.

General Assembly resolution 2750 C (XXV), in paragraph 6 of which the Committee was requested to prepare "a comprehensive list of subjects and issues relating to the law of the sea", also recognized that the Conference on the law of the sea must have a meaningful and fair agenda. For that, each member State participating in the Conference would have to be afforded a full chance to present its views and to seek support for the positions and treaty texts which, in its view, best served the common interest. The function of the "comprehensive list of subjects and issues" - which might become the agenda for the Conference - was, after all, to facilitate fair and full discussion. It was in that open spirit that the United States had approached the questions raised by

the list. For example, he had pointed out in the informal consultations that while his delegation did not share the views of the Peruvian delegation with regard to the plurality of régimes in the territorial sea, it would have no objection to the inclusion of the plurality concept in item 2 of the list. It did not in any way seek to prevent the Peruvian delegation from discussing the concept of the plurality of régimes at the Conference or from seeking support for its position from other delegations, such as that of Mexico. All the United States delegation asked was that the same reciprocal flexibility should be shown by certain other delegations which had sometimes objected to the inclusion, in the list, of certain items to which the United States attached particular importance. For example, one group of countries continued to oppose the inclusion of an item 4 bis on free transit through straits used for international navigation. His delegation, which had proposed a number of amendments to the list of subjects and issues introduced by the 56 Powers (A/AC.138/66 and Corr.2), was unable to accept the attitude of those countries, which wished to maintain their items as they had formulated them but refused the same possibility to other States. If, for example, the United States delegation considered that the formulation of item 4 concerning straits did not adequately cover such concepts as free transit, it asked to be allowed to include its own item - in its own formulation - especially in view of the fact that a significant group of countries shared its view on that point.

In the words of the Chairman of the Committee, any delegation that wished to have a particular item included in the list of subjects and issues should have an opportunity to gratify that wish. That was the only way to maintain every country's freedom of action and to avoid prejudicing any country's position. It was the only approach that met the requirements of the General Assembly resolution on the question of the Conference. More than that, it was the only approach which would maintain the credit of a United Nations conference on the law of the sea in the eyes of the world because, if one country or a group of countries believed that they would be prevented at the Conference from advancing their national positions, the Conference could accomplish nothing. Clearly, not all the participants were going to obtain general agreement on every one of their positions. It would be for the Conference as a whole to decide in a fair and democratic way what should be the contents of a new treaty or treaties on the law of the sea. The United States delegation appealed to the fundamental sense of fairness for all delegations, and asked only for treatment equal to that accorded to every other nation.

Mr. FRANCIS (Jamaica) said he regretted that the procedure which had been adopted with a view to expediting the preparation of the list of subjects and issues - and which debarred each delegation from speaking at more than two meetings - had not been complied with. Though some of the statements had been interesting, there had been a considerable waste of time on fruitless discussion which, by unduly prolonging the general debate, had slowed up the progress of the Sub-Committee's work. Perhaps the Bureau would take the necessary steps to remedy the situation.

Mr. ZEGERS (Chile) recalled that Chile had been one of the sponsors of resolution 2750 C (XXV), which had authorized the Committee to allocate the subjects among its subsidiary bodies. The discussions which had taken place in Sub-Committee II had undoubtedly been much longer than had been anticipated, but they had helped to pinpoint the subjects on which negotiations were required, to identify the areas to which the new law would apply, and to clarify the political implications of the problems raised. As the United States representative had pointed out, the drafting of the list of subjects and issues could be facilitated only by prior political agreement. It could

not be said, therefore, that the Sub-Committee had wasted its time, because each country had been able to explain its interests and mention the items it would like to see discussed. Nevertheless, if the Conference was to achieve its objective and States were to have a reasonable amount of time to prepare for it, it did seem to be time now to establish a list reflecting a genuine consensus, if not total unanimity.

The draft list prepared by the group of 56 Powers, in which due account had been taken of all the views expressed and all the amendments proposed, should serve as a useful basis for a definitive text. If some articles - or the formulation thereof - were still the subject of controversy, the best course would be for the delegations concerned to agree to a compromise, in the spirit of flexibility and co-operation which should always prevail in such negotiations.

Mr. FLEISCHER (Norway) agreed with the United States and Chilean representatives that it was essential not to jeopardize the success of the Conference and that each country should be given the opportunity to express its views. The question of straits was of vital importance and could not be evaded, though some compromise might be needed on the use of the terms "innocent passage" and "free passage".

Mr. YANGO (Philippines) said he was concerned that some delegations might be thinking of abandoning the consensus method, whose advantages had been clearly restated by the Chilean representative and which had already proved its worth. He said that the group of 56 Powers was ready to meet as soon as possible to consider the new amendments announced by the Chairman.

Mr. ARIAS SCHREIBER (Peru), after expressing his support for the comments made by the representatives of Jamaica, Chile and the Philippines, reminded the United States representative that his delegation was not alone in thinking that the question of the plurality of régimes should be considered.

Mr. HARRY (Australia) suggested that the Secretariat should circulate the text of the list of subjects and issues as it stood, mentioning perhaps the alternatives proposed but not stressing the differences of opinion.

The CHAIRMAN said he could well understand that some members of the Sub-Committee were suffering from a feeling of frustration. Although, like them, he regretted that the work was not further advanced, he would like to emphasize that, despite shortcomings, some real progress had been made. The Secretariat would comply with the Australian representative's request as soon as possible, and that would certainly allay misgivings. As to procedures, he did not think it was wise at the present stage to consider changing them. He invited the group of 56 Powers to hold a meeting on the following morning, after which informal talks might be started.

The meeting rose at 5.40 p.m.

SUMMARY RECORD OF THE FORTIETH MEETING

held on Friday, 4 August 1972, at 3.40 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

In the absence of the Chairman, Mr. Yankov (Bulgaria), Vice-Chairman, took the Chair.

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45th MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued) (A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-9)

Mr. McKERNAN (United States of America) introduced on behalf of his delegation a revised version (A/AC.138/SC.II/L.9) of the draft articles on fisheries which it had submitted to Sub-Committee II in 1971. 21/ His delegation remained more than ever committed to the "species approach"; it considered that both sound conservation and a rational utilization of living resources should be directly linked to the biology and distribution of the resources in question. His delegation also continued to believe that international and regional fisheries organizations would have a vital role to play in both the conservation and utilization aspects of fisheries and would be largely called upon to implement the proposed fishery régime.

On the other hand, his delegation had come round to the opinion that the coastal State should have the right to regulate the fish stocks inhabiting its coastal waters, as well as its resources of anadromous species, and believed that inherent in that right was a preference in favour of the coastal State in the utilization of such stocks. They were the resources upon which the coastal fishermen of such a State relied for their livelihood and upon which the people of the State depended for a substantial part of their nutritional requirements. Accordingly, the revised article would grant to the coastal State the authority to regulate coastal stocks, to the limit of their range, and the right to reserve to itself all of the available catch its vessels were capable of harvesting. To ensure that such authority was not misused, the coastal State would have the obligation to notify and consult with other affected States prior to implementing any new regulatory measures.

In his delegation's view, any régime adopted should be designed to ensure that all fish stocks were available for human consumption. Consequently, the draft article provided that the portion of a stock which was not being utilized by local fishermen should be made available to others. As for the preference in favour of the coastal State, it should be applied in a manner calculated to minimize its immediate economic effects on the traditional fisheries of other countries. Moreover, the draft allowed for the possibility of neighbouring coastal States entering into regional arrangements in order to share more equitably in the resources inhabiting the waters near their shores. However, only international organizations could regulate highly migratory and truly oceanic species.

21/ Ibid.

Enforcement procedures for the regulatory measures would have to be included in any fishery régime. Under the United States draft, the coastal State would have, for the fisheries under its jurisdiction, not only the right of inspection and arrest, but also that of trial and punishment in certain cases. Some other provisions of its draft article were also intended to strengthen the effectiveness of international organizations.

His delegation remained firm in its belief that any fishery régime should contain provisions for the peaceful settlement of disputes, without creating an obstacle to the application of conservation measures already promulgated by coastal States, which should remain in force pending the outcome of any settlement procedure. Lastly, it was obvious that the rational management of fishery resources required technical expertise and money. According to the revised draft article, States harvesting a resource under the regulation of a coastal State would therefore pay a reasonable fee to help the latter to defray those costs and a register of experts would be drawn up to whom the coastal State could appeal for assistance in formulating effective conservation programmes.

To conclude, he proposed that a working group on fisheries should be established immediately by the Sub-Committee to make a thorough study of the draft article his delegation had submitted.

Mr. EVENSEN (Norway) said that the fishing industry was of enormous importance in the economy of his country which, with a total annual catch of 2.5 to 3 million tons, was fifth among the world's fishing nations. A large part of its population, particularly in the Arctic regions, was almost entirely dependent upon fishing for its livelihood. So much progress had been made in world fisheries since the Second World War that the situation had become critical, both for certain species threatened with extinction and for coastal populations which did not possess the technical means used by countries practising distant-water fishing. Various proposals had been put forward to remedy that situation and two of them in particular had attracted his delegation's attention.

The draft article on fishing submitted by the Soviet Union (A/AC.138/SC.II/L.6) had the great merit of being concerned with the special needs and interests of the developing countries. Nevertheless, it could be asked whether it took sufficient account of the fact that, in countries regarded as developed, there were coastal regions whose population was just as dependent on fisheries as that of the corresponding regions in developing countries. Moreover, the extension of States' exclusive fishery zones led to increased pressure by distant-water fishing fleets on the living resources and fishing grounds of other coastal States. For those reasons, his delegation could not support the Soviet proposal in its present form.

The working paper on the management of the living resources of the sea submitted by the Canadian delegation (A/AC.138/SC.II/L.8) had a new approach to the problem but one which needed closer study by his delegation. Although the establishment of biological criteria seemed to avoid some of the difficulties which the extension of national jurisdiction to broad fishery zones would entail, it would mean setting up a complex system that would be difficult to administer.

As for the proposals just made by the representative of the United States of America, which were similar in approach, they too deserved careful consideration.

Regardless of the modalities of any régime adopted, the Norwegian authorities thought it would be necessary to strengthen the scope and powers of international and regional fisheries organizations with respect to the conservation of the living resources of the sea, the management and allocation of fisheries and the settlement of disputes.

Mr. WARIOBA (United Republic of Tanzania) said that he reserved the right to comment on the two preceding statements at a later date. For the present, he would confine himself to the question of straits, which, since the first 1972 session, had given rise to a number of important proposals, particularly by the Soviet Union (A/AC.138/SC.II/L.7).

It was important to remember that a strait was an integral part of the territorial waters of a coastal State, whose sovereignty must be fully safeguarded. The various regulations issued by States for their territorial waters, which no one had so far regarded as arbitrary, should thus apply to straits. The absurdity of a special régime for straits became obvious if, for instance, the case was taken of a submarine, which would have to navigate on the surface in the waters of a State without a strait, while it could navigate under the surface in the waters of a neighbouring State which did possess a strait. The coastal security of both States should be equally guaranteed and it was difficult to see why the proponents of free transit could seriously believe that the right of innocent passage was not enough. Were they prepared to allow free transit in the territorial waters of all States, whether or not they possessed a strait? There seemed to be a lack of logic.

Similarly, those who, on one pretext or other, argued that the establishment of a 12-mile limit for territorial waters was an extension of jurisdiction were being inconsequential. It was nothing more than an agreement among members of the international community.

The United States and the Soviet Union had suggested that navigation in straits should be regulated by international rules and the United States had gone further and proposed (37th meeting of Sub-Committee II) that the rules should be fixed by IMCO. The reply might be that an organization such as IMCO could only fix minimum standards whereas a coastal State, for the sake of its security, had to fix maximum standards. Moreover, not all States were members of IMCO and they could not be asked to place their coastal security in the hands of an organization to which they did not belong. Furthermore, his delegation did not think that it would be suitable to invite a representative of IMCO to submit his organization's views on the question of traffic separation schemes. It was the Sub-Committee's responsibility to lay down the principles for such schemes, after which IMCO, as the technically competent organization, could regulate their application.

It would be still more serious to leave to ships' captains the responsibility for the strict observance of rules for the protection and security of coasts. That responsibility lay with States. It was true that the United States had suggested that coastal States should be entitled to penalize ships which, when exercising their right of free transit through territorial waters and straits, violated laws and regulations. But what regulations were meant if ships had the right of free transit? They could only be the regulations applicable to the whole territorial sea.

To compensate the coastal State for the partial abandonment of its jurisdiction over its territorial waters, it was proposed to impose strict liability on vessels for accidents. Compensation, however, was only a secondary measure. The primary responsibility was to prevent accidents, and that responsibility could rest only with the coastal State, which was primarily concerned.

Another important question was the free transit of aircraft. It had been referred to at the 37th meeting by the representative of the United States, who had proposed that military aircraft should be entitled to overfly straits freely. That proposal would introduce discrimination between States possessing straits and those not possessing them, a discrimination justified by no principle and motivated solely by the desire of military Powers to maintain a link between their military aircraft and their naval vessels. It was to be hoped that the international community would not allow itself to be imposed upon by such a desire for domination.

In short, it appeared that the right of free transit through straits was advocated by certain delegations for reasons totally unconnected with the facilitation of international navigation. The proposal was aimed only at States with straits, and its result would be to subject some countries to military servitude.

The Soviet Union and the United States both provided for the possibility of agreements excluding the application of the rule to straits for which there were special regulations. But the right to innocent passage was an important principle of international law, one which was accepted by every State in the world and which could not be changed. It was hardly reasonable to make a law applying to everyone except those proposing it.

His delegation was ready to undertake negotiations on the question of straits, but the hope of reaching agreement in such negotiations was slight unless the attitude of certain Powers was modified.

Mr. EL HAJ (Libyan Arab Republic) said he would give a brief account of his delegation's views on a number of subjects falling within the Sub-Committee's terms of reference. Different proposals had been made concerning the width of the territorial sea; some delegations wanted 12 miles and others 200. The position of his delegation was known: it accepted a width of 12 miles for States on the coast of a sea and would accept a greater width for those on the coast of an ocean.

Secondly, with reference to paragraph 1 of the draft article on fishing submitted by the USSR, he considered that the fishery zone should extend beyond the outer limit of the territorial sea and not be included within it.

Thirdly, his country attached particular importance to the question of the peaceful uses of the seas and oceans, in view of the fact that the great Powers often made use of the Mediterranean for their military activities.

Fourthly, in connexion with straits, his delegation was in favour of the idea of innocent passage, for the reasons already expounded by other delegations.

Mr. McKERNAN (United States of America) said he would reply to the representative of the United Republic of Tanzania at a later meeting.

ORGANIZATION OF WORK

The CHAIRMAN, referring to the proposal by the United States delegation that a working group on fisheries should be established, asked whether delegations wished to consider it immediately, or to reflect upon the matter and make suggestions concerning the group's composition and terms of reference the following week.

Mr. ARIAS SCHREIBER (Peru) said he thought it would be better not to set up working groups before the list of subjects and issues to be considered had been established. If countries started asking for working groups to be set up on topics that were of particular interest to them, the result was likely to be disorganized. The Sub-Committee should first establish the list of topics to be considered and the order of priority in which they were to be taken. His delegation would like the Sub-Committee to discuss the matter at its next meeting on the organization of work.

Mr. GHARBI (Morocco) requested that the question of establishing a contact group on fisheries should not be considered in the Sub-Committee until it had been discussed by the group of 56 Powers.

Mr. ZEGERS (Chile) said that it had already been agreed that the Sub-Committee would give priority consideration to the list of subjects and issues to be studied. He could see no reason to modify the procedure which had been adopted. A procedural debate would be a waste of time.

The CHAIRMAN invited delegations to consider the various proposals which had been made to the Sub-Committee concerning its method of work. He hoped that the Sub-Committee would hear reports on the groups' deliberations at its meeting on 7 August.

The meeting rose at 4.45 p.m.

SUMMARY RECORD OF THE FORTY-FIRST MEETING

held on Monday, 7 August 1972, at 3.40 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)
(A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-10)

Mr. TUNCEL (Turkey) said that he wished to make a few general and preliminary comments on the following three points: the preparation of the list of subjects and issues relating to the law of the sea, the question of fisheries and that of straits.

With reference to the first matter, which, at the present stage, was undoubtedly the most important of the tasks entrusted to the Sub-Committee, his delegation's view - as it had already explained - was that the list should be as full as possible but, at the same time, not exhaustive, i.e. delegations should be entitled to include in it all the items which seemed to them to require the attention of the forthcoming Conference on the law of the sea. It would obviously be desirable for the Sub-Committee, and then the Committee, to reach an understanding as quickly as possible, so that the list could be adopted by consensus, since a vote might spoil the chances of holding a conference on the law of the sea at all.

On the problem of fisheries, which had already been discussed on several occasions at meetings of the Sub-Committee at its preceding sessions, a number of important statements had been made and interesting proposals submitted, particularly by the delegations of the United States of America, the Union of Soviet Socialist Republics and Canada. Since all those proposals related to fishing in what it had been agreed to call the "economic zone" adjacent to the territorial sea of coastal States, and not to fishing on the high seas, his delegation felt that certain preliminary observations could be made forthwith. It was not yet possible to speak of "exclusive rights in the economic zone", since no detailed proposals concerning such rights had been submitted, but it was already possible to talk about the question of "preferential rights". It was indeed difficult, as the representative of Peru had pointed out (34th meeting of the Sub-Committee), to consider any item on the list before the list itself had been finally adopted, but the problem of a preferential zone was such an important one that the Sub-Committee could even now make arrangements for considering it later. The United States delegation had suggested (40th meeting) that a working group should be set up for that purpose. Even if the establishment of a working group could not be envisaged for the moment, an attempt should be made to define the situation as it now was and to decide on the machinery for considering the question in the most appropriate way. His delegation had noted with interest that, in the proposals put forward, particular emphasis had been placed on the economic and social aspects of the proposed régimes. The United States delegation, for instance, had referred to the possible economic repercussions, on traditional fishing fleets, of certain measures by coastal States. The delegations of Sweden (39th meeting), Norway (40th meeting) and particularly Denmark (39th meeting) (which had cited the special case of Greenland and the Faroe Islands, where the local population lived solely by fishing) had also made some interesting statements on

the subject. Moreover, the documents which FAO had submitted to the Committee on fishing in coastal waters, in adjacent waters and on the high seas provided some information which would be particularly useful for the Sub-Committee's work, notably concerning the number of persons engaged in fishing activities, the situation of the fishing industry, and production for food and for export. The conclusions emerging from the FAO documents led him to wonder whether it might not be useful to prepare a study containing detailed information and analyses on the economic and social aspects of fishing, so that the Sub-Committee could take those aspects into account in one or the other of the régimes to be worked out, exclusive or preferential. A similar study had, in fact, been prepared by the Secretary-General on mineral resources (A/AC.138/73).

In the revised draft article on fisheries proposed by the United States delegation (A/AC.138/SC.II/L.9), there was another point which deserved attention in connexion with the preferential rights of coastal States. That was the principle that States could cede to other States the portion of the resources which they were not themselves able to exploit fully. According to the United States proposal, priority in the use of such resources should be accorded first to traditional fishing States, then to land-locked States bordering on the coastal State, and, lastly, to States in general without distinction. His delegation's preliminary view was that it would not be fair to establish an order of priority among fishermen from third States. Turkey, for example, like most countries represented in the Committee, was not for the moment fishing in extra-territorial waters, but its development plans provided for the possibility of distant-water fishing. Such countries should not be deprived in advance of any possibility of exploiting the living resources of the sea at some future time, by the establishment of a list which would give priority - and a privileged status - to traditional distant-water fishing fleets and then to neighbouring land-locked States. The affirmation of equality of status would, on the contrary, serve the interests of all countries.

As for the question of straits, which had also taken up much of the Sub-Committee's time, some delegations (such as those of Spain and Indonesia, the United States of America and the Union of Soviet Socialist Republics) had made, during the first 1972 session and at the current session, some particularly important statements. In that field, there were two sets of interests: those of international navigation, and those of the State or States bordering on a strait. That was obviously a particularly delicate matter, and the work would have to be conducted in a spirit of conciliation and understanding to remove all obstacles to the adoption of universal common rules. Hitherto, a distinction had been made between straits subject to "treaty law" and those subject to "general law". With respect to treaty law, the 1958 Convention on the Territorial Sea and the Contiguous Zone stated in article 25 that its provisions "shall not affect conventions or other international agreements in force, as between States Parties to them". 22/

22/ United Nations, Treaty Series, vol.516 (1964), No.7477, p.222.

The draft articles proposed by the United States of America ^{23/} and the Union of Soviet Socialist Republics (A/AC.138/SC.II/L.7) incorporated those provisions of the 1958 Convention, by stating that existing conventions would continue to apply, and that was indeed in keeping with a universally recognized principle of public international law. In the case of straits subject to general law, greater difficulties arose. The first step was to draft a definition of those straits which might be within the framework of the general-law régime. In that connexion, the two proposals he had mentioned favoured the formula "straits used for international navigation". But, if that formula were adopted it would still be necessary to define what exactly was meant by international navigation, what its objectives were, what commercial or other activities it covered, what the tonnage limits involved were, etc. The formula would therefore have to be clarified and expanded in the course of the Sub-Committee's future work. Other aspects which would require clarification were those connected with the geographical situation and geological structure of straits. Such characteristics differed considerably from one strait to another, and it would be difficult to find a definition applicable in all cases. Perhaps, as his delegation had already proposed at the Committee's first 1972 session, the studies on geographical and geological characteristics which had been carried out for the 1958 United Nations Conference on the Law of the Sea could be expanded and updated. Such additional studies - the idea of which had not yet been approved - would certainly be required at some stage, in order to facilitate the Sub-Committee's work.

Several delegations, in their statements on the subject of straits, had expressed their concern regarding the problems of pollution and navigational safety in straits. To dispel their concern, the United States delegation in particular had made an interesting statement (37th meeting); and the importance of the traffic separation schemes proposed by IMCO and of the relevant provisions elaborated by ICAO should also be emphasized. It was obvious that the major - and perfectly legitimate - concern related to the security of coastal States. In a country such as Turkey, where the width of the straits did not exceed one mile and was sometimes as little as 500 metres, questions of navigational safety and pollution appeared in all their seriousness. It was obvious that in that field, too, some very extensive studies would be required in order to expand and clarify the definition of straits. In the field of general law, the judgment of the International Court of Justice in the Corfu Channel case constituted a useful precedent. The Court had, inter alia, given a clear definition of "innocent passage" in the case of warships, which was based on the following criteria: ships must not carry out certain manoeuvres; the crew must not be at action stations; ships must not assemble in large numbers; and they must not engage in mine-sweeping operations in any part of the straits. In its endeavours to draft a definition which would satisfy the justifiable demands of coastal States, the Sub-Committee could certainly base its future work on the proposals put forward by the delegations of the United States, the USSR and other countries. The underlying ideas of those proposals should be elaborated and expanded in the course of future work on the subject.

The meeting rose at 4.20 p.m.

^{23/} A/AC.138/SC.II/L.4. See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex IV, p.241.

SUMMARY RECORD OF THE FORTY-SECOND MEETING

held on Tuesday, 8 August 1972, at 3.35 p.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued) (A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-10)

Mr. RUIZ MORALES (Spain) said that his delegation was most interested in the question of straits and shared the understandable concern felt by the representatives of coastal States about some of the proposals that had been made. He could not share the satisfaction expressed by the representative of Turkey (41st meeting) with regard to the alleged safeguards described by the proposals' sponsors, who were in fact recommending changes in the ordinary law that had been recognized and applied for centuries.

The fact was that the proposals for allowing free passage through straits were justified only by the political, military and strategic interests of a few States. It was amazing that no one had raised the problem of the danger to the security of coastal States raised by the passage of submerged submarines. Only surface navigation had been mentioned, although submerged passage, particularly in the case of nuclear-powered submarines carrying nuclear warheads, was a very serious danger and was, of course, cloaked in the strictest secrecy. What route should submarines follow? How would IMCO be able to regulate their movements? How would coastal States be able to ensure that their safety regulations were applied? Those and other questions had remained unanswered.

Moreover, the so-called safeguards offered by those delegations that recommended free passage were quite useless, since all they would do was to confirm to a very limited degree rights already possessed by coastal States under international law. Far from being a generous concession by the international community, the proposals submitted would be tantamount to a substantial loss of traditional rights. There was no need to refer to the Judgment of the International Court of Justice on the Corfu Channel case, since the legislation adopted by all countries, including the sponsors of the proposals, provided for the safety of navigation and human life and laid down that vessels sailing in territorial waters were not to carry out any naval or naval aviation exercises and could not without special authorization undertake any exploratory activities in the marine environment. Not a shadow of doubt had ever been cast on those principles by anybody. It was thus not to be hoped that the coastal States would accept as a generous concession a very limited part of the powers they already enjoyed by right.

The proposals in question were still more serious with reference to the over-flying of straits by military aircraft. The political and strategic motive was even clearer in that connexion, because the amendment to the law which was claimed to be urgent would only benefit military aircraft. On the other hand, it was difficult to see how aircraft flying at high speeds could observe hypothetical "high-seas corridors" above straits, which, by definition, were narrow. Moreover, the sponsors of the

proposals had not lost sight of the fact that straits almost never followed straight lines and had consequently proposed that aircraft should be entitled to make free use of air corridors that already existed over land. That would be a strange sort of safeguard for coastal States and such an idea could only confirm the anxiety of those who feared a progressive escalation which would be an infringement of national sovereignty: the right to overfly straits without prior authorization, then the extension of that right to air corridors which already existed over national territory and finally - and why not? - an "open skies" policy that would favour the strategic interests of the big Powers to the fullest possible extent.

The least that could be said was that such a policy would in no way serve the interests of the international community. His delegation sincerely hoped that the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor would not countenance the pursuit of ends that had so little in common with the United Nations' goal of international peace and security.

Mr. NJENGA (Kenya) introduced and explained the draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10) submitted by his delegation. Although the draft articles had been the subject of fairly wide consultations and embodied ideas that had received the support of the Asian-African Legal Consultative Committee at its recent session, his delegation took full responsibility for the text. Its main concern had been to dispel certain misunderstandings concerning the idea of the economic zone and to ensure that the resources of the sea were divided fairly among the developing countries without harming the legitimate interests of other countries.

Article I simply established the principle that all States had the right to determine the limits of their jurisdiction over the seas adjacent to their coasts beyond a territorial sea of 12 miles in accordance with criteria which took into account their own geographical, geological, biological, ecological, economic and national security factors. It should perhaps be pointed out that the major maritime Powers, particularly the United States of America, had been the first to assert their jurisdiction beyond their territorial waters when that suited their national interests.

Article II expanded and clarified that principle and stressed its importance for the economic development of coastal States, particularly when the living and non-living resources of their territorial waters were insufficient and they had to protect themselves against operators from more developed States with superior technology.

That strictly economic aspect was made even clearer by article III, which protected the rights of third States in all matters not concerned with the exploitation and preservation of the natural resources specified in article IV. Article V, which set forth various aspects of the "economic" jurisdiction of the coastal State, also provided for the granting of concessions to third States by the coastal States. Regional bodies could play an essential role in the enactment of regulations governing such concessions.

Article VI aimed at protecting the interests of land-locked or otherwise geographically disadvantaged countries.

In the same spirit, article IX stressed the need for agreement between neighbouring countries.

Article VII dealt with the important question of the limits of the economic zone. With a view to preventing exorbitant claims, it proposed that the limit of the economic zone should be fixed in accordance with criteria relevant to each region, taking into consideration the resources of the region and the rights and interests of all countries in the region. In no case was the width of the zone to exceed 200 miles.

Article VIII provided for the definition of the economic zone between opposite and adjacent States and for the settlement of disputes.

Article X provided for the peaceful use of the economic zone without undue interference with the legitimate interests of other States in the region or those of the international community.

Article XI provided that no territory under foreign domination or control was entitled to establish an economic zone, since such a right would be recognized at the time of achieving independence.

His delegation hoped that its proposals, which had been inspired by the Declaration of Santo Domingo (A/AC.138/80) and the conclusions of the general report of the African States' Regional Seminar on the Law of the Sea (A/AC.138/79) held at Yaoundé in June 1972 would be incorporated in the text of the future international Convention on the law of the sea.

Mr. CASTANEDA (Mexico) said that his delegation merely wished to make some brief observations following the statement by the representative of Kenya, and that it reserved the right to refer in detail later to the comments he had made and the very important proposals he had submitted. It should be stressed that the proposals were extremely close to those set forth in the Declaration of Santo Domingo. The two sets of provisions in fact contained nearly all the same elements and were presented in a very similar way. Broadly speaking, they were both based on an equation whose two terms would be the extension of the territorial sea to 12 miles and the establishment of an economic zone immediately adjacent to the territorial waters. The nature of the economic zone envisaged was the same in both cases, i.e. the exercise by the coastal State of its right of sovereignty would not apply to the zone itself, but to the resources it contained. It was also indicated in both cases that the size of the zone would depend on a whole series of geographical and geological conditions and on other factors, but that it would have a maximum width of 200 miles. It should be stressed that that was a maximum limit and not an ordinary limit common to all countries. In addition, the establishment of such a zone would in no way affect freedom of navigation or other customary freedoms, such as freedom of overflight and freedom to lay submarine cables and pipelines.

The draft articles just introduced by the representative of Kenya also contained a number of entirely new provisions, such as the particularly interesting one contained in article VI, or the idea, which was rich in possibilities, of a particularly active form of co-operation between neighbouring coastal States based on similar regional or local conditions, which was perhaps derived from the particular situation along the African coasts, but which certainly warranted study. Lastly, the Kenyan proposals stated that the economic zone would be a zone of peace reserved exclusively for peaceful uses.

All those similarities suggested that there was a good chance of finding a formula which might serve as a basis for a possible compromise at the future Conference on the law of the sea. At recent sessions of the Committee, the broad outlines of a solution had gradually been taking form, which, if not acceptable to the majority, would at least be acceptable to a large number of States, and the progress being made showed that efforts should be made to strengthen that tendency and that joint positions would then begin to emerge which might be defended at the Conference planned for 1973.

Mr. AKYAMAC (Turkey) said that, following the statement by the representative of Spain, he wished to clarify a number of points in order to dispel any possible misunderstandings. His delegation first wished to stress that the statement it had made at the 41st meeting had been purely of a preliminary nature. Secondly, it had clearly indicated that it did not think it would be appropriate to make observations on the content of the proposals submitted until the list of subjects and issues had been adopted and all the relevant proposals were before the Sub-Committee. Last but not least, what his delegation had found most welcome in the proposals of the United States of America and the USSR was, basically, that they shared the intention to take into consideration the security requirements of the coastal State. Fully aware as it was of the difference of opinion with regard to the régime which should govern navigation through straits, his delegation had considered it advisable to refrain, at the present stage, from expressing any opinions on the concepts of innocent passage or freedom of navigation, advocated by opposing parties. From the general tenor of its statement, it should have been clear that, on the question of straits, as well as on the other two issues touched upon, all his delegation had ventured to suggest was that there was a need for a conciliatory spirit in the consideration of differences of opinion if agreements satisfactory to all parties were to be reached.

Mr. PANIKKAR (India) said that his delegation had listened with a great deal of interest to the statement just made by the representative of Kenya and wished to make some preliminary observations on the points he had raised; it reserved the right to refer in detail in the plenary meeting to the substance of his proposals. It could be said without further ado that the statement was certainly an important contribution to the work of Sub-Committee II and the Committee. Ideas very like those put forward by the representative of Kenya had also emerged from the thorough discussions which had taken place in the Asian-African Legal Consultative Committee (an intergovernmental body which met regularly to consider international legal questions) and from the report of the Yaoundé Seminar held in June 1972, which had been distributed as a document of the Committee. Although it would not, at present, give detailed consideration to the content of the proposed articles, his delegation wished to stress that the idea of an economic zone adjacent to the coastal State was one to which it attached great importance. The way in which such a zone could be delimited and its resources, whether biological or mineral, could be exploited required further study, but, in principle, his delegation strongly supported the ideas contained in the draft articles presented by Kenya.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE FORTY-THIRD MEETING

held on Monday, 14 August 1972, at 3.30 p.m.

Chairman: Mr. MARTINEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued) (A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-12)

Mr. OGISO (Japan) introduced a document entitled "Proposals for a régime for fisheries on the high seas", which the Japanese delegation had submitted (A/AC.138/SC.II/L.12). The Japanese delegation had already expressed its opposition to any attempt to solve the fisheries problem by recognizing the exclusive economic rights of coastal States in an area extending far beyond the limits of their territorial sea. At the first 1972 session, in particular, he had said that it would be inequitable for certain countries having a long coastline, or bordering upon rich fishing grounds, to have the exclusive enjoyment of marine living resources. The living resources of the sea were not evenly distributed, and the interests of the underprivileged countries must therefore be protected, particularly the interests of countries which depended heavily on fisheries for the supply of nutritive substances. The fact that a large number of developing countries were making great efforts to expand their fisheries and related industries should also be taken into account. Moreover, the application of the concept of an exclusive economic zone would prevent the sound conservation of fishery resources, because each coastal State would apply in an arbitrary manner any measure it thought fit.

For the foregoing reasons, one of the basic provisions of the Japanese proposals was designed to establish the right of the nationals of all States to fish on the high seas. Obviously, that right could not be unrestricted, since it was now clear that the living resources of the high seas were not inexhaustible. States must therefore take the necessary conservation measures, but the formulation of criteria for the adoption of such measures was a difficult problem. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas 24/ had solved the problem only partially. In actual fact, there was no universal solution for the problem of conserving living resources. The choice of appropriate measures depended on many factors, such as ecological conditions, the biological characteristics of the stock concerned, etc., and all those matters were the domain of scientists and biologists. Some interesting suggestions in that connexion were contained in the working paper on the management of the living resources of the sea submitted by Canada (A/AC.138/SC.II/L.8). In his delegation's view, the technical conference planned by FAO for the beginning of 1973 would be the most appropriate forum for dealing with such problems, but Japan also supported the regional approach and thought that the best way to handle conservation problems was through regional fisheries commissions, in which a flexible approach suited to individual cases could be adopted. In general, States should as far as possible make use of international or regional organizations in taking appropriate conservation measures; they should strengthen the functions of existing commissions and co-operate in establishing new commissions whenever desirable.

24/ United Nations, Treaty Series, vol.559 (1966), No. 8164, p.285.

With regard to the preferential rights of coastal States, he said that certain coastal fisheries, particularly those of developing countries, could not compete effectively with large modern fishing fleets, and that situation should be taken into account in the future treaty on the law of the sea.

He summed up the Japanese proposals on the question of the fisheries régime on the high seas as follows. In the first place, the rules concerning the preferential rights of coastal States should ensure sufficient protection for coastal fisheries, particularly of the developing countries, in areas adjacent to the 12-mile limit. Secondly, developing coastal States should be entitled to an annual allocation of fisheries resources corresponding to their harvesting capacity. Thirdly, the general rules for the protection of coastal States should be flexible enough to take individual cases into account, and should be the subject of negotiation between the coastal and other States concerned. Fourthly, if negotiation failed, the case in dispute should be referred to a body of experts for a binding decision, unless it was settled by some other means agreed upon between the parties. Until the dispute had been settled, other States should restrain their fishing efforts in accordance with agreed interim measures. Fifthly, international co-operation should be established between the developing coastal State and other fishing States concerned, in order to protect the former's interests. Sixthly, no preferential rights of catch should be recognized for coastal States with regard to highly migratory and anadromous stocks of fish. The conservation and regulation of such stocks should be the subject of international or regional consultations or agreements or should be entrusted to existing regional fishery commissions. Seventhly, enforcement jurisdiction under the rules should be retained by flag States, though coastal States would have the right to inspect foreign vessels and to inform the flag State of any violations.

The distinction made by Japan between the preferential rights of developed and developing coastal States, respectively, was completely in line with General Assembly resolution 2750 C (XXV). Nevertheless, the view had been expressed that there was no need to accord preferential rights to developed countries; he was thinking in particular of a proposal made by the USSR in paragraph 1 of its draft article on fishing (A/AC.138/SC.II/L.6). Japan thought that developed coastal States had sufficient financial and technological resources to make their fishing industry competitive, and that the application of special rights should therefore be reserved for developing coastal States. However, certain fisheries - usually small-scale - in the developed countries did deserve protection as well; in that case, the preferential right should be accorded in terms quite different from that recognized for the developing countries. The Japanese proposals relating to the preferential rights of developing countries were subject to certain limitations, in that the rights were ensured to the extent that a developing coastal State was actually able to fish for a major proportion of the allowable catch.

With regard to highly migratory and anadromous stocks, the United States of America had proposed that the regulation of those resources should be entrusted to the appropriate international organizations, and Japan shared that point of view. Japan was in fact a member of two international organizations concerned with the protection of tuna: the International Commission for the Conservation of Atlantic Tuna and the Inter-American Tropical Tuna Commission. With regard to anadromous stocks, he agreed

with the view expressed at the 39th meeting of the Sub-Committee by the representative of Denmark that they should be equitably regulated by special agreements or through appropriate international or regional fishery commissions. The yield of migratory species should not be reserved for particular countries, since the major part of their life cycle was spent in mid-ocean far from any coasts. The problem of anadromous stocks was one which mainly affected the northern hemisphere, and was already being dealt with by a number of bodies - particularly with respect to salmon.

His delegation hoped to have an opportunity to elaborate upon the proposals he had just introduced, once a working group on fisheries had been set up.

Mr. JEANNEL (France) said that the two main problems to be dealt with - the extension of the prerogatives of coastal States, and the conservation of the resources of the sea - could not be solved without reference to the many existing regulations and institutions.

With regard to the extension of the prerogatives of coastal States, the first step was to determine how the legitimate concerns of the developing countries could be met on conditions that were acceptable to the international community as a whole. The prerogatives of coastal States could not be extended unless the proper conservation and sound management of the biological resources of the sea were ensured. To that end, it was necessary to develop a system of rights and obligations for those States which would be compatible with existing international practice. The rights of coastal States should not simply be preferential rights; they should help to give the "economic zone" concept - which seemed to be gaining increasing support - a universally acceptable content.

It had been suggested that that could be done by first making a distinction between species, and the French delegation thought that more detailed studies should be undertaken at the international level, so that the different local conditions could be taken into consideration. As it was clearly possible to devise world-wide solutions that would be valid for all coastal States, efforts should rather be directed towards regional solutions. All that could be done on a world-wide scale was to draft some general rules embodying principles that were universally applicable.

In the interests of all States, it was essential - and it was sound economics - to obtain an optimum yield which would ensure good returns on the catch in relation to the number of ships used and would at the same time create the best possible conditions for the reproduction of the species. The coastal States were in the best position to appreciate the importance of the conservation measures to be taken in co-operation with international fishery organizations, in a broad area adjacent to their territorial waters. The coastal States, which would be the first to bear the cost of the conservation measures, should in return be allowed to derive a reasonable income from fishing, particularly by reserving a large proportion of the exploitable resources for their own ships. One factor to be taken into account in that connexion was the amount of fish which the coastal State's ships could catch. The French delegation believed that the highest priority should be given to human nutrition, and that other requirements (animal nutrition, fertilizers, industrial uses, etc.) should not be considered until human consumption requirements had been satisfied.

Coastal States should also abstain from taking arbitrary measures for their own benefit. That could be avoided if the prerogatives accorded to the coastal State were exercised within an international framework - in other words, on the basis of criteria that were internationally valid, and of scientific studies undertaken by existing international fishery organizations. The FAO Fisheries Committee was a consultative body which could play a very useful role in that respect, and assistance could also be obtained from the international commissions existing in various regions. If the coastal States wished to extend their fishing prerogatives to areas adjacent to their territorial waters, and if those areas came within the competence of one of the international commissions, it would be for the coastal State concerned to decide to what extent it wished to participate in the activities of the commission and on what terms it would be prepared to negotiate the amendment of the commission's rules. If the State exercised policing and surveillance powers in the joint fishing area, it would do so on behalf of the regional body, and could derive special benefits therefrom.

However, if a coastal State was situated in an area not covered by any international convention, it could itself take protection measures in its economic fishing zone, but such measures should be preceded by international consultations. The coastal State should obtain advice and scientific information from the competent international experts and organizations, and also from the other coastal States concerned and from States which had traditionally or recently been fishing in the area concerned. If an international convention was later adopted, the coastal State should accede to it and could derive preferential benefits from it. Any dispute which arose between the coastal State and a number of other States concerned, or an international fishery commission, should be settled by arbitration. If the allowable catch was small, the coastal State should give priority to States which had traditionally fished in the area, and to other coastal States. States which did not come within either of those categories could share in the resources without discrimination if stocks permitted.

The French delegation insisted that the rights and obligations of coastal States should be applied on an international basis. Thus, the coastal State, by accepting the minimum of constraints, could extend its competence to the area adjacent to its territorial sea.

Mr. SETTER (Australia) recalled that during the Committee's second 1971 session (6th meeting of the Sub-Committee), his delegation had proposed that the Sub-Committee should consider the possibility of permitting each coastal State to establish a fisheries management zone in an adequately wide area off its coast, and of recognizing preferential rights of exploitation for the coastal State within that zone. In view of the statements made by other delegations and as a result of consultations which had taken place particularly with members of the New Zealand delegation, the Australian delegation considered that it could make a further contribution to the Sub-Committee's work. Together with the New Zealand delegation, it had submitted a working paper proposing a set of principles for a fisheries régime (A/AC.138/SC.II/L.11). The paper did not necessarily represent the definitive views of the Australian or the New Zealand Government, but the two sponsoring delegations believed that it could help in narrowing the gap between the positions of the various groups of countries.

According to principle I, the coastal State would have exclusive jurisdiction over the living resources of the sea within an adequately wide zone of the high seas adjacent to its territorial sea. As was explained in the introduction to the document, the over-all objective of any régime should be to establish conditions that would allow the rational utilization of each particular stock of fish. It was also necessary to bear in mind the special characteristics of fishery resources, which, while admittedly capable of regeneration, were extremely susceptible to depletion by over-exploitation. Thus, the coastal State had a twofold responsibility: to ensure the rational utilization of the resources, involving, in particular, management to maintain the stocks, and to provide the maximum possible production of food from the available resources. At some stage, it would, of course, be necessary to agree upon a specific limit to the fishery zone in which the coastal State had jurisdiction, but the working paper did not contain any proposal in that respect. It merely indicated that the responsibility and control exercised by the coastal State should cover the free-swimming species that inhabited nutrient-rich areas adjacent to the coast.

Principle IV stated that pursuant to its exclusive jurisdiction, it would be for the coastal State to determine the allowable catch of any particular species, and to allocate to itself that portion of the catch, up to 100 per cent, that it could harvest. But exclusive jurisdiction would not be inconsistent with the existence of consultative procedures for settling certain legal issues with other interested States. Principle V stated that, where the coastal State was unable to take 100 per cent of the allowable catch of a species, it should allow the entry of foreign fishing vessels, with a view to maintaining the maximum possible food supply. Principle VII provided that, when the coastal State intended to allocate to itself the whole of the allowable catch of a species, it should enter into consultation with any other State which requested such consultations and was able to demonstrate that its vessels had "carried on fishing in the fishery resources zone on a substantial scale for a period of not less than [ten] years". Under principle VIII, the coastal State, as an exercise of its exclusive jurisdiction, would have powers of boarding, arrest and detention of fishing vessels. The working paper also dealt with the question of wide-ranging species which were exploited within the limits of the zone, since it seemed evident that international arrangements would be necessary to ensure the proper management of those resources.

The sponsors of the working paper had taken account of the views of various delegations concerning the management of anadromous species (principle XI). It was also provided (principle XII) that any State might question the manner in which a coastal State was exercising its responsibility in respect of utilizing the living resources of the zone. Principle XIV dealt with the role of international bodies and referred, in that connexion, to the Canadian working paper. Finally, it was the responsibility of the coastal State to ensure that its fishing operations in the fishery zone were conducted in such a way as not to interfere with other legitimate uses of the waters of the zone. In that connexion, a dispute settlement procedure was suggested.

The sponsors of the set of principles had considered the possibility of including in it a reference to encouraging the establishment of joint venture projects, under which the developed countries might assist the developing countries to expand their fishing operations. They thought, however, that such arrangements, which might be extremely useful in certain cases, were rather a matter for the countries concerned and should not be included in an international régime.

He drew the Sub-Committee's attention to the large number of documents and reports on the living resources of the sea which had been assembled for consideration by the Sub-Committee. That information should be examined and discussed in more detail than was possible within the Sub-Committee itself. For that reason, the Australian delegation supported the proposal to set up a working group on fisheries at the earliest possible stage, to enable the Sub-Committee to make progress in its work.

Mr. SMALL (New Zealand) said that his country was an island State isolated in a vast oceanic environment and over 1,000 miles distant from its nearest neighbour. In view of the length of its coastline and the width of the continental margin, the fishing industry was of considerable importance for New Zealand. According to recent studies carried out by FAO, it seemed that demersal stocks were already heavily exploited. Hitherto, New Zealand's fishing activities had generally been conducted near the coasts and had been limited to the sale of fresh fish, but in recent years the economic situation had made it necessary to devote increasing attention to the export of frozen fish and lobsters. In order to diversify its economy, New Zealand had to be able to export fish to other countries. The 1971 catch was already 50 per cent higher than that of 1961. Fish exports to other countries had doubled in five years. So far, the pelagic species which were found at a considerable distance from the coasts had only been lightly worked, but New Zealand was interested in them.

Another point to be taken into consideration was that fishery resources around New Zealand's coasts were receiving increasing attention from distant-water fishing States. New Zealand offered a classical case of a developing fishing industry which was of increasing value to the local economy, but was confronting difficulties due to the activities of the fishing fleets of distant countries.

Accordingly, New Zealand wanted to ensure that the fishery resources of its surrounding waters were not over-exploited. Those resources needed careful management and New Zealand, as the coastal State in the centre of a large productive area, had a special responsibility for management.

New Zealand also took the view that the exploitation of the area should be controlled in such a way that the local fishing industry was able to expand. The fishing industry of a coastal State should have a preferential position related to its capacity for expansion. It was with those considerations in mind that the New Zealand delegation, in its statement at the 62nd plenary meeting of the Committee on 26 July 1971, had urged a readjustment in the existing law on fisheries.

In order to convey its ideas in more specific form, the New Zealand delegation, together with the Australian delegation, had submitted working paper A/AC.138/SC.II/L.11, which might serve as a basis for negotiations. The working paper took a specifically zonal approach. It was possible that a system of control founded on the ascertained characteristics of particular species was feasible in other parts of the world, but in the seas around New Zealand the demersal species were mixed, and the zonal approach seemed to be preferable. Moreover, practical experience in the administration of a fisheries limit - at present 12 miles - suggested that the establishment of a clearly defined zone had many practical advantages. The working paper did not specify the width of the zone; that was a question which would have to be further considered by the Committee, but New Zealand thought that it might extend to 200 miles from the coast.

The fisheries zone proposed in the working paper might form part of a more general economic zone covering not only fisheries resources but also non-living resources. Many of the statements made in the Committee suggested that that idea was gaining increasing support.

Mr. STEVENSON (United States of America), replying to the comments by the representatives of the United Republic of Tanzania (40th meeting) and Spain (42nd meeting) on the question of the right of free transit through straits, said that the proposals submitted to Sub-Committee II by the United States delegation (37th meeting) represented an effort in good faith to alleviate the legitimate concern of coastal States regarding navigational safety.

The United States recognized a three-mile limit for the territorial sea. At present, United States flag ships and aircraft exercised high seas freedoms in straits more than six miles wide. Consequently, an extension of the territorial sea to 12 miles would change the status of certain areas, including parts of certain international straits. The United States was prepared to accept such a result if the future treaty on the law of the sea preserved, with respect to international straits, free transit for all ships and aircraft.

The right of free transit proposed by the United States was a limited right, i.e. a ship or aircraft exercising that right could only enter a strait, pass through or over it on the most direct course and leave it at the other end. In particular, it was not entitled to engage in activities prejudicial to the security of a coastal State. In the United States' view, that right of free transit was an inseparable adjunct to the freedom of navigation and that of overflight on the high seas themselves. In addition, the régime of innocent passage provided for in the 1958 Convention on the Territorial Sea and the Contiguous Zone 25/ was inadequate when applied to international straits, because it was a standard which could be abused if a coastal State interpreted it subjectively. Some delegations had in fact said that certain types of passage - for example, by nuclear-powered ships and super-tankers - should be considered as non-innocent per se.

The representative of the United Republic of Tanzania had said that a strait was an integral part of the territorial waters of the coastal State and that any special arrangement should apply to the entire area. The United States delegation could not agree that special arrangements made for straits used for international navigation must necessarily be made for the entire area of the territorial sea as well. The United States proposal related to straits in which many States, in addition to the coastal State, had an interest. There was, for example, a direct relationship between the degree to which merchant shipping could pass freely over the oceans and through international straits, and the price of goods paid by consumers in different countries. The composite of interests was, in fact, that of the international community as a whole.

Some criticisms had been directed against the United States proposals with respect to the mandatory application of the IMCO traffic separation schemes. It had been said that maximum standards could be achieved only by the coastal State. There was, however, no reason to believe that IMCO was incapable of developing satisfactory standards. The separation schemes could, of course, be improved in the light of experience gained and the recommendations of interested Governments, but they did constitute sound and reasonable safety measures. If observance of the schemes were made mandatory, much would be done to ensure navigational safety in areas of congested traffic, including straits. The work of IMCO was accomplished by many government representatives who were experts in matters of navigational safety. Moreover, the establishment of navigational standards by an international organization such as IMCO was likely to balance the interests of the entire international community much better than coastal State regulation.

25/ Ibid., vol. 516 (1964), No. 7477, sect.III, p.214.

With regard to the United States Government's proposals concerning liability in the case of accidents caused by the failure of ships or aircraft to observe international safety standards, he agreed with the representative of the United Republic of Tanzania that prevention was much better than compensation. It was, however, difficult to eliminate accidents at sea altogether.

In the proposal it had made at the 37th meeting, the United States delegation had advocated that the observance of the IMCO traffic separation schemes in straits and other congested areas should be mandatory for all surface ships. The representative of Spain had pointed out that that proposal did not apply to submerged submarines. There were a number of reasons why existing traffic separation schemes did not apply to submerged submarines. First, IMCO had not seen fit to develop such schemes for submarines, because submarine traffic accounted for such a small proportion of maritime activity. Secondly, a submarine was less dangerous to navigation when it was submerged than when it was on the surface, since on the surface it was difficult to see even in good visibility. Finally, a submarine on the surface was less manoeuvrable than when it was submerged. Obviously, should future developments indicate a concern for safety due to increased submerged traffic, the United States would want to give consideration to any special safety procedures applicable to such traffic and based, for example, on depth criteria.

In view of some remarks which had been made in the Sub-Committee, it might be appropriate to describe briefly some of the built-in safety characteristics of the nuclear-powered ships, including submarines, in operation in the United States Navy. The reactors used in nuclear-powered ships were designed to minimize potential hazards to the environment even under the worst conditions, including the actual sinking of the ship. It was physically impossible for the core of the reactor to explode. The materials in the reactor fuel elements were highly resistant to corrosion, even in sea-water, and, if a reactor sank in sea-water, the fuel would remain intact for an indefinite period. The reactor was fitted with protective devices which prevented any release of radioactive materials. To give an idea of the effectiveness of the safeguards, he would merely mention that the United States Navy's nuclear propulsion programme had accumulated the equivalent of over 950 years of operational experience, covering over 20 million miles without a single reactor accident.

The representatives of the United Republic of Tanzania and Spain had also spoken of the United States' proposal concerning a free transit right for aircraft over international straits. They had rightly pointed out that existing multilateral aviation agreements did not provide transit rights for State - including military - aircraft. In addition, aircraft - civil or military - did not even now under international law have a right of innocent passage over the territorial sea. Because of the United States position on the breadth of the territorial sea, United States aircraft at present exercised a high seas freedom of overflight in straits wider than six miles. The purpose of the United States free transit proposal regarding aircraft was to preserve the existing right of transit over straits 24 miles wide or less. According to the proposal submitted at the 37th meeting by the United States delegation, the observance of ICAO procedures during transit over straits would be the usual practice. The Convention on International Civil Aviation did not of course apply to military aircraft, but the United States had always operated its State aircraft in the spirit of that Convention and it anticipated that the overwhelming majority of flights by its State aircraft would continue to comply fully with ICAO procedures. However,

there might be occasional instances when State aircraft would be unable to comply fully with ICAO procedures. The State aircraft of many countries were at present flying over international straits with high seas areas in them without difficulty, and there was no reason to believe that the United States free transit proposal would result in an increase in air traffic over international straits and a corresponding increase in the possibility of mishap. United States State aircraft had an extremely good safety record, and his Government wanted that record to remain unblemished. Also, under the United States proposal, State aircraft exercising the right of free transit would be strictly liable for accidents caused by deviations from ICAO standards and procedures.

It was true that the United States Government was seeking the right of free transit partly for reasons of national security. That was quite understandable, since the security of the United States and its allies depended to a very large extent on freedom of navigation on and overflight of the high seas. More extensive territorial seas, without the right of free transit in straits, would threaten that security.

Mr. GREKOV (Byelorussian Soviet Socialist Republic) said it was important to find a solution to the problem of fisheries, both from the standpoint of a more efficient use of the living resources of the sea by the international community for nutritional purposes and from the standpoint of the protection of the interests of the various countries. Some countries maintained that the living resources of the high seas belonged to everyone, others that they belonged primarily to the coastal States. He wished to remind the Sub-Committee of the situation of the land-locked countries, particularly the least developed land-locked countries, which because of their geographical situation were faced with many difficulties and naturally hoped that an equitable solution would be found.

That problem, which had existed for more than half a century, had generally been solved in the interests of the imperialist Powers and to the disadvantage of the less developed, dependent countries. The socialist countries, for their part, had always helped the young land-locked States in a disinterested manner, in accordance with the principle of equality of rights and mutual advantage.

Most land-locked countries were facing great difficulties because of their geographical isolation and, in some cases, because of the consequences of the colonial régime, and the question arose as to whether provisions favouring those States should be introduced into international law. During the Sub-Committee's discussions, it had been proposed that the non-reserved part of the catch might be allocated to the vessels of other countries, particularly the land-locked countries. His country supported that proposal and hoped that it would be given favourable consideration by all countries, particularly by those which had common borders with the land-locked countries.

He wished to emphasize, however, that it was one thing to accord a specific right to the land-locked countries, both developed and developing, and quite another thing to make that right effective. He understood the misgivings of countries which demanded not only the freedom to fish in the high seas, but also a guarantee that that freedom would be accompanied by other measures relating to transport and the use of port facilities.

In view of the high cost of the transit of goods through the territory of neighbouring countries, the land-locked countries were perfectly justified in demanding measures to solve related questions of general policy, formalities and material resources.

Some of the problems of the land-locked countries had already been dealt with in various international instruments.' The 1921 Barcelona Convention and Statute on Freedom of Transit 26/ laid down the principles of freedom of transit and non-discrimination, and the 1958 Convention on the High Seas defined the principle of free access to the sea on a reciprocal basis, and provided for the settlement by mutual agreement of all questions relating to freedom of transit and equality with regard to the use of ports. Lastly, the United Nations Conference on Transit Trade of Land-locked Countries had led to the adoption in 1965 of the Convention on Transit Trade of Land-locked States 27/ which dealt with freedom of transit and non-discrimination. However, a large number of problems remained to be solved, such as those relating to free movement from and to the sea, freedom of transit, transport and connexions, equality of treatment in ports, etc.

The Byelorussian SSR could not support the proposal for the establishment of fishing zones reserved for coastal States, since it ran counter to existing international law relating to the freedom of fishing in the high seas, and it also represented a threat to the economies of other countries, particularly the land-locked countries. His delegation considered that, if the width of the territorial sea was fixed at 12 miles, that would provide a solid basis for the full application of the fundamental principles of international maritime law, and particularly the principles of freedom of navigation and freedom of fishing in the high seas. His delegation, of course, understood the legitimate concerns expressed by certain maritime developing countries which could not at the present time, in view of their economic difficulties and the inadequate size of their fishing fleets, take advantage of the equality of all States on the high seas as recognized by international law.

It was important, however, to consider what attitude should be taken with regard to other countries, particularly the land-locked countries. It was necessary to establish the principle that the resources of the sea could be exploited by all countries, developed or developing, maritime or land-locked, since in the near future, as a result of scientific and technological progress, all developing countries would undoubtedly have large enough fishing fleets to enable them to take full advantage of their right to exploit the living resources of the sea. It was essential to take into account the interests of all countries, in view of the universal character of the future organization of the peaceful exploitation of the resources of the sea-bed.

The Soviet Union's draft article on fishing provided that a developing coastal State could annually reserve for itself, in the areas of the high sea directly adjacent to its territorial sea, such part of the allowable catch of fish as could be taken by vessels navigating under that State's flag; with the growth of its fishing fleet, the part it reserved to itself could be increased (see A/AC.138/SC.II/L.6, para.1). It was clear that that provision, which was in the interests of the developing countries, maintained the principle of freedom of fishing in the high seas. Such a solution in no way hindered the effective exercise of the freedom of fishing in the high seas by all nations, large or small, developed or developing, maritime or land-locked. On the other hand, the Byelorussian SSR could not subscribe to the proposals for the creation of so-called economic zones, or for the attribution of different preferential rights to

26/ League of Nations, Treaty Series, vol.VII, 1921-1922, No.171, p.11.

27/ United Nations, Treaty Series, vol.597 (1967), No.8641, p.42.

coastal States. The creation of such zones would do more than protect the rights of developing coastal States; it would also favour certain coastal States to the disadvantage of geographically isolated countries, and of maritime countries which did not have sufficient living resources in their coastal waters. In addition, the Byelorussian SSR could not accept the position of certain developed coastal States which, on the basis of their interests alone, were trying to solve the problem of fisheries by unilateral measures, without taking account of the interests of the disadvantaged countries or of the international community as a whole. It hoped that the problem of the use of the living-resources of the sea would be solved in the interests of all.

Mr. CARROZ (Food and Agriculture Organization of the United Nations) said that in reply to requests made at the Committee's first 1972 session, a new series of FAO fishery country profiles had just been distributed. The new series dealt with many of the countries that had not been included in the first series made available during the preceding session. It was expected that profiles for the few remaining countries would be prepared in time for the Committee's next session.

Two other documents were also being distributed: the first was a circular concerning sedentary, migratory and intermingling species.^{28/} Three species, North Sea plaice, North Sea herring and Mexican Gulf shrimps, had been selected as examples for case studies on the distribution and migration of fish species. If the type of information given in the paper was considered useful, additional case studies on North Pacific salmon, North Atlantic cod, West African sardinellas, tunas, whales and perhaps a number of other species could be provided.

The second document was a circular dealing with the conservation of fishery resources.^{29/} At the first 1972 session, FAO had been requested to supplement the paper it had submitted on conservation problems with special reference to new technology^{30/} by a more detailed document that would specifically indicate, first, sea areas where resources were over-exploited and species affected by over-exploitation; secondly, fishing methods likely to have adverse effects on the conservation of fishery resources; and thirdly, biological and economic advantages that would be derived from a strengthened regulation of fishing on the high seas. The circular FID/C/147 would deal only with the second of those questions.

Every effort would be made to submit to the Committee at its next session the technical documents that FAO had been asked to prepare. He had noted the observations made by the representative of Ecuador at the 25th meeting of Sub-Committee III and of the suggestions made by the representative of Turkey at the 41st meeting of Sub-Committee II.

^{28/} Subsequently circulated under the symbol FID/C/148.

^{29/} Subsequently circulated under the symbol FID/C/147.

^{30/} Transmitted to the Committee under the symbol A/AC.138/65.

The CHAIRMAN thanked the FAO representative for the very useful documents submitted by FAO and expressed the view that the other case studies in course of preparation would be equally useful to the Sub-Committee.

Mr. WARIOBA (United Republic of Tanzania) thanked the representative of the United States for explaining the position of the United States delegation. However, the Tanzanian delegation still had misgivings on a number of points. The United States representative had spoken at length on traffic separation schemes, referring to the rules established by IMCO. In so doing, however, he did not appear to have answered the point made at the 40th meeting by the United Republic of Tanzania, which considered that the application of those rules should not be restricted to straits and that they should, also where necessary, be applied in the territorial waters of certain States that did not have any straits.

Moreover, the United Republic of Tanzania did not believe that IMCO, an organization that was not universal in character, was competent to establish mandatory rules for all States parties to a treaty on the law of the sea. Nor would the Conference on the law of the sea be competent to amend the rules established by IMCO on traffic separation schemes, which were not mandatory. He hoped therefore that the United States delegation would provide further clarifications.

His delegation also thanked the United States delegation for the information it had given on the transit of military aircraft. It had certain misgivings, however, concerning the observation that in some cases such aircraft might not be able to comply fully with ICAO procedures. If exceptions were to be permitted, they should be mentioned in the future Convention.

Lastly, the United States representative had reiterated that up to the present the United States had recognized only a three-mile limit. Any straits wider than six miles were, therefore, regarded by the United States as international straits. But no agreement was possible on the basis of purely individual criteria, since some States recognized a distance of three miles, others a distance of 12 miles and others a distance of 200 miles, and it was essential to establish truly international criteria. On that question, too, further clarifications by the United States delegation would be welcome.

Mr. YTURRIAGA BARBERAN (Spain) said that the explanations given by the United States representative had merely served to heighten his misgivings, since they seemed to confirm that the attempts being made to change the existing international rules on innocent passage were prompted exclusively by military and strategic considerations that had nothing to do with the subject of the discussions. Spain reserved the right to reply at a later stage to the arguments advanced by the United States. In his delegation's view, the opinions of the great Powers on their vital interests did not necessarily coincide with international interests.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE FORTY-FOURTH MEETING

held on Wednesday, 16 August 1972, at 11.30 a.m.

Chairman: Mr. MARTINEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued)
(A/AC.138/66 and Corr.2, A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/75 and Corr.1, A/AC.138/76-78, A/AC.138/SC.II/L.6-12, A/AC.138/SC.II/L.14)

List of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea (continued)*

Mr. YANGO (Philippines) introduced an informal document containing a revised draft list of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea, prepared by 56 delegations. Since the time when his delegation had introduced the original list (A/AC.138/66 and Corr.2) in Sub-Committee II at the first 1972 session (29th meeting), great efforts had been made to narrow down areas of disagreement. As a result of the spirit of compromise shown on all sides, it had been possible to produce a common list, despite a considerable number of difficult problems that had arisen during the negotiations. After drawing attention to some minor changes, he read out the list and pointed out that item 25 would be omitted. Also, item 6 his (Coastal States' preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea) would be renumbered as item 7, with the consequential renumbering of items 7 to 24.

Mr. AKYAMAC (Turkey) referring to item 7 (High seas), said that in view of the 1971 Convention on Psychotropic Substances³¹ which prohibited illicit traffic in psychotropic substances, the word "narcotic" should be deleted from item 7.5, unless the words "and psychotropic substances" were added.

In reply to a question by the CHAIRMAN, Mr. GAUCI (Malta) said that his delegation, which had originally proposed, in its amendment to the original 56-Power list, the inclusion of item 7.5 (see A/AC.138/67, item 7.6), agreed to the deletion of the word "narcotic" proposed by the representative of Turkey.

The Turkish amendment was adopted.

Mr. STEVENSON (United States of America) said that his Government had accepted the formulation of item 4 (Straits used for international navigation) on the understanding that the formulation of the list was a procedural and not a substantive matter. Moreover, his Government could accept the revised formulation of item 4, because it in no way derogated from its position on free transit through and over straits used for international navigation and it provided an opportunity for a full presentation of its position. In that connexion, he reiterated his Government's position in favour of agreement on a 12-mile territorial sea coupled with free transit in

*/ Resumed from the 34th meeting.

³¹/ E/CONF.58/6.

international straits, and said that the objectives of his Government's proposals on those points must be taken into account if a final settlement was to be reached on the law of the sea. The right of free transit was defined precisely in the draft articles his delegation had submitted, and his delegation had made proposals to meet the legitimate concern of coastal States, and particularly States bordering straits, regarding the safety of navigation through and over straits.

Mr. BACKES (Austria), speaking on behalf of the group of nine countries that had submitted amendments to the list (A/AC.138/72 and Corr.1), said that the group had accepted the wording of items 6 and 6 bis, subject to its right to discuss the special rights, interests and obligations of land-locked countries with reference to those items.

The CHAIRMAN informed the Sub-Committee that he had received a letter from the Chairman of the Committee urging the group of nine countries and the delegation of Malta to follow the example of the group of seven, which had accepted the list without entering any reservations. The letter stressed the fact that the list was only a framework for the discussion and drafting of necessary articles and mentioned that the group of seven had made it clear they relied on the explanatory note at the head of the list.

Mr. OLMEDO-VIRREIRA (Bolivia), speaking on behalf of his own delegation and without prejudice to the views of other members of the group of nine countries, said that the group of seven had found it easier to waive their right to enter reservations, because they were not defending the economic development and improved standards of living of their peoples and because they would be able to ensure that their interests were properly discussed and fully taken into account at the Conference on the law of the sea. If the exclusive economic zone were to extend in the seas around Asia, Africa and Latin America to a distance of 200 nautical miles, countries such as his own, which were both land-locked and among the developing countries, would suffer a double disadvantage. He pointed out that, even if an endeavour was made to accommodate the interests of the maritime Powers by imparting a permissive and not an obligatory character to the delimitation of the exclusive economic zone, that concept did not protect the rights of the land-locked developing countries, since it was just in those areas to which they belonged - Asia, Africa and Latin America - that the coastal States were isolating them more and more from the sea and cutting them off from the enjoyment of the resources, to which they were entitled, defined as the common heritage of mankind.

He was not opposed to the claim that the 56 Powers proposed to advance, provided that the concept of the exclusive economic zone was regional in outlook and scope. He urged the coastal States to set an example of progress towards an international solidarity based on justice; to that end, the progress made should produce such repercussions as would extend the benefits derived to those countries which were the poorest and most disadvantaged on account of their geographical situation.

Therefore, so long as items 6 and 6 bis of the list of subjects and issues were not drafted in that spirit, he would express every reservation with regard to them.

Mr. GAUCI (Malta) said that he was not in a position to withdraw his delegation's reservations. He reminded the Sub-Committee that Malta's basic philosophy had always been that States should exercise responsibility for the international community and that they would benefit individually in doing so. He had already

endeavoured to modify his delegation's formulation to suit the wishes of other delegations, but he believed that that formulation was essential, if the Conference on the law of the sea was to take a short-term as well as a long-term view. In conclusion, he made an appeal for the inclusion of the amendments proposed by his delegation in the list of topics to be discussed at what would be a very important conference which required a universalist approach.

The CHAIRMAN noted that the group of nine countries and Malta were unable to withdraw their reservations.

Sir Roger JACKLING (United Kingdom) said that his delegation had accepted the inclusion of items 4, 6, 6 bis, 7 and 12 32/ subject to the qualifications contained in the explanatory note at the head of the list. He had not been expecting 6 bis to be renumbered as item 7 and considered that it should be discussed in conjunction with item 6. He noted that the reservations entered by some delegations did not detract from the understanding that he had referred to.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation's approach to the preparation of the list was that it should consist of the various unresolved questions relating to the law of the sea that needed to be examined as a result of recent scientific and technological achievements. Nevertheless, it had not objected to a broad list, having regard to the wishes of the developing countries, which had expressed interest in discussing all aspects of the law of the sea in the development of which their nations had not participated.

He stressed that his delegation had accepted the list subject to the qualifications contained in the explanatory note and that its adoption by the Committee would be without prejudice to the existing principles and norms of international maritime law, as expressed in international practice and in conventions, including the 1958 Geneva Conventions. The fact that his delegation had not entered reservations must not be interpreted as meaning that it had changed its position with regard to the substance of some of the questions included in the list, such as the question of plurality of régimes or exclusive or other types of economic zones.

His delegation did not consider that because an item was included in the list it should necessarily become the subject of a draft article, or that it should necessarily be put forward for consideration by the Conference on the law of the sea. In its work on the substance of the draft articles, the Committee might well find it advisable to delete or clarify certain items on the list. He agreed that items 6 and 6 bis should be considered together.

Mr. GREKOV (Byelorussian Soviet Socialist Republic) said that his delegation associated itself with those delegations which had stated that their basic premise was that adoption of the list of subjects and issues would not in any way prejudice the position of any State or commit any State in respect of any particular item on the list. He wished also to emphasize that the adoption of the list did not in any way

32/ In the revised list of subjects and issues subsequently circulated under the symbol A/AC.138/66/Rev.1, these items are numbered 4, 6, 7, 8 and 13 respectively.

prejudge the need for a draft article on each of the items included. In his delegation's view, the adoption of the list and the further discussion of the subjects and issues in the Committee should not lead to any change in the basic principles of the law of the sea already established by a number of international conventions.

Mr. OGISO (Japan) said it was his delegation's understanding that the adoption of the list did not in any way prejudice the position of any State with respect to the substance of any of the items. Nor did it prevent any State from putting forward any question it wished to be discussed by the Conference. There had been no mention of renumbering item 6 bis during the negotiations and, in view of the close relationship between item 6 and item 6 bis, his delegation considered that they should be discussed together and would urge that the numbering should not be altered at the present stage.

Mr. HARRY (Australia) said that his delegation did not propose to enter any reservations, since the explanatory note preceding the list constituted a sufficient general reservation to protect the position of any delegation. Recommendation of the list would not prejudice the position of any delegation regarding the inclusion or non-inclusion of any item in the eventual agenda for the forthcoming Conference on the law of the sea. It was his hope that the Sub-Committee's further work on the list would solve some of the substantive problems and make it possible to have a somewhat more streamlined list for the actual agenda. He would be glad to have confirmation that the foot-note to item 1.5 would be retained in the final document.

Lastly, he wished to suggest that the Sub-Committee should give some thought to the question of its future work. His delegation was intending to circulate a document outlining a possible approach.

The CHAIRMAN confirmed that the foot-note to item 1.5 would be retained in the final document.

Mr. de la GUARDIA (Argentina), referring to item 9 of the list of subjects and issues, pointed out that the Spanish text of the original list (A/AC.138/66) referred to "intereses y necesidades" whereas the English text referred to "rights and interests". While he did not object to the wording of the English text, he wished to bring that difference to the notice of the Secretariat. Lastly, he wished to state that it was his delegation's clear understanding during the negotiations that item 6 bis was to be renumbered as item 7 and the remaining items renumbered accordingly.

Mr. JEANNEL (France) said that, in his view, the explanatory note at the head of the list of subjects and issues made it perfectly clear that the adoption of the list did not prejudice the position of any delegation in any way whatsoever. He found it difficult, therefore, to understand why there should be any talk of reservations at the present stage. In view of the statements made by other delegations, however, he felt obliged to state that his delegation's acceptance of the list did not mean that it approved of all the items included in it. Lastly, in his view, the Sub-Committee should not take a decision on such an important question until the text of the list of subjects and issues was available in all the working languages.

Mr. BEESLEY (Canada) said that his delegation had no difficulty in accepting the list on the basis of the explanatory note, which reflected the approach adopted from the outset. The adoption of the list would not prejudice the submission of any proposal or the position of any delegation on the substance of any item. While he would have preferred a solution without reservations, he strongly supported the right of delegations to express them. Many of the delegations in question had withdrawn amendments precisely on that understanding. Lastly, he wished to support the suggestion made by the Australian representative that the Committee should give some thought to the question of its future work. His delegation intended to co-operate with the Australian delegation and to co-sponsor the document referred to by the Australian representative.

Mr. ZEGERS (Chile) said that his delegation had already suggested as a compromise solution that the Sub-Committee should separate the items on the exclusive economic zone beyond the territorial sea and those on the preferential rights of coastal States, and for that reason would prefer item 6 bis to be renumbered as item 7. The second paragraph of the explanatory note already indicated that the list did not establish any order of priority, and if it were also made clear that the consideration of any one item in no way prejudiced the consideration of another, he believed that that might satisfy the delegations that wanted to retain the item as 6 bis.

Although, as was stated in the explanatory note, the list was intended to serve merely as a framework for discussion, it was clear that, in the spirit of General Assembly resolution 2750 C (XXV), it ensured the comprehensive nature of the forthcoming Conference and safeguarded the element of progressive development of the law of the sea, expressly referred to in that resolution. The list adequately reflected existing international and regional practice and constituted a good framework for the adaptation or creation of international norms appropriate to the political and economic realities of the present day, created by the emergence of newly independent States and technological and scientific progress. The preparation of the list had considerably facilitated the identification of the main aspects of the forthcoming international negotiations, had enabled all delegations to define clearly their own national interests, and, above all, had facilitated the work of preparing the necessary political framework for an international solution as a basis for the forthcoming Conference.

Lastly, his delegation considered that the approval of the list would enable the Sub-Committee to make substantial progress at its next session in the preparatory work for the Conference. It would be able not only to prepare draft articles on the various subjects included in the list but also to give substantive consideration to such drafts. In his delegation's view, that exercise was already clearly defined and there was no need for the Sub-Committee to prepare a programme of work; it would, however, welcome with interest any ideas put forward on the future work of the Sub-Committee.

The CHAIRMAN, referring to the question of the numbering of items 6 and 6 bis, suggested as a compromise that item 6 bis should be renumbered as item 7 and that it should be clearly stated in the Sub-Committee's report that both items could be dealt with jointly at the forthcoming Conference.

It was so agreed.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE FORTY-FIFTH MEETING

held on Wednesday, 16 August, 1972, at 3.40 p.m.

Chairman: Mr. MARTINEZ MORENO El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON THE ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45th MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (concluded) (A/AC.138/66/Rev.1)

List of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea (concluded)

Mr. YANKOV (Bulgaria) associated his delegation with those which had expressed gratification that a list of subjects and issues which might serve as the basis for future work had finally been produced. He congratulated all those who had played a part in its preparations and stressed the importance which his delegation attached, from both the practical and legal standpoints, to the explanatory note preceding the revised text of the list (A/AC.138/66/Rev.1). Every State remained free to adopt any position that it might deem appropriate on a particular question, and to propose to the Conference on the law of the sea the deletion or addition of one or more subjects or issues; in the opinion of his delegation, it would be in the interests of the Conference to focus its debates so far as possible on the most pertinent aspects. Similarly, it should be understood that the question of priorities remained open. The Chairman had been right to stress the close relationship between items 6 and 7 of the list; there was no doubt that they would have to be considered together. The Sub-Committee would henceforth have to devote its efforts to the preparation of draft articles, which constituted the essential part of its mandate.

Mr. SMOQUINA (Italy) expressed gratification at the successful conclusion of the long debates and numerous negotiations held in the Sub-Committee and thanked all those who had contributed to it. There should, however, be no delusions about the fact that the preparation of draft articles would certainly be a delicate process which would give rise to many difficulties.

The Italian delegation was prepared to approve the list of subjects and issues without entering any particular reservations since it thought it sufficed to refer to the third paragraph of the explanatory note preceding the revised list. It requested, however, that the following points, on which its approval of the list was based, should be brought out in the summary record of the meeting.

In his delegation's opinion, a new law of the sea could not be envisaged as the result of a direct, exclusive confrontation between the so-called maritime States and those which were termed coastal States; such an approach could only be prejudicial to the interests of the international community as a whole. It would be essential to balance the rights and obligations of all States, and in particular, to bear in mind the existence of land-locked or "shelf-locked" States, constituting what might be called a silent majority, which would be unable to accept such an extreme approach. In that connexion, it was interesting to note that the number of "shelf-locked" countries was growing at the same rate as the ambitions and objectives of the two other categories of States. That majority could not, indeed, conceive of any infringement of its rights of

navigation on the high seas and exploitation of the sea-bed, all the more so since it did not in any way intend any threat to security, public order, economic interests or ecological balance in the other countries. The Conference would have a duty not to neglect the interests of the land-locked or "shelf-locked" States, which could not agree to the high seas becoming either the preserve of a group of Powers, or the subject of exclusive negotiations between parties holding opposing views.

Mr. VOHRAH (Malaysia) said that his Government, which had carefully examined, and was continuing to examine, all aspects of item 4 of the list, relating to straits used for international navigation, would not fail to take account of the observations made on that subject by the United States representative (44th meeting). He did not doubt that the spirit of co-operation which had made it possible to draw up the list of subjects and issues would prevail in future negotiations.

Mr. OLSZOWKA (Poland), said that, although it was regrettable that the preparation of the list should have taken up so much time, the remarkable spirit of co-operation and compromise displayed in that arduous task was most gratifying. Referring to the explanatory notes, he expressed the view that the Conference on the law of the sea would have to concentrate its efforts on those problems which had not so far been resolved. Its task should be, not to undertake a general revision of the law of the sea, but to adapt certain of its provisions to the economic situation and to technical and scientific progress, while taking particular account of the interests of the developing, land-locked and "shelf-locked" countries. Until those adaptations had been made and universally accepted, no State should infringe existing law or compromise the outcome of the Conference by presenting other States with a fait accompli; unilateral measures could result only in chaos and further disputes.

Mr. ZOTIADES (Greece) commended the spirit of conciliation which had made it possible to agree on a generally acceptable text and to the efforts of those who had participated in its preparation. Endorsing the observations made by the French representative (44th meeting), he praised the clarity of the explanatory note, which made any reservation unnecessary. The discussions which had taken place in the Sub-Committee had helped to highlight present trends in the law of the sea, whose age-old and sacrosanct elements were the freedom of the high seas, on the one hand, and the jurisdiction of coastal States over their territorial waters, on the other.

Mr. KEDADI (Tunisia) congratulated those who had produced the text submitted to the Sub-Committee for its approval and noted that, although the wording of item 19 (Régime of islands) had been amended in the course of the informal negotiations, it did not entirely satisfy his delegation. In a spirit of conciliation and in order to avoid delay, his delegation had not wished to request a new amendment, but it had expressed the wish that as comprehensive and flexible a wording as possible should be adopted, so that the Conference would have the possibility of examining all aspects of the question; it hoped that many delegations would support its views on that question at forthcoming sessions.

Mr. IMRU (Ethiopia) thanked those who, although confronted with so many difficulties, had succeeded in bringing the debates and negotiations to a successful conclusion. The list now submitted to the Sub-Committee for its approval had been devised with a view to expediting future work and not with a view to depriving that work of all effectiveness; consequently, it should be treated flexibly and considered as a non-committal document. Already, several reservations had been expressed and various

interpretations had been given; in any case, in the interpretation of the list, it was by promoting the interests of the international community as a whole that the case of individual countries would be strengthened. National objectives might have to give way to some extent to international obligations, and countries would be in a better position to share fully in and benefit from the common heritage of mankind when the bonds that existed between neighbours were respected and strengthened. In that connexion, the dire needs of the land-locked and partially land-locked countries should be taken into account.

Mr. MESLOUB (Algeria) congratulated all those whose unflagging efforts had finally proved successful. The list produced, which was to be used as a basis for a far-reaching reorganization of the law of the sea, would enable the Conference to find solutions equitable to all, particularly the developing countries, and thus to carry out the entire task entrusted to it.

Mr. NJENGA (Kenya) said he was particularly pleased that the Chairman, to name only one of those responsible, had made the wording of item 7 acceptable to the Kenyan delegation; as a result of his wisdom, that wording could now serve as the basis for constructive discussion. In his delegation's opinion, it was not necessary to draft articles on each of the items in the list.

Mr. FRANCIS (Jamaica) expressed gratitude to the Chairman of the Committee, Sub-Committee II and the group of 56 Powers, and to the representatives of Spain, Tunisia and Egypt, who had succeeded in finding a compromise solution for items 4, 7 and 18, and also to the members of the group of 7 countries, who had withdrawn the amendments which they had intended to submit on a number of points.

When agreement had been reached on the present list in the group of 56 Powers, it had been understood that some land-locked countries would join the sponsors. That, unfortunately, had not been the case, and reservations had been expressed during the negotiations. The question had arisen whether a State was entitled to make reservations and whether it would be appropriate to reflect them in the report; admittedly, it was for the land-locked States themselves to determine their own interests, but it would be advisable not to leave any doubt about their position in that respect. He hoped that those countries would review their positions.

The CHAIRMAN invited the Sub-Committee to adopt the revised list contained in document A/AC.138/66/Rev.1.

Mr. LAGARDE (France) recalled his delegation's statement at the 44th meeting that, although it had no substantive objection to the list as prepared in English, it would not be able to take a final decision until the French translation had been distributed.

The CHAIRMAN expressed regret that, for practical reasons, it was not possible to distribute the text in all the working languages before the end of the meeting.

Perhaps the French delegation would be good enough not to delay the work of the Sub-Committee, on the understanding that the Secretariat would at a later stage make any amendments to the translations that might prove necessary in order to ensure complete conformity among the various texts.

The list of subjects and issues relating to law of the sea, to be submitted to the Conference on the law of the sea (A/AC.138/66/Rev.1) was approved without objection.

DRAFT REPORT OF SUB-COMMITTEE II (A/AC.138/SC.II/L.13)

Mr. ABDEL-HAMID (Egypt), Rapporteur, introducing the draft report (A/AC.138/SC.II/L.13), explained that the list of subjects and issues relating to the law of the sea that had just been approved by the Sub-Committee would be circulated within the next few hours as an addendum to the draft report. He suggested that the Sub-Committee should proceed with its consideration of the draft report paragraph by paragraph. He indicated, in addition, that in paragraph 5 the name of Mr. Ezedine Kazemi (Iran) should replace that of Mr. Mohammed Ali Massoud-Ansari (Iran) in the list of Vice-Chairmen.

The CHAIRMAN, at the suggestion of the Bulgarian delegation, invited the Sub-Committee to adopt en bloc paragraphs 1-12, which constituted section I of the draft report, and paragraph 13, the first paragraph in section II.

Section I (paragraphs 1-12) and section II, paragraph 13

Mr. DUDGEON (United Kingdom) said he wished to suggest a drafting amendment to paragraph 7. In the passage between square brackets at the end of the first paragraph of the Chairman's statement, the words "in paragraph 7 above" should be replaced by "above in this paragraph".

Section I (paragraphs 1-12) and section II, paragraph 13, were adopted.

Section II, paragraph 14

Mr. STEVENSON (United States of America) said that, in order to bring the text of paragraph 14 into line with the expressions used in the explanatory note accompanying the list of subjects and issues, the words "would not prejudice", in the second sentence of paragraph 14, should be replaced by the words "would not establish".

The United States amendment was adopted.

Paragraph 14, as amended, was adopted.

Paragraph 15

Paragraph 15 was adopted.

Paragraph 16

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that reference would be made to the list of subjects and issues relating to the law of the sea submitted by Malta at the first 1972 session.

Sir Roger JACKLING (United Kingdom) said he wondered whether it was really necessary to indicate all the amendments that had been submitted to the Sub-Committee, since not all of them had been accepted and the list had just been adopted. It would be sufficient to send to the General Assembly the proposal of the 56 countries and the list that had just been adopted. Consequently, his delegation proposed that paragraph 16 should be reformulated and should state that the Sub-Committee had had

before it a list of subjects and issues submitted by 56 countries and that amendments had been submitted and considered, on the basis of which a final list had been drawn up. The paragraph would also indicate in which paragraph the final decision taken by the Sub-Committee was reproduced.

Mr. PARDO (Malta) proposed, having regard to the comments made by the United Kingdom representative, that a sentence should be added at the end of paragraph 16 reading: "These documents were the subject of intense consultations, which led to the adoption of an agreed list of subjects and issues as indicated in paragraph ... below."

The Maltese amendment was adopted.

Paragraph 16, as amended, was adopted.

Paragraph 17

Paragraph 17 was adopted.

Paragraph 18

Mr. FRANCIS (Jamaica) proposed that the second part of the sentence, beginning with the words "either in connexion with", should be deleted and replaced by the words "either contained in working papers submitted or in statements made in the Sub-Committee".

The Jamaican amendment was adopted.

Paragraph 18, as amended, was adopted.

Paragraph 19

Mr. DUDGEON (United Kingdom) proposed a slight correction to the English text; the reference in the middle of the paragraph should be to "historic waters" and not to "historical waters".

Mr. AKYAMAC (Turkey) said he wished to propose several amendments to paragraph 19. Firstly, the first set of parentheses should be deleted and the first parenthesis replaced by the words "such as"; secondly, after the words "to define such breadth" the words "including the drawing of base-lines" should be inserted; thirdly, after the deletion of the second set of parentheses, the words "drawing of base-lines" between the words "for instance" and the word "delimitation ..." should be deleted. Lastly, in order that the report should give a balanced reflection of the discussions of the group of 56 Powers responsible for drawing up the list, he proposed that between the words "opposite States" and the word "etc." the words "and that of certain islands" should be inserted.

Mr. ZOTIADES (Greece) said he was opposed to the last amendment proposed by the Turkish representative, since it was contrary to United Nations practice for the report to contain anything other than the official discussions of the Sub-Committee.

Mr. AKYAMAC (Turkey) pointed out that his delegation had submitted a formal amendment on the question, which had been circulated as a document of the Sub-Committee (A/AC.138/74 and Corr.1) but had not been officially submitted to the Sub-Committee, because

it had been decided to establish a consultative group of 56 countries in order to examine the amendments to the list. The results of the consultations of the group of 56 Powers could not therefore be considered as entirely unofficial, since those consultations had been held pursuant to a decision of the Sub-Committee.

Mr. ABDEL-HAMID (Egypt), Rapporteur, accepted the Turkish amendments relating to the deletion of the brackets but requested him not to insist on the reference to the question of islands in paragraph 19, since that question was dealt with later in the report.

Mr. AKYAMAÇ (Turkey) said that the Turkish amendment to the list of subjects and issues did not relate to item 19 of the list, concerning islands, but precisely to the question dealt with in paragraph 19 of the draft report. He wished to maintain his amendment.

Mr. SMOQUINA (Italy) asked the Chairman to give a ruling to settle the question of procedure, since the report was supposed to reflect only the discussions in the Sub-Committee.

Mr. GAUCI (Malta), pointing out that the list of subjects and issues would be annexed to the Sub-Committee's report, wondered whether there was any point in reproducing in the body of the report the subjects and issues contained in the list. In his view, the paragraphs in question could be deleted.

Mr. AGUILAR (Venezuela) said he shared the view of the Maltese delegation. With regard to the procedural question raised by Greece in connexion with the Turkish amendment, to the knowledge of his delegation there were no examples of the report of a United Nations body contained an account of anything other than the discussions covered by the summary records.

Mr. YANKOV (Bulgaria) proposed that the adoption of paragraph 19 should be postponed, in order to give the Rapporteur time to settle with the delegations concerned the procedural question at issue.

Mr. CUENCA ANAYA (Spain) said he wished to make a comment on the Spanish text of paragraph 19. He noted that in the English text the passage commencing with the words "not prejudicial to ..." was based on the text of article 14, paragraph 4, of the 1958 Convention on the Territorial Sea and the Contiguous Zone 33/ and he proposed that the Spanish version should also be based on that text, i.e. the word "público" after the word "orden" should be deleted.

The CHAIRMAN suggested that the Sub-Committee should take up the consideration of paragraph 20, as proposed by the Bulgarian delegation.

Paragraph 20

Mr. PARDO (Malta) proposed that a sentence should be added at the end of paragraph 20 reading: "In this connexion, reference was made to the protection of international rights and interests in the zone". That question had been mentioned several times by his delegation in the Sub-Committee.

33/ United Nations, Treaty Series, vol.516 (1964), No.7477, p.214.

Mr. ABDEL-HAMID (Egypt), Rapporteur, observed that the question had already been referred to in the last sentence of paragraph 15. If there were no objections, from other delegations, he proposed that he and the Maltese representative should get together to prepare the text of the sentence the Maltese representative wished to be added to paragraph 20.

The CHAIRMAN invited the Sub-Committee to take up the consideration of paragraph 21 until the text of the Maltese amendment to paragraph 20 was available.

Paragraph 21

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the word "archipelago" should be perhaps replaced by the words "archipelagic States".

Mr. DUDGEON (United Kingdom) thought that it would be more correct to say "straits between the islands of an archipelago".

Mr. DJALAL (Indonesia) preferred the formula proposed by the Rapporteur, which was perhaps linguistically less correct but was much closer to the idea which his delegation had wished to express.

Mr. PARDO (Malta) wondered what exactly was meant by the word "difference" at the beginning of the paragraph.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that that term had already been used in the 1971 report.

Mr. HARRY (Australia) suggested that the beginning of the paragraph could be amended to read: "With respect to straits, reference was made to differences in their relative importance for international navigation".

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that the amendment proposed by Australia seemed to reflect most clearly the essence of what had been said in the discussions; he therefore supported that proposal.

He added that his delegation assumed that, in accordance with the usual practice, it would be able to work in close co-operation with the Rapporteur and the Secretariat in the preparation of the Russian text of the draft report, which was now being considered in the English version. On the basis of that assumption, his delegation was refraining for the time being from any statement on matters of form.

Mr. ABDEL-HAMID (Egypt), Rapporteur, confirmed that that procedure would, as usual, be followed for the final Russian and Chinese versions of the report.

The Australian amendment was adopted.

Mr. CUENCA ANAYA (Spain) suggested a drafting correction in the Spanish text.

Paragraph 21, as amended, and taking into account the other changes suggested, was adopted.

Paragraph 22

Mr. HARRY (Australia) said that, in the phrase in parentheses, the words "prevention against risks" should be replaced by the words "prevention of risks" or "precaution against risks".

After a brief exchange of views between Mr. FRANCIS (Jamaica) and Mr. LUGOYE (United Republic of Tanzania), the words "prevention of risks" were approved.

Mr. DJALAL (Indonesia) said that the word "could" in the third and sixth sentences should be replaced by the word "would".

Mr. DUDGEON (United Kingdom) said that the verb used in the present text reflected an existing situation in international law, whereas the verb proposed by the Indonesian delegation would reflect a commitment which coastal States wished to make with regard to their future action.

Mr. DJALAL (Indonesia) maintained his proposed amendment, which corresponded to the statements made during the discussion.

Mr. CUENCA ANAYA (Spain) said that he would prefer the change to apply to only the first of the two verbs.

Mr. HARRY (Australia) proposed that the third sentence should read:

"It was mentioned that such enactment of regulations and their implementation were never arbitrary and that, in accordance with the law as recognized and regulated at present, innocent passage should not be suspended through straits used for international navigation".

The CHAIRMAN suggested that paragraph 22 as a whole should be approved, on the understanding that the Rapporteur would, together with the delegations of Indonesia, Spain and Australia, work out an appropriate wording.

It was so decided.

Paragraph 23

Mr. STEVENSON (United States of America) proposed that the beginning of the third sentence should read: "It was added that in the event of international agreement on a maximum breadth of the territorial sea of 12 miles, free transit should be maintained ...".

Mr. NJENGA (Kenya) said that such an amendment was likely to jeopardize what had already been accomplished, since present international law already recognized the 12-mile limit adopted by many States.

Mr. CASTAÑEDA (Mexico) agreed with that view. The "further extension" referred to related to the extension which might be agreed upon beyond the limits at presently recognized by international law. The 12-mile limit had already been enforced by many countries, including his own, for more than 40 years and was recognized by international law. Consequently, the proposal of the United States representative

would not reflect the real international situation; a "further extension" could not be an extension up to 12 miles. A more neutral formula should therefore be found which would take into account the real situation - that States were now authorized to have a territorial sea exceeding 12 miles in width - and would not provide that an increase from 3 to 12 miles represented a "further extension" accepted by all.

Mr. STEVENSON (United States of America) said that there seemed to be a basic misunderstanding, because in his opinion the paragraph under consideration expressed a point of view which was quite different from the one set out in the preceding paragraphs, since it referred to recognition in an international treaty of the establishment of a 12-mile limit. The expression "further extension" was meaningless, because it was not known what was being extended. Like other paragraphs, the paragraph should reflect exactly the point of view of delegations to which it was supposed to refer.

Mr. DJALAL (Indonesia) agreed with the representative of Mexico that the 12-mile limit was already recognized in international law. The beginning of the sentence under consideration could, if necessary, be amended to read: "It was added that if there was no international agreement on a further extension of the territorial sea, free transit should be maintained in the new expanded territorial sea through and over straits used for international navigation ...".

Mr. MOVCHAN (Union of Soviet Socialist Republics) recalled that his delegation had made no attempt to have paragraph 22, which had reflected the point of view of coastal States, amended, in the belief that those States were in the best position to assess the correctness of the text, since the report should only include what had been said.

Paragraph 23 reflected what had been said by States which advocated the maintenance of free transit through straits used for international navigation. The Soviet delegation had contributed to that discussion, and recognized that the Rapporteur had done an excellent job in balancing the various positions expressed. It was therefore at a loss to understand the attempts of some delegations which had not taken part in the discussion, such as the Indonesian delegation, to upset a balance which had been so difficult to achieve. The Committee should not open a new discussion of substance, but merely report on what had been said. In that connexion, the United States proposal appeared to improve the present text, but if it caused difficulties, the Soviet delegation considered that all reference to a "further extension" of the territorial sea could be simply deleted and the sentence could start: "It was added that free transit should be maintained through and over straits ...".

Mr. STEVENSON (United States of America) accepted that proposal.

The Soviet amendment was adopted.

Mr. PARDO (Malta) pointed out that no mention of the principle of non-discrimination had been made in paragraphs 22 or 23. He therefore wondered whether the end of the fifth sentence of paragraph 23 might not be amended to read: "... which the coastal State and the flag-State would enforce without discrimination".

Mr. REBAGLIATTI (Argentina), Mr. VALDIVIESO (Peru) and Mr. CUENCA ANAYA (Spain) suggested changes in the Spanish text of the fourth and ninth sentences of paragraph 23.

Mr. STEVENSON (United States of America) said that the ninth and tenth sentences of paragraph 23 reflected the proposals made by his delegation. The present wording of those two sentences might leave the impression that the United States delegation had suggested that existing civil aviation regulations should be supplemented, whereas its view was that those measures should be taken within the framework of the future treaty on the law of the sea. The ninth sentence should therefore be amended to read: "In addition, it was stated that the law of the sea treaty should require State, including military, aircraft normally to observe existing civil aviation regulations, and also require State aircraft to operate at all times with due regard for the safety of navigation of civil aircraft". The following sentence would read: "State aircraft exercising a free transit right would be strictly liable for accidents caused by deviations from such regulations".

Mr. DJALAL (Indonesia) asked why reference was made to a "free transit right" in the penultimate sentence of the paragraph, whereas all the preceding paragraphs merely mentioned "free transit".

Mr. STEVENSON (United States of America) said that the use of the word "right" was intended to ensure that any aircraft exercising that right could be held liable.

Mr. AKYAMAC (Turkey) asked whether the word "particular" in the last sentence could not be deleted, since he considered that it had been understood that international law, where it had existed, had applied in all cases; in addition, that word had not been used in any working papers or statements.

The meeting rose at 6.30 p.m.

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

held on Thursday, 17 August 1972, at 11 a.m.

Chairman: Mr. MARTÍNEZ MORENO El Salvador

DRAFT REPORT OF SUB-COMMITTEE II (continued) (A/AC.138/SC.II/L.13 and Add.1)

Section II (continued) (A/AC.138/SC.II/L.13)

Paragraph 20 (concluded)

Mr. ABDEL-HAMID (Egypt), Rapporteur, informed the Sub-Committee that he and the representative of Malta had agreed to recommend that the following sentence be added at the end of paragraph 20: "In this connexion, reference was made to the protection of international rights and interests in the zone".

It was so decided.

Paragraph 20, as amended, was adopted.

Paragraph 22 (concluded)

Mr. ABDEL-HAMID (Egypt), Rapporteur, informed the Sub-Committee that after consultations with all the parties concerned, he recommended that the word "could" in the third sentence of the paragraph should be retained and that the word "could" in the sixth sentence should be replaced by the word "would".

It was so decided.

Paragraph 22, as amended, was adopted.

Paragraph 23 (concluded)

Mr. ABDEL-HAMID (Egypt), Rapporteur, asked that the last three sentences of the paragraph should be replaced by the following text:

"In addition, it was stated that the treaty on the law of the sea should require State, including military, aircraft to normally observe existing civil aviation regulations, and also require State aircraft to operate at all times with due regard for the safety of navigation of civil aircraft. State aircraft exercising a free transit right would be strictly liable for accidents caused by deviations from such regulations. Finally, it was underlined that existing international agreements on straits should not be affected."

It was so decided.

Paragraph 23, as amended, was adopted.

Paragraph 19 (continued)

Mr. SMOQUINA (Italy) said he would like a ruling from the Chairman on the question of what should be included in the report in accordance with United Nations practice, i.e. whether the report should reflect only points made in the official meetings of the Sub-Committee, or whether it should also reflect points made during unofficial negotiations.

Mr. ZOTIADES (Greece) said he wished to associate himself with the Italian representative's request for a ruling on that question. It was his understanding that the report should be drawn up purely on the basis of the official records of the Sub-Committee. That had always been United Nations practice and, in his view, it would be unwise to deviate from it.

Mr. FRANCIS (Jamaica) said that the informal negotiations held by the Sub-Committee had been of a rather unusual type, and in view of the importance of the report it would be unfortunate if various points were left out just because they had been made in informal meetings of the Sub-Committee. What mattered most was that the report should give a neutral and balanced account of what had happened.

Mr. AKYAMAC (Turkey) said a ruling from the Chair on that question was not only undesirable but might be prejudicial to the future work of the Sub-Committee. It was clear from paragraph 13 of the report that the Sub-Committee itself had decided to hold informal meetings and those meetings could not be regarded as the usual informal exchange of views between delegations. Sponsors of amendments had introduced their amendments at those meetings because the Sub-Committee had decided to follow that procedure, and if the views expressed were excluded from the report, it would create an atmosphere of mistrust and delegations would in future have to insist on expressing their views in the formal meetings as well.

The CHAIRMAN said he would prefer to consult the United Nations Legal Counsel before ruling on such an important question. He did not feel that a ruling at the present stage would facilitate the work of the Sub-Committee. The best solution would perhaps be to take each case as it arose and see if some kind of compromise solution could be found.

Mr. DJALAL (Indonesia) felt that the problem raised by the words in the second set of parentheses in paragraph 19 might be solved by referring simply to "delimitation between adjacent or opposite States and matters relating thereto", as already suggested by the Rapporteur.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that an alternative solution would be to delete the parenthetical words in question entirely.

Mr. ZOTIADES (Greece) said he was willing to accept the last proposal by the Rapporteur, since that solution would be in line with his delegation's thesis that the Sub-Committee should not depart from United Nations practice in drafting its report.

Mr. AKYAMAC (Turkey) said that his delegation would prefer something that would reflect, at least obliquely, what had been discussed in the Sub-Committee and the informal meetings, although, with regard to the wording suggested by the Indonesian representative, it would prefer the words "circumstances relating thereto" rather than

"matters relating thereto". He did not believe that it would be out of order for the report to include a reference to the Turkish delegation's amendment, since it had been referred to in official meetings of the plenary Committee and the Sub-Committee. His delegation could not, however, take any final decision on the proposals made concerning paragraph 19, since it was still awaiting instructions from its Government on the question.

Mr. PARDO (Malta) suggested that the Sub-Committee should leave paragraph 19 in abeyance and proceed with its consideration of the remaining paragraphs.

It was so decided.

Paragraph 24

Mr. PARDO (Malta) suggested that, in the penultimate phrase of paragraph 24, the words "the continental shelf of certain islands," should be deleted, since reference to that aspect was made in paragraph 36.

Mr. SMOQUINA (Italy) pointed out that, when the time came to consider paragraph 36, his delegation would probably suggest a new wording for it.

Mr. ZOTIADES (Greece) said that his delegation had some difficulties with paragraph 24 and that it wished to enter a reservation on its wording for the same reasons that it had entered a reservation on paragraph 19. It had carefully studied the summary records of the Sub-Committee's meetings, but had found no reference to the position of the Turkish delegation on islands. It was therefore of the opinion that the wisest solution would be to reproduce amendments which had been withdrawn in the annex to the report of the Sub-Committee. Thus, nothing of the report's balance would be lost by following the United Nations practice of using summary records as a basis for the preparation of reports.

Mr. REBAGLIATTI (Argentina) said that, near the beginning of paragraph 24, the word "obligaciones" in the Spanish text did not correspond exactly to the word "duties" used in the English text. His delegation therefore suggested that the word "obligaciones" should be replaced by the word "deberes" in the Spanish text. Also, it was of the opinion that the idea expressed would be clearer if the words "duties of States" were followed by the words "in respect of" instead of the word "in".

The CHAIRMAN said that, with regard to the first suggestion by the delegation of Argentina concerning the Spanish text, he did not think that there would be any difficulty in replacing the word "obligaciones" by the word "deberes". With regard to the second observation made by the delegation of Argentina, he thought that suggestion clarified the idea expressed. If he heard no objection, he would assume that the suggestion of the delegation of Argentina was accepted.

It was so decided.

Mr. JACOVIDES (Cyprus) said that he appreciated the efforts made by the Chairman and various delegations to facilitate the Sub-Committee's work. However, a question of principle was involved and his delegation's understanding was that, on the basis of United Nations practice, only statements included in the summary records should be used for the preparation of the Sub-Committee's report. It therefore considered that postponing consideration of certain paragraphs of the report could only delay the Sub-Committee's work.

Mr. FRANCIS (Jamaica) said that he had understood that the purpose of postponing the consideration of certain paragraphs was to make it possible to reach a compromise solution. The traditional approach to the preparation of the report was to use summary records, but in 1971 a more pragmatic approach had been used in the preparation of the report of the plenary Committee and the report of Sub-Committee II. He therefore considered that it should be possible to find a compromise solution for the present situation.

Mr. AKYAMAC (Turkey) said that the representative of Greece had inaccurately stated that the Turkish amendment had been withdrawn. That was not the case and, if necessary, his delegation would have to request the opportunity to introduce its amendment formally.

Mr. WARIOBA (United Republic of Tanzania) said that if the consideration of certain paragraphs of the report was postponed at present, the same problems would arise again at a later stage. His delegation was of the opinion that unless it was possible to find a compromise solution, it would be necessary to adjourn the debate on the adoption of the report and to hold a meeting in order to give delegations the opportunity to state their positions again.

The CHAIRMAN agreed with the suggestion made by the Tanzanian representative. However, it would first of all be necessary for delegations with different points of view to try to find a compromise solution. He therefore suggested that the consideration of paragraph 24 should be left in abeyance and that the members of the Sub-Committee should go on to consider paragraph 25.

It was so agreed.

Paragraph 25

Mr. ARYUBI (Afghanistan) said that paragraph 25 was of particular interest to the developing land-locked countries. His delegation was therefore surprised to see that it contained no reference to the rights and interests of those countries. It considered that the paragraph was not balanced and that it should be improved so as to reflect the differing views of delegations.

Mr. ABDEL-HAMID (Egypt), Rapporteur, thought that the point raised by the representative of Afghanistan was covered in paragraph 33.

Mr. ARYUBI (Afghanistan) said that his delegation was aware of the reference to the interests and rights of the land-locked countries in paragraph 33, but that would not help to balance paragraph 25. In addition, a reference was made in paragraph 33 to regional or bilateral arrangements, with which his delegation could not agree.

Mr. AGUILAR (Venezuela) said that his delegation had some difficulties with the arrangement of the ideas in paragraph 25. It therefore suggested that the first sentence of the paragraph should be deleted and that the rest of the paragraph should be divided into two parts, the first beginning with the words "With regard to the exclusive economic zone" at the beginning of the present second sentence, and the second with the words "With regard to coastal State preferential rights" at the beginning of the present third sentence. Finally, as to the last two sentences of the paragraph, his delegation would agree to their deletion or, if the Sub-Committee wished, to their forming a separate paragraph.

Mr. PARDO (Malta) said that his delegation wished to suggest that the word "some" in the last sentence of paragraph 25 should be deleted.

Mr. OLMEDO-VIRREIRA (Bolivia) said that his delegation shared the concern expressed by the representative of Afghanistan that the wording of paragraph 25 did not reflect the position of the land-locked countries.

Mr. MHLANGA (Zambia) said that his delegation shared the view of the delegations of Afghanistan and Bolivia that paragraph 25 did not adequately reflect the balanced nature of the formal and informal discussions held by the Sub-Committee. The penultimate sentence of the paragraph contained a cross-reference to paragraphs 27 to 31, but his delegation was of the opinion that it should also refer to paragraph 33.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that he did not want to complicate the work on the adoption of the report but he pointed out that, so far, practically every paragraph of the draft report had been the subject of debate. It was impossible in a short report to satisfy all delegations, since the report in itself was a result of a compromise. Every report was different, but the most important thing was that it should be balanced.

He therefore requested delegations to keep in mind the fact that the report provided information on what had taken place at the Sub-Committee's meetings. He considered that paragraphs 1 to 25 of the report contained no substantive decisions and that they did not prejudge the positions adopted by delegations. Paragraphs 25 to 40 reflected the list of subjects and issues and the unofficial negotiations held on that question. He therefore wondered whether it was worth while to make changes in any part of the report if most delegations could agree that the report was balanced and that the first 25 paragraphs were only for information and did not refer to matters of principle. He suggested that those paragraphs could be taken together and approved as a whole.

Mr. YANKOV (Bulgaria) said that he did not think the balance of paragraph 25 would be disturbed if the Afghan proposal was accepted. He suggested that a new penultimate sentence should be added to read as follows: "Reference was also made to the rights and interests of land-locked States with regard to different ocean areas".

As to the Venezuelan suggestions, he expressed the view that, if the paragraph were to be divided, it would have to be divided into four rather than two separate paragraphs. He suggested the addition of the words "referred to in paragraphs 26 and 27" at the end of the paragraph.

Mr. ZEGERS (Chile) supported the Venezuelan suggestion and said that it was important that the report should follow the order of the list of subjects and issues. The position of the land-locked countries could be covered in a separate paragraph.

His delegation could accept the references made in the report to the economic zone, on the understanding that it was also dealt with in the report of the plenary Committee. In his view, the paragraph should also contain a reference to the draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10) submitted by the Kenyan delegation and to the Declaration of Santo Domingo, approved by the meeting of Ministers of the Specialized Conference of Caribbean Countries on Problems of the Sea (A/AC.138/80).

Mr. YANGO (Philippines) agreed that the two main topics dealt with in the paragraph should become separate paragraphs. He also agreed with the suggestion of the representative of Bulgaria concerning the land-locked countries, but that it should relate to paragraph 33, in order to obviate repetition or overlapping with regard to the interests and needs of land-locked countries.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that, although his delegation considered the paragraph acceptable as it stood, if the Sub-Committee did decide to restructure it, it would prefer to see it restructured in the following manner: the first sentence would not be deleted, as the representative of Venezuela had suggested, but would become a separate introductory paragraph comparable to paragraph 21; the next sentence would then become the new paragraph 26; the third sentence would become the new paragraph 27; and the last two sentences would become the new paragraph 28. With regard to the suggestion made by the representative of Malta, he expressed the view that both the word "some" and the words "and areas" in the last sentence should be deleted. He drew the Sub-Committee's attention to the fact that the first sentence of what would become the new paragraph 28 was applicable to the new paragraphs 26 and 27.

His delegation fully supported the position of the land-locked countries and felt that the first sentence of paragraph 25 should refer to that position.

Mr. AGUILAR (Venezuela) expressed support for the Soviet suggestion and agreed with the Rapporteur that there should be separate paragraphs for separate subjects.

The CHAIRMAN said that, if there was no objection, he would take it that, subject to a decision on the Chilean suggestions, the restructuring of the paragraph on the basis of the Soviet representative's résumé, together with an additional sentence to be drafted by the Rapporteur on the basis of the one suggested by the representative of Bulgaria, was acceptable to the Sub-Committee.

It was so agreed.

Mr. ABDEL-HAMID (Egypt), Rapporteur, pointed out that a reference to the draft articles submitted by Kenya was contained in paragraph 30.

Mr. ZEGERS (Chile) replied that that paragraph did not refer to the economic zone but to fishing and the conservation of living resources.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that the Declaration of Santo Domingo would in any event be referred to in the report of the plenary Committee and he doubted whether the Sub-Committee's report should refer to documents that had been submitted elsewhere.

Mr. AGUILAR (Venezuela) expressed support for the view of the Soviet representative and said that the Sub-Committee's report should reflect only what had been said in its own debates.

Mr. ZEGERS (Chile) said that, even if there was no mention of the Declaration of Santo Domingo, there should be a reference to the draft articles submitted by Kenya at the end of the new paragraph 26, since the draft articles had in fact been before the Sub-Committee.

Mr. FRANCIS (Jamaica) expressing support for the representative of Chile, said that there was a precedent for including in the report of the Sub-Committee matters that related to it.

Mr. CASTAÑEDA (Mexico) said that he saw no reason why the report should not say that in the debates reference had been made to the Kenyan draft articles and the Declaration of Santo Domingo.

Mr. PARDO (Malta) felt that the references in paragraphs 17 and 30 were adequate and that a further reference would be superfluous.

Mr. STEVENSON (United States of America) endorsed the remarks of the representative of Malta and said that, if references to documents submitted by some delegations were to be repeated, the same course would have to be followed in the case of other delegations.

Mr. REBAGLIATTI (Argentina) agreed with the representative of Mexico and pointed out that, in introducing his delegation's draft articles, the representative of Kenya had in fact referred to the Declaration of Santo Domingo.

Mr. NJENGA (Kenya) confirmed that he had mentioned that Declaration and said that he had no objection if other delegations wished to have repeated references to their own documents.

Mr. ZOTIADES (Greece) expressed support for the view that all delegations that had submitted documents to the Sub-Committee had a right to see that fact mentioned in the report.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that if any individual proposals were to be mentioned then all should be mentioned.

Mr. FONSECA TRUQUE (Colombia), supporting the Chilean suggestions, said that there was no point in referring to all the draft articles that had been submitted. The Declaration of Santo Domingo, however, had not only been submitted but had been referred to in the Sub-Committee's debates.

Mr. SHITTA-BEY (Nigeria) also supported the view that a reference should be made in the report to the draft articles submitted by Kenya and to the Declaration of Santo Domingo.

The meeting rose at 1.35 p.m.

SUMMARY RECORD OF THE FORTY-SEVENTH MEETING

held on Thursday, 17 August 1972 at 3.55 p.m.

Chairman: Mr. MARTINEZ MORENO El Salvador

DRAFT REPORT OF SUB-COMMITTEE II (concluded) (A/AC.138/SC.II/L.13 and Add.1)

Section II (concluded) (A/AC.138/SC.II/L.13)

Paragraph 25 (new paragraphs 25 - 28) (concluded)

Mr. PARDO (Malta), referring to the proposals made at the 46th meeting, said that he had no objection to a reference in the new paragraph 26 to the Declaration of Santo Domingo, as suggested by the Chilean representative, but in that case he thought there should also be a reference to the conclusions of the report on the Yaoundé Seminar (A/AC.138/79). He said he had no objection, either, to the excellent draft articles on the concept of an exclusive economic zone, submitted by Kenya, being mentioned in the paragraph, but he would ask that there should also be a reference to the relevant chapter of the "Draft ocean-space treaty: working paper submitted by Malta (A/AC.138/53)". 34/

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that he would add at the end of that paragraph a sentence indicating that during the debate there had been a reference to the draft articles submitted by Kenya and to the Declaration of Santo Domingo. Similarly, there should be added at the end of the new paragraph 27 a sentence on the following lines: "During the debate, reference was made to draft articles and working papers submitted by Malta, the Union of Soviet Socialist Republics, Canada, the United States of America, jointly by Australia and New Zealand, and by Japan".

Mr. REBAGLIATTI (Argentina), replying to a question from the Chairman, said that his delegation had decided, in a spirit of understanding and conciliation, not to press the suggestions it had made at the 46th meeting.

Paragraph 25 (new paragraphs 25 - 28), as amended, was adopted.

Paragraph 26 (new paragraph 29)

Mr. VONAU (Poland) said that on many occasions, both at the present session and at earlier sessions of the Committee, his delegation had stressed its view that freedom of fishing was absolutely inseparable from regulation of fishing, in view of the conditions in which that freedom was being exercised. Consequently, the Polish delegation wished that, in order to reflect more accurately the view expressed by Poland during the debate, the phrase beginning with the words "in particular to fishing and regulation" in the first sentence should be amended to read: "in particular to freedom of fishing and its regulation, management and conservation ...".

34/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), annex I.11, p.105.

Mr. YANKOV (Bulgaria) supported that suggestion. Furthermore, in order to follow the terminology used in existing conventions on the law of the sea, the end of the first sentence of the paragraph should be amended to read: "as well as to the freedom of laying submarine cables and pipelines on the bed of the high seas".

Mr. AGUILAR (Venezuela) said that he would not oppose the amendments that had just been suggested, although they did not accurately reflect what had been said during the debate, but he considered that if they were adopted a number of other changes should be made in the paragraph to take account of the views of other delegations, particularly on the questions of the limitations to be imposed on fishing on the high seas, the regulation of fishing on the high seas, and the part to be played in that respect by the international (world or regional) authority. Thus, two solutions were possible: either the whole paragraph should be changed so as to take account of all the views expressed, or - the solution that the Venezuelan delegation would prefer - the existing text should be left unchanged. That text had been very carefully drafted in order to avoid the type of controversy that was now beginning, and such phrases as "and other freedoms and uses, in particular to fishing and regulation, management and conservation of the living resources of the high seas" were specifically designed to ensure a balance between the positions of the various delegations, which had been discussed at great length during the informal consultations.

Mr. NJENGA (Kenya) agreed with the representative of Venezuela that the paragraph as it stood was balanced, based on the facts, and so drafted as not to give rise to controversy. That balance would certainly be upset if there were any mention of freedom of fishing as such. He therefore appealed to the Polish representative not to press his suggested amendment, or else to agree to the addition of the words "to the question of" before the new wording he had suggested, in order to make it clear that all the delegations were not in agreement on the point.

On the other hand, the delegation of Kenya had no objection to the suggestion made by the Bulgarian representative concerning the end of the first sentence.

Mr. AKYAMAÇ (Turkey) thought that in order to bring the text of the report into line with what had finally been decided concerning the list, the penultimate sentence of the paragraph should be amended to read: "and illicit traffic in narcotic and synthetic drugs".

Mr. YANKOV (Bulgaria) said that he was prepared to agree to the sub-amendment suggested by Kenya, and that he supported the suggestion just made by Turkey.

Mr. PARDO (Malta) also supported the amendment suggested by Turkey.

Mr. FRANCIS (Jamaica) asked whether the Turkish delegation meant by "synthetic drugs" the psychotropic substances to which Turkey had previously referred during the discussion on the list of subjects and issues (44th meeting).

Mr. AKYAMAÇ (Turkey) said that that was so, but he would prefer the broader term.

Mr. ABDEL-HAMID (Egypt), Rapporteur, felt that it would be better to follow the terminology used in the list of subjects and issues and adopt only the amendment previously proposed by Turkey, namely, the insertion of the single word "illicit".

Mr. AKYAMAC (Turkey) agreed.

It was so decided.

Mr. PARDO (Malta) said he would like to see added at the end of the penultimate sentence of the paragraph the words "and other matters". He was thinking in particular of such questions as those of artificial islands or floating harbours.

The Maltese amendment was adopted.

Mr. VONAU (Poland) said that the paragraph dealt with the question of the freedoms of the high seas; consequently he did not see why, in listing those freedoms, a distinction should be introduced with respect to freedom of fishing by the insertion of the words "to the question of".

Mr. AGUILAR (Venezuela) said that it was precisely in the case of fishing that freedom on the high seas gave rise to problems. No question had ever been raised regarding freedom of navigation through or overflight of the high seas, or freedom of laying submarine cables and pipelines. With respect to freedom of fishing, however, divergent views had been voiced during the debate; some delegations believed that in future there should no longer be any freedom of fishing on the high seas, while others, on the contrary, wished to maintain that freedom, and others again considered that it should be strictly regulated by international authority, so that it was a question that had to be finally resolved by the future Conference on the law of the sea. The suggestion made by Kenya therefore appeared fully justified, particularly as it did not greatly affect the balance of the paragraph.

Mr. FONSECA TRUQUE (Colombia) and Mr. de SOTO (Peru) supported those observations.

Sir Roger JACKLING (United Kingdom) said that the wording originally proposed by the Rapporteur was completely satisfactory to his delegation, and wondered why the Polish delegation could not accept such a well balanced text.

After a discussion in which Mr. VONAU (Poland), Mr. YANKOV (Bulgaria), Mr. AGUILAR (Venezuela), and Mr. TELLO (Mexico) took part, Mr. VONAU (Poland) asked whether it would not be better simply to delete a part of the first sentence of the paragraph, beginning with the words "to freedom of navigation" and ending with the words "and regulation".

Mr. YANKOV (Bulgaria) said that, in view of the difficulties raised by the various amendments proposed, he would be willing to agree to a return to the original text proposed by the Rapporteur.

The CHAIRMAN said that, in order to permit the discussion to make progress, he wished to appeal to the spirit of co-operation of delegations, and reminded them once more that the original formula proposed by the Rapporteur was the result of long and detailed work aimed at arriving at a balanced text on the difficult problem in question.

Mr. VONAU (Poland) said that he was prepared, in a spirit of conciliation, to withdraw the amendments he had proposed.

Paragraph 26 (new paragraph 29), as amended, was adopted.

Paragraph 27 (new paragraph 30)

Mr. STEVENSON (United States of America) suggested that the beginning of the first sentence of the paragraph should be amended to read: "... beyond the territorial sea, reference was made to rational utilization of such resources because of their importance in ensuring man's nutrition ...".

The United States amendment was adopted.

Mr. PARDO (Malta) suggested that the end of the penultimate phrase in the paragraph should be amended to read "... the protection of the marine environment as a whole and the conservation and management of the living resources of the sea ...".

The Maltese amendment was adopted.

Mr. DUDGEON (United Kingdom) suggested two minor drafting changes in the English text.

Mr. FRANCIS (Jamaica) thought that at the beginning of the paragraph after the words "dependent upon their coastal fisheries for their", the text should be amended to read "livelihood or economic development, to the interests of other States, particularly geographically disadvantaged States, including land-locked and ...".

Mr. OLMEDO-VIRREIRA (Bolivia) said that he would prefer the deletion of the reference to land-locked and "shelf-locked" countries, and the amendment of the proposal made by Jamaica to read "... to the interests of other States, particularly countries that were the least advanced because of their geographical situation".

Mr. FRANCIS (Jamaica) pointed out that what was involved was a statement by a delegation that had been found particularly striking by the representatives of many countries, and it should be reported accurately.

Mr. OLMEDO-VIRREIRA (Bolivia) said that he would leave the matter to the Rapporteur, who could find in the summary record the wording used by the delegation concerned.

Paragraph 27 (new paragraph 30), as amended, and subject to the amendment to be made by the Rapporteur, was adopted.

Paragraph 28 (new paragraph 31)

Mr. KUMAGAI (Japan) thought that the beginning of the paragraph sounded somewhat too subjective. He suggested that it should read "Reference was made to the need for more precise rules...".

The Japanese amendment was adopted.

Paragraph 28 (new paragraph 31), as amended, was adopted.

Paragraph 29 (new paragraph 32)

Mr. ABDEL-HAMID (Egypt), Rapporteur, indicated that the last comma in the paragraph should be deleted.

Mr. VINDENES (Norway), speaking on behalf of the delegations of Denmark, Sweden, Norway and Iceland, said that those delegations had no objection to the text as drafted by the Rapporteur. Nevertheless, they would like to see the third sentence replaced by the following wording: "Particular reference was made to developing coastal States and to other States or areas heavily dependent on fisheries. The view was stated that any future régime should safeguard the special interests and needs of such States and areas".

Mr. TELLO (Mexico) proposed that the first sentence should be amended to read "It was generally recognized that coastal States sought to reserve for their nationals the living resources of the sea in areas adjacent to their coasts".

Mr. KUMAGAI (Japan) considered that, as in the preceding paragraph, it would be more accurate to say "Many delegations expressed the view that coastal States ...".

Mr. HARRY (Australia) suggested that the second sentence be amended to read "There was a wide support for the view that this entailed certain specific rights and duties for all coastal States with respect to utilization ...".

Mr. AKYAMAÇ (Turkey) proposed the following wording for the last phrase in the paragraph: "taking into account the interests, traditional and other, of distant-waters fisheries".

Mr. VALDIVIESO (Peru) supported the proposal of the Mexican representative and suggested that it should be supplemented by adding the sentence: "On the other hand, other delegations considered it advisable to take into account the interests of traditional distant-water fisheries". The last sentence in the paragraph would then be deleted.

Mr. FRANCIS (Jamaica), referring to the proposal by the Norwegian representative, said that the draft report simply restated a universally recognized principle, which was included in the Declaration of Principles contained in General Assembly resolution 2749(XXV). He believed that it would be more prudent not to introduce a new idea, and hoped that the Norwegian representative would not press for the inclusion of his amendment.

Mr. FONSECA TRUQUE (Colombia) supported the Mexican proposal, adding that there should also be a reference to "sovereign rights".

Mr. REBAGLIATTI (Argentina) said he supported the Mexican representative's proposal, but wondered if it could not be combined with the original text by saying, for instance: "had a special interest in reserving for their nationals the living resources ...". He supported the suggestion of the Colombian representative and that of Australia, but believed that there might be a compromise between the latter and the Norwegian representative's proposal, in view of the reservations expressed by the Jamaican representative; the reference might, for instance, be not to "all coastal States" but to "some coastal States".

Mr. NJENGA (Kenya) supported the Mexican proposal as reworded by the representative of Argentina. He hoped that the Japanese representative would not insist on his suggestion, since no one in the Sub-Committee had questioned the interest of coastal States in the living resources of the sea in areas adjacent to their coasts, and the wording used by the Rapporteur was extremely flexible. However, if the Japanese representative maintained his proposal, a second sentence should be added to read: "One delegation expressed a contrary view". The amendment proposed by the Australian representative gave rise to no problems. As to the Norwegian representative's proposal, it was true that the view reflected had been expressed on many occasions, but perhaps it would suffice to add a single sentence to the existing text.

Mr. PARDO (Malta) said that it would be more accurate in the last sentence of the English text to say "distant-water". He also suggested that in the same sentence the words "under various schemes" should be deleted.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the representatives of Mexico and Peru had just given him a text, on which they had agreed, to replace the first sentence. That text read: "It was generally recognized that coastal States sought to reserve for their nationals the living resources of the sea in areas adjacent to their coasts. On the other hand, some delegations considered it advisable to take into account the interests of traditional distant-water fisheries".

Sir Roger JACKLING (United Kingdom) said that the large number of amendments and sub-amendments proposed made it very difficult for his delegation to take a position on them. He therefore suggested that the Sub-Committee should pass on immediately to the consideration of paragraph 30 and revert to paragraph 29 when the Chair was able to submit a new text - unless, of course, delegations preferred to adopt the paragraph as originally drafted by the Rapporteur, which would undoubtedly be the best solution.

Mr. TELLO (Mexico) agreed with the United Kingdom representative.

Mr. ABDEL-HAMID (Egypt), Rapporteur, agreed with the speakers who had asked that paragraph 29 should be adopted as it stood, apart from the inclusion of the amendment submitted by Australia and a sentence, as proposed by the representative of Kenya, to meet the suggestion of the Norwegian representative.

Mr. STEVENSON (United States of America) approved the Rapporteur's proposal.

Mr. VINDENES (Norway) said that he had followed the discussion with close attention, and wished to repeat that the delegations for which he spoke had no objection to the existing text, or to the various amendments that had been submitted. They only wished that the report should contain an appropriate reflection of the position they had always maintained that there should be a reference to coastal States that were heavily dependent on fisheries. He thanked the representative of Kenya for his suggestion, and said he was prepared to consider any compromise wording that that representative might wish to propose.

Mr. PARDO (Malta), supported by Mr. KUMAGAI (Japan) and Mr. KEDADI (Tunisia), suggested that paragraph 29 should be considered and adopted sentence by sentence. That would no doubt help to clarify the situation.

It was so agreed.

The CHAIRMAN invited the Sub-Committee to consider the first sentence, to which amendments had been submitted by the representatives of Mexico, Peru and Japan.

Mr. KUMAGAI (Japan) withdrew his proposed amendment.

Sir Roger JACKLING (United Kingdom) thought that the word "advisable" suggested by the Peruvian representative was too weak, and should be replaced by either "essential" or "necessary".

Mr. STEVENSON (United States of America) thought that the only way of giving the proper balance to the sentence suggested by the Mexican representative would be to say: "A number of delegations referred to the aspirations of the coastal States ...". As to the sentence proposed by the Peruvian representative, he himself would prefer a different wording, such as "Other delegations expressed the view that coastal States should be given appropriate preferences on the coastal and anadromous species, taking into account the interests of distant-water fisheries".

The CHAIRMAN suggested that to find a way out of the impasse the representatives of Mexico, Peru, the United Kingdom and the United States should consult each other and submit a joint draft for the first sentence.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that it seemed pointless at that late hour to think of starting to redraft a text which, after numerous consultations, had been drafted with the greatest care by the Rapporteur during his long hours of work. After all, the Sub-Committee was producing only an information document, whose form would have no effect on the conduct of its work. If new negotiations were nevertheless to be undertaken, his delegation would ask to take part in them, after receiving the Russian version of the various amendments proposed. He appealed again to the members of the Sub-Committee to accept as it stood the perfectly balanced and impartial text of the Rapporteur.

The CHAIRMAN recognized the soundness of the arguments advanced by the Soviet representative. If the Sub-Committee wished to adopt a procedure different from what he himself had thought it appropriate to suggest, he would certainly not object.

Mr. DJALAL (Indonesia) associated himself with the representatives of the United Kingdom and the Soviet Union in inviting the members of the Sub-Committee to withdraw their amendments and adopt the text as drafted by the Rapporteur.

Mr. LAGARDE (France) also supported that view. He pointed out that his delegation had not proposed any amendment, and that the amendments made to early paragraphs had not in any way changed the substance.

Mr. VINDENES (Norway) suggested that the Sub-Committee should maintain the Rapporteur's draft, adding only a fourth sentence reading: "Equally reference was also made to States or areas heavily dependent on fisheries whose special interests and needs should be taken fully into account in any future régime".

Mr. FONSECA TRUQUE (Colombia) observed that any amendment to a perfectly balanced text would necessarily entail the adoption of another amendment to offset it.

Mr. CASTANEDA (Mexico) said he wished to maintain his proposed amendment, and would accept the reference to anadromous species suggested by the United States, as well as the suggestion by the United Kingdom that the word "advisable" be replaced by the word "necessary".

The CHAIRMAN invited the Sub-Committee to adopt the first part of paragraph 29, consisting of the proposals by the Mexican, Peruvian and Australian representatives, with the amendments proposed by the United States, the United Kingdom and Turkey.

Mr. REBAGLIATTI (Argentina) asked the Mexican representative if he would agree to the following wording in the Spanish text: "los estados costeros desean reservar para sus nacionales", in the first sentence.

Mr. CASTANEDA (Mexico) said that he would.

The first part of paragraph 29 (the new paragraph 32), as proposed by Mexico, Peru and Australia, and amended by the United States, the United Kingdom and Turkey, was adopted.

The CHAIRMAN invited the Sub-Committee to consider the second part of the paragraph, namely the sentence proposed by Norway, which would be inserted after the third sentence of the present paragraph 29.

The fourth sentence of paragraph 29 (the new paragraph 32), proposed by Norway, was adopted.

The CHAIRMAN invited the Sub-Committee to decide on the Colombian amendment, referring to exclusive "sovereign" rights instead of to exclusive "fishing" rights before the reference to preferential rights in the last sentence.

The Colombian amendment to the last sentence of paragraph 29 (the new paragraph 32) was adopted.

Paragraph 29 (new paragraph 32), as a whole, as amended, was adopted.

Paragraph 30 (new paragraph 33)

Mr. NJENGA (Kenya) proposed that the words "sovereign rights and the exercise of" should be inserted before the words "exclusive jurisdiction" in the second sentence.

Mr. CASTAÑEDA (Mexico) endorsed the Kenyan amendment.

The Kenyan amendment was adopted.

Mr. PARDO (Malta) proposed the addition of a sentence mentioning the zonal approach which his delegation had discussed. It would read:

"A zonal approach under which there would be international management of ocean fisheries, together with exclusive jurisdiction of the coastal State over living resources within a 200-mile economic zone to be exercised in accordance with treaty-defined principles, was contained in the draft ocean-space treaty submitted by Malta".

The Maltese amendment was adopted.

Mr. BEEBY (New Zealand) said that the words "right and responsibility" in the 27th line of the paragraph should be in the plural.

The New Zealand amendment was adopted.

Mr. CUENCA ANAYA (Spain) proposed the following amendments to the Spanish text of paragraph 30: the deletion of the words "la administración....reglamentaria", in the thirteenth and fourteenth lines, and of the words "como guardián", in the fifteenth line of the Spanish text, and substitution of the words "en calidad de guardián, la administración exclusiva y la competencia para reglamentar". Moreover, the words "entre otros" should be used instead of "entre otras cosas" in the fifth line of the Spanish text.

The CHAIRMAN said that, if there were no objections to those corrections to the Spanish text, paragraph 30 could be adopted.

Paragraph 30 (new paragraph 33), as amended, was adopted.

Paragraph 31 (new paragraph 34)

Mr. BLAEHR (Denmark) proposed two additions. The first consisted of inserting the following text at the end of the third sentence: "Another view was that this was also the case with respect to anadromous species". The second was the addition of the following sentence at the end of the paragraph: "It was also suggested that control and enforcement powers should primarily be vested in the regional fisheries organizations".

The two amendments proposed by Denmark were adopted.

Mr. PARDO (Malta), speaking with reference to the role of international fishery organizations, proposed the addition of a sentence which would mention the criticism voiced by some delegations. The sentence would read: "Another view expressed was that international fishery organizations should be integrated within a more comprehensive framework".

The amendment proposed by Malta was adopted.

Mr. VALDIVIESO (Peru) proposed that the words "it was stated" in the third sentence should be replaced by "some delegations stated".

The amendment proposed by Peru was adopted.

Paragraph 31 (new paragraph 34), as amended, was adopted.

Paragraph 32 (new paragraph 35)

Paragraph 32 (new paragraph 35) was adopted.

Paragraph 33 (new paragraphs 36 and 37)

Mr. OLMEDO-VIRREIRA (Bolivia) said that the Spanish text of the paragraph should be revised, because it did not clearly bring out the different views which had been expressed.

Mr. VALDIVIESO (Peru) said that a clearer distinction should be made between the situation of land-locked countries and that of other countries.

Mr. MHLANGA (Zambia) suggested a redraft of paragraph 33 but, after comments thereon by Mr. NJENGA (Kenya), Mr. REBAGLIATTI (Argentina) and Mr. KEDADI (Tunisia), he said he would be satisfied with the following changes: the word "Various" to be inserted at the beginning of the paragraph; at the beginning of the second sentence, the words "Reference was made to" to be replaced by wording which suggested that agreement had been reached on the points subsequently listed; in the same sentence, the words "as well as to agreed arrangements (regional or bilateral)" to be deleted, the full stop at the end of that sentence to be replaced by a comma, followed by the words "and more specifically ..."; lastly, towards the end of that sentence, the phrase "the living resources of the sea" to be changed to "the natural resources of the sea", although he would not press that amendment if it gave rise to objections.

Mr. REBAGLIATTI (Argentina) observed that agreement had been reached only on a list of points, not on the points themselves.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that, to cover the suggestions which had been made, the second and third sentences might be revised to read: "It was agreed to consider the general principles of the law of the sea concerning such countries and more specifically the following points: free access ..." The list of points in the third sentence would then follow. — The reference to regional or bilateral arrangements would disappear. The word "Various" would be inserted at the beginning of the paragraph, but the word "living" near the end of the sentence would be retained, inasmuch as the Zambian representative was not insisting on its being changed.

Mr. UPADHYAY (Nepal), Mr. BACKES (Austria), Mr. NJENGA (Kenya), and Mr. OLMEDO-VIRREIRA (Bolivia) agreed to the wording read out by the Rapporteur.

Mr. REBAGLIATTI (Argentina) replying to a comment by Mr. ARYUBI (Afghanistan), said that the reference to "agreed arrangements (regional or bilateral)" could not be omitted. Several delegations, including his own, had spoken of such arrangements during the debate, and that fact must be reflected in the report.

Mr. SHITTA-BEY (Nigeria) and Mr. KAZEMI (Iran) agreed with the representative of Argentina.

Mr. KEDADI (Tunisia) said that he too felt that a reference to regional or bilateral arrangements should be made in the report. He suggested that they should be the subject of a separate paragraph which might read: "Reference was also made to agreed arrangements (regional or bilateral), although that reference was questioned by the land-locked countries."

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) and Mr. PARDO (Malta) endorsed the wording proposed by the representative of Tunisia.

Mr. MHLANGA (Zambia) said that, in a spirit of compromise, he too would accept it.

Mr. OLMEDO-VIRREIRA (Bolivia) said that the land-locked countries wanted widely applicable agreements that would make their position less dependent. That view should also be reflected in the report.

Mr. REBAGLIATTI (Argentina) suggested that the wording proposed by the representative of Tunisia should be amended to read as follows: "In this respect, reference was also made to agreements (bilateral or regional) to be concluded, although likewise this reference was questioned by delegations of land-locked countries, which considered that their interests would be better safeguarded by general agreements." That might meet the wishes of the Bolivian representative.

Mr. ARYUBI (Afghanistan) said that he could support the Argentine text but would prefer the reference at the end of the paragraph to be to "international" agreements.

Mr. UPADHYAY (Nepal) also supported the new wording as just amended by the representative of Afghanistan.

Mr. MHLANGA (Zambia) suggested that the end of the new paragraph should read as follows: "which considered that their interests would be better and more appropriately safeguarded by international agreements."

The CHAIRMAN said that if he heard no further objections he would suggest that the Sub-Committee should adopt paragraph 33, with the amendments proposed by the Rapporteur, along with the new paragraph proposed by the representative of Tunisia, as amended by the representatives of Argentina, Afghanistan and Zambia.

Paragraph 33 (new paragraphs 36 and 37), as amended, was adopted.

Paragraph 34 (new paragraph 38)

Mr. TELLO (Mexico) suggested that the end of the paragraph should be reworded to read: "including the countries with broad [continental] shelves which had exercised sovereignty over them for a period of time"; for what was involved was sovereignty, rather than jurisdiction.

Mr. PARDO (Malta) suggested that, for the sake of clarity, the first few words should read "including those which had exercised"

The Mexican amendment, as amended by the Maltese representative, was adopted.

Paragraph 34 (new paragraph 38), as amended, was adopted.

Paragraph 35 (new paragraph 39)

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that he would like to make a few changes in the wording of the paragraph. In the first place, the word "archipelago" in the English text should be replaced by "archipelagic" when it was used as an adjective. Secondly, in the last sentence the clause following the words "special régime" should be changed to read: "which would also accommodate other interests by providing for the innocent passage of foreign ships through designated sea lanes in archipelagic waters".

It was so decided.

Paragraph 35 (new paragraph 39), as amended, was adopted.

Paragraph 36 (new paragraphs 40 - 43)

Paragraph 19 (concluded) and paragraph 24 (concluded)

The CHAIRMAN said that following the comments made at the 46th meeting regarding paragraphs 19, 24 and 36, the representatives of Greece, Italy, Tunisia and Turkey had met and, in an exemplary spirit of compromise, had jointly drafted two new paragraphs to replace paragraph 36. The two new paragraphs would read:

"Reference was made to the various kinds of islands and to the criteria applicable to them, such as their size, their location, their population and the marine space related to them, in order to make a thorough study of the different situations which may arise. In particular, the régime of islands was referred to in connexion with islands under colonial dependence or foreign domination or control or under the sovereignty of a State and located in the continental shelf of another State in a different continent. Islands were also mentioned in general, as well as in specific contexts such as those of the territorial sea and the continental shelf and their delimitation, the exclusive economic zone beyond the territorial sea and other related matters."

"On the other hand, views were expressed by some delegations which emphasized the indivisibility of territorial sovereignty and jurisdiction and referred to the dangers inherent in drawing any distinction between islands according to their size, their location and their population, and between island States on the one hand, and islands under the jurisdiction of a State on the other. Stress was furthermore laid on the non-existence of a generally recognized concept of continent or of continental shelf, as well as on the unacceptability of putting forth notions which would apply to some continents and not to others. The régime for enclosed and semi-enclosed seas and for artificial islands and installations was also referred to."

He added that the delegations of Jamaica and of Trinidad and Tobago, which had originally wished to present amendments to the above text, had finally accepted it, subject to its being supplemented by the two following paragraphs:

"It was emphasized that the foregoing reference to islands in no way relates to island States. More particularly, with respect to the law of the sea, no distinction in the application of rules could be made between coastal States and island States."

"It was also stated that dependent island units maintain their inherent right, on attaining independence, to claim, on a basis of equality, all rights enjoyed by independent coastal States."

Mr. ABDEL-HAMID (Egypt), Rapporteur, pointed out that some parts of paragraphs 19 and 24 should now be deleted: in paragraph 19 the words in the second set of parenthesis "(for instance ... States, etc.)", and in paragraph 24 the words "and the special problems related to the continental shelf of certain islands", towards the end of the paragraph.

Paragraph 36 as originally drafted would thus be replaced by four new paragraphs - the two proposed by Greece, Italy, Tunisia and Turkey, and the two proposed by Jamaica, and Trinidad and Tobago. They would appear in the final version of the report as paragraphs 40 to 43.

Mr. CUENCA ANAYA (Spain) said that, while he did not object to the amendments, he regretted that the text of the proposed paragraphs had not been distributed earlier and that a Spanish version was not available.

Mr. PRIETO (Chile), Mr. OLMEDO-VIRREIRA (Bolivia) and Mr. FONSECA TRUQUE (Colombia) supported the remarks of the representative of Spain.

Mr. LAGARDE (France) said that he too would have liked to have had the opportunity to examine the proposed new paragraphs more carefully, preferably in French.

Mr. FRANCIS (Jamaica) pointed out that the delegations submitting the new paragraphs had met for consultations in the course of the day. The delegation of Trinidad and Tobago had seen the proposal of the four other delegations for the first time only a short while previously.

The CHAIRMAN said that, if there was no objection, the four new paragraphs proposed would replace the original paragraph 36 and that paragraphs 19 and 24 would be amended in line with the Rapporteur's suggestions.

It was so decided.

Paragraph 36 (new paragraphs 40 - 43), as amended, was adopted.

Paragraphs 19 and 24, as amended, were adopted.

Paragraph 37 (new paragraph 44)

Mr. PARDO (Malta) proposed the insertion of the words "the quality and" between the word "preserve" and the words "the ecological balance" and the words "and duties" between the word "rights" and the words "of coastal States" near the end of the paragraph.

The Maltese amendments were adopted.

Paragraph 37 (new paragraph 44), as amended, was adopted.

Paragraph 38 (new paragraph 45)

Paragraph 38 (new paragraph 45) was adopted.

Paragraph 39 (new paragraph 46)

Mr. PARDO (Malta) proposed the addition of a new sentence at the end of the paragraph, reading: "A further point mentioned was control in the use of such technology as might have serious effects on the marine environment".

The Maltese amendment was adopted.

Paragraph 39 (new paragraph 46), as amended, was adopted.

Paragraph 40 (new paragraph 47)

Mr. TELLO (Mexico) requested the deletion of the words "por último" at the beginning of the Spanish text of the paragraph.

Mr. AKYAMAC (Turkey) observed that the Rapporteur had been guided by the list of subjects and issues relating to the law of the sea which had been drawn up in compliance with General Assembly resolution 2750 C (XXV). However, the question of the effects of the provisions which would be adopted at the future Conference on the law of the sea on earlier multilateral conventions on the subject, originally included in the list, had since been deleted. Accordingly, the reference to that question in the paragraph under consideration should also be deleted.

Mr. TELLO (Mexico) objected that the question had been discussed at length in Sub-Committee II and that fact should therefore be reflected in the report.

Mr. HARRY (Australia) agreed.

Mr. AKYAMAC (Turkey) suggested that, if the question was to be mentioned, the reference to it after the words "national jurisdiction" should be amended to read: "the relationship of the provisions adopted at the future Conference of the law of the sea to the 1958 Convention and to the earlier multilateral conventions of a general nature on the subject".

Mr. TELLO (Mexico) wished to know which multilateral conventions the representative of Turkey had in mind.

Mr. ABDEL-HAMID (Egypt), Rapporteur, felt that the representative of Turkey should not press for a reference to the 1958 Convention.

Mr. PARDO (Malta) suggested that the disagreement on the paragraph should be settled by deleting the words "the effects of the provisions adopted at the future Conference on the law of the sea on the earlier multilateral conventions on the subject", as the representative of Turkey had originally suggested.

It was so decided.

Paragraph 40 (new paragraph 47), as amended, was adopted.

Section III (A/AC.138/SC.II/L.13/Add.1)

Paragraph 41 (new paragraph 48)

Mr. ABDEL-HAMID (Egypt), Rapporteur, referred to an amendment which had to be made for technical reasons. In the English text, the second sentence should read: "The approved list is hereby transmitted to the Committee".

It was so decided.

Paragraph 41 (new paragraph 48), as amended, was adopted.

Paragraph 42 (new paragraph 49)

Mr. NJENGA (Kenya) suggested that the word "agreed" at the beginning of the paragraph should be replaced by the word "proposed". A number of delegations, including his own, had considered that items 6 and 7 were separate items.

There followed an exchange of views, in which Mr. MOVCHAN (Union of Soviet Socialist Republics), Mr. STEVENSON (United States of America), Mr. EVENSON (Norway), Mr. KUMAGAI (Japan), Mr. BLAEHR (Denmark), Mr. KEDADI (Tunisia), Mr. PARDO (Malta) and Mr. SHITTA-BEY (Nigeria) took part.

Thereafter, Mr. STAVROPOULOS (Under-Secretary-General for Legal Affairs, United Nations Legal Counsel) expressed the view that the discussion was pointless, since items 6 and 7, by their very nature, would have to be treated simultaneously.

Mr. SHITTA-BEY (Nigeria), Mr. ZOTIADES (Greece) and Mr. BOZHILOV (Bulgaria) thought that it would be better to delete paragraph 42 altogether, in view of the opinion expressed by the Legal Counsel.

Mr. STEEL (United Kingdom) pointed out that the paragraph recorded a compromise which the members of the Sub-Committee had reached, after much difficulty, a few days earlier, and which should be reflected in the report.

Mr. NJENGA (Kenya) said that he would accept the Rapporteur's text in a spirit of conciliation, but his delegation still felt that items 6 and 7 were separate items.

The CHAIRMAN assured the representative of Kenya that his statement would appear in the record of the meeting. He suggested that paragraph 42 should be adopted as it stood.

Paragraph 42 (new paragraph 49) was adopted.

Paragraph 43 (new paragraph 50)

Paragraph 43 (new paragraph 50) was adopted.

Paragraph 44 (new paragraph 51)

Mr. TELLO (Mexico) requested the inclusion of the following sentence at the end of the paragraph: "Other delegations pointed out that the reservations in no way affected the provisions contained in paragraph 3 of the explanatory note of the list".

The Mexican amendment was adopted.

Paragraph 44 (new paragraph 51), as amended, was adopted.

Section IV (A/AC.138/SC.II/L.13/Add.1)

Paragraph 45 (new paragraph 52)

Paragraph 45 (new paragraph 52) was adopted.

Section V (A/AC.138/SC.II/L.13/Add.1)

Paragraph 46 (new paragraph 53)

Paragraph 46 (new paragraph 53) was adopted.

The draft report of Sub-Committee II (A/AC.138/SC.II/L.13 and Add.1), as a whole, as amended, was adopted.

CONCLUSION OF THE WORK OF SUB-COMMITTEE II FOR THE SESSION

After the usual exchange of courtesies, the CHAIRMAN declared that Sub-Committee II had completed its work for the current session.

The meeting rose at 10 p.m.