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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 FOURTH TO THE TWENTY-THIRD MEETINGS

Held at the Palais des Nations, Geneva,
from 22 July to 26 August 1971

Chairman:	Mr. GALINDO POHL	El Salvador
Rapporteur:	Mr. ABDEL-HAMID	United Arab Republic

Note. The list of participants is to be found in documents A/AC.138/INF.5 and Corr.1 - 3, INF.5/Add.1 and Add.1/Corr.1, INF.5/Add.2 - 4.

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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Pollution
IAEA	International Atomic Energy Agency
IMCO	Inter-Governmental Maritime Consultative Organization
ICC	Intergovernmental Oceanographic Commission
ITU	International Telecommunication Union
LEPOR	Long-term and Expanded Programme of Oceanographic Research
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization
WMO	World Meteorological Organization

SUMMARY RECORD OF THE FOURTH MEETING

held on Thursday, 22 July 1971, at 3.20 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

The CHAIRMAN recalled that in March the Sub-Committee had adopted the agenda for its spring and summer sessions (A/AC.138/SC.II/L.1), which consequently covered the present session.

At the end of the spring session, the Chairman of the Sub-Committee had sent the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction a letter informing him that the Sub-Committee had decided to submit its report at the end of its July-August session. At the spring session, the Chairman of the Sub-Committee had circulated a Note describing the Sub-Committee's mandate (A/AC.138/SC.II/L.2). The Sub-Committee had been requested, inter alia to "commence its work with an exchange of views concerning the subjects and matters allocated to it, including the question of the preparation of a comprehensive list of subjects and issues relating to the law of the sea".

He intended to examine with the Bureau and the various groups the main views held on the subject of the list referred to and to make some suggestions on the matter in the near future. Meanwhile, the Note of the Chairman of the Sub-Committee and his letter to the Chairman of the Committee might help to guide the Sub-Committee's work.

Mr. YANKOV (Bulgaria) recalled that at the previous session several delegations had requested the Secretariat to prepare a list of the most significant United Nations documents on the law of the sea, as well as of the documents prepared for the use of the Sea-Bed Committee and the Ad Hoc Committee. He would like to know how matters stood in that connexion.

Mr. SAPOZHNIKOV (Secretary of the Sub-Committee) referred the Bulgarian representative to the list of documents published under symbol A/AC.138/42 and to the documentation previously distributed on the law of the sea and other related questions. Those documents dealt with questions relevant to the Sub-Committee's work.

Mr. ZEGERS (Chile) suggested that the general discussion begun in March 1971 on the list of subjects and issues relating to the law of the sea should be continued and that the Committee should begin the current session by considering that item.

Mr. ARIAS SCHREIBER (Peru) and Mr. ORIBE (Uruguay) supported the suggestion.

Mr. KHLESTOV (USSR) said that he fully endorsed the suggestions just made. His delegation awaited with interest the list of subjects to be submitted and the presentation of delegations' views on the substance of the problem the Sub-Committee was dealing with. It seemed to him that the documents which had been distributed at the previous session could provide good guidance for the work of the present session; they gave a clear and precise definition of the Sub-Committee's mandate and he was convinced that the methods of work which had proved fruitful in March would help the Sub-Committee at its present session to complete the task it had been assigned.

The CHAIRMAN said that, judging from the statements just made, he took it that the members of the Committee were in agreement to pursue their work along the lines indicated in the documents distributed at the March session and, in particular, to continue the general discussion on the comprehensive list of subjects and issues relating to the law of the sea. He invited delegations to submit their suggestions concerning that list as soon as possible.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE FIFTH MEETING

held on Tuesday, 27 July 1971, at 10.40 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEES BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ BY THE CHAIRMAN AT THE FORTY-FIFTH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971

Mr. OKAWA (Japan) said that his delegation maintained a flexible position concerning the items to be included in the list of subjects and issues to be dealt with by the forthcoming Conference on the Law of the Sea. It even thought that the list might be left open-ended so that members could at any time suggest new items which merited the Sub-Committee's consideration. However, to expedite its work, the Sub-Committee should concentrate its initial efforts on those issues which were already known to be of deep and common concern.

The agreed terms of reference of Sub-Committee II were wide enough to cover practically all the major aspects of the law of the sea but the most important of the subjects and issues was undoubtedly the question of the maximum breadth of the territorial sea. Other issues, such as fisheries and international straits, were also directly related to that central question. Although the list as such did not need to be limited to those items, no useful purpose would be served if the Sub-Committee, by over-emphasizing the importance of agreeing on a definitive list was prevented from starting substantive discussions on matters which called for urgent action. Three times in the past, the international community had tried to reach agreement on the maximum breadth of the territorial sea, but in vain. As a result, numerous jurisdictional claims and disputes had gradually led to the erosion of the legal order of the sea, to the detriment of all concerned. No matter how successful the forthcoming Conference on the Law of the Sea might be in other fields, history would record it as a failure if no equitable rule were established on that key issue.

The issue was indeed difficult and complex, and careful consideration must be given to the different interests of nations in the various uses of the sea. On the one hand, a number of coastal States felt that their interests would not be sufficiently protected if they agreed to a narrow limit of their jurisdiction over the seas; and they maintained that States should be entitled to wider territorial seas or to additional jurisdictional zones for specific purposes. Maritime States, on the other hand, were concerned lest their interests might be unduly harmed by

the expansion of the national jurisdiction of coastal States over waters which had traditionally been considered part of the high seas. They felt that the rights enjoyed under the principle of the freedom of the high seas ought to be respected, though they admitted that that principle did not permit unbridled use of the high seas. The interests of the land-locked States would also have to be duly safeguarded under any new system.

Before attempting to resolve the question of the maximum breadth of the territorial sea and other related issues, it might be useful to consider the basic attitudes which all States should maintain towards the various uses of the sea. It was widely held that the interests of coastal States could best be served by the extension of their territorial sea or by the establishment of other forms of jurisdictional zones; and that argument could not entirely be refuted. The fact was, however, that a widening of the territorial sea meant a corresponding shrinking of the high seas which were open to all nations. Such a curtailment of the freedom of the high seas - a recognized right under international law - would have serious implications. The growth of world trade depended on efficient maritime transport, for which freedom of navigation was essential.

The conservation and effective utilization of fishery resources could not be achieved merely by abolishing a right hitherto enjoyed by all States and by giving coastal States an exclusive right to monopolize fishery resources. No action to preserve the marine environment could be effective unless co-ordinated measures were taken within the framework of international co-operation; and that would not be possible in areas under the jurisdiction of coastal States. Hence, if the international community was to derive the maximum benefit from the ocean, it must try to reinforce the law of the sea on the basis of the widest possible high seas and the narrowest possible territorial sea. In the circumstances, his delegation took the view that the twelve-mile limit, as currently claimed by over forty-five States, represented the best possible compromise as the maximum breadth for the territorial sea.

Coastal States criticized the principle of the freedom of fishing - a recognized principle of maritime law - on two grounds: first, that it militated against effective conservation of fishery resources and, secondly, that it hindered the development of infant coastal fisheries. The first criticism derived from a certain misunderstanding of the concept of the freedom of fishing, which did not accord unrestricted rights to fish the high seas. Such freedom might have been possible in the past when the resources of the sea could to all intents and purposes

be regarded as inexhaustible; but, with the development of modern fishing techniques, it had come to be widely recognized that fishing activities must be regulated in order to avoid over-exploitation of resources and ensure their effective utilization. To that end, an extensive system of international co-operation had been developed in the form of multilateral and regional conservation arrangements. When a stock of fish was in danger of depletion, no State could disregard the general obligation to co-operate with other States in keeping fishing activities down to an appropriate level. Provided that that general obligation was accepted, however, no State could be excluded from fishing in any part of the high seas.

The proper solution to the problem of conservation was not to extend the jurisdiction of coastal States, but to strengthen and supplement the existing network of conservation arrangements, with due regard for the biological and other characteristics in each individual case. Japan was actively participating in a number of such conservation arrangements and was always prepared to co-operate with other States in further strengthening the roles of regional fishery commissions.

While the principle of conservation did not seem to require further elaboration in the form of general rules, the second argument against the freedom of fishing - namely, its undesirable effects on the development of infant coastal fisheries - was a subject which might properly be discussed in depth by the Sub-Committee. The concept of "protection" had no place in the existing legal régime concerning fisheries; but it must be recognized that infant coastal fisheries, particularly those of developing countries, were seldom in a position to compete on equal terms with the distant-water fisheries of developed countries. There would therefore appear to be ample justification for working out new rules to be incorporated in the law of the sea for the purpose of protecting and promoting the interests of infant fisheries of developing coastal States.

In that connexion also, the question arose as to whether or not the establishment of exclusive fishery zones beyond the territorial seas of coastal States would be an appropriate solution. As his delegation had stated at the Fifty-third Meeting, the fishery resources of the world were distributed in a highly uneven manner, and large and lucrative fishing grounds were to be found only off the coasts of a limited number of countries. Consequently, the protection of coastal fisheries, by establishing exclusive fishery zones would be tantamount to granting to a few countries the right to monopolize the major fishing grounds

of the world. The new régime should indeed provide adequate protection for the small-scale fisheries of developing coastal States; but it should, at the same time, accommodate in an equitable manner the interests of all nations, all of which were entitled to utilize the living resources of the high seas.

Mr. STEVENSON (United States of America) said that his own delegation, like a number of others, supported the Chairman's proposal that the Sub-Committee should proceed in accordance with the agreement reached on 12 March 1971. Though not wishing for the moment to comment on the substance of certain matters within the terms of reference of the Sub-Committee, he did wish to comment on the nature of the list of issues to be prepared.

There was no need to regard the list as definitive, since there would be much merit in retaining sufficient flexibility to modify the list in the light of the Sub-Committee's work and the work of other United Nations organs and international agencies. It might later be decided that a certain item should be added or that some other item could reasonably be deleted. Consequently, his delegation planned to take a liberal attitude towards the list at the present stage, on the understanding that no delegation would thereby prejudice its position regarding the substance of any item or regarding the eventual inclusion of any item in the agenda of the Conference.

Mr. TUNCEL (Turkey) said that, at the Ninth meeting of Sub-Committee I, his delegation had stressed the importance of documentation, particularly maps and charts. It was true that a List of Maps (A/AC.138/39 and Corr.1) had been supplied by the Secretariat; but, as it had been received only recently, his delegation had not yet been able to obtain and examine the maps in question. Neither his nor any other delegations could reach any decision concerning such questions as the breadth of the territorial sea, or the régime for the continental shelf, before it was in a position to judge the effect of such a decision. Once full documentation - including maps and charts - was available, the Sub-Committee would be able to reach decisions based on facts rather than on suppositions and possibilities.

The representative of New Zealand had in connexion with the question of the breadth of the territorial seas, referred to the problem which arose where an extension of the territorial sea would affect areas which had hitherto been international straits. The geographical and legal concept of the international strait was perfectly clear: an international strait was a strait used for international navigation as defined in the 1958 Convention on the Territorial Sea

and the Contiguous Zone.[1/] The case in question concerned areas where navigation was subject to the high seas régime. Since those areas could, as a result of the extension of the territorial sea, become part of the territorial sea of the coastal State, the right of innocent passage would indeed apply but freedom of navigation - unrestricted by the coastal State - would be lost. The solution might be to recognize the concept of an international waterway through the territorial sea, with a régime similar to that of the high seas. The subject was important, since it had been estimated that between 50 and 100 international waterways would be affected.

The meeting rose at 11.25 a.m.

1/ United Nations Treaty Series Vol. 516, p.205

SUMMARY RECORD OF THE SIXTH MEETING

held on Friday, 30 July 1971, at 10.55 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. SETTER (Australia) said that for the time being he would concentrate on the subject of fisheries. At a later stage his delegation would refer to the related questions of maximum breadth of the territorial sea and of passage through international straits. It believed, however, that whilst those various questions would ultimately have to be looked at together with all the other matters to be dealt with at the comprehensive Conference on the Law of the Sea, the subject of fisheries was separate from questions relating to the territorial sea and the associated questions of passage and overflight.

It was the expectation of the Australian delegation that the list of subjects to be considered at the forthcoming Conference would include in appropriate form fishing and the conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), as indicated in General Assembly resolution 2750 (XXV).

His delegation interpreted the phrase in brackets as referring to the preferential rights in relation to fishing and conservation of the living resources of the high seas. It understood and expected therefore that the Conference would be able to consider comprehensively and in all aspects the question of high seas fisheries and in particular the question of the rights of coastal States in that regard. It believed there was wide agreement within the Sub-Committee that that should be the position.

On that basis, he would, in the first place, refer briefly to the position of Australian fisheries.

Australia occupied a special position among the world's fishing nations. Although a technically developed country, it shared the problem of the developing countries, in that its fishing industry (probably because Australia had not been heavily dependent on fish for its protein food) was not developed in the sense of exploiting all the available resources and using all the available modern technology. Nevertheless, a number of its fisheries were being fully exploited, possibly in some cases over-exploited.

Australian fisheries had been confined for the most part to coastal waters involving the use of relatively small owner-operated boats which remained at sea for periods of a few days only. On a production basis Australia still ranked only forty-ninth among fish producing countries.

However, recent developments, particularly in the northern prawn fisheries, had resulted in the introduction of larger boats capable of extending operations into more distant waters. In addition, recent exploratory fishing operations had indicated the presence of resources capable of commercial exploitation on the continental slope in waters as deep as 800 metres.

Australia exercised jurisdiction over fisheries within a twelve-mile zone from its coastline, and in that zone its domestic law applied to foreign as well as Australian fishermen. In the case of Australian fishermen, the domestic fishing laws also applied beyond the twelve miles in waters specified in those laws and extending to a distance of approximately 200 miles from the coast. In addition, legislation had been enacted in the exercise of jurisdiction over the living natural resources of the continental shelf in accordance with the 1958 Convention on the Continental Shelf.[1/]

Australia for the time being also had responsibility for the development of Papua-New Guinea where the fishing industry until recently had been almost entirely of a subsistence type. Recent developments, assisted by the introduction of overseas technical and financial contributions, had resulted in the establishment of two major prawn fisheries in the Gulf of Papua and in the undertaking by three fishing companies of surveys of the skipjack tuna resources in and around the Bismarck Sea.

Australia was interested in the expansion of its fishing industry, particularly with respect to the production of prestige seafoods such as lobster, prawns, scallops and abalone for the export market. At the same time approximately half of the fish consumed in Australia was imported, mainly in the form of frozen fillets. That placed Australia in an important position in international trade in fish and fish products.

1/ United Nations Treaty Series, vol.499, p.311.

In addition to its commercial interest, Australia, as a coastal State, was anxious that the fishery resources should be subject to a form of management that would ensure the rational utilization of the available resources. While the renewable nature of fishery resources was recognized, the fact should also be recognized that the resources of Australia were relatively small and hence extremely sensitive to over-exploitation. In those circumstances Australia had imposed severe restrictions on the operations of its own fishermen. It was the coastal State which had the greatest interest in ensuring that the resources were not depleted, since the distant-water fishing countries had the advantage that they could move their fleets to other areas if the fishing operations became uneconomical. That had been recognized, in principle at least, when the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas[2/] had been adopted. Article 6(i) of that Convention stated: "A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the High Seas adjacent to its territorial sea".

It was against that background that the Australian Government had decided to submit proposals which would give coastal States wider powers of management in respect of the fishery resources in adjacent waters.

It had been argued that such fishery resources should be governed by a multilateral management régime. It was doubtful, however, whether any programme of multilateral management of fisheries had been fully successful. The classic failure in that respect had been in the whaling industry. In order to persuade the major whaling countries to accept the International Convention for the Regulation of Whaling,[3/] it had been necessary to provide an escape clause under which any country which did not wish to accept an amendment to the schedule under which whaling operations were controlled could lodge an objection and by so doing remove its obligation to adhere to that amendment. That had been possible in spite of the fact that amendments to the schedule required a three-quarters majority of members of the Commission voting on the item. As a result of those escape

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2/ United Nations, Treaty Series, vol.559, p.285.

3/ United Nations, Treaty Series, vol.161, p.75.

clauses in the Whaling Convention, the Commission had been in a very weak position and, in spite of continued warnings by the scientists, it had found it impossible to impose the necessary restrictions to prevent over-exploitation. Although there was now total prohibition on the killing of certain baleen whales, scientists believed that it would take many years, possibly more than fifty, before it would be possible to permit the killing of any of those whales on a commercial basis. To sum up the position, it was not until the killing of a species had become uneconomical that agreement could be reached on its protection.

The same pattern was emerging with respect to fisheries. By the time scientists had agreed on the proper level of exploitation, and the participating countries had agreed on a régime of management in accordance with the scientific advice, and the developing fishing countries had attained the technical competence to participate in the fisheries adjacent to their coasts, depletion of the stocks might well have occurred.

Under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, the powers of the coastal State to implement a management programme applicable to other nationals were so restricted that an effective management programme was impossible. The provisions of article 7 (2) of the Convention, together with the procedure for settling disputes, were heavily balanced in favour of the technically developed countries with highly sophisticated fisheries research facilities.

In recent years there had been a number of instances where coastal States had claimed wide jurisdiction over fisheries in their off-shore waters. It was the Sub-Committee's task to develop an agreed régime of international law that met the fisheries situation in a way that was reasonable and just to the community of nations. The Sub-Committee should therefore examine the reasons that had prompted the various governments to take unilateral action. It was the belief of the Australian delegation that one reason for such action was the failure of all previous efforts to develop a set of rules that would ensure that the stocks of fish were not depleted. Another important reason had been the failure to recognize the basic rights of the coastal State in respect of the fishery resources in adjacent waters and the needs of developing States to be able to participate in the exploitation of the adjacent resources as they developed their technology to do so. Attention should be paid to the position of coastal States, the economies of which were heavily dependent on fish.

As the representative of New Zealand had so clearly pointed out in his statement at the sixty-second meeting of the Committee, when referring to the arguments put forward by the representative of Mexico at the March 1971 session, it should now be recognized that the establishment of a limit for the territorial sea was a separate issue from the establishment of limits for the exercise by the coastal State of other and lesser forms of jurisdiction such as control of fishing. It was essential to make that distinction and to eliminate the fear that extension of partial jurisdiction would produce a so-called "creeping jurisdiction" by gradual extension of the territorial sea. That fear could be removed completely by the establishment of a firm, broadly-agreed territorial sea limit, together with recognition at the same time of the right of the coastal State to control and organize adjacent fisheries.

The Australian Government was convinced that the new concept of fisheries management zones over which the adjacent coastal State would have jurisdiction deserved serious consideration. His delegation considered that it was an over-simplification to argue, as the representative of Japan had done at the previous meeting, that the right of freedom of fishing on the high seas must be preserved unchanged and that multilateral co-operation was the only practical way to manage fishery resources. He had already pointed out that multilateral efforts to establish management régimes for fisheries had proved ineffective or inadequate and that the alternatives should be examined. Also, the representative of Japan had referred to only two types of fisheries exploitation - namely, that undertaken by the technically developed countries, especially the distant-water fishing countries, and those which he had described as the "junior developed" fisheries. No mention had been made of the many fisheries in which the coastal State was actively engaged and which were in some cases vital to the coastal State's economy. A number of those fisheries were already being exploited to their maximum and the coastal State had imposed restrictions on its own nationals but was virtually powerless to regulate the activities of fishermen of other countries.

The Australian delegation recognized that for certain oceanic fisheries such as the tuna fisheries the development of a management régime could not be left to individual coastal States, and that international co-operation would be necessary. Perhaps serious thought should be given to the establishment of a world-wide body on tuna, but care would have to be taken that it did not contain elements of failure similar to thosewhich had prevented the Whaling Convention from ensuring the rational utilization of whale stocks.

On the other hand, the majority of the world's fisheries were closely identified with the land mass, the continental shelf and the adjacent reefs and islands. Those fish stocks were as clearly a part of the natural resources of the coastal State as were the sedentary living resources, or indeed the mineral resources, of the continental shelf. It was in the area where those stocks were found that the establishment of fisheries management zones was required.

The Australian delegation therefore proposed that the right of each coastal State to establish fisheries management zones in an adequately wide area on its continental shelf and around its coasts be recognized. The tentative view of his delegation was that a depth limit and a distance limit to meet the fisheries' position would be needed.

He wished to make it clear that his delegation was not proposing that those zones should be exclusive fishing zones. It appreciated the need for the optimum exploitation of the important source of protein which fish constituted in a world where total food supply was insufficient for an adequate food supply for all the world's population. Provided the stocks were not being fished to the optimum, they should be open to fishing by the nationals of other States, subject to the management measures currently in force.

His delegation's proposal was that the zones should be subject to management by the coastal State. That State should also in its view have preferential rights with regard to the exploitation of the resources of the zone. In that way countries with developing fisheries could increase their participation as their technological capacity improved.

Mr. ZEGERS (Chile) said that, under the terms of General Assembly resolution 2750 C (XXV), the Sub-Committee's first task was to draw up a list of subjects and issues in preparation for the third United Nations Conference on the Law of the Sea scheduled tentatively for 1973.

The list would be a preliminary or tentative agenda for the preparatory work, defining the substance of the task to be undertaken in the present preparatory phase. The agenda for the Conference itself would be prepared by the General Assembly at its twenty-seventh session or whenever the preliminary work had progressed far enough, as explained at the fifty-eighth meeting of the Committee by the Canadian representative on behalf of the sponsors of General Assembly resolution 2750 (XXV).

In defining the nature and scope of the preparatory work, the Sub-Committee would to some extent be setting the framework for the Conference. The Conference should be broad in scope, covering any current problem relating to the law of the sea - just as the 1958 and 1960 Conferences had done - and dealing with the problems of ocean space as a whole. In that connexion, he recalled the fourth preambular paragraph of General Assembly resolution 2750 C (XXV) which stated that: "the problems of ocean space are closely interrelated and need to be considered as a whole".

If the Conference itself was to be comprehensive and unitary in scope, the preparatory work should be of the same nature; and the list of subjects and issues should be such as to permit unity of treatment and negotiation. That did not mean recasting the whole of the law of the sea and setting aside international - including regional - custom. It meant rather that all problems existing in the ocean space should be covered. Topics to be included in a list of issues relating to the law of the sea fell into three categories; first, new subjects or realities, such as the international régime for the sea-bed beyond the limits of national jurisdiction, the peaceful uses of the ocean, or the extent and forms of pollution; secondly, issues in respect of which the new realities of the present-day world referred to in General Assembly resolution 2750 C (XXV) made it necessary to bring international custom up-to-date, such as the freedom of the high seas or the recognition of specific rights of coastal States which had been established in fact by the practice of States; and thirdly, issues in respect of which disputes or conflicts of interest had arisen, such as the claiming or exercise of certain rights in various parts of the ocean space.

A merely theoretical or academic problem, totally divorced from reality and from the interests of States in the present-day world, would not be an issue.

In accordance with the resolution, also, each "issue" included in the list should be broken down into its component "subjects". For instance, under the "issue" of the régime of the continental shelf, consideration should be given to the "subject" of living resources; under the "issue" of pollution, there was the "subject" of possible pollution by tankers or nuclear vessels.

It should be made clear at the same time that inclusion of a subject in the list did not mean that the Conference would have to deal with it; and conversely, exclusion of a subject did not mean that it could not be dealt with by the Conference.

Also, the inclusion of a subject did not necessarily mean that at a later stage the Sub-Committee would have to draft articles on it. Logical working methods called for discussion and the selection of specific subjects and issues, as an intermediate stage between approving the list and drafting articles.

Lastly, acceptance of a particular list of subjects and issues did not imply, for any delegation, acceptance of their substance or any pre-judgment in regard to their intrinsic value.

With regard to other aspects of the agenda for the preliminary work, his delegation considered that the list should harmonize the use of the terms and categories established by international custom with the new political, economic, technical and scientific realities referred to in General Assembly resolution 2750 C (XXV). The new realities of the past twenty years, the emergence of many more independent countries, and the opportunities and problems created by technological progress should all be taken into account in the formulation and presentation of the subjects. For example, it would seem to be more logical to divide the problems and areas of ocean space into those subject to national jurisdiction and those beyond national jurisdiction, rather than keep strictly to the headings of the United Nations 1958 Conventions or other classical texts. Such an approach would make it possible to deal with the multiple expressions of sovereignty and sovereign powers in the modern world, and to classify the numerous régimes and limits that now existed.

A realistic and up-to-date classification, instead of a repetition of provisions which might have lost their meaning, seemed to be the only method compatible with the concept of the progressive development of the law of the sea referred to in the fifth preambular paragraph of General Assembly resolution 2750 C (XXV). It would also make it possible to deal at the same time with both the traditional types of problem and the new realities and issues; and it would mean that in international negotiations the parties could envisage the possibility of a plurality of solutions for a plurality of situations, which would be legitimate as well as more realistic. There was nothing to prevent an international agreement from taking into account the reality of regional agreements or from recognizing regional custom as international custom when it genuinely had the force of international custom. It would be unrealistic, for example, to ignore regional realities in the North Sea, the Baltic and the Adriatic, in the South-East Asian archipelagos, in part of the Indian Ocean and in Latin America.

In addition to being comprehensive and unitary, realistic and compatible with the progressive development of the law of the sea, the list should also provide possibilities for all positions to be stated and should cover all the different interests in ocean space.

He did not at that preliminary stage propose to make any substantive comments on the subjects and issues in the list. In the first phase of the work, draft lists of subjects should be submitted and discussed, and an agenda for the preparatory work approved. In the second, and more important phase, the various issues in the list should be discussed with a view to negotiation. Drafting of articles would take place only in the third phase.

As a contribution to the first phase his delegation, with a number of others, was preparing a draft list of subjects which he hoped to submit shortly.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that at the fifty-sixth meeting of the Committee his delegation had explained its point of view on many questions concerning the law of the sea which would have to be studied by the Committee in connexion with the preparatory work for the Conference on the Law of the Sea to be held in 1973. His delegation had already pointed out that the Committee would have to prepare proposals on questions which had not been satisfactorily solved in the 1958 Conventions on the law of the sea. One such question was that of the limits of the territorial sea. As international events had shown, the failure to settle that problem had led to an aggravation of relations between States which was fraught with serious consequences.

Other questions which needed to be settled had arisen during the decade following the 1958 Conference. The development of mankind and technological and scientific progress were always creating new problems. In cases where there was an obvious need and where economic and other prerequisites existed, new rules of the law of the sea, taking into consideration the interests of all States, must be devised. However, the new rules should be based on a thorough analysis of political and other processes, in order to make sure that they were in keeping with realities.

The time available before the Conference was relatively short and there was a great deal of work to be done if the Committee was to carry out its mandate efficiently. In his view, the Sub-Committee, in drafting articles on the questions which had been allocated to it by the Committee, should be guided by the 1958 Conventions which were an integral part of the law of the sea and had demonstrated

their value in practice. Those Conventions had been drafted by a wide variety of States; out of the 86 States participating in the 1958 Conference, 49 had been developing countries, including 20 Latin American countries and 29 Asian and African countries.

He intended to dwell at that juncture on the question of the limits of the territorial sea, which was basic. It was closely linked with such problems as the passage of vessels through international straits and fishing in coastal waters but it was itself the key problem. To give some idea of the territorial sea from the standpoint of international law, he said that the territorial sea was part of the State.

The representative of Mexico had already stressed at the fifty-eighth meeting of the Committee that the territorial sea was an integral part of the territory of the State concerned and that in it, the jurisdiction of the State was all-embracing.

The Soviet Union was in favour of establishing a twelve-mile limit for the territorial sea. Where the limit of the territorial sea stood at less than twelve sea miles, the State concerned could establish a fishing zone contiguous to its territorial sea, provided that the breadth of the territorial sea and the fishing zone together did not exceed twelve sea miles. In the fishing zone, the State would have the same rights in regard to fishing as in its territorial sea.

Why was his delegation in favour of that limit? First, international practice showed that that limit was in accord with realities. Of the existing 109 litoral States, 96 had established a limit of their territorial waters not exceeding twelve miles, so that the practice of the vast majority of countries justified the inclusion of that limit in the Convention. The Soviet delegation was not, however, proposing that all States should adopt the twelve-mile limit. States could decide themselves whether to adopt that limit or retain the existing lower limit. The twelve-mile limit was fully adequate for ensuring the security of States. In modern times, ideas of the width of the territorial sea which were based on the range of naval artillery were completely out-dated. Twelve miles was quite sufficient to prevent an incursion by persons attempting to enter a country illegally. Experience showed that with unduly wide limits protection was so costly as to be almost impracticable economically. A country, for example, with a limit of 200 miles would find it exceedingly difficult to exercise effective control.

One of the basic principles of the current law of the sea was freedom of navigation, which was equally important to existing and potential possessors of fleets. The establishment of a 200-mile territorial sea would mean that a large part of the world's oceans would become territorial seas. Experts in his country had calculated that, if the majority of countries imposed a 200-mile limit, over 144 million km^2 of the total sea and ocean area of 361 million km^2 - or 40 per cent of the total area would become territorial sea. That would mean, for example, that 44 per cent of the Pacific Ocean would become territorial sea; and only the countries with long coastlines would benefit. The United States of America would have more than 8 million km^2 of territorial sea, Canada more than 5.5 million km^2 and the USSR more than 9 million km^2. Such an extension of the territorial sea would have an adverse effect on trade, and particularly on the prices of goods sold on the world market by developing countries.

Some 78 per cent of the total volume of world trade, or 68 per cent by value, was carried by sea. In the past decade there had been a rapid growth in international sea transport and in the world merchant fleets. Between 1958 and 1968 the volume of international sea transport had more than doubled. The world merchant fleet tonnage had risen from 100.3 million registered tons in 1958 to 184 million registered tons in 1968 and 202 million registered tons in 1969. Existing shipbuilding orders suggested that merchant fleets would continue to grow, and the increase was expected to continue until 1980. It was anticipated that from 1973 demand would far exceed the capacity of shipbuilders.

In 1966 the developing countries' share in exports shipped by sea had been 63.6 per cent, of which 85 per cent was liquid cargo and 35 per cent dry cargo. Maritime transport to and from the developing countries was increasing steadily. Between 1959 and 1969, it had risen by 50 per cent for the Latin American countries, 116 per cent for the Asian countries and 260 per cent for the African countries. The developing countries had small merchant fleets themselves and had to expend a great deal of foreign exchange on freight charges: in 1969 they had spent $3,500 million on chartering foreign vessels. The high freight rates for commodities and manufactured goods made it difficult for the developing countries to compete on the world market and reduced their foreign exchange earnings from exports. The land-locked countries were in a particularly unfavourable situation: in the case of Mali, for example, 15 per cent of its total annual foreign exchange earnings went on transport of export cargoes to the nearest seaport.

It was a well-known fact that the only solution was to build national fleets, and many countries, especially the developing countries, were doing so. In recent years there had been a significant increase in the building, enlarging and strengthening of national merchant fleets. India, Pakistan, the United Arab Republic and the Philippines had already considerably enlarged their fleets; Brazil, Chile, Mexico and Morocco were in process of doing so; and a number of African countries such as Ghana, Nigeria and Kenya had started building fleets.

The establishment by the developing countries of their own national merchant fleets would have a favourable impact on their foreign trade and foreign exchange earnings and would enable them to bring pressure to bear on the ship-owning monopolies and conference lines to reduce their rates.

The Soviet Union, like the other socialist countries, was giving technical and material assistance to the developing countries to help them build up their own fleets. It had been supplying seagoing vessels on preferential terms, organizing joint steamship lines, constructing and expanding sea ports, and training seamen and marine specialists from the developing countries in its institutes.

However, the development of international merchant shipping and maritime trade was bound to be adversely affected by any radical reduction in the area of the high seas and by States taking over control of huge areas of the world's oceans. A very wide territorial sea would inevitably complicate shipping terms and would increase, not diminish, sea risks. Such factors would cause freight and other rates to rise. The increased transportation costs would be accompanied by increases in the prices of both exported and imported goods, which would have a particularly adverse effect on the economies of the developing countries. It was sometimes asserted that extension of the limit of territorial waters to 200 miles would not interfere with navigational freedom because territorial waters were covered by the right of innocent passage, which was supposed to guarantee freedom of navigation. In actual fact, however, the right of innocent passage did not provide vessels with the much more extensive safeguards which they enjoyed on the high seas, as was clearly apparent from the 1958 Convention on the Territorial Sea and Contiguous Zone[4/] and from laws in force in a number of countries.

4/ United Nations Treaty Series, 516, p.207

In contrast to the high seas, where the merchant vessels of all countries enjoyed complete freedom and were subject to the jurisdiction only of the State of their own flag, in foreign territorial waters vessels were obliged to comply with the laws and regulations of the coastal State. Under the right of innocent passage, vessels were compelled to avoid heaving to, mooring and any other actions which the coastal State might regard as violating its security and order.

In territorial waters coastal States could take almost any unilateral measures, which so many of them considered essential. They could even go so far as to stop vessels sailing in territorial waters, check their papers, carry out a customs examination of their cargoes and passengers, order the vessels to leave the territorial waters, and impose penalties on the captains and owners of the vessels for violating the navigational regulations in force. Under the legislation of a number of countries, coastal States could notify so-called "recommended routes" in territorial waters and demand that they be strictly adhered to, although the routes might be commercially unfavourable and navigationally unsafe.

It was well known that, under article 16 of the 1958 Convention on the Territorial Sea and Contiguous Zone, a coastal State had the right to suspend completely in specified areas of its territorial sea the innocent passage of foreign ships. Under the laws in force in a number of States, such a suspension could be for an unlimited time. Very considerable difficulties were caused for vessels which were subject in foreign territorial waters to the administrative, civil and criminal jurisdiction of the coastal State.

The considerable extension of their territorial waters being proposed by some States would therefore greatly increase the navigational and commercial risks to shipping and inevitably reduce the carrying capacity of vessels, increase freight and insurance rates, increase the pricesof goods carried c.i.f. and lower the prices of goods carried f.o.b. As the developing countries generally exported their goods f.o.b., the outcome would be a fall in the prices of their exports and a rise in the prices of their imports, which, as a rule, were carried c.i.f.

Extension of the limits of territorial waters to 200 miles would have an adverse effect not only upon international maritime trade, but also upon the interests of countries endeavouring to set up their own national merchant fleets. Such fleets would have to develop under considerably more complicated and commercially unfavourable conditions than fleets established at a time when the practice of extending territorial waters was still relatively restricted.

Such was the present state of international shipping and such were its prospects, if the present régime of ocean space were revised and a significant number of States extended the limits of their territorial waters.

Since a number of States were concerned about protecting their economic - particularly fishing - interests in the contiguous zone of the high seas, his delegation, as it had already pointed out at the fifty-sixth meeting of the Committee, considered it essential that those interests be satisfied by giving coastal States certain rights which would safeguard their fishing interests in areas of the high seas adjacent to their territorial waters. In that connexion, careful consideration should also be given to the interests of States operating long-distance fishing fleets.

With regard to the freedom of passage through, and overflight of, straits used for international navigation, his delegation considered the question extremely important. The delegations of a number of countries had already drawn attention to the immense importance of international straits for ordinary navigational purposes. It had already been said in the Committee that freedom of the high seas was inconceivable without freedom of navigation through the international straits which linked high seas and oceans and which had long served mankind as vital international waterways. Many straits were vital arteries through which thousands of vessels of different countries passed annually. Some straits formed the only natural outlets from very important inland seas.

It should be emphasized that the establishment of a 12-mile limit would bring about a new situation affecting over 100 straits, the middle reaches of which formed part of the high seas and in which all vessels currently enjoyed freedom of passage. A 12-mile limit would mean that those straits would become the territorial waters of coastal States.

It should also be emphasized that, in regard to many of those straits, there had evolved over the centuries the practice - which could now be regarded as a legal norm - whereby the vessels of all countries had freedom of passage.

For those reasons his delegation considered that there should be a distinct category of international straits including straits which linked up the high seas and the oceans or linked two parts of the same high sea, and which had over a considerable period of history served as waterways for international shipping and consequently were open for unhindered passage by all vessels in accordance with the principle of equality of all flags.

It was therefore difficult to agree with the arguments of delegations which were opposed to freedom of navigation through international straits - as on the high seas - on the ground that it would enable warships and other vessels to pass unhindered through the straits and thus pose a threat to the coastal States. Hitherto such straits had not constituted territorial waters; yet no threat had arisen for the coastal States when warships as well as merchant vessels had sailed through them or when on occasion aircraft had flown over them. It was not easy to understand why some delegations felt that such vessels, particularly warships, now suddenly constituted a threat when they had been passing through the straits for so long, in some cases for centuries.

Restrictions on freedom of passage through the straits could do immense harm to international navigation and trade and lead to higher costs for transporting cargoes and higher prices for goods imported by the developing countries. Such a state of affairs would interfere with international maritime trade and harm the interests of all countries, particularly developing countries with their own merchant fleets.

It went without saying that not all international straits should be measured with the same yardstick. There were straits which had never been used for international navigation; and there was all the difference in the world between them and major international waterways which had been freely used for international shipping. Clearly, the two types of waterway could not be regarded as being in the same legal category and it would be perfectly reasonable for them to have different régimes.

If the 12-mile limit for the territorial sea were adopted, a number of international straits would come under the control of the coastal State with a consequent change in legal status. The right of innocent passage through territorial waters could - and had been - interpreted in many various ways. It would certainly have to be defined clearly for the more important international straits. If that were not done, various kinds of conflicts might arise between States and the interests of many States would be impaired. The lack of a clearly defined rule concerning passage through international straits would permit coastal States to establish their absolute sovereignty over major international sea-routes, and that was not in the interest of the international community as a whole. In a sense, it would be a return to mediaeval times when certain States had arrogated to

themselves the right to control waterways. References to the alleged prejudice to the interests or the security of coastal States could not be used as an excuse for changing the existing régime of freedom of passage through major international straits. All States were interested in maintaining the freedom of passage through straits; and such passage did not affect the security of coastal States.

Mr. RUIZ-MORALES (Spain) said he wished to intervene in the debate with respect to a very specific point, namely the reference in General Assembly resolution 2750 (XXV) to the question of international straits, since the criterion put forward by several delegations did not adequately cover the issue.

At the Committee's last and current sessions, a number of delegations had referred to the question of international straits and had given a very clear expression of what, in their view, that question signified, together with its ultimate justification and the method they thought appropriate for considering it and reaching a final solution.

Operative paragraph 2 of part C of General Assembly resolution 2750 (XXV) referred in passing to "the question of international straits" but that term, as used by certain delegations, had suffered a surprising metamorphosis. According to them, it involved the question of "freedom of navigation through straits" together with "freedom to overfly international straits". In that way, they had revealed their own concept of the desirable content and ultimate objectives of the simple reference in General Assembly resolution 2750 (XXV) to the question of international straits. It would appear that those delegations wished to import an attractive novelty into the law of the sea - namely "freedom of navigation" and "freedom to overfly" in respect of straits. They had attempted to justify their approach by reference to the breadth of the territorial sea, indicating that the extension of the territorial sea to twelve miles would necessitate the establishment of certain "correctives" to ensure the hypothetical freedom of navigation and of overflight. They had also stated that existing standards on the subject were "inadequate" and "unsatisfactory", since they left the control of international navigation through straits in the hands of the coastal States. Needless to say, the ostensible justification for those propositions was respect for the freedom of international communications. If however, their real justification was sought, the situation appeared in a very different light.

According to existing international law, the fact that the waters of an international strait formed part of the territorial sea of one or more States in no way constituted a necessary limitation on the freedom of navigation. A time-honoured and generally accepted rule of the law of the sea gave a right of innocent passage through territorial waters. That was a right established in the interests of shipping which had been further strengthened and entrenched in respect of navigation through straits in that the States bordering on such waterways were not entitled to suspend passage, even temporarily, through such waterways, on security grounds. That was the régime established by articles 14 et seq. of the 1958 Convention on the Territorial Sea, which had recognized and codified time-honoured standards for navigation. The régime was generally recognized as a satisfactory one, as was clear from the debates of the 1960 United Nations Conference on the Law of the Sea in connexion with the proposal put forward at that time that the territorial sea should be extended to twelve miles.

As for aerial navigation, international law in no way recognized the so-called freedom to overfly straits which formed part of the territorial sea of one or more States. National sovereignty extended to the territorial sea and, as declared in article 1 of the Chicago Convention on International Civil Aviation[5/] "every State has complete and exclusive sovereignty over the airspace above its territory". According to article 2 of the same Convention, the territory of a State included its territorial waters. The Chicago Convention was currently binding on almost all the States of the international community. By virtue of the standards it laid down, civil aircraft of the contracting States not engaged in scheduled air services had two important rights: freedom of transit over the territory of another State and freedom to stop for non-traffic purposes. On the other hand, in the case of State aircraft, including military aircraft, article 3, paragraph (c) of the Chicago Convention clearly laid down that no State aircraft could fly over the territory of another State, or land thereon, without authorization from the State in question.

If, as was generally recognized, the standards of the law of the sea gave sufficient protection to peaceful navigation while the law of the air gave major

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5/ United Nations, Treaty Series, vol.15, p.297 et seq.

rights to civil aviation, it was difficult to see why certain delegations held those standards to be inadequate and insufficient. What was the real justification, in the final analysis, for those so-called freedoms of navigation and of overflight? In the view of his delegation, the only real justification could be strategic considerations which required the elimination of existing obstacles to the use of naval and air power. Nothing could be further removed, or more opposed, to the idea of the peaceful use of the seas and oceans.

A glance at a few of the consequences which could arise from the adoption of such proposals would make the situation clear. If the so-called freedoms of navigation in and of overflight of international straits were adopted, the final result would be to establish a right of indiscriminate transit through States for the benefit of a few powers. Such indiscriminate transit would directly favour not civil aircraft or merchant shipping but military aircraft - currently excluded from overflying - and naval craft, particularly submarines which, according to existing international law, had to travel on the surface when passing through territorial seas. The submerged transit of submarines through straits forming part of the territorial sea of one or more States, particularly if the submarines in question were nuclear-powered or carried nuclear weapons, would leave the coastal States powerless in the face of a possible accident. Such an accident could have a grave effect on the use of the waterway and on the interests of all States. He had referred only to a possible "accident", since there was no need to dwell upon the foreseeable consequences in the case of an international armed conflict.

If a military aircraft overflew the waters of a narrow international strait at a high altitude, it would be easy for it to carry out observations for military purposes of the territory and installations of the coastal States. The latter would be helpless to prevent such threats to their national security. In addition, of course, the territory of the coastal State would also be at serious risk in the case of an accident to such a military aircraft.

States bordering on straits were not "geographically privileged States" which behaved like feudal lords and controlled for their own purposes transit through the waters of such straits in a manner incompatible with international communications. On the contrary, they had a very difficult and onerous responsibility. Apart from a few isolated incidents in areas of war-like tension, States bordering on

international straits had always permitted, and continued to permit, innocent passage by all ships, whether merchant ships or battleships, irrespective of the State to which they belonged. He thought it hardly excessive to ask the defenders of the freedoms of navigation and of overflight to show, quoting chapter and verse, that there had been unjustified suspension of passage, arbitrary closure of important straits or serious threats to peaceful navigation, which justified them in claiming such freedoms.

The extraordinary technological development of shipping constituted a potential menace to every coastal State, through pollution by accidents at sea. The passage of nuclear-powered ships or of ships carrying poisonous and dangerous goods could not leave the coastal State indifferent. Those risks were, however, "normal", though they should be prevented and eliminated as far as possible. It was quite another thing to attempt to impose on States bordering on straits risks which were definitely "abnormal", were related to political and strategic objectives, and entailed a serious threat to their national security, all the more so when such risks were in no way necessary for the sake of the international community as a whole but, appeared merely to serve the interests of a small group of States.

Since he had limited himself on that occasion to a single aspect of the subject under discussion, his delegation reserved the right to intervene again at a later stage.

Mr. ARIAS-SCHREIBER (Peru) said he had been rather disconcerted to find that there were so many difficulties in the way of mutual understanding in the Sub-Committee. His delegation fully realized that the extension of his country's territorial seas to a distance of 200 miles could affect non-innocent intentions of some powers and might, of course, interfere with the long-term military and strategic plans of certain Powers. It was unable to see, however, that it would affect international trade or the right of innocent passage in any way whatsoever. Unless some strange technical problem was involved, he could only imagine that the difficulties certain delegations encountered in conducting a dialogue on the issue were due to a lack of political will. It was to be hoped that some formula could, nevertheless, be found to improve mutual understanding.

In that connexion, he had been most surprised that a delegation which, a few years previously, had been upholding the rights of coastal States to establish their territorial waters in accordance with their own vital needs and requirements, had since swung round to a diametrically opposed viewpoint.

He wished to make it quite clear that the developing countries had now risen up against intolerable uses of the sea; and he fully endorsed everything said by the representative of Spain on that subject. His delegation would return to the issue in greater detail at a later stage when it would comment on some of the statements that had been made.

Mr. STEVENSON (United States of America) said that his delegation would intervene on the subject of international straits at a later meeting but that, for the moment, he wished to clarify his Government's position on two points. It was traditional for the United States of America not to recognize territorial seas beyond the 3-mile limit. That meant that, where a strait had a width of more than 6 miles, it regarded it as an international strait in which freedom of navigation prevailed. In the interests of holding a successful conference, his Government had indicated its willingness, in principle, to accept a 12-mile limit, provided that the freedom of passage through international straits was maintained. The concept of innocent passage, as it was often interpreted, was inadequate.

The meeting rose at 12.15 p.m.

SUMMARY RECORD OF THE SEVENTH MEETING

held on Monday, 2 August 1971, at 3.15 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. ADESALU (Nigeria) began by referring at once to the substance of the question and listing the matters considered by his Government as being of paramount importance: the priority to be given to the question of the proposed international régime, including international machinery, for the area and resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction; the question of the limits of national jurisdiction; and fisheries.

The matter of the international régime should be settled first, since the type of régime adopted would necessarily affect the limits of national jurisdiction. His delegation wished to take the opportunity to comment briefly on the United States proposal to establish an intermediate zone, more commonly known as international trusteeship.[1/] The 1958 Convention on the Continental Shelf[2/] conferred on the coastal State sovereign rights over its continental shelf beyond the limit of the territorial sea and up to any point where it was technically feasible to explore and exploit the continental shelf.

The new concept of an intermediate zone over which the coastal State would ultimately have no control and which would be controlled by an international body ran counter to the spirit of the above-mentioned Convention. The concept of international trusteeship would need further examination as a means of solving the problems of the developing countries in that respect. It seemed to his delegation that the machinery proposed by the United States was somewhat cumbersome. His delegation would prefer a somewhat simpler document containing a statement of the rights and obligations of the participating States. The USSR proposal (A/AC.138/43) on the other hand, left a number of important questions unanswered. The Tanzanian scheme (A/AC.138/33) also needed careful study.

1/ See Official Records of the General Assembly, Twenty-fifth, Supplement No.21 (A/8021) annex V.

2/ United Nations, Treaty Series, vol. 499, p.311.

Petroleum was one of the principal resources of the sea-bed and the ocean floor. It was a matter of vital interest to Nigeria, which was developing its exploitation of off-shore petroleum. It had been established that petroleum could be exploited up to a depth of 1,000 metres in the Gulf of Mexico and drilling up to 3,000 metres or more was regarded as technically feasible in the future. Maps already available showed that the continental margin of Nigeria lay about 400 miles off the coast. Off-shore petroleum exploitation was becoming increasingly important and his country therefore proposed that the limit of the continental shelf, conferring exclusive exploitation rights, should be fixed at a depth of 2,500 metres or at a distance of 200 miles off the coast.

So far as fishing was concerned, his country considered that there was a need to establish a zone for exclusive fishing. The Nigerian fishing industry was expanding rapidly and there was evidence that foreign fleets were fishing in Nigerian waters. Nigeria's interests must be protected in that respect. Furthermore, his Government would also like to establish, within its territorial waters, a conservation zone for the living resources of the sea.

In conclusion, he stressed once again the importance which his Government attached to the three issues he had enumerated. He reserved the right to make further comments once he had studied the various proposals relating to an international régime and machinery.

Mr. YANKOV (Bulgaria) introduced the working paper prepared by his delegation concerning the list of subjects and issues relating to the law of the sea (A/AC.138/45). In drawing up that list, account had been taken of the relevant provisions of General Assembly resolution 2750 C (XXV), the agreement on organization of work adopted by the main Committee on 12 March 1971 (A/AC.138/SR.45), and the views expressed by a number of delegations during the March 1971 and current sessions of the Committee.

Identification of the most important problems relating to the law of the sea was closely linked with the preparatory work of the Conference on the Law of the Sea; hence its usefulness for the success of the work of the Sub-Committee. The list in question could facilitate and stimulate the discussions of the Sub-Committee. Its purpose was to enable the work to be undertaken without delay. It was important to avoid unnecessary digressions on the length of the list of subjects and to formulate concrete suggestions which would enable the Sub-Committee to embark as soon as possible on a fruitful discussion of the subjects to be studied.

In drawing up its list, his delegation had been guided by several considerations of a general character. It had included the key subjects of the law of the sea that were of particular significance for the international community and had felt that particular attention should be paid to the problems that remained outstanding from the 1958 and 1960 Conferences on the Law of the Sea.

Certain subjects, such as the maximum breadth of the territorial sea, had acquired particular urgency. The list drawn up was comprehensive in the sense that it covered all the main subjects, but it was not necessarily exhaustive or definitive with regard to the possible sub-divisions of those subjects. As his delegation had stated at the March 1971 session, the list of subjects and issues should not be unreasonably long. Other questions could, of course, be considered for inclusion in the list, but that should not prevent the Sub-Committee from establishing a priority list in due course and embarking on the elaboration of draft articles. As provided in the agreement on the organization of work, the Sub-Committee might decide to draft articles before completing the comprehensive list of subjects and issues related to the law of the sea.

The Sub-Committee might request the delegations that wished to submit proposals concerning the list to do so fairly soon. A preliminary list could be drawn up on the basis of those proposals, and detailed consideration of the items already included in the list could be undertaken at the same time. Such consideration could lead to a study of specific draft articles proposed by certain delegations which would provide a precise framework for the Sub-Committee's work.

His delegation agreed with the Chilean representative's statement at the forty-eighth meeting that nothing prevented the list from being rapidly prepared, as was warranted by its importance and the requirements of the preparatory work. At that stage, any delay or slowness could paralyse the work of the Sub-Committee.

The list contained in the working paper under consideration had been formulated in flexible terms and had taken note of the views and interests of all States.

The order of the subjects listed reflected the logical and legal connexion between them but was not necessarily an order of priority. Whatever the order of the subjects, consideration of the question of the maximum breadth of the territorial sea was of particular interest, in view of its importance and numerous implications.

He wished to make a few preliminary remarks on that subject. He fully agreed with the lucid and convincing statement made by the USSR representative at the sixth meeting.

The fact that over ninety States had accepted a distance of 12 miles as the maximum breadth of the territorial sea was of particular significance. That was without any doubt the view of the overwhelming majority of States on the subject. Any further widening of the territorial sea and any unilateral claim for different jurisdictional zones would inevitably shrink the area of the high seas and affect the freedom of the high seas. Such claims would lead to unilateral partitioning of the accessible reaches of the sea and would thus give rise to serious friction and conflict, unless the international community could find an equitable and effective solution.

Claims for an extension of national jurisdictional zones could not produce any effects erga omnes if they did not correspond to the requirements of the international legal order. As the International Court of Justice had pointed out in its judgment of 8 December 1951, the definition of the breadth of the territorial sea had both international and internal implications:

> "The delimitation of the sea has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law". 3/

It was significant that that judgment had been given specifically in a case involving fisheries. He fully understood the legitimate desire of coastal States to benefit from the resources of adjacent waters, but their geographical or geopolitical advantages should not be used to the detriment of non-coastal States.

Rational use and conservation of the living resources of the sea required realistic consideration of the needs and interests of all States.

Excessive claims regarding the extent of national jurisdiction or special zones with exclusive rights might lead, in practice, to under-utilization of fish stocks or to unjustified benefits for some, based on geopolitical factors. It was well known that, if the living resources of the sea were totally unexploited in large areas, that could curtail the natural regenerating process and affect the productivity of fisheries.

Since, according to information supplied by FAO at the fifty-fourth meeting of this Committee, the living resources of the sea as a whole were still under-exploited

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3/ See I.C.J. Reports, 1951, p.132.

there would be no justification for a number of States to declare vast areas of the high seas their exclusive national jurisdictional zones. If they did, they could then use their exclusive rights to grant fishing licences to non-coastal States and receive royalties for the exploitation of high sea areas unilaterally declared as being under their jurisdiction. Such a practice was unfair and contrary to international law.

The question of fisheries had to be considered in the broader framework of the freedom of the high seas, with due regard for the interests of States engaging in distant-water fishing as well as those of land-locked countries. The number of countries engaging in long-range fishing beyond their coasts had increased considerably; among them were developed and developing, large and small countries, which had made heavy investments in the construction or purchase of special ships and equipment.

Another important aspect of the question of fisheries was the conservation of marine living resources. The principle of the freedom of fishing could not be considered separately from the principle of the strict observance of requirements for the conservation of fish stocks and protection of the marine environment.

Some claimed that extension of national jurisdictional zones was a protective measure against activities harmful to fish stocks and against negligence with regard to the marine environment. The Bulgarian delegation shared the general concern regarding the conservation of the living resources of the sea and the prevention of pollution and other hazards affecting the marine environment. In its view, however, neither fishing nor conservation of the marine environment should be monopolized through extension of the territorial sea of coastal States. Conservation measures could not be undertaken unilaterally and exclusively by coastal States. It was important to establish effective international rules, which would be applied by all States on the basis of international co-operation. All men, whatever their nationality, lived on the same planet and benefited from its resources. The interests of both coastal and other States should therefore be taken into consideration.

His delegation had also included in the list of subjects and issues the question of freedom of passage through, and flight over, international straits situated within the territorial sea of a coastal State or States. Any extension of the territorial sea might affect straits already used for international

navigation as a part of the high seas. Freedom of passage through, and flight over, such international straits should be embodied in international treaties. That would not affect the legal régimes of straits which had already been established under international instruments.

Another of the subjects included was the definition of the outer limits of the continental shelf. It had been generally agreed that establishment of an international régime for the sea-bed and elimination of some ambiguities and uncertainties in the Geneva Convention on the Continental Shelf would inevitably necessitate the definition of the outer limits of the continental shelf.

Finally, the last subject proposed related to the problem of universality. Each of the Geneva Conventions contained restrictive provisions with respect to the accession of all States, namely, articles 26 and 28 of the Convention on the Territorial Sea and the Contiguous Zone,[4] articles 31 and 33 of the Convention on the High Seas[5], articles 15 and 17 of the Convention on Fishing and Conservation of the Living Resources of the High Seas[6] and articles 8 and 10 of the Convention on the Continental Shelf.

At the March 1971 session of the Committee, his delegation had pointed out that a basic prerequisite for a sound and equitable régime for the sea-bed and for a law of the sea that corresponded to present international realities was the general accession by all States to the respective international instruments.

In line with those general requirements, the Sub-Committee should consider practical arrangements to enable any State, irrespective of membership of the United Nations or of a specialized agency, to become a party to the Geneva Convention on the Law of the Sea and to the new international instruments which were to be adopted by the forthcoming Conference on the Law of the Sea.

Mr. FERGO (Denmark) said that the Sub-Committee's most immediate concern was to establish a list of subjects and issues relating to the law of the sea. The questions referred to in General Assembly resolution 2750 C (XXV) should naturally be included in the list, but various suggestions had been made regarding the

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4/ United Nations, Treaty Series, Vol. 516, p.205.

5/ Ibid, Vol. 450, p.82.

6/ Ibid, Vol. 559, p.285.

inclusion of other questions. His delegation would not, for the time being, be making any suggestions of its own because it wished to limit the number of items on the list as much as possible in order not to make the task of the Preparatory Committee and its Sub-Committees even more difficult than it already was. The four 1958 Conventions on the law of the sea, which codified existing customary international law and which had been ratified by many countries, seemed adequate in a great number of respects.

The list established by the Sub-Committee should be considered neither exhaustive nor binding. In the course of its work, the Sub-Committee should be able to delete some questions or add others, as appropriate.

A particularly important issue which had been left unsolved at the Conferences of 1958 and 1960 was the question of the maximum permissible breadth of the territorial sea. Denmark currently claimed a territorial sea of only three nautical miles. Nevertheless it recognized that other countries might wish to extend their territorial waters, and his delegation was prepared to support a maximum limit of 12 nautical miles. Any extensions beyond that limit would not be in the real interests of the world community as a whole. Freedom of navigation on the high seas was of importance for both the developed and the developing countries. The territorial waters of a country were an integral part of its territory and required effective control and surveillance, which meant that countries with long coastlines would find it difficult to exercise effective control if the territorial waters were to be extended beyond a reasonable limit. It should be pointed out that there was no need to extend the territorial sea over a very wide area of the high seas in order to safeguard legitimate national interests such as, for instance, fishing rights or pollution control. Those interests should be protected under suitable multilateral arrangements. The establishment of such arrangements was not necessarily bound up with the question of the breadth of the zone in which a coastal State exercised full national jurisdiction.

Several delegations had already spoken about the problems which would arise in connexion with the right of passage through straits if the limit of the territorial sea were extended to 12 miles. The existing rules, which had been codified in the 1958 Convention on the Territorial Sea and the Contiguous Zone, reflected a careful balancing of the divergent interests of the coastal State and those of international navigation. There seemed to be no need for a general revision of the existing regime of international straits which had its roots in international customary law.

There was an obvious physical difference btween a narrow strait less than 6 miles wide where vessels navigated within a few miles of the coast, and a strait up to 24 miles wide. A legal difference stemmed from the fact that, in some narrow straits, there had never existed a right to free passage. In such straits, the régime, adapted to local conditions, was based on treaties, customs and the national legislation of the coastal States. In the opinion of his delegation, arrangements which had proved their value over the years and served the interests of both the coastal State and the international community, should continue to apply.

Another problem concerned the consequences, in the case of some international straits, of extending the limit of the territorial sea to 12 miles. It would not be justified or reasonable to ban international navigation and aviation from vital straits which had long been considered part of the high seas. If some countries thought it necessary to clarify or supplement certain rules concerning such new straits, his delegation would be willing to help find a solution reconciling the legitimate interests of the coastal State with those of international navigation. It should be possible through careful study to devise a system of rules for right of passage which would apply to zones which would become straits following an extension of the limit of the territorial sea to 12 miles. Countries whose territory was divided by international straits were not in an enviable position. There was no doubt that they were very much aware of their responsibility towards other countries, and that they were doing everything possible to reconcile the conflicting interests impartially.

Mr. ZEGERS (Chile) said that he also considered that the Sub-Committee's work would be facilitated if it promptly proceeded to draw up a list of subjects and issues relating to the law of the sea. For the present, the Sub-Committee should devote its entire attention to the preparation of such a list and refrain from entering into questions of substance. In its resolution, the General Assembly had declared that the problems of ocean space were closely interrelated and needed to be considered as a whole. The agenda should therefore be regarded as forming an integral whole.

Mr. YANKOV (Bulgaria) recalled that, in the course of his statement, he had suggested that the Chairman ask delegations and groups of delegations intending to submit items for inclusion in the list to do so as soon as possible. The

Sub-Committee only had three weeks left in which to draw up such a list and then study the items in detail. In his view, it was desirable to draw up a programme of work and not to prolong unduly the discussion on what was contained in the list.

Mr. TUNCEL (Turkey) said that his delegation intended to request the inclusion in the list of a question entitled "Effects of the instruments to be adopted by the Conference on the four Conventions which have entered into force and which form an integral part of positive public international law". That aspect of the Sub-Committee's work was important because the discussion had clearly shown that there would be changes in the present system of maritime law and that it was advisable to clarify the legal status of the four 1958 Conventions.

Turkey, as a maritime country, wished to return to another matter, which had been raised at the forty-seventh meeting of the Committee by the representative of Greece: conservation of the potential wealth of the sea-bed. In that connexion, his delegation intended to consult the delegations of various countries faced with the same problem and might have a proposal to submit.

The delegation of Bulgaria had referred, in document A/AC.138/45, to the question of international straits. The wording used, however, did not cover the legal situation that would result from possible extension of the territorial sea. The Turkish delegation might wish to submit the same question in another form. The Conference of 1958 had considered document A/CONF.13/6/Add.1, which had been prepared by Captain A.H. Kennedy at the request of the Secretary-General.[7] It consisted of a geographical and hydrographical study of thirty-three straits which already constituted routes for international traffic. It had been pointed out, however, that, if the limit of the territorial sea were extended to 12 miles, some 50, or even 100, zones of the high seas could become international straits. It might be helpful if the Secretariat were to prepare a document, complementary to document A/CONF.13/6/Add.1, indicating the maritime zones which were at present open to international navigation and aviation and which would form part of the territorial sea of certain States if those States decided to extend their territorial sea. The complementary document would enable the Sub-Committee to have in mind the effects which such decisions might have on international nagivation and aviation.

7/ See United Nations Conference on the Law of the Sea, Official Records (United Nations Publications, Sales No. 58.V.4.

Mr. BEESLEY (Canada) asked the representative of Bulgaria whether the subjects listed in document A/AC.138/45 related exclusively to questions dealt with by the Sub-Committee, or whether they constituted a complete list for the preparatory work of the Conference on the Law of the Sea.

Mr. YANKOV (Bulgaria) said that the list had been established in accordance with the agreement on the organization of work adopted at the forty-fifth meeting of the Committee. The work of Sub-Committee II, however, was closely related to the preparatory work of the Conference on the Law of the Sea. Therefore, although the list related to the work of Sub-Committee II, it was also indirectly connected with the preparatory work, although certain questions such as scientific research and pollution within the terms of reference of other sub-committees were not mentioned. The list, in short, included all questions which had not been allocated to other sub-committees.

Mr. d'ANDREA (Italy) supported the Turkish delegation's request. It was not a matter of discussing the substance of the straits question but simply of providing certain information on the current situation. The matter was important. He therefore requested the Secretariat to say there and then whether it could carry out that task. If it could not, the various countries should each endeavour at the national level to obtain the information.

Mr. KHLESTOV (Union of Soviet Socialist Republics) supported the proposals by the representatives of Bulgaria and Chile and said that he thought the Chairman could ask all delegations to prepare as soon as possible draft articles on the subjects which the Committee would have to consider.

Mr. ARIAS-SCHREIBER (Peru) pointed out that various Latin American countries had drawn up a list of subjects that might be considered by the Committee, and would soon submit it.

The CHAIRMAN emphasized that the Secretariat would need some time to carry out the work which the Turkish delegation, supported by the Italian delegation, wished it to do.

Mr. STAVROPOULOS (Legal Counsel) observed that before that work could be done, it would be necessary to clear up two unknowns, namely the financial implications and the criteria to be observed with respect to the breadth of the territorial sea.

Mr. CASTAÑEDA (Mexico) supported the Turkish request but thought instructions should be given to the Secretariat, because the work requested dealt with a complicated and rather ambiguous question. Since the three-mile rule apparently did not apply prior to the 1930 Conference for the Codification of the Law of Nations, at the Hague, it was difficult to ask the Secretariat to determine which straits would exist if the rule was extended from three to twelve miles. The Secretariat must therefore be told what was expected of it.

Mr. JEANNEL (France) thought that, without prejudging the breadth of the territorial sea at that stage, it was possible to find out the current situation with regard to straits, which, after all, was the important question. Once the situation was known, the consequences for navigation of a decision on the breadth of the territorial sea could be determined. There were some straits where international traffic was heavy enough to interest the economy of all the countries of the world. The Secretariat should be asked to make a factual study of the present situation in those straits (the legal situation as governed by international agreements, or by national legislation or the de facto situation). Such a study would be extremely useful for the Committee's future work.

Mr. BEESLEY (Canada) endorsed the observations of the representatives of France and Mexico and said that he fully appreciated both the usefulness of the documentation requested and the difficulties entailed in its preparation. His delegation thought that a study of the situation in certain straits would be opportune and it was ready to take part in the discussion of the matter.

Mr. JAGOTA (India) said he realized the difficulties entailed in bringing the 1958 study up to date. It was, however, only a question of determining the actual number of straits in which a decision to increase the breadth of the territorial sea to twelve miles would have direct repercussions with respect to international navigation. A list of those straits had been published, officially or informally, but not by the Secretariat on an international basis. It appeared that the 115 or 116 straits which would be affected by a decision on the breadth of the territorial sea were those in which the distance between the coasts was not more than twenty-four miles. The study could, therefore, apply only to such straits. For such a study, it would not be necessary to prejudge what was to be the breadth of the territorial sea.

Mr. DEUSTUA (Peru) suggested that delegations refrain for the moment from discussing specific cases and revert to the item under discussion, namely the preparation of a list of subjects for discussion.

Mr. TUNCEL (Turkey) said that he had had no intention of raising a question of substance - that of the breadth of the territorial sea. He had merely made a suggestion, which had been supported by the representative of Italy, that information be collected which would make it possible to clarify the straits question, which the Danish representative had said was a special question from the point of view of legal situation. What was more, the question of international straits was referred to in the General Assembly resolution 2750 C (XXV). The study made by the expert, A.H. Kennedy, for the 1958 Conference covered, in keeping with his instructions, thirty-three straits with a maximum width of twenty-six miles. No account had been taken of the different widths of territorial waters claimed by States. Those instructions enabled the Secretariat to avoid being put in the difficult position of having to take a position on the substance of the question. The object of the Turkish delegation's request was merely to supplement that particular study.

Mr. SARAIVA GUERREIRO (Brazil) thought that, however timely the study proposed by Turkey might be, it would have to be carried out with care in order to avoid appearing to prejudge the question. Further thought ought to be given to the matter, consultations held and possibly consideration given to other documents which might be necessary after the list of subjects had been drawn up and discussed. The decision to have an expert make such a study could be taken when the Committee had a clearer picture of the questions to be discussed in priority.

Mr. FRANCIS (Jamaica) agreed with the Brazilian representative that the straits question should be left in abeyance until a decision had been taken concerning the list of subjects to be dealt with.

Mr. d'ANDREA (Italy) said that the intention was not to find a solution to the straits question but only to collect certain elements which might throw light on it. That question was of course only one of the subjects to be studied the list of which had not yet been drawn up but it was obvious that it would become relatively urgent, since it was linked to the question of the territorial sea. The documentation requested should supply information on the following points: geographical names of the straits, geographical data, distance between the nearest

coastlines, regime to which the straits were at present subject and any other information which would be useful for the work of the Committee. The question of the minimum limit had been partially solved in 1958; a more important question had been left pending, namely that of the maximum width for inclusion in the list of straits. He suggested the inclusion of straits whose width was double that proposed for the territorial sea.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) considered that the Turkish representative's request that the Secretariat's study on straits should be supplemented was not a question of substance, because it was merely a matter of bringing an earlier study up to date. A precedent in fact existed, that of the study made on landlocked countries, although the substance of that question had not been settled. Consequently, the arguments for postponing the supplementary study were not convincing. It should be realized, however, that the supplementary study could not be carried out immediately and in any case not in the course of the current session. In any event, it was not as urgent as drawing up the list of subjects and the draft articles, and he thought that consideration of those two questions should be continued without delay.

Mr. ABDEL-HAMID (United Arab Republic) agreed that the question of the documentation the Committee would need to carry out its mandate would have to be discussed at some time. He did not, however, think that was the appropriate moment, because the Sub-Committee was already deeply involved in the discussion of the list of subjects relating to the law of the sea. To deal forthwith and at the same time with the question of documentation might confuse the discussion and prejudge the order of priority of the questions on which the Sub-Committee would have to decide. Consequently, he thought it premature to take an immediate decision on the Turkish delegation's request, especially after what had been said by the representative of the Secretariat.

Mr. ZEGERS (Chile) endorsed the statements by the representatives of Peru and of the United Arab Republic. The Sub-Committee had agreed first to draw up a list of subjects and then to discuss them. Among those subjects, that of the international straits called for definition since, as the Under-Secretary-General and the representative of Mexico had rightly said, it was related to the breadth of the territorial sea.

There was no international agreement on the subject, however, because the breadth of the territorial sea had always been fixed unilaterally by the coastal State. Consequently, to propose a study based on the criterion that the territorial sea should not exceed twenty-five nautical miles would be to prejudge the definition to be given later and also to prejudge a question of substance, which was certainly not the Turkish representative's intention. He agreed with the Under-Secretary-General and the representatives of Mexico and United Arab Republic that the proposed study would be inadvisable. He therefore renewed his suggestion that the Committee should keep to what had been agreed upon, and continue to discuss the list of subjects.

Mr. BEESLEY (Canada) agreed with the Chilean delegation on the supplementary study requested by the Turkish representative. The concept of an international strait was open to many interpretations, if not to controversy. Consequently, the Secretariat must first be given a precise definition on the basis of which to work. Such a definition necessarily raised delicate political and geographical problems which needed careful study, and the Sub-Committee should be wary of any hasty decision in that respect.

The CHAIRMAN confirmed that the Secretariat would need precise instructions from the Sub-Committee for making a supplementary study of international straits. In view of the divergence of views, he suggested that a decision on the matter be postponed.

It was so agreed.

The CHAIRMAN appealed to delegations to submit any draft lists of subjects or treaty articles as soon as possible, as well as any other texts they might be preparing, in order to enable the Bureau to make suggestions on the organization of future work.

Mr. ZEGERS (Chile) asked the Chairman if draft lists of subjects and draft treaty articles should really be submitted at the same time. He personally considered that it was premature to consider draft articles.

The CHAIRMAN confirmed that that was what he had actually requested and said that, to meet the wishes of the Soviet delegation, he was going beyond the Sub-Committee's terms of reference by asking delegations to submit their drafts, even if

they concerned questions which were not on the agenda, in order to speed up the discussion as much as possible. He agreed however that it was not yet the time to consider draft articles.

Mr. KHLESTOV (Union of Soviet Socialist Republics) emphasized that the Sub-Committee should discuss as promptly as possible a list of subjects, draft articles and any other texts which could expedite its work and give it material for a further discussion that would enable it effectively to prepare for the Conference on the Law of the Sea.

The meeting rose at 5.20 p.m.

SUMMARY RECORD OF THE EIGHTH MEETING
held on Tuesday, 3 August 1971, at 3.30 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. STEVENSON (United States of America) introduced the draft articles (A/AC.138/SC.II/L.4) which the United States delegation had just submitted on the breadth of the territorial sea, straits and fisheries, all subjects which should be included in the list of subjects to be prepared by the Sub-Committee.

Technological changes and more intensive use of the oceans required new agreements revising the regime of the high seas as it applied to some uses of the oceans, particularly ocean and sea-bed resources. However, there were uses of the ocean, particularly navigation and overflight, with respect to which the greatest circumspection had to be exercised in order to prevent any conflict of interest. In addition to the importance of sea navigation for their international trade, many States depended upon air and sea mobility in order to exercise their inherent right of individual and collective self-defence. New rules of international law reducing mobility might therefore be expected to intensify the competition for strategic advantages relating to activities which were now freely conducted, thus increasing the changes of conflict. Freedom of navigation was important for all nations, not just the major maritime States. That was why the United States had submitted draft articles designed to regulate one aspect of maritime activities in the interests of the international community.

Article I would establish a maximum breadth of twelve miles for the territorial sea. The United States Government adhered to the traditional three-mile limit, but would agree to a treaty fixing the breadth at twelve miles, if there was adequate agreement concerning international straits. That breadth seemed to be acceptable to the great majority of States. However, the rights, advantages, obligations and responsibilities relating to navigation and overflight were not adequately accommodated by a twelve-mile limit alone. To increase the breadth of the territorial sea from three to twelve miles would place many important straits totally within the territorial sea of the riparian States, which

raised the question of "innocent passage". The doctrine of innocent passage was not adequate when applied to international straits. Some States considered it to be a subjective criterion to be left to the discretion of the coastal State. Neither aircraft nor submerged submarines had a right of innocent passage. The United States delegation believed that the right to pass through straits should be regarded in law as what it was in fact: an inherent and inseparable adjunct of the freedoms of navigation and overflight on the high seas themselves. Without such right of transit, those high sea freedoms would lose much of their meaning if the breadth of the territorial sea was to be increased to twelve miles. However, nothing compelled any State to concede that an extension of territorial seas had the same effects upon the rights of the international community in straits as it had in other coastal areas. The balance of international and coastal interests was quite different in the two situations.

Article II of the United States draft recognized that distinction by providing for a right of free transit for vessels and aircraft through and over international straits overlapped by territorial sea. Coastal States would have the right, but not the obligation, to designate corridors suitable for transit. The United States believed that straits wider than six miles had high seas within them, where States might exercise the freedom of the high seas. However, to achieve widespread international agreement on a breadth of twelve miles for the territorial sea, they were prepared to give up high seas freedom in those international straits in exchange for a limited but vital right of free transit, on the understanding that that right would only apply in international straits as defined at the 1958 United Nations Conference on the Law of the Sea and that it would be a simple right of passage, which did not cover any other activities. Any vessel contravening that regulation would be subject to appropriate enforcement action by the coastal State. The State could enforce compliance with reasonable traffic safety regulations, but could never use safety regulations as a way of impairing the right of free transit.

There were very few countries whose vital trade and communication links did not pass close to the shores of other countries, particularly in international straits. If coastal States were given a legal basis for impairing transit, virtually every country in the world would find its very economy dependent upon the political goodwill of some other State by virtue of geography. The

United States doubted that any coastal State located on a strait or important navigational route would benefit from gaining such control over international navigation and overflight. It would subject itself to strong and conflicting domestic and international pressures regarding the exercise of such control.

Several delegations had expressed concern about problems of pollution caused by passage through straits. The doctrine of innocent passage was not adequate to protect both coastal and maritime interests against pollution because it only applied in territorial seas. Specific international agreements would be required for that purpose.

It should be pointed out that existing agreements relating to particular straits, such as the Montreaux Convention,[1/] would not be affected by the provisions of article II.

The first two articles of the United States draft appeared to provide the necessary accommodation of the rights, advantages, obligations and responsibilities inherent in navigation and overflight. All those considerations explained why the United States Government would be unable to conceive of a successful Conference on the Law of the Sea that did not accommodate the objectives of those articles.

The United States recognized that many countries attached greater importance to the question of off-shore resource management than to freedom of navigation. His delegation understood the reasons for this and hoped that a successful law of the sea conference could be achieved through a process of negotiation with mutual respect for each other's interests.

With regard to fishing, his delegation believed that the Sub-Committee should avoid the extremes of absolute freedom of fishing beyond the twelve-mile limit and absolute and exclusive coastal State control over fisheries in a fixed zone beyond the territorial sea. The text of article III on high seas fishing was a revised version of a text circulated to many Governments and reflected many of the comments which had been made on that text.

1/ League of Nations Treaty Series Vol. CLXXIII, p.214

High seas fishing posed many problems. The first was the establishment of clear responsibility for regulating fisheries. The question was how regulatory decisions should be made regarding uses of the high seas and how fisheries could best be managed. On the basis of United States thinking and comments in favour of international and regional co-operation, article III began by specifying that living resources of the high seas should be regulated by international or regional fisheries organizations established or to be established for that purpose. The second problem concerned the need to assure conservation of the living resources of the sea. The object of the draft text was to ensure that no stock would be over-fished and it provided for the exchange of scientific information, catch statistics, etc.

The third and perhaps the most controversial problem concerned the protection of the economic interests of coastal States beyond twelve miles from the coast. In the past, discussion had centred on criteria such as economic dependence or investment. Many developing countries, however, wished to expand their fishing industries and believed that such criteria did not adequately deal with their problems. The United States had therefore drafted a new criterion based on the actual fishing capacity of the coastal State, under which its preference would expand along with its capacity to fish. In many countries, particularly developing countries, fish represented the bulk of animal protein available. It would therefore not be wise to give any State the right to prevent or hinder fishing for portions of stocks that the State could not harvest itself for the time being. That problem was closely connected with the controversial question of traditional fisheries in coastal waters. The United States Government considered that the matter should be settled by negotiation between the coastal and distant-water fishing States most concerned. In any case, highly migratory oceanic stocks would be excluded from the coastal State's economic preference. Owing to the mobility of those fish and the short periods during which they appeared off the coast, any preference would be difficult to implement and coastal States could not develop economically viable fisheries.

The fourth problem involved procedures that would apply in the event that the States directly concerned were unable or deemed it unnecessary to establish an international or regional organization for the time being. The United States

proposed two systems to cover two different aspects of the problem: for the highly migratory oceanic stocks, a multilateral approach was suggested; for other stocks on the high seas adjacent to the coast or which spawned in fresh waters, certain responsibilities regarding regulations and enforcement could be delegated to the coastal State. In the case of dispute, if agreement with other States could not be reached within four months, the coastal State might unilaterally implement both conservation measures and its economic preferences.

The fifth problem concerned enforcement. Inspection and arrest functions would be exercised by the international or regional organization or by a State designated by it, or by the coastal State. Trial and punishment would be the responsibility of the State under whose flag the offending ship was sailing.

The sixth problem related to international co-operation in fisheries research and development. The draft provided in particular for the development of fishing industries in developing countries. The United States did not believe that developing countries should be limited to fishing off their own coasts.

The last problem concerned the settlement of disputes. As certain responsibilities would be delegated to certain States and in view of the possibility of unilateral regulatory and enforcement measures, in order to avoid any abuse, the draft text provided for the compulsory settlement of disputes by a commission of experts along the lines of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.[2/] However, the parties could choose another means of peaceful settlement as provided for in Article 33 of the Charter.

In general, consultations had indicated a need for further accommodation of coastal States by distant-water-fishing States. The United States draft tried to avoid juridical absolutes, in accordance with the modern trend towards international and regional co-operation. The proposal was not exclusive, however, and his delegation would be ready to consider favourably any other proposals formulated in a way that precluded encroachment on freedom of navigation and overflight beyond a twelve-mile territorial sea and protected the fishing rights of all States. His delegation was in particular convinced that the attribution of a strong role to international and regional organizations and provision for compulsory settlement of disputes would greatly advance international and regional co-operation.

2/ United Nations, Treaty Series, Vol. 450, p.84.

His delegation would welcome the comments and suggestions of other delegations with respect to the draft articles it had just submitted.

Mr. RUIZ-MORALES (Spain) requested clarification of the decision adopted the previous day.

The CHAIRMAN replied that he wished to give an explanation in that connexion and made the following statement:

"I understand that in accordance with the procedural decision taken yesterday, delegations may submit concrete proposals, including draft articles and may make a statement explaining these proposals. In that connexion I should like to remind you of the text of my note of 18 March 1971 (A/AC.138/SC.II/L.2), which was adopted as guidance for the work of the Sub-Committee during the present session, an extract from which reads as follows: 'The Sub-Committee may wish to commence its work with an exchange of views concerning the subjects and matters allocated to it, including the question of the preparation of a comprehensive list of subjects and issues relating to the law of the sea and the preparation of draft treaty articles thereon'.

"The Sub-Committee naturally intends to pay particular attention to the preparation of the list of subjects and issues related to its terms of reference. Consequently, for the sake of proper methods of work and organization of meetings, I hope that delegations will limit their remarks to explanations of proposals; these proposals will be discussed in detail later, at a suitable moment, in accordance with the procedure which the Sub-Committee considers appropriate, possibly through the establishment of working groups."

Mr. RUIZ-MORALES (Spain) thanked the Chairman for his statement, which completely dispelled his delegation's doubts.

Mr. FAKTOR (Czechoslovakia) said that his country had a merchant fleet which used seas, oceans and straits, helping to strengthen Czechoslovakia's economic links with other States, and in particular with many developing ones. His country therefore hoped that the question of the delimitation of the maximum breadth of the territorial sea could be solved. In spite of numerous endeavours and two international conferences on the law of the sea, the question had not yet been fully solved in international law.

His delegation considered that to solve the problem there must be unanimous agreement on two important principles of international law: first, the sovereignty of coastal States over a given stretch of territorial sea, and secondly, the freedom of the high seas. Those requirements would be met, in his delegation's view, if the maximum breadth of the territorial sea was fixed at twelve nautical miles.

International experience had shown that a maximum breadth for the territorial sea of twelve miles would be realistic, from both the political and the economic standpoints. That principle had been recognized by ninety-six Member States of the United Nations with access to the sea. Unfortunately certain States had unilaterally extended their territorial sea to 200 miles.

That meant that those States were appropriating a total area of over 9 million km^2 of the high seas used by all States in common.

One of those States had unilaterally decided to place under its own authority an area of the high seas amounting to 3.5 million km^2, or one and a half times the area of the Mediterranean.

If the 200-mile limit were adopted, the 28 land-locked countries would be even further than at present from the area of salt water that could be used in common. In many cases they would be able to exercise many of their rights only at a distance of more than 200 nautical miles from the coast. As a result, all countries would face further complications in using the ocean and the sea and in working out the highly complex régime of the high seas.

His delegation urged all Governments, particularly those of land-locked countries, to unite their endeavours with a view to adopting a uniform rule fixing the maximum breadth of the territorial sea within the traditionally and universally accepted limit of twelve miles which had proved effective for shipping in practice.

His delegation could understand why certain Latin American States wished to guarantee rich fishing areas for their countries, since fishing represented a large proportion of their national income. But the same result could be obtained by protecting the legal rights of all Governments, without diminishing traditional rights over the high seas.

To annex 40 per cent of the area of the sea together with the sea-bed and its subsoil, would do irreparable damage not only to the land-locked countries but to all the countries in the world. International trade and scientific research would also suffer badly.

His delegation was convinced that countries which at present had territorial seas of more than twelve miles would join the overwhelming majority of States which in accordance with international custom recognized the twelve-mile limit.

The question of the territorial sea was closely linked with that of the continental shelf, which had in the main been settled in international law. However, since the 1958 Convention on the Continental Shelf[3/] had not defined the outer limit of the continental shelf, it would be necessary to settle that matter.

The question of the demarcation between the continental shelf and the ocean floor was bound up with that of measuring the ocean floor and the continental shelf of the various States.

Regarding the outer limit of the continental shelf, the particular situation of some closed or inland seas must be taken into account.

Czechoslovakia was also deeply concerned with safeguarding freedom of navigation in international straits for vessels of all flags. It was inadmissible that certain States should extend their authority over important international straits which for centuries had been open to all. Any intention or attempt on the part of a Government to extend its authority over any straits, for whatever motive, should be considered as contrary to international law and the interests of the world community.

In straits used for international navigation, the middle channel should therefore always be free and open to shipping as if it was part of the high seas, since most such straits were part of the high seas in fact and in law.

His country was prepared to collaborate with other States, particularly developing ones, with a view to working out a uniform rule defining the breadth of the territorial sea and measures to ensure adequate protection of the economic interests of those countries by delimiting acceptable areas in which coastal Governments would exercise preferential fishing rights.

Mr. KANIARU (Kenya) noted that the mandate of the Sub-Committee, as stated by the Chairman of the Committee at its forty-fifth meeting, was to draw up a comprehensive list of subjects and issues on matters relating to the law of the sea. The Sub-Committee could, however, start drafting articles before completing the comprehensive list of subjects.

The list would not be a complete one, and any Government would be entitled to place an issue before the Sub-Committee until and even during the Conference on the Law of the Sea, unless the General Assembly decided otherwise. The Sub-Committee had to debate the law of the sea, identify issues that might form the subject of

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3/ United Nations Treaty Series, Vol. 499, p.311.

draft articles, and review provisions that cut across the interests of a great many countries. The point of departure might be the provisions of the four Conventions of 1958 and the issues left unsolved at the 1958 and 1960 Conferences on the Law of the Sea.

It was essential to make a thorough and critical examination of those instruments, for many States had become independent since they had entered into force. Moreover, at the time when those provisions had been drafted, some countries had been unable to take part in the Conference because of lack of specialized personnel and sufficient knowledge of the facts involved, as the representative of Brazil had rightly pointed out in a statement to the First Committee of the General Assembly (A/C.1/PV.1777, pages 57-58).

The United States representative had also brought up that matter after the 1958 Conference on the Law of the Sea, when he had written that as an older maritime nation, his country must not be too critical of the newer nations, as they had only just begun to become acquainted with the problems of the law of the sea at the Conference.

It would now be possible not only to create a new law of the sea for the new States, but also to take account of the special position of certain countries, such as the archipelago States. The Sub-Committee should not shy away from evaluating the Geneva Conventions, and it was essential to deal with the matters which had been left unsettled, since the law of the sea had so far been formulated for the benefit of certain countries alone.

In examining the issues still unsolved, it was important to remember the close links between them.

According to article 1 of the Convention on the High Seas,[4/] the term "high seas" meant all parts of the sea that were not included in the territorial sea or internal waters of a State. That definition raised the question of the extent of the territorial sea, which had not been settled at the 1958 and 1960 Conferences, nor in the Convention on the Territorial Sea and the Contiguous Zone.[5/] The régime of the high seas, which was at present at the mercy of the coastal States, had to be settled.

4/ United Nations, Treaty Series, Vol. 450, p.82

5/ Ibid., Vol. 516, p.205.

It was unlikely, however, that the limits of the territorial sea could be agreed upon unless other issues could also be settled, namely, the question of fisheries in waters adjacent to a coastal State, the preservation of the marine environment and resources, pollution control, and the exploration and exploitation of the resources of the sea-bed in the area. Kenya had designated the area that should be subject to coastal State jurisdiction in those matters as the "economic zone". In that economic zone, the rights of other States would not be in any way affected, whether in shipping or other uses of the sea, except those uses for which the zone had been set up.

It was very difficult to understand the argument put forward by the Soviet representative at the Sixth Meeting of the Sub-Committee to the effect that an extension of territorial waters or national jurisdiction beyond twelve miles would result in an increase in freight and transport costs. He thought it unlikely that any State would change shipping routes or in any way interfere with transport on the high seas.

His Government attached considerable importance to the concept of the economic zone, and its delegation to the session of the Asian-African Legal Consultative Committee held at Colombo in January 1971, had made its position very plain. It had stressed the need to recognize an area of exclusive fisheries that would safeguard the interests of all States, including developing countries. It was a question not only of maximizing the catch of fish in the high seas adjoining territorial waters but also of ensuring that the coastal State had an equitable share of the catch. That could only be done by setting aside an area in which the country could develop its fisheries without cut-throat competition from the sophisticated fisheries of developed countries or by giving it the right to a share of the catch.

Freedom of navigation would not be the only exception to the free use of the economic zone by the coastal State, since such use might be extended through bilateral or regional arrangements to nationals of land-locked countries. Any other State might, of course, operate in the area for other purposes with the permission of the coastal State and on its terms.

The extent of the economic zone remained to be determined. His delegation believed that a limit of 200 miles was fair and reasonable and would obviate the need for a plurality of regimes.

The question of the freedoms set forth in article 2 of the Convention on the High Seas also remained unsolved: freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. He would confine himself for the moment to the freedom of fishing and the freedom to lay submarine cables and pipelines. On the pretext of freedom of fishing, which at present was only enjoyed by a handful of developed countries, stocks of fish had been virtually extinguished in many areas. His delegation would therefore prefer to see the freedom of fishing qualified by the establishment of the economic zone. That was the only way of guaranteeing many developing coastal States a fair share of the fish resources of the sea.

The freedom to lay submarine cables and pipelines, on the other hand, had to be harmonized with the functions of the regime of the sea-bed, as the Secretary-General had rightly observed in his study on the international machinery.6/ In that connexion it was important that adjustments could be made to cables and pipelines laid before the discovery of new resources, and that future cables and pipelines should not be laid without prior consultation with the sea-bed authority. Existing instruments might have to be modified to meet requirements in that regard.

It seemed to be generally accepted that the limit of the territorial sea, particularly if the idea of an economic zone was accepted, might be set at twelve miles. If that was so, over 100 straits previously in the high seas would come under the national jurisdiction of the coastal States, in which case their status might be in doubt. In his delegation's opinion, such straits would be subject to the regime of the territorial sea with the right of innocent passage guaranteed. But there should be no question of free overflight of such territorial sea, for in that case two types of regime would be introduced within the territorial sea, and that was clearly unacceptable. His delegation fully agreed with the views put forward by the delegation of Spain in that connexion at the sixth meeting.

With regard to the problem of the uncertain definition of the continental shelf, his delegation had already categorically stated its views in connexion with the question of national jurisdiction. It was in favour of the distance criterion

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6/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), p.115-116.

and had proposed a uniform distance of 200 miles, measured from an appropriate baseline. It maintained that view, and was grateful to the delegations of Gabon, Ceylon, Chile and others which had supported its proposal.

There remained the question of the Convention on Fishing and Conservation of the Living Resources of the High Seas.[7] All nations were using the resources of the sea to supplement their land resources. The interests of nations in the seas were of two kinds: actual interests and potential interests. The former related to a group of nations already exploiting fish resources not only along their coasts but also out into the high seas. Those "distant-fishing nations" were the only ones to have benefited from the freedom of fishing in the high seas. Potential interests related to those countries, particularly developing nations, which had not yet exploited fisheries resources, either because they lacked the necessary capital or equipment or because they were still struggling to exploit their land resources. As circumstances changed, those States would increasingly look to the seas for food, and if they had sea coasts, they should be able to benefit from them. It was for that reason that Kenya had advocated an economic zone in which such States might licence others to fish, in exchange, for instance, for personnel training, technical assistance, apportionment of fish caught and sold, etc.

Finally, there was the question of the traditional and historical fishing rights off the coasts of other States, especially those which had recently become independent. Those rights should be reviewed, for their effect was to restrict the economic life of a young nation which prior to independence had not had the voice to protest, and it was unfair that a State many miles away should claim and enjoy the exploitation of fishing zones a few miles off a coastal State.

The meeting rose at 4.45 p.m.

7/ United Nations Treaty Series Vol. 559, p.285.

SUMMARY RECORD OF THE NINTH MEETING

held on Friday, 6 August 1971, at 3 p.m.

Chairman: Mr. HOLDER Liberia

In the absence of the Chairman, Mr. Holder (Liberia), Vice-Chairman, took the chair.

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

Mr. ANDERSEN (Iceland) said that his delegation first wished to emphasize that the task of the forthcoming Conference on the Law of the Sea was the progressive development of international law, not the codification of obsolete theories or outworn assumptions from the more or less distant past. What was now called for was a fresh look at all the problems involved on a realistic and pragmatic basis; with due regard for the fact that a large number of new States had emerged with legitimate interests and policies which had not been taken into account in the past.

His delegation did not feel it was necessary to insist on a wide territorial sea if fisheries jurisdiction were adequately defined. Provided that were done, the legitimate interests of navigation and commerce could be maintained. If fisheries jurisdiction were adequately safeguarded, his delegation would not consider a territorial sea of twelve miles to be an insurmountable obstacle. It was clear, however, that that distance had been determined on the basis of considerations other than those relevant to fisheries.

In the past, it had been maintained in some quarters that each coastal State had a territorial sea which, for various reasons, such as navigation, commerce, strategy etc., should be kept as narrow as possible, and that in the area outside the territorial sea fishing was free for all, although it was admitted that conservation measures equally applicable to all should be taken in the common interest. Regional organizations were supposed to deal with conservation measures, but in those organizations unanimity was required. Clearly that system, which was totally unacceptable to coastal fishery nations, had been designed to protect the interests of nations which wanted to fish as close as possible to the shores of other nations. The regional organizations had not been in a position to deal adequately with the conservation measures required. Moreover, the system did not take account of the coastal State's legitimate interest in the utilization of fish resources.

Instead of that system, progressive international law should adopt an entirely different approach that would consist of two aspects: the conservation of resources and the utilization of resources.

With regard to conservation, measures were required to maintain the maximum sustainable yield of fish stocks. For that purpose, national conservation measures were of the greatest importance, since spawning areas were for the most part found in shallow coastal areas. But internationally agreed measures were also necessary to prevent over-fishing of the stocks throughout the vast areas beyond national jurisdiction. The function of regional organizations in the interests of conservation had therefore to be greatly strengthened in order to make it possible to adopt the necessary national and international conservation measures for the protection of fish stocks as a whole. To sustain the maximum yield of fish stocks, it was also necessary to determine the total allowable catch and to adopt international or regional standards of protection applicable in all waters - on the high seas and in the territorial sea. The Government of Iceland had for many years applied much stricter standards within its fishery limits than the regional standards adopted for the area outside its national jurisdiction. His delegation felt that that was quite natural, since it was the coastal State that had the greatest interest in conserving coastal fish resources. Other nations might not be as concerned. Their fishing fleets frequently found it to their advantage to take all the fish they could get in one area and then to proceed to another, even if they destroyed the local resources in the process.

His delegation considered that conservation measures had to include international or regional standards established by the appropriate organizations, complemented within the fishery limits by any further conservation measures considered necessary by the coastal State. That point had to be kept in mind when the extent of the fishing limits was determined.

With regard to the second aspect, that of the utilization of resources, even if national and international conservation measures were adopted, the problem of sharing the resources fairly would not be solved. In that connexion, the preferential position of the coastal State had to be recognized. The allotment of quotas by a regional organization to the various nations concerned with fisheries might be useful in some areas, but not in an area fished by one coastal State and trawlers from ten or twelve other countries at the same time. Such countries might be reluctant to allot a greater quota to the coastal State.

It would be better to recognize that the coastal fishery resources formed part of the natural resources of the coastal State up to a reasonable distance from the coast based on relevant local considerations. In Iceland, those considerations would clearly indicate the waters of the continental shelf, i.e. an area to a distance of fifty to seventy miles from the coast. The outlines of the platform on which the country rested followed the contour of the coast itself. Conditions in those shallow underwater terraces were ideal for spawning areas and nursery grounds, and the area was extremely important for the conservation of resources which were vital to the nation's economy. In Iceland the export of fisheries products constituted approximately 90 per cent of total exports. Without the coastal fisheries, the country would not be habitable. The continental shelf area constituted the national fishery limits of Iceland, and the Icelandic Government had announced that it would issue new regulations in conformity with those considerations before 1 September 1972.

His delegation realized that, although in the case of Iceland the continental shelf was the natural criterion for fishery limits, other local considerations might apply in other countries. It was for each country to appraise those local considerations, and its right to determine its fishery limits on that basis should be recognized. When all such claims had been stated in the Committee, it ought to be possible to work out the solutions that should apply, and there was no reason why the same limits should be applied everywhere.

The regional organizations should be given the right and the duty to see that fisheries were exploited when a coastal country did not have a fleet large enough for the purpose. The coastal State might agree to admit foreign nationals to fish in the waters in question. There would, however, be no great danger even in over-protecting areas adjacent to the coast, for that would result in greater catches outside the fishery limits, which would ensure the full utilization of the stocks.

The basic principle should be that the coastal fisheries formed part of the natural resources of the coastal State. In other words, the principles laid down by the International Court of Justice in the Anglo-Norwegian Fisheries Case[1/] should apply. The Court had said that it was the land that conferred upon the coastal

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1/ I.C.J. Reports 1969, p.3.

State a right to the waters off its coast. More recently, the Court had stressed the fact that the continental shelf was a natural prolongation of the territory.

The Icelandic delegation recognized that natural resources were unevenly distributed in the world. But to claim the right to harvest the coastal fishery resources of other nations was like claiming access to their mineral and forest resources. As long as the coastal State was able and willing to harvest its coastal fishery resources, its function in a world of division of labour was to do so and to furnish other nations with the products, just as they in turn utilized their own natural resources to supply the world. When the coastal States had formulated their claims to their coastal fishery resources and presented them in the Committee, it would be relatively easy to find a formula which, within a system of progressive international law, would recognize the coastal fisheries as forming part of the natural resources of the coastal State. It would then emerge that it was not a question of choosing between narrow fishery limits for all and very wide fishery limits for all. There was no reason whatever why the same limits should apply, for instance, on the one hand in the North Sea, the Mediterranean and the Caribbean, and on the other in Australia, Canada, New Zealand, Chile, Peru and Iceland. The situations were different and it should be possible to devise a harmonious system. Thus the appropriate solutions might vary. In some areas the coastal State might be content with narrow fishery limits. In others, there might be varying degrees of interest ranging from relatively wide conservation and management or preferential zones to exclusive fishing grounds under national jurisdiction. Sufficient safeguards were necessary to ensure that valuable resources did not remain unused or under-utilized.

In that connexion, he wished to remind the Sub-Committee of the proposal made by his delegation at the forty-ninth plenary meeting on 16 March 1971 that experts from the specialized agencies should be fully integrated into the secretariat. He would like to know what action had been taken in that respect.

What was important was to recognize the basic principle that, to the extent that the coastal State was willing and able to utilize its coastal fishery resources, it should be allowed to do so. As far as Iceland was concerned, although one half of the maximum sustainable yield had been taken by foreign nationals, the Icelandic people were quite capable of fully utilizing that maximum yield themselves. It was for that

reason that the Government of his country had announced that, before 1 September 1972, the Icelandic fishery limits would be extended to cover the waters of the continental shelf area. Those measures were urgently required because of scientific, technical and economic development; one of the most important reasons was the constantly growing danger of the increased diversion of highly developed fishing fleets from other countries to the Icelandic area.

His delegation hoped that other coastal States would state their claims so that the Committee would as soon as possible be in a position to evaluate the different situations and to work out a just and equitable formula that would fully recognize the right of coastal States to utilize and develop their coastal fishery resources for the well-being of their people.

Article III, paragraph 2.C., of the draft articles submitted by the United States (A/AC.138/SC.II/L.4) stated that the "percentage of the allowable catch of a stock in any area of the high seas adjacent to a coastal State that can be harvested by that State shall be allocated annually to it". As his delegation understood that paragraph and the explanations given by the United States delegation in the statement introducing the draft articles at the Sub-Committee's 8th meeting, the fundamental principle would be recognized that the coastal fishery resources formed a part of the natural resources of the coastal State. It therefore wholeheartedly welcomed that proposed provision.

A limitation was, however, contained in paragraph 2.E. of that same article III, which stated that "The percentage of the allowable catch of a stock traditionally taken by the fishermen of other States shall not be allocated to the coastal State." It was added in a footnote to the article that, in the view of the United States Government, "an appropriate text with respect to traditional fishing should be negotiated between coastal and distant-water-fishing States". His delegation had given much thought to that matter, but as far as it could see, the final solution would then depend on what the distant-water-fishing States in the region would be willing to "allocate" to a coastal State. The coastal States would thus be at the mercy of the distant-water-fishing States, as they had been in the past. His delegation sincerely hoped that some formula would be found that would clearly establish the method of implementing the general principle of allocating to the coastal State that portion of the allowable catch that could be harvested by that State. In the meantime, however, it thought that the only solution to the problem lay in fishery limits beyond the territorial sea.

His delegation therefore formally proposed that the following topic be added to the list of topics for discussion under the heading of zones of special jurisdiction: "Fisheries and other marine resources; exclusive limits and preferential rights, conservation and management of resources".

Mr. SIMPSON (United Kingdom) noted that the representative of Iceland had stated his Government's intention before 1 September 1972 to extend Icelandic fishery limits to cover the waters of the continental shelf area. That would involve extending the fisheries zone for a distance of up to fifty to seventy nautical miles round the coast. However, the question of fisheries jurisdiction was to be examined in the Committee and at the Conference on the Law of the Sea in 1973. The intention of the Icelandic Government to proceed unilaterally must cause grave concern to all who hoped for the successful outcome of the 1973 Conference. Should the proposed extension be put into effect, it would have no basis in international law.

The statement of intent was of special concern to the United Kingdom Government, since its fisheries relations with Iceland were governed by an agreement duly registered with the United Nations. He wished to make it clear that his Government reserved all its rights under that agreement. He also reserved his delegation's right to make a fuller statement at a later stage.

Mr. NEEDLER (Canada) said that after the failure of the 1958 and 1960 Conferences on the Law of the Sea to define either the breadth of the territorial sea or the limits of national fishery jurisdiction, his country had adopted in 1964 a nine-mile exclusive fishing zone contiguous to its three-mile territorial sea. Many countries had followed suit, so that the contiguous fishing zone was now well established in customary international law.

Developments in recent years, however, had shown that, at least for Canada, coastal interests could not be adequately protected by the three-mile limit for the territorial sea. In the light of the failure of the international community to agree on effective rules for the conservation of fishery resources in general and the protection of coastal fisheries in particular, Canada in 1970 had adopted a number of amendments to its Territorial Sea and Fishing Zones Act providing for the establishment - which had since been implemented - of exclusive fishing zones covering the Gulf of St. Lawrence and the Bay of Fundy on the Atlantic, and

Dixon Entrance, Hecate Strait and Queen Charlotte Sound on the Pacific coast. At the same time, in keeping with now prevalent State practice, Canada had extended the limits of its territorial sea from three to twelve miles, thus absorbing the old nine-mile contiguous fishing zone.

It had preferred that functional approach to the assertion of full sovereignty on geographical and historical grounds, because it wished to accommodate conflicting interests in the future development of the law of the sea, to protect the legitimate interests of other countries in freedom of navigation and to take into account the interests of other countries directly affected by Canada's action by entering into negotiations with them for the gradual phasing-out of their traditional fishing practices in the Canadian coastal areas. His delegation was glad to say that the negotiations were proceeding well.

Fish had been traditionally regarded in Canada and internationally, so far as the high seas were concerned, as a common property resource. That had resulted in over-manning and over-capitalization. Canada's present commercial catch and that of many other countries could be taken by far fewer fishermen and far fewer boats than were currently engaged in fishing. That was all the more regrettable because profits in the fishing industry were low.

Canada had therefore started a programme of rationalization of its fisheries management system. The success of that programme would, however, depend in part on the progress achieved in the rationalization of the international fisheries management system. That had so far been based on the principle of unlimited entry into the exploitation of the resources, i.e. the principle of freedom of fishing on the high seas. That principle must be re-examined in order not only to minimize economic waste and maximize financial returns, but above all to protect the living resources of the sea from an increasing threat of over-exploitation.

The arrival of large distant water factory fleets on the international fishing scene had led to increased exploitation, which could bring about depletion of stock. Those fleets could, however, move about, whereas the coastal fisheries, if they were to survive, must husband the resources close at hand. They depended on careful management of the fishery, designed to maintain the yield at its optimum economic level.

A considerable number of bilateral and regional agreements existed for the regulation of certain international fisheries. Canada was a member of nine international commissions established under such agreements and would continue to

do its best to make them effective. However, while those bodies fulfilled a useful function, the results they could achieve would be limited until there had been a fundamental readjustment of certain traditional concepts of international fisheries management.

Canada considered that, in order to solve these problems, rational management systems for fishery resources beyond the limits of the jurisdiction of coastal States must be established. Those systems would provide for the general interests of the international community in the conservation and equitable sharing of the living resources of the sea, subject to the special interests and rights of coastal States in fisheries adjacent to their coasts.

With regard to fish stocks in coastal areas beyond the limits of the territorial sea or exclusive fishing zones, his delegation had already stressed the desirability of a resource management system under which the coastal State would assume the responsibility and be delegated the required powers for their conservation and management as custodian for the international community under internationally agreed principles. That system would apply to free-swimming species, as distinct from the sedentary species of the continental shelf, over which the coastal State now enjoyed exclusive sovereign rights. The coastal State would have the right and indeed the duty to manage the fish stocks in areas adjacent to the coast but would not have the exclusive right to exploit them. Canada believed, however, that the special interests of the coastal State would require provision to be made for preferential rights in the harvest of those species of particular social and economic importance to the coastal population.

With regard to anadromous fish such as salmon, the coastal State should naturally assume the obligation of maintaining the spawning areas in good condition, undertaking research to increase production, imposing severe regulations upon its own nationals to facilitate spawning and, perhaps most of all, forgoing the economic benefits which could accrue from alternative uses of the waters concerned, such as hydro-electric development. Despite the heavy responsibilities they discharged, however, coastal States enjoyed no corresponding rights beyond their exclusive fishery jurisdiction, where other States were now free to reap the benefits while at the same time jeopardizing the results of the coastal State's conservation efforts.

A sound management system for salmon fishing must therefore be established. Coastal States should enjoy preferential rights and agreement must be reached on restricting the capture by one country of salmon bound for the rivers of another. Canada therefore favoured the prohibition of salmon fishing on the high seas.

Large pelagic fish and marine mammals must often be taken far from adjacent coastal waters. The management of those species and the allocation of catches was therefore best approached through international commissions such as those already existing.

Under the 1958 Convention on the Continental Shelf,[2/] sedentary species were subject to the exclusive sovereign rights of the coastal States. But the definition of "sedentary" had been a source of dispute and must be clarified.

It was difficult to establish an effective fisheries resource management system. So far, attention had mainly been paid to the problems posed by the different species individually. Although more attention was now being given to the concept of management by communities of stocks, more progress was needed in that field. Research must be undertaken, the cost of which might be shared among the States benefiting from the management system.

A régime in which responsibility for research and conservation was delegated to coastal States would pose serious problems for many developing countries. It would be necessary, therefore, to have a competent international agency to provide them with the required technical and scientific assistance. The FAO Committee on Fisheries might be strengthened in order to give the developing countries the technical and scientific assistance they needed.

Canada's concept of the delegation of management and conservation powers to coastal States might meet with the objection that such a régime might lead to the under-utilization of fishery resources. Such an argument would, however, be fallacious, because the coastal State resource management system would operate under internationally agreed principles. Moreover, if the demand for a particular resource was strong enough, that resource would be exploited. Finally, everyone was aware that the emergent problem in the field of international fisheries was not

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2/ United Nations Treaty Series, Vol.499, p.311.

under-utilization of stocks but rather the depletion of stocks by uncontrolled fishing. The general acceptance of the concept of a fishing zone adjacent to a territorial sea represented one of the major achievements in the development of customary international law. It would be tragic to abandon that functional approach and to revert to a sharp distinction between coastal States' sovereignty in the territorial sea on the one hand, and on the other, exclusive flag-State jurisdiction on the high seas.

Mr. Van der ESSEN (Belgium) said that his delegation had indicated in document A/AC.138/35 the items it felt should be included in the list to be drawn up by Sub-Committee II. The first three points in the list suggested by Belgium had already been proposed by other delegations. The fourth item, "Jurisdiction over artificial islands or artificial installations on the high seas" had not so far been mentioned, but his delegation thought it important to request its inclusion.

The Belgian Government had received a proposal from a private source for the off-shore construction, more than 27 km from the Belgian coast, of an artificial port covering an area of 170 hectares for the unloading of heavy tankers. It would of necessity be permanently occupied by a comparatively large staff. It would be outside Belgium's territorial sea, but on its continental shelf. The 1958 Convention on the Continental Shelf only gave the coastal State sovereign rights to explore the shelf and exploit its natural resources. That expression did not cover a construction for use as a port. To submit it to Belgian jurisdiction would be a unilateral act of appropriation of part of the high seas, and Belgium did not recognize the validity of any unilateral extension of jurisdiction.

In Belgium, bills introduced into parliament were first submitted to the Conseil d'Etat for a legal opinion on their content. The bill, which had become the law of 13 June 1969 on the Belgian continental shelf, had therefore been studied by that authority. The opinion of the Conseil d'Etat was that an installation which was not used for the exploration or exploitation of the natural resources of the continental shelf did not come under Belgian jurisdiction. Belgium could take legal action against its own nationals, who could always be brought before the court of their place of domicile for an offence committed outside the territory. That, however, was not the case for foreigners, who might well be numerous among the staff of an artificial port.

The problem of jurisdiction was not the only one posed by the possible construction of such installations. Could a State undertake such construction work in the high seas on its own initiative? An artificial port could obstruct navigation, lead to changes in navigable channels in shallow waters, or change the pattern of tides. Must the neighbouring States, or the States whose ships used the waters in question first be consulted? And if they did not agree, could the project be carried out? Technical advances gave every reason to assume that structures of that kind would proliferate in the future. His delegation therefore considered it appropriate to take advantage of the revision of the 1958 Conventions to try to solve the problem.

Mr. JEANNEL (France) said that his delegation realized the need to draw up a list of subjects and issues, but that it did not feel that that exercise need give rise to much controversy and slow down or even paralyze the work of the Sub-Committee. A long list did not necessarily mean that there would be interminable debates and that the Sub-Committee would become involved in hair-splitting. A short list did not automatically mean that the work would be easy and rapid. While it was understood that the inclusion of one or more questions in a list did not mean that the members of the Sub-Committee would have to prepare treaty articles or that the provisions of certain treaties relating to those questions would necessarily have to be challenged, it seemed likely that a great many fears and doubts might be raised. All that needed to be done was to arrange the various questions under the general headings to which they necessarily belonged to draw up a list which might be relatively short, but would be none the less general or even comprehensive. He therefore believed that between two possible attitudes, i.e. to try to set out everything in detail beforehand or merely to list five or seven major categories of questions, the wisest solution would be to adopt a middle course, namely to list the titles of the main subjects of study and to furnish for each of them examples of the various questions they covered, on the strict understanding that the titles of these questions would be as neutral and objective as possible.

His delegation thought there should be some flexibility in the examination of the list of subjects, particularly since it felt that it was not possible to isolate each topic absolutely or to force the Sub-Committee to concentrate on a specific subject until it was settled, without considering other related problems. Everyone

was aware that the questions relating to the ocean space were interrelated, so that for example any discussion of the territorial sea also raised the question of the freedom of navigation and hence the régime of the high seas, pollution control and international measures which might be adopted on that subject.

If the Sub-Committee drew up a list establishing an order of study (his own delegation would like to start with the territorial sea), it would not be absolutely binding. The preparation of such a list should therefore not be made the subject of too much argument and the Sub-Committee would then soon be able to take up the discussion of the draft articles of the treaty. To do so as rapidly as possible did not mean that the Sub-Committee would lose the thread of an over-all outlook or of a central idea. The close interrelationship of the questions submitted to the Sub-Committee for consideration prompted the search for a general idea that might serve as a guideline. The major concern for the French delegation would be the existence of national interests. Some of those interests were quite vital, since they involved the cohesion and indeed the very existence of the particular State. They found their necessary fulfilment in the exercise of sovereignty - exercised over a clearly defined space, over a territory whose existence was in fact one of the conditions for the existence of the State itself. The question therefore was to determine what was the legal régime appropriate to the exercise of that sovereignty by the State and within what territorial limits it should be maintained.

Other national interests, although requiring constant attention and commanding great respect, were not as a rule of such vital importance for the State. They were mostly interests of an essentially economic and competitive nature. The second problem which arose was how to ensure that the competition was fruitful, how to prevent it from degenerating into conflict.

With regard to the first problem, the concept of territorial sea met every concern a State might have as a sovereign agent under international law. The territorial sea concept should therefore be maintained, subject to such clarifications as would need to be made in order to reconcile the exercise of the sovereignty of the coastal State with that exercised by other States over vessels flying their flag - reconciliation in the form of innocent passage. The most urgent problem, therefore, was to reach an understanding on the outer limits of that territorial sea. The French delegation favoured the adoption of a criterion of a uniform distance, or more specifically the twelve-mile limit.

The second problem called for the harmonization of the other, essentially economic, interests, the main ones being navigation and the exploitation of the living resources of the sea. Navigation should be free. Indeed, inspection, stopping and re-routing involved additional costs which affected the profitability of shipping lines and hence the growth of international trade and particularly the development of the economically less advanced countries. The right of innocent passage could not be regarded as being identical with freedom of navigation. It was a limitation recognized by international law on the fundamental rule which governed the territorial sea and established the sovereignty of the coastal State over the space in question. The 1958 Convention on the Territorial Sea and the Contiguous Zone[3/] which codified international custom, after reaffirming the obligation for the coastal State to grant innocent passage, made it subject to conditions which in fact gave the State in question considerable leeway in assessing the innocent nature of the passage. Thus freedom of navigation was not compatible with the exercise of sovereignty by the coastal States. Nor was it compatible with the régime of the territorial sea. In order to safeguard the economic interests of all States, it was therefore essential to ensure freedom of navigation beyond the limits of the territorial sea and to see to it that those limits were established at a reasonable distance from the coasts.

The other economic interests, such as those relating to fishing, raised other problems which called for new solutions. The régime of freedom could not be automatically applied to fishing, since the very exercise of the right to fish raised the question of the conservation of the living resources in all the oceans. Some regulation was necessary. Certain countries were in favour of the concept of a fishing zone adjacent to their coasts and reserved either for their nationals or also for the fishermen of other States who were allowed to fish on payment of a fee. Those fishing zones defined, as it were, an area over which the coastal State would exercise economic rights, either exclusive or preferential, but of strictly defined nature and scope. With regard to the exploitation of the sea-bed, some States claimed economic rights which were also of a very precise nature over zones in the process of being delimited on an international basis. Other States would like to

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3/ United Nations, Treaty Series, Vol.516, p.205.

exercise equally specific rights in restricted zones, for example in regard to pollution control. In other words, there was a movement among certain countries in favour of the exercise of a number of economic rights over a portion of the ocean space situated beyond the territorial sea.

That movement raised two problems which it would perhaps be well for the Committee to consider. Was it possible to reach an understanding on the exact nature of the economic powers which States were allowed to exercise? Consequently, was it possible to determine a range of powers, uniform for all countries, and in keeping with the definition of a new concept that might be called "economic jurisdiction"? Was it possible to define a single limit measured from the coast for the sea and sea-bed area which would come under that economic jurisdiction? Reflexion on those concepts would enable the Committee to clarify certain notions and to speak in more lucid terms. Different terminologies could call up very different notions, and every precuation must be taken to avoid the danger of a dialogue where no-one understood anyone else.

His delegation, which explained the régime of the territorial sea by the concept of State sovereignty, was surprised to see the concept of sovereignty being used to qualify rights which were obviously not related to the territorial sea. In some legal documents, approved by various countries, expressions such as "sovereignty and national jurisdiction" or "sovereignty or national jurisdiction" were used interchangeably to indicate rights claimed by those States over extensive areas of the sea. Was it a question of sovereignty or of specific rights? The French delegation considered that sovereignty could not be synonymous with national jurisdiction. But the ambiguities on that subject had still to be cleared up. Such clarification work might well be one of the most fruitful activities of the Sub-Committee.

Mr. TUDOR (Romania) said that the exchanges of views in Sub-Committee II on the problems allocated to it were a necessary stage in the search for equitable solutions to those problems. It was to be hoped that the resolutions to be drafted in the Sub-Committee would give concrete shape to the opinions thus expressed.

The General Assembly had been well advised to enlarge the Committee and to entrust additional tasks to it, since as far as the Sub-Committee was concerned, it seemed impossible to envisage a régime for the area beyond the limits of national

jurisdiction without taking into consideration a number of questions concerning the law of the sea. Obviously, that must not mean challenging all existing agreements, especially the Conventions of 1958 and 1960. The question was whether maritime law should be amended or whether other solutions should be found, such as the inclusion of new rules in any future treaty on the régime, the drawing up of additional protocols to existing conventions and to the new treaty, and so on. The Chairman of Sub-Committee III had already asked a similar question in his statement of 28 July 1971 (A/AC.138/SC.III/L.3), and at the seventh meeting, the Turkish delegation had submitted a proposal on the subject.

In the search for answers to the questions with which the Sub-Committee was dealing, account must be taken of the fundamental principles of international law contained in the Charter and other international instruments. In addition to those generally recognized fundamental principles, there were principles and standards which were the product of a long historical evolution and catered for the needs of the international community. On the other hand, there were gaps in international law; the most important were listed as examples in the terms of reference of the Sub-Committee.

He congratulated the delegation of the People's Republic of Bulgaria on the working paper concerning the list of subjects and issues to be considered at the forthcoming Conference (A/AC.138/45). He noted that the delegations of Latin America had announced that they too were preparing a draft list of subjects and issues.

He realized that it would be very difficult to settle the issues to be considered by the Sub-Committee with due regard to the legitimate rights and interests of the coastal States. For instance, there were differences of opinion over the question of the limits of the continental shelf. However, some points on which agreement seemed possible had emerged from the discussions: the criterion of exploitability had been rejected, and several delegations had suggested using as the criterion the distance from the coastal base-line, either alone or in conjunction with a depth limit of 200 metres. Perhaps still better criteria might be found, and in the pursuit of that objective, all possible avenues should be explored in a fair and equitable spirit.

Referring to the continental shelf, he thought that certain gaps in the 1958 Convention should be filled. In that text, the "special circumstances" which determined the method to be used in the delimitation of the continental shelf were

not clearly set out, and that gave rise to different interpretations, as in the case of the North Sea. He also referred to the question already mentioned by the Ceylonese delegation at the eleventh meeting of Sub-Committee I regarding islands as having continental shelves of their own.

His country was greatly interested in fisheries and related activities. As far as fishing in areas adjacent to the territorial sea was concerned, the needs of international shipping and deep-sea fishing must be taken into account as well as the interests of coastal States. The Sub-Committee should also carefully consider the position of international straits, for which no special convention existed.

Generally, Sub-Committee II should consider all the issues referred to it, bearing in mind that its task was to prepare for a world conference. It must act in such a way that the rules adopted were accepted by all States.

Mr. ZAFERA (Madagascar) recalled that Sub-Committee II had the task of drawing up a complete list of subjects and issues relating to the law of the sea and of preparing draft treaty articles on those issues. He proposed including in that list the following questions: the establishment of a régime for the exploration and exploitation of the sea-bed; the delimitation of the territorial sea and the contiguous zone; the determination of the external limits of national jurisdiction; fisheries and the conservation of living resources in adjacent areas and on the high seas. The list was not exhaustive, and he was glad that Sub-Committee II was authorized to prepare draft articles before drawing up a complete list.

He attached special importance to the question of delimiting territorial seas. Under the 1958 Convention, the territorial sea of a State was the marine area adjacent to its coast over which that State had sovereignty, subject to certain limitations laid down either by the Convention itself or by other rules of international law. The rights of the coastal State were not absolute, since the principle of the freedom of the sea recognized in that Convention (mainly in the form of the right of innocent passage) had also to be borne in mind.

The Convention had not fixed any uniform breadth for that area. In the present state of international law, the limits of the territorial sea were therefore left to the coastal State itself. The Convention had simply laid down a maximum of twelve miles for the territorial sea and the contiguous zone. Many States had adopted that maximum; others had extended the limits of their sovereignty up to 200 miles.

His Government considered that a uniform limit should be fixed by international agreement. It could accept a limit of twelve miles, if the overwhelming majority of other States did so also. If that breadth were chosen, the contiguous zone would have to be abolished or else given a new definition. In his opinion it could be abolished, especially as it did not confer any preferential fishing rights. Furthermore, a solution must be found to the question of international straits, which might be situated in the territorial waters of one or several coastal States. The future convention should therefore provide for freedom of navigation in such straits, the provisions possibly going beyond the right of innocent passage - a concept which incidentally should be better defined.

Turning next to the question of determining the area of the sea-bed under national jurisdiction, he said that under article 1 of the Convention on the Continental Shelf that area, situated outside the territorial sea, extended to a depth of 200 metres, or to the point where the depth of the water ruled out exploitation of natural resources. His delegation considered that those delimitation criteria should be reviewed. The criterion of the 200-metre isobath placed countries surrounded by deep water at a disadvantage, and the criterion of exploitability favoured technically advanced countries. Furthermore, the present delimitation of the continental shelf gave rise to differences of interpretation, which were liable to create political disagreement and international conflict. His delegation therefore preferred a criterion of distance in miles from base-lines. In support of its view, he also mentioned the practical difficulties of applying the criterion of depth, because of the inaccuracy of the hydrographic surveys in certain regions of the world, including that in which his country was situated, and the fact that technological development had made the exploitability criterion obsolete. At the 1973 Conference, a great many developing countries would be partly basing their economic hopes on the resources of the sea. To protect their interests, national jurisdiction would have to be extended beyond the natural shelf in cases where its breadth was too small.

Referring to the criterion of distance, which he favoured, he said that his delegation had not yet chosen a figure. The limit to be adopted should be reasonable and should take into account the special interests of both the coastal States and the international community.

Referring to the question of preferential fishing rights to be granted to coastal States, he said that his country agreed with those who considered it

necessary to provide for an area adjacent to the territorial sea, where coastal States would enjoy preferential fishing rights and would look after the conservation of living resources. That question should be dealt with in a draft international Convention, whether it was considered along with other urgent questions relating to sea fishing or during the Conference on the delimitation of territorial seas.

Mr. POPPER (Food and Agriculture Organization of the United Nations) recalled that, at the preceding meeting of Sub-Committee II, FAO had distributed an atlas of the living resources of the sea (A/AC.138/47) in response to requests made at the sixtieth meeting of the Committee on 26 March 1971. For the time being he would merely draw attention to the explanations contained in the introduction to the atlas. If, subsequently, members of the Sub-Committee would like a technical presentation of the maps and charts or wished to ask specific questions, staff members of FAO would be at their disposal. The atlas had been prepared at short notice, and he paid a tribute to the scientists whose names appeared in the document. However, it might perhaps be necessary to produce an expanded and corrected version in due course, and FAO would do so, if the Sub-Committee so wished.

He announced that another document, entitled "Limits and Status of the Territorial Sea, Exclusive Fishing Zones, Fishery Conservation Zones and the Continental Shelf" would be distributed the following week, in response to a request made by the Sub-Committee at its third meeting. His Organization would also publish a list of documents concerning the work of the Sub-Committee. Lastly, he said he would like to renew the assurance given by Mr. Roy Jackson, Assistant Director-General (Fisheries Department) of FAO at the fifty-fourth meeting of the Committee that FAO would provide the Sub-Committee with any factual information of a technical and scientific nature on fisheries it might require.

The CHAIRMAN invited the Secretary of the Sub-Committee to reply to a question asked by the Icelandic delegation at the forty-ninth meeting of the Committee concerning the integration of the experts of specialized agencies into the secretariat.

Mr. SAPOZHNIKOV (Secretary of the Sub-Committee) said in reply that the question had been considered by the Secretary-General and that steps for co-ordination and co-operation in that respect would be taken in due course.

Mr. PRIETO (Chile) congratulated FAO on its atlas and on the other document mentioned by Mr. Popper which it would present the following week. He hoped that the second document would be distributed shortly. FAO provided an excellent example of co-operation by a specialized agency.

He asked whether FAO could also supply a map of world fishing resources, giving a rough indication of the existing species of fish and their habitats, as well as the characteristics of these areas. He also pointed out that map 1.2, concerning plankton mentioned on page 2, was not to be found in the atlas. He wondered whether FAO could supply it.

The meeting rose at 5.40 p.m.

SUMMARY RECORD OF THE TENTH MEETING

held on Tuesday, 10 August 1971, at 3.25 p.m.

Chairman: Mr. MASSOUD ANSARI, Iran

In the absence of the Chairman, Mr. Massoud Ansari (Iran), Vice-Chairman took the chair.

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

Mr. TUNCEL (Turkey) introduced document A/AC.138/48 in which his delegation proposed that the list of questions to be prepared by the Committee for consideration by the next conference on the law of the sea should include an item entitled "Relationship of the draft articles and conventions prepared in pursuance of resolution 2750 C (XXV) to, and their effects on, the 1958 Conventions on the Law of the Sea".[1] He recalled that, at the Committee's first session in 1971, many delegations had stressed the role played in public international law by the four 1958 Conventions on the Law of the Sea. However, since proposals already submitted by delegations on the matters under consideration by the Committee had a direct relationship to those Conventions, it seemed advisable to examine the effects which any new international instruments might have on the 1958 Conventions as well as the advisability of incorporating them into those Conventions.

There were two schools of thought. Some believed that all that was needed was to amend the text in force, others that the law of the sea should be completely recast. His own delegation did not believe that the list should be enlarged to the point of involving such a process of recasting, but it was prepared to listen with an open mind to other opinions. He wished to point out, however, that article 30 of the Convention on the Territorial Sea and the Contiguous Zone[2] and the corresponding articles of the other three Conventions provided that "a request for the revision of this Convention may be made at any time by any Contracting Party by means of a letter addressed to the Secretary-General of the United Nations" and that

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1/ Convention on Fishing and Conservation of the Living Resources of the High Seas, Convention on the High Seas, Convention on the Continental Shelf, Convention on the Territorial Sea and the Contiguous Zone.

2/ United Nations, Treaty Series, vol. 516, p. 205.

"the General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request". The next conference would therefore not be empowered to amend or abrogate any of the 1958 Conventions, since that could be done only by the General Assembly.

In any event, his delegation would be glad if, at an appropriate stage in its work, the Sub-Committee could examine the item to which he had drawn attention.

Mr. SHAH (Nepal) said he wished to refer to the report of the Secretary-General on the question of free access to the sea of land-locked countries and the special problems of those countries relating to the exploration and exploitation of the resources of the sea-bed (A/AC.138/37), on which he had already commented at the twelfth meeting of Sub-Committee I. The report was in part an up-dated version of the Secretary-General's 1958 study on the question of access to the sea of land-locked countries.3/ Much had happened since that time. Freedom of transit and access to the sea of land-locked countries had been formally confirmed in two of the Geneva Conventions and in the 1965 Convention on Transit Trade of Land-Locked States.4/ But the exercise of most of the rights enunciated and codified in those Conventions was subject to bilateral agreements with neighbouring countries. In paragraph 246 (formerly 245) of his report, the Secretary-General himself had stated that the tenor of those agreements and of multilateral instruments was inadequate. He agreed with that view and thought that the situation was even worse where relations between developing countries were concerned.

In fact, the 1958 Conventions and the 1965 Convention on Transit Trade of Land-Locked States provided transit countries with a legal basis for hampering the trade of land-locked countries. Thus man-made laws added to the disadvantages imposed by nature and virtually consigned the land-locked countries to a state of serfdom. The first step towards remedying that situation was for transit countries to become parties to the multilateral instruments. But most of the transit countries which were Members of the United Nations had not acceded to the 1965 Convention on Transit Trade, and, with the exception of Nigeria, no developing transit country had become a party to that Convention. However, even if the transit countries did become parties to those multilateral treaties, they could still hamper trade of the

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3/ United Nations Conference on the Law of the Sea, 1958, Official Records vol. I (United Nations publication, Sales No.: 58.V.4, Vol. I), document A/CONF.13/29 and Add.1.

4/ United Nations, Treaty Series, Vol. 597, p. 42.

land-locked countries. Unless they adopted a sympathetic approach, the whole economy of the land-locked countries might collapse. Bilateral treaties involved difficult problems; one party might refuse to apply some of the provisions or it might terminate or simply not renew the treaty. Land-locked countries must therefore be protected by international law.

For those reasons, the third conference on the law of the sea should reaffirm in the strongest terms the importance of transit and access to the sea, and lay down the obligations of coastal or transit countries towards land-locked countries. The conference should also take into consideration the situation that would result from the establishment of an international sea-bed authority. The Secretary-General had indicated certain specific measures in that regard. That aspect should be taken into account in formulating treaty articles on the régime of the sea-bed and the ocean floor.

The important point was that, under any new régime, the land-locked countries should feel that freedom of transit and access was guaranteed to them under international law and was not simply accorded as a matter of courtesy by their neighbours.

Turning to other matters, he said that, in his view, a comprehensive list did not mean a "complete" list. The aim was to identify the matters of overriding interest on which treaty articles must be drafted. It was to be hoped that agreement could be reached, at least on a tentative list of that kind so that real work could begin. In particular, matters such as the breadth of the territorial sea, straits and fisheries should be tackled promptly and with the greatest care. His delegation wished to compliment the United States delegation on its draft articles (A/AC.138/SC.II/L.4), which the Government of Nepal would study with the greatest care. He could already state that his Government did not recognize State sovereignty beyond a three-mile limit. However, if a large majority of States were in favour of a twelve-mile limit, his Government could agree to that extension, provided it formed part of a wider agreement on a range of important matters relating to the law of the sea.

Where high seas fishing was concerned, he thought that nations that wished to exercise exclusive control over that activity were acting in a manner incompatible with existing laws. If their economies were absolutely dependent on fisheries, they must first try to obtain adequate compensation under international arrangements. Countries which also claimed exclusive jurisdiction over ocean space on the grounds of pollution, ecological imbalance or offshore resources management, similarly had

a duty to seek an international consensus instead of taking unilateral action. The general freedom of the high seas must not be jeopardized. The United States proposal was an honest and serious attempt to solve those problems. It must also be emphasized that the question of international fisheries was not of importance only to the coastal and distant-fishing countries, but to all countries. In view of the reserve of protein for men and animals that was contained in the seas, the land-locked countries also had a great interest in high seas fishing. Through its association with bodies such as FAO and UNDP, Nepal had taken part in activities connected with international fisheries. It could not participate in international fishing, but it expected to benefit from activities conducted in international waters under international auspices. So far it had not done so, and he would like to know what arrangements were envisaged under the proposed international organization of fisheries which would be of direct benefit to land-locked countries.

Mr. DE LA GUARDIA (Argentina) said that his delegation considered that most of the situations governed by the rules of the customary law of the sea which had been incorporated in the 1958 Conventions - to which Argentina was not a signatory - did not need any substantial amendment, because they established a balance between the various interests concerned. The existence of established customs was empiric proof that a balance existed, and the rules originating in those customs confirmed that state of affairs and ensured their legal protection. The effect of customary rules was to render obligatory the conduct which States observed in practice.

That did not, however, mean that customary law could not be changed. The established balance might be disturbed by the emergence of new factors such as the discovery of new ways of using the marine environment, the adoption of new technologies for the exploitation of its resources or the appearance of new State interests, as had been the case with several points of the customary law of the sea. In such cases, the customary rules providing legal protection for a situation which did not represent a true balance of interests required amendment in order to restore that balance. The balance could be restored either by instituting a new custom, which would subsequently become the customary rule, or through a convention, as, for instance, when the General Assembly of the United Nations convened a new conference on the law of the sea.

The Committee's primary function was, in his delegation's opinion, to draw up a list of subjects covering all aspects of the law of the sea which States considered controversial or which, because they had only recently come to light, were not covered by the current legal régime applicable to the sea.

His delegation considered that the list of subjects to be drawn up should be as complete as possible and broader than the one so far established, so that the necessary documents could be prepared for a detailed discussion of all aspects of the law of the sea which needed revision. The Argentine delegation welcomed the spirit of unity within the Committee and urged delegations to try to harmonize and reconcile the various interests at stake. The Committee's work should be aimed at securing general acceptance of the legal régime it elaborated, thus facilitating the task of the future Conference.

In December 1966, the Argentine Republic had extended its jurisdiction over the sea adjacent to its coasts up to a distance of 200 nautical miles from the low-water mark. In doing so, the Argentine Republic had acted jointly with other Latin American countries which had taken the same decision. His delegation appreciated the arguments put forward by those delegations in the Sub-Committee which were opposed to the unilateral extension of national jurisdiction to distances greater than those traditionally accepted. Their arguments, supposedly objective and universally valid, usually concealed a desire to defend their own well-defined interests. The developing countries did not possess the technological means to obtain the resources they needed for adequate development of their economies and had to protect and defend the resources adjoining their territories in order to prevent nationals of other more developed States from appropriating them for their exclusive benefit. The danger of over-fishing and the need to preserve the ecological balance of certain species justified the step taken by the Argentine Government to defend its legitimate interests. In taking that step, the Argentine Government was defending not only the interests of its own inhabitants but also those of all the peoples of the world that would ultimately benefit from a rational and balanced exploitation of the resources of the Argentine coastal seas. As a coastal State, it was Argentina's responsibility to ensure the conservation of precious resources which would in future be necessary to feed mankind.

Those reasons had been clearly set forth in the two Declarations of Montevideo (A/AC.138/34) and Lima (A/AC.138/28) signed by the Latin American countries. The preamble to the 1970 Montevideo Declaration stated that the implementation of measures to conserve the resources of the sea, its soil and its sub-soil by coastal States in the areas of maritime jurisdiction adjacent to their coasts ultimately benefited mankind, which possessed in the oceans a major source of means for its subsistence and development.

Under existing Argentine legislation, foreign fishing vessels could fish within the area between 12 and 200 nautical miles off shore, provided they complied with certain legal requirements. Very recently adopted legislation encouraged investment in the fishing industry and the establishment of foreign enterprises under the protection of Argentine law, in the interests of better utilization of the resources of the Argentine coastal seas.

The Argentine Act which at the end of 1966 had extended that country's sovereignty to cover the 200-mile zone had expressly stipulated that its provisions in no way interfered with freedom of navigation in the waters concerned and flight over them in other words, it recognized the existing principle of international law which prohibited States from regulating navigation and overflight outside a maritime area continguous to their coasts, where such regulation was justified for security reasons or for the proper application of fiscal, Customs, health and other legislation. An explanatory statement on the instruments signed by the Argentine Government following the conferences on the law of the sea at Montevideo and Lima in 1970 made it clear that the extension of sovereignty or jurisdiction to maritime zones for the purpose of protecting the economic rights of the coastal State must not contravene the principle of free navigation and overflight by ships or aircraft of any flag.

With regard to straits, his delegation considered that the Committee should make a careful study of that question in order to establish a possible classification of straits complying with certain criteria and to determine the legal regimes applicable to those seaways in respect of navigation and overflight. The problem was to reconcile the interests of the international community with those of the coastal States bordering the straits in order that a liberal regime of navigation and overflight would not jeopardize their security, especially when a single State exercised jurisdiction over both shores.

The Argentine Republic possessed one of the most extensive geological continental shelves in the world. Existing international law recognized that coastal States possessed sovereign rights over all the area that they were in a position to exploit. Under the international law in force, the fixing of a precise limit for the continental shelf in fact implied a renunciation of rights by coastal States.

The Committee had to reconcile the criterion of exploitability with the principle, recognized by Argentina, of the existence of an international area of the sea-bed which was the common heritage of mankind. In so doing, it would have to take into account the relevant existing rules, in particular the judgement of the International Court of Justice in the North Sea continental shelf cases.5/ The Argentine delegation's understanding was that those rules granted coastal State sovereign rights over the whole submerged continental territory, in other words up to the lower limit of the continental margin. On the other hand, his delegation supported the proposals made by States which had only a narrow continental shelf and therefore suggested criteria such as distance, provided States could choose between the geomorphological criterion and that of distance.

As the Canadian representative had suggested, countries must state their maximum claims concerning the delimitation of their continental shelf. In the Argentine delegation's view, the coastal State had a special interest in the utilization of the vast resources contained in its submerged territory. That interest had increased with the years, as technology had made it possible to extract appreciable quantities of oil from the sea-bed and to undertake profitable exploitation of other minerals. Although the extraction of minerals or oil was currently the most important utilization of the continental shelf, it was already possible to conceive of other uses which went far beyond the concept of exploration and exploitation of the natural resources of the shelf. His delegation therefore considered that article 2 of the 1958 Convention on the Continental Shelf6/ was too restrictive, since it only recognized exclusive sovereign rights for coastal

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5/ ICJ Records 1969, p. 3.

6/ United Nations, Treaty Series, Vol. 499, p. 311.

States for the purpose of exploration and exploitation. It considered that that article should be amended to make the sovereignty of the coastal State not only exclusive but complete without in any way affecting the legal status of the superjacent waters, either in the area under national jurisdiction or in the high seas. The coastal State's sovereignty should extend over the whole of its submerged territory. It was because the 1958 Convention did not recognize adequate sovereignty for the coastal State that the Argentine Government had been unable to ratify that Convention, which represented a compromise between different trends and took only partial account of the interests of coastal States, as defined in President Truman's famous statement. His delegation considered that those interests should be more adequately protected. It hoped that the next conference on the law of the sea would produce a more appropriate definition of the sovereign rights referred to in article 2 of the Convention on the Continental Shelf. It also hoped that conference would be fully successful and would do its utmost to contribute to that result.

Mr. EL HAJ (Libya) said that Libya faced some of the same problems as a large number of developing countries. Despite its 1,900 kilometres of coastline, it had only a small merchant fleet and its fishing industry, though growing, was not yet large enough for the full exploitation of the resources of adjacent waters, much less of those of more distant waters. Libya had already concluded a number of agreements with countries such as Greece and Malta and Turkey with a view to more effective exploitation of its territorial waters, and hoped that the next conference on the law of the sea would culminate in a multilateral settlement of maritime problems that would be widely accepted and respected. The large maritime Powers had not so far paid sufficient attention to the needs of developing countries and the success of that conference would largely depend on the changes which those Powers were willing to make in their policies.

His delegation fully supported the working paper in which the People's Republic of Bulgaria had proposed a list of subjects and issues relating to the law of the sea (A/AC.138/45), which had been well prepared and was very clear.

Another working paper had been submitted by the Latin American Group. All the subjects in it were of very great interest but the list could not be considered as exhaustive.

One of the most important questions which arose was unquestionably that of the breadth of the territorial sea, a question which had not been settled by the 1958 Conference and on which opinions were still so divided that, while some States - for example, the United States of America and the USSR - would like to see the limit fixed at twelve miles, others - particularly the Latin American countries - would like it extended to 200 miles.

In Libya, a law had been passed on 28 May 1959 fixing the limit at twelve miles, with the exception of the Gulf of Sidra which, because of its geographical configuration, lay wholly within territorial waters, but his Government attached particular importance to the concept of the contiguous zone.

From the international point of view, his delegation thought it would be advisable to make a distinction between countries bordering on seas and those bordering on oceans. Although a twelve-mile limit seemed reasonable for countries in the former category, a higher figure could be adopted to meet the requirements of the latter category of countries, for which fishing was often a key industry.

With reference to the continental shelf, his delegation was not satisfied with the definition given to it by the 1958 Convention on the Continental Shelf. It did not consider either the concept of depth or that of exploitability to be acceptable: the former, because it led to flagrant inequalities (the coasts of the African continent were often very precipitous); and the latter, because the technically developed countries often had an unfair advantage. The criterion of distance from the coast proposed by Iraq seemed more equitable and the suggested figure of forty miles might form an excellent starting-point in the search for a joint solution.

His delegation regretted that it was categorically opposed to the United States delegation's proposal for the establishment of an intermediate area under international trusteeship. In its opinion, the existence of an area controlled by an international body would run counter to the spirit of the 1958 Convention on the Continental Shelf and would ultimately give an unfair advantage to the highly developed countries; it therefore fully supported the position taken on that point by the delegation of Nigeria.

The question arose of whether or not there should be recourse to the International Court of Justice in the event of a dispute. As the Charter of the United Nations provided that only Member States of the United Nations could refer a case to the Court for arbitration, his delegation thought it would be desirable to set up a special court composed of specialized jurists representing the various legal systems in the world. Such court would be appointed by the General Assembly and would have the function of settling all disputes concerning maritime matters. It would obviously be advisable to provide for procedures of negotiation, conciliation and arbitration, in accordance with Article 33 of the Charter of the United Nations.

The meeting rose at 4.55 p.m.

SUMMARY RECORD OF THE ELEVENTH MEETING

held on Thursday, 12 August 1971, at 3.20 p.m.

Chairman: Mr. CALINDO POHL El Salvador

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

Mr. VOHRAH (Malaysia) said that his delegation maintained a flexible position with regard to the list of subjects to be prepared by the Sub-Committee. Like the representative of Chile, it considered that the subjects should be adequately treated before articles were drafted on them.

With regard to the question of straits used for international navigation, he welcomed the statement made by the representative of Spain at the sixth meeting of the Sub-Committee concerning the case of coastal States bordering international waterways. The Strait of Malacca between Malaysia and Indonesia was such a waterway. In 1969 Malaysia had, for reasons of security and economic necessity, extended the limit of its territorial sea to twelve miles, a step which had already been taken by Indonesia. Since part of the Strait was less than twenty-four miles wide, the two Governments had signed an agreement delimiting the boundary of their respective territorial waters.

Malaysia therefore exercised sovereignty over a belt of twelve miles adjacent to its coast, over the airspace above that area and over the sea-bed and its subsoil. It had always recognized the right of innocent passage. It regretted that the great maritime Powers were seeking to replace that traditional right by the "high seas corridor" concept with free overflight: the apparent desire of those Powers to strengthen their privileges was contrary to the trend of the era. The concept of "innocent passage" should, on the contrary, be revised to take account of the hazards to which coastal States were exposed as a result of present-day sea transport. Since that concept had been defined in article 14 of the Convention on the Territorial Sea and the Contiguous Zone[1/], dramatic advances had produced more lethal warships and increased the capacity of oil tankers. In those circumstances,

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1/ United Nations Treaty Series, vol.516, p.205

coastal States must be protected by investing them with regulatory and management powers. Malaysia could not agree to freedom of flight over its territorial waters.

The problem of pollution was another reason why Malaysia would resist any diminution of its sovereignty over its territorial sea in the Strait of Malacca. The majority of ships using that Strait were large oil tankers; pollution was already taking place from minor oil spills and because tankers apparently found the Strait an ideal place for cleaning up and flushing out waste. If a disaster of the magnitude of the Torrey Canyon were to occur, a large proportion of Malaya's inhabitants would be deprived of their staple diet. Tourism would also be seriously affected. Wild-life would be gravely endangered and the high ambient temperatures would create a risk of ignition of uncontrolled oil fuel. The possible effect of an accident to a nuclear vessel must also be considered. There were no guarantees against those risks and there could never be adequate compensation for them.

The super-Powers were clamouring for freedom of transit for their warships through territorial straits. Malaysia could not be expected to invite potential calamity by encouraging their war of nerves. In the present age, it was essential to ensure that the seas, the sea-bed and the ocean floor were used for peaceful purposes. Malaysia therefore insisted upon prior authorization for the passage of warships, including submarines, through its territorial strait. It would guarantee the right of innocent passage, but must be absolutely certain that the passage was innocent.

Mr. WOLDE-GIORGIS (Ethiopia) said that the Sub-Committee should base its method of work on the actual wording of the agreement reached at the March 1971 session and leave the outstanding problems to be settled by the passage of time. The list of subjects prepared by the Sub-Committee must be as complete as possible and should therefore remain open-ended. It must not, however, be so detailed as to obscure the actual purpose of the 1973 Conference.

With regard to the limit of the territorial sea, the 1958 and 1960 Conferences on the Law of the Sea had not resulted in the choice of a uniform limit. Ethiopia, which had a coastline of 800 km on the Red Sea, which would be an inland sea but for the Bab al Mandab Strait to the South, was in favour of a uniform limit. The misgivings expressed on that point in the past would be allayed if provisions and guarantees to safeguard the national, economic and other interests of the coastal States were included in the final convention. If States were to agree on a limit of

twelve nautical miles at the current session, that would not mean that they were renouncing the protection of each State's vital economic interests beyond that limit. If a maximum limit of twelve miles was not acceptable, any other limit proposed must be as reasonable as possible.

Another question of interest to the Sub-Committee was that of the economic rights of coastal States beyond the limits of national jurisdiction. The developing countries, which were not necessarily bound by existing legal standards, in whose development they had played no part, were in favour of granting exclusive economic rights over a well-defined area beyond the limits of the territorial sea. The developed countries objected that that would interfere with freedom of navigation on the high seas; they also maintained that it would be selfish for the coastal States to claim such an area, since the resources of the sea, in particular proteins, were not evenly distributed. As that argument was not convincing, his delegation had already, at the fifty-seventh meeting asked that the developing countries should be granted exclusive fishing rights. The extent of their exclusive economic area would depend on the importance of fishing in their economy, and on the stage of development reached by their fishing industry. On the other hand, there should be a treaty guarantee that exclusive economic rights over an area of the high seas would not interfere with freedom of navigation.

With regard to straits, according to some statements made in the Sub-Committee, the effect of fixing the limit of the territorial sea at twelve miles would be to subject some hundred international straits to the jurisdiction of coastal States. Article 16, paragraph 4, of the 1958 Convention on the Territorial Sea and the Contiguous Zone laid down that there should be no suspension of the innocent passage of foreign ships through straits which were used for international navigation. The special character of straits had thus been recognized because, under the same article 16, the coastal State might suspend temporarily the innocent passage of some ships if such suspension was essential for the protection of its security.

Before a special treatment could be established for international straits, it would be necessary to study the analysis of the existing rules of innocent passage and add certain provisions concerning international straits in order to prevent arbitrary acts by coastal States or abuses by flag States. As early as 1960 at

Geneva, Ethiopia had urged that, in straits traditionally used for international navigation, coastal States should fix the limits of their territorial seas in such a way as to provide high seas corridors of sufficient width for free navigation.

Ethiopia had no definite proposal to make at the moment but wished to suggest that, in due course, a working party should be given the task of preparing draft articles to make the conditions of exercise of the right of innocent passage in international straits more flexible by revising article 14, paragraph 4, of the 1958 Convention, since the very vague wording of that article lent itself to a variety of interpretations, which were difficult for coastal States to verify. In general, Ethiopia on account of its geographical position requested a liberalization of the rule of innocent passage in straits, rather than absolute freedom.

Lastly, where national jurisdiction over the sea-bed was concerned, his delegation favoured the criterion of distance rather than that of depth (isobath of 200 metres). That would establish a measure of equality between States, but agreement must be reached on a reasonable distance which, without depriving States of the resources of their continental shelf, would help to institute a viable and profitable international régime. His delegation considered that any limitation of the continental shelf which would deprive the international régime of important resources would be acceptable only in so far as the economic interests of the land-locked and shelf-locked countries were safeguarded by regional agreements.

Mr. N'DAO (Mauritania) said that the definition of the continental shelf in the 1958 Convention[2/] was based on two fundamental concepts: the geophysical concept of the continental shelf, which in most cases coincided with a depth of 200 metres, and exploitability. The concept of exploitability had now become too vague; part of what had been over-generously granted in 1958 on the strength of that concept now had to be taken back in order to create a common heritage. Everyone must make the necessary sacrifices to that end and Mauritania, for its part, was ready to do so. The restrictions imposed must, however, be reasonable, if they were to obtain the constructive support of all, and that was why his delegation thought that a distance criterion should be adopted. In its view, a

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2/ United Nations, Treaty Series, vol.499, p.311

distance of 200 miles from the baselines of each State was reasonable, those lines being defined in accordance with the 1958 Convention or by reference to criteria of indisputable validity. His delegation did not believe that that distance criterion could cause any real hardship, nor did he think that it would unduly diminish the common heritage or be incompatible with the progressive establishment of a sound machinery.

With regard to the delimitation of the territorial sea, he thought that it would be difficult to obtain the support of all States for the adoption of a limit of less than twelve miles. His delegation did not, however, wish to propose any specific distance for the time being, because it would like to be more fully informed of all the implications of the choice to be made.

The concept of an exclusive fishing zone was of great economic and scientific interest to many countries, including his own. The establishment of such a zone was a vital matter for many developing countries. A study of the material prepared by FAO and, particularly, of documents FID:CFRA/41/4 and FAO:CFRA/71/6, submitted at the Casablanca consultation on the conservation of fishing resources and the control of fishing in Africa, was sufficient to show the present threats to the stocks of certain regions said to be abounding in fish and the existing disturbing imbalance between the fishing fleets of the developing countries, especially in Africa, and the fish requirements of the inhabitants of those countries.

The striking contrast between the primitive and out-of-date fisheries of developing countries and the ultra-modern, large-scale industrial fisheries of the industrialized countries led to serious injustices which could be corrected only by measures of international law and by sincere co-operation between countries in the conservation and control of fishing resources. In addition to the international bodies already set up for that purpose and their commendable efforts, proposals had been made for the establishment of a system of assistance from the more advanced to the developing countries, so that the latter might legitimately derive maximum benefit from the resources adjacent to their coasts. It was true that, in current circumstances, there was little hope of such a system being created and his delegation thought it would be wiser to consider the possibility of general co-operation based on reciprocity. Such co-operation could only be effectively established if the coastal States, the developing countries in particular, had the exclusive right to the fishing resources adjacent to their coasts in a zone of a

breadth to be determined. They would thus be in possession of an asset which would induce the technically advanced maritime countries to collaborate with them in exploiting those resources. A country making a technical contribution to the development of fisheries and the training of specialized personnel would in return be entitled to a share of the catch, an arrangement which would balance the distribution of proteins the need for which had rightly been emphasized by some delegations. It should be remembered that the fishing resources of small countries were often abundant because they had not been over-exploited like those of the larger countries; the plundering of the waters adjacent to the latter countries had gradually extended to the waters of other countries and only well-organized co-operation would put an end to that veritable piracy.

As the representative of Iceland had aptly pointed out at the ninth meeting, nature had apparently intended to compensate for the unequal distribution of land resources by its methods of stocking the seas; many countries had to rely on their fishing resources not only for subsistence but also for the harmonious development of their industrialization. There was a danger that international regulations, no matter how well conceived, would not be applied by fishermen, who would not understand either their scope or their ultimate justification; it was therefore mainly the responsibility of the coastal States, together with other States in the same region, to adopt suitable legislation for the control and conservation of the living resources of their seas.

His delegation considered it necessary to define a zone of the sea-bed and its subsoil coming within the exclusive sovereignty of each State, a territorial sea, and lastly, a fishing zone of an economic nature intended to ensure the feeding and development of the least developed countries or those whose interests were largely connected with the exploitation of fishing resources; for all other purposes, the latter zone could be placed under international control. The criteria to be used should be determined on the basis of depth and distance, depending on the configuration of the various continental shelves. The land-locked countries should be given easy access to such zones, either by regional or by bilateral agreements, so that those exclusive fishing zones would in no way curtail their rights.

Mr. CASTAÑEDA (Mexico) said his delegation noted, firstly, that no convention in force precluded a coastal State from itself determining the breadth of its territorial sea and, secondly, that in practice it was always the coastal States which had fixed that breadth in their national legislation. The national

legislation of those countries, taken as a whole, might be regarded as establishing a rule of customary international law. The legislation of most countries fixed the maximum breadth of the territorial sea at twelve miles. The very fact that States had thus voluntarily limited the extent of their territorial sea implied a renunciation of the exclusive right to exploit the resources of the sea beyond those limits, i.e. in the high seas. In other words, they implicitly recognized that there was no restriction on the exploitation of the high seas beyond the limit of the territorial sea. It also followed that if a State, by a unilateral act, reserved for itself the exclusive exploitation of the resources of the high seas, it was violating the rights of all other States. It was therefore incorrect to say that every State had the right itself to determine the breadth of its territorial sea. A State possessed that right only on condition that it exercised it within the limits tolerated by international law. In more technical legal terms, its decision to define the breadth of the territorial sea unilaterally was not valid erga omnes, nor was it mandatory or binding upon other States, except to the extent that it conformed, or did not conflict, with the rule of international law which laid down the maximum limit of the territorial sea. Such a rule did in fact exist, although it was a customary rule derived from State practice and not one incorporated in an international convention. It emerged clearly from the interpretation of the well-known judgement of the International Court of Justice in the Norwegian Fisheries case[3/]. It was based on the practice of over ninety coastal States which had laid down twelve miles or less as the outer limit of their territorial sea. In contrast, less than ten States claimed sovereignty over a more extensive area beyond the limit of twelve nautical miles, and less than five, over an area of territorial sea extending up to 200 miles. The current legal position was totally different from that prevailing at the time of the 1958 and 1960 Conferences, at which the various schools of thought had been so evenly balanced that one of the proposals then submitted had been rejected by a majority of only one vote. The situation had now completely changed and there could be said to be a sufficient international consensus of opinion for the twelve-mile limit for the territorial sea to be regarded as a customary rule.

3/ ICJ Reports 1969, p.3.

That rule was not only well-defined and well-established, but it adequately met the requirements of the international community. It was not desirable, for example, that a coastal State should be able to restrict freedom of navigation beyond twelve miles from its coast. In any case, even those countries which claimed a territorial sea of 200 miles permitted navigation beyond the twelve-mile limit. But if a coastal State exercised sovereignty over the territorial sea, it was difficult to see why it should allow the ships of other States to sail freely in that sea. As the French representative had so aptly pointed out, the notion of the territorial sea was incompatible with that of freedom of navigation. A concept of the territorial sea which allowed for a right of navigation recognized and guaranteed by international law was a contradiction in terms.

His delegation had already had an opportunity to commend the Pacem in Maribus draft prepared by Ambassador Pardo of Malta (A/AC.138/53). That draft had the great merit of being the first systematic attempt to base the whole of the law of the sea on the idea that the high seas and their resources constituted the common heritage of mankind and that those resources must be managed in the interests of all nations instead of on the traditional and now anarchical principle of the complete freedom of the seas. The draft had, however, the grave defect of providing for a national ocean space in which the coastal State would exercise its jurisdiction up to a distance of 200 miles from the coast. That was the general principle, but it was subject to at least six exceptions, i.e. there were at least six cases in which the author of that draft had felt it necessary to impose a twelve-mile limit on the area over which the national jurisdiction of the coastal State was exercised in practice. Thus, article 34, paragraph 2, authorized overflight beyond twelve miles from the coast. It was only within a twelve-mile limit that the head of a scientific expedition would need to request the coastal State's consent to research (article 35). Article 47, paragraph 5, required submarines to navigate on the surface and to show their flag within twelve miles from the coast. Under article 48, paragraph 1, the coastal State was authorized to suspend the right of innocent passage only up to a distance of twelve miles from the coast. Lastly, article 56 prohibited the emplacement of nuclear weapons beyond twelve miles of the coast. There were two further contradictions between the exercise of sovereignty over the territorial sea and certain obligations imposed upon the coastal State. The first was the coastal State's obligation under article 61 to transfer to the international institutions

a portion of the revenue obtained from the exploitation of the animal and mineral resources of national ocean space. The second was that State's obligation under article 27 not to hinder the laying of submarine cables and pipelines in its territorial sea. Although those two obligations, which were incompatible with the concept of the territorial sea, did not contain any specific reference to a distance of twelve miles, they were meaningless except in terms of a jurisdictional area extending well beyond the twelve-mile limit.

Thus, fishing would be the only matter in which the coastal State would exercise its jurisdiction over the 200-mile zone. It would seem more logical to accept the facts and to agree that the authentic territorial sea, i.e. the area in which the six exceptional functions were to be exercised, should have a breadth of twelve miles and to establish, in addition, a 200 mile zone of special jurisdiction for fishing.

The traditional sub-division of the sea into two parts, the territorial sea and the high seas, was no longer consistent with present requirements with regard either to fishing or to other questions such as that of pollution of the marine environment.

It was necessary to recognize the existence in the high seas of zones over which, to use Gidel's expression, the coastal State projected its competence. That State exercised its jurisdiction in such zones for certain concrete and specific purposes, such as exclusive fishing by its nationals, conservation of the living resources of the sea or prevention of pollution of the marine environment. It exercised exclusive jurisdiction for the specific purpose for which such a zone had been established. The legal character and purpose of that jurisdiction, as well as the geographical area over which it was exercised, had to be consistent with the purposes which the coastal State was seeking to achieve in the zone. In other words, the coastal State exercised not sovereignty but partial jurisdiction over the zone which, in all other respects, remained the open sea, for example, for such purposes as navigation and the exercise of civil and criminal jurisdiction.

What purposes of the coastal State could justify the establishment of such a zone of special jurisdiction today? In the opinion of the Mexican delegation, the current meetings of the Committee in preparation for the 1973 Conference were specifically intended to take a decision on that point. His delegation believed that the establishment of zones of special jurisdiction would be justified for the

conservation and management of the living resources of the sea, the preferential or exclusive exploitation of those resources and control of pollution of the marine environment. Since such zones related to the sea and not to the sea-bed and the ocean floor, they did not include the continental shelf.

Consideration might also be given to the establishment of a zone of special jurisdiction in which the coastal State could authorize or prohibit scientific exploration in the high seas near its coasts or in its sea-bed.

It was desirable that high sea fisheries should be rationally exploited in accordance with effective standards of conservation and with criteria of equitable distribution laid down and applied by international authorities. In other words, the ideal would be for high sea fisheries to be administered instead of being chaotically exploited in accordance with the principle of absolute freedom of catch which had so far prevailed. Until the international community had established authorities and organs capable of administering the resources of the sea, some other way must be found of meeting that need, and minimum rules must be drawn up for the exploitation of those resources. In most cases, the coastal State was best placed to remedy that deficiency and to carry out the functions which would be exercised by international organs, if such organs were to be established. The existing régime embodied in the 1958 Convention on Fishing and Conservation of th Living Resources of the High Seas[4/] must be replaced by recognition of the predominant role played by the coastal State in the conservation, regulation, administration and even in the equitable distribution of fishing resources in the sea areas adjacent to its coast. Although those functions of conservation, administration and distribution were theoretically distinct, care should be taken not to separate them artificially in drawing up the new régime. What was involved was a global management function which embraced the various functions of conservation, regulation and administration.

As the Canadian representatives, Mr. Beasley and Mr. Needler, had rightly pointed out, the coastal State would exercise its functions in the zone of special jurisdiction by delegation of authority from the international community. It was a case which fitted Georges Scelle's theory of the functional duality of the

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4/ United Nations, Treaty Series, vol.559, p.285

personality of the State, acting at one and the same time as a subject of international law and as an agent or an organ of the international community in the interests and on behalf of that community.

A coastal State would not be acting as an agent of the international community only when it adopted measures for the conservation of the living resources in the high seas. The Brussels Convention of 29 November 1969[5/] authorized the coastal State to take unilateral measures in the high seas and even to destroy a vessel of another nationality where its presence constituted a danger or a pollution hazard for its coasts. Piracy and the slave trade were the best-known cases in which a State acted by delegation of authority from the international community. Similarly, when Canada had restricted navigation in an area extending to 100 miles from some of its coasts in order to prevent pollution of the Arctic Ocean, it had done so in the interests and on behalf of the international community, regardless of its own reasons for taking such measures for protection of that special ecological environment. Those various examples showed that it would not be abnormal to entrust the coastal State with important functions relating to the regulation of fishing areas of the high seas adjacent to its coasts to be exercised in the interests and for the benefit of all States.

With regard to the question of exclusive or preferential fishing zones in the high seas, both of the extreme solutions were, in his view, unacceptable. He rejected any claim by a coastal State completely to prohibit fishing by foreign ships in an extensive area of the high seas adjacent to its coasts, unless that State was itself in a position to undertake adequate and rational exploitation of the area's resources for its own benefit. The other unacceptable solution would be to refuse to recognize the coastal State's right to reserve for its own nationals a certain proportion of the fish resources near its coast which those nationals were in a position to exploit. The only logical, effective and fair solution lay between those two extremes and would be to reserve and guarantee to the coastal State a share of the fish resources which was in keeping with its capacity to exploit them and which should tend to increase, particularly in the case of developing countries.

5/ IMCO Publication, Sales no. IMCO 1970.3.

That was the solution proposed by the United States delegation, which could be taken as a basis of negotiation by the Committee in its preparations for the Conference and by the Conference itself.

It would, however, be necessary to simplify the United States proposal, because it provided for different régimes for various species of fish. His delegation also had reservations regarding the idea of establishing a sui generis type of compulsory arbitration modelled on the 1958 Convention on Fishing.

The Mexican delegation reserved its right to give its views in Sub-Committee III on the establishment of zones of special jurisdiction in the high seas in order to prevent pollution of the coasts and the territory of the coastal State.

In conclusion, he read out the text of the draft articles proposed by his delegation regarding the establishment of areas of special jurisdiction.

Mr. FARHANG (Afghanistan) said that, in his delegation's view, the list of subjects to be compiled by Sub-Committee II should not be either too short or too long. Every delegation should be free to ask for the inclusion of one or more items which it felt to be particularly worthy of interest.

His delegation believed that the list should include the question of free access of land-locked countries to the sea, on which the Secretary-General had prepared an excellent report (A/AC.138/37), as requested in General Assembly resolution 2750 (XXV). Neither the various conferences held on the subject nor the 1965 Convention on Transit Trade of Land-locked States[6/] had unfortunately proved satisfactory to the countries concerned, and the existing international law must therefore be reviewed.

The principle of free access to the sea, which today was universally recognized and had been proclaimed on several occasions, was based on the general principle of the freedom of the high seas, just as the right of free transit derived from the right of free access. Those three principles were inter-dependent and constituted a whole which could be divided into several issues: freedom of the sea, freedom of passage across the territorial sea, freedom of passage through international straits, the use of maritime ports, the right to fly a flag, the right of navigation in inland waters, equal treatment in ports, the right of transit by road, rail and air

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6/ United Nations, Treaty Series, vol.597, p.42

across countries whose territories blocked the access of other countries to the sea, etc. The principle of reciprocity laid down in the 1958 and 1965 Conventions should also be re-examined.

Mr. MBOTE (Kenya) said that he would address himself solely to the question of rational utilization of marine living resources.

The exploitation of those resources was at present the only marine industry open to many developing countries. His delegation did not believe that the principle of freedom of fishing in international fisheries, so eloquently defended by the representatives of the United States, Canada, Australia, Japan and Iceland, was in fact in the interests of the international community, in general, and of the developing countries, in particular. Indeed, regional experiments so far made seemed to prove the contrary.

Although Kenya had fixed the limits of its national jurisdiction at twelve miles, it had noted with regret that the area beyond those limits was being exploited by large distant-water factory fleets, whose activities might have adverse effects on its coastal resources. Kenya had concluded that it should have the right to exercise control beyond its territorial waters with respect to both pollution and fishing. In an earlier statement, his delegation had already expressed its view that it should be possible to exercise such control up to 200 miles from the coast.

Several delegations had referred to the problem of wastage of resources. He thought that problem could be solved by licensing or other arrangements under which a country unable to exploit its fish resources could authorize another to fish in its territorial waters.

It was surprising that foreign countries preferred to invest considerable sums in building factory ships rather than in installing shore-based facilities in the developing countries, which would be much less expensive and would have the advantage of promoting economic development and creating employment in those countries. That abuse should be ended by regional or international arrangements.

The living resources of the sea must also be preserved by action at the regional or international level, for ecological systems did not conform to political or geographical boundaries. In addition to control of over-fishing, the prevention of pollution was obviously very important. He appreciated the work being done in preparation for the Stockholm Conference on the Environment, particularly on marine pollution, and hoped that the 1973 Conference on the Law of the Sea would formulate

satisfactory legal regulations. Primary responsibility nevertheless rested with each State, although, of course, accidents were always liable to occur. In that connexion, it should be noted that the developing countries had not so far contributed much to the pollution of the biosphere. As they became industrialized, they would try not to repeat the mistakes already made, but they would oppose the adoption of laws that might restrict their progress towards industrialization.

Scientific exploration of the sea-bed and its subsoil was so vast a field that it could be undertaken only by regional or international enterprises. Research must, of course, be free, as the representatives of the United Kingdom and the USSR had rightly pointed out, but it was impossible to disregard the fact that certain types of commercial and military spying were very easily disguised as scientific research. Thus, in the absence of criteria for distinguishing each activity every State must be entitled to decide what type of research should be conducted in its waters and even to prohibit such research if it considered its security to be at stake. In addition, when research was carried out in a country's "economic zone", that country should be fully associated with the research, if it so desired.

Furthermore, if the measures to be taken by the 1973 Conference on the Law of the Sea were to be effective, it was essential to provide, particularly in the developing countries, for the training of personnel specializing in the utilization of sea resources and in marine pollution control. Training programmes should be organized for that purpose, and his delegation believed that the Committee should forthwith recommend to the General Assembly the adoption of a resolution requesting the specialized agencies and the developed countries to commence and accelerate such programmes for developing countries.

Since the majority of the States represented seemed to prefer a territorial sea of relatively limited breadth in order to avoid interference with several freedoms of the high seas, his delegation wished to point out that, in its view, the most important of those freedoms were freedom of navigation, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. Moreover, as his delegation had already stated, coastal States should be able to exercise exclusive economic control over a reasonable area beyond the limits of their territorial waters.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE TWELFTH MEETING

held on Friday, 13 August 1971, at 3.20 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. TRAORE (Ivory Coast), referring first to the question of drawing up a complete list of subjects relating to the law of the sea, said that the 1973 Conference should be able to examine all the questions relating thereto. He did not agree with the representative of the Soviet Union that the Committee should make proposals only on those questions left pending by the 1958 Conference on the Law of the Sea (A/AC.138/SC.II/SR.6). To do so would be to ignore the interests of the countries that had not taken part in that Conference. That did not mean, however, that Ivory Coast was expecting a total and systematic revision of all former Conventions. It was rather a question of trying, in a pragmatic and flexible way, to supplement and possibly improve on some of the provisions of those Conventions in order to adapt them to current realities.

Secondly, with regard to the territorial sea, his delegation accepted the twelve-mile limit, which seemed to be widely approved by the various delegations. The fact that there was no serious controversy over this definition showed the progress made in international law over the last ten years. The problem of special jurisdictions, which had been admirably expounded by the Lebanese representative in his learned statement at the seventeenth meeting of Sub-Committee I, was a little more delicate. Fishing was particularly important for the Ivory Coast. Considerable investments had been made in that industry but coastal fish resources were becoming poorer and poorer each year, despite the allotment of quotas, in national waters. His Government believed that something had to be done to protect the stocks of benthic fish; the pelagic stock itself was not safe from overfishing, as had been shown at the regional consultation on the conservation of fishery resources and the control of fishing in Africa, held under the aegis of FAO in Casablanca in May 1971.

In this respect, he considered that the draft text submitted by the United States (A/AC.138/SC.II/L.4) was such as to allow some replenishment of stocks for the benefit of all fishing countries. The coastal State's right of intervention,

however, should not, in his view, depend on the prior creation of an international or regional organization with authority to regulate fishing in the zone in question: such a procedure was too lengthy. Every coastal State should, beyond the limit of its territorial waters, have a zone in which it could, in the absence of regional agreements, take any measures it considered useful for the conservation of the living resources of the sea, it being understood that it would justify those measures before the other States concerned. In such a zone, the coastal State could enjoy - or possibly be granted by a regional organization - preferential fishing rights, or even excluding rights for some species, if the available stock was particularly small. The zone could be of the same size as the zone of the sea-bed under national jurisdiction. The two zones would form the essence of "the economic zone", a concept put forward by many developing countries. In that economic zone, the coastal State would not have the same rights on the sea-bed as in the superjacent waters: it would have exclusive rights in the first instance but not in the second.

Moreover, in the Ivory Coast delegation's view, well-organized regional co-operation would be necessary to ensure the regulation of fishing in the economic zone and a fair distribution of the living resources of that zone between the coastal State and other States that fished there by tradition.

Mr. VOLKOV (Union of Soviet Socialist Republics) said that in the experts' opinion, annual catches of the living resources of the sea could be considerably increased without resulting damage to the reproduction of marine species. Catches could rise from 80 to 200 million metric tons. FAO specialists reckoned that by 1975 it would be possible to net 74 million metric tons of fish as compared with 63.1 million metric tons in 1969, but that by 1985 the catch could be as much as 107 million metric tons without affecting the reproduction of fish reserves in the future. Such results could be achieved if sea fishing was organized rationally, i.e. by avoiding a depredatory exploitation of resources and at the same time seeing that fish resources were properly exploited so that the fish did not die without benefit to anyone.

Work was proceeding in the Soviet Union on the artificial reproduction of salmon in the Pacific Ocean and on the improvement of conditions favourable to their natural reproduction in the waterways of Kamtchatka and Sakhalina, and in the Okhotsk sea. As a result of salmon migration, that work was also benefiting

fishermen in other countries. Soviet specialists were trying to find means of successfully transplanting salmon from the Pacific Ocean to the North-Eastern part of the Atlantic. Tens of millions of fertilized eggs were being moved from the Far East to the rivers of the Kolsk peninsula, from which the small fish usually emigrated towards the Atlantic. Such experiments, and the work done in other countries, showed that there were many possibilities of acclimatizing fish in new areas of the world's oceans. At present marine herring, cod, salmon and perch, accounting for more than half the world catch, were only found in the Northern hemisphere. They were not to be found in the Southern hemisphere, although natural conditions in that part of the world were favourable to their survival and reproduction. All countries would benefit from the acclimatization of those valuable species in the Southern seas, and particularly the coastal States in those seas, but it was not possible to carry out such work without the latters' very close co-operation.

The Soviet delegation thought that the current provisions of international law, with regard to sea fishing and the conservation of the living resources of the high seas, were not in need of radical revision, and that the principle of the freedom of fishing, as laid down in the 1958 Convention on the High Seas,[1/] did not give States the right to fish without taking the interests of other countries into consideration. The Convention recognized the freedom of fishing, but only in accordance with the general principles of international law, which obliged states to take the interests of other States into account in the exercise of the freedom of the high seas.

Pursuant to that Convention, States had negotiated dozens of agreements which were truly international instruments on sea fishing and the conservation of the living resources of the sea. A good number of those agreements had been entered into quite some time previously and, in the current situation, needed to be thoroughly revised. Measures had been taken by States to that end. Experience showed that it was in the interest of all peoples to regulate fishing on an international basis.

Replying to the criticisms made by some representatives on the International Commission on North Atlantic Fishing (ICNAF), the representative of the Soviet

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1/ United Nations, Treaty Series, vol.450, p.82

Union quoted an extract from a statement made on 27 May 1971 before that Commission by the Canadian Minister of Fisheries, Mr. Davis, in which the latter praised the accomplishments of ICNAF and what the Commission had done, not only for Canada and Canadian fishermen, but also for the fishermen of all countries represented on the Commission.

Some representatives maintained that the best way of defending their fisheries against foreign fishing fleets was for States to set the maximum limit of the territorial sea at 200 miles or to extend appreciably the jurisdiction of the coastal State over fishing. In areas where fishing was carried out with the most modern technological methods, for example, in the northern part of the Atlantic and in the Pacific Ocean, from which came over 60 per cent of the world catch, no country extended its jurisdiction beyond the twelve-mile limit or, with few exceptions, tried to extend the zone under national jurisdiction. Fishing was conducted on the basis of international agreements covering the large majority of zones and States concerned, without discrimination.

The countries that claimed that the fishing rights of the coastal State exceeded the twelve-mile limit were very often those countries that were under-exploiting the resources even of their territorial waters, not to mention resources in zones further from their coast. There was clearly no benefit either to coastal fishing, deep-sea fishing or humanity as a whole, in trying to cling to fish resources that a country could not even exploit.

His country was pleased at the success of the developing countries of Africa and Asia in exploiting the resources of the sea, and glad to note from their statistics that their catches were increasing regularly. Progress was moderate, however, since the weight of catches in the Indian Ocean in 1969 amounted to only 4.3 per cent of the world catch compared with 3.7 per cent in 1968. The potential resources of the Indian Ocean were nevertheless not exploited as they should be, and the danger to the fish resources of that region from foreign fishing fleets could hardly be taken seriously. FAO put the potential catch from the Indian Ocean at 6 million metric tons, while total catches in that ocean amounted to only 2.7 million metric tons. Recent research work in the Indian Ocean carried out by Soviet scientific research vessels at the request of some coastal States, the results of which had been communicated to governments of developing countries, showed that a large part of the fish resources of that ocean were not exploited and that fish were dying without benefit to anyone.

According to document A/AC.138/47, drawn up by FAO, fishing resources in the Indian Ocean were unevenly distributed. The North-West part of the ocean was richest in fish, to the tune of up to 10 million metric tons. In the central part, to the east of the African coast, resources fell to less than 100,000 metric tons. It seemed, moreover, that total exploitation was out of the question if there was to be normal reproduction. The fish shoals were quite a long way from the coast. Consequently, the establishment of fishing zones over a given area in that particular case would yield no advantage to the coastal States. For obvious reasons, that region had only slight prospects of a sea-going fleet and it would be futile to count on the possibility of massive sales of licences in the area.

At the eighth meeting the Kenyan representative had stated his country's intention of developing the fishing industry. The Soviet delegation hoped that Kenya would complete that task in the near future. At the same time, it regarded an annual catch of 32,000 metric tons (according to FAO statistics) as insufficient for such a large country. Taking into account the fish resources in the zone close to the East African coast, possibly the only means of increasing the catches of the countries in that region to any great extent would be to exploit the rich zones containing the largest unexploited sources, i.e. those in the northern part of the Indian Ocean. Many other coastal States found themselves in that situation, since, as a result of poor natural conditions, their coastlines were not rich in fish resources. Consequently, if Kenya and other countries in a similar situation were considering the expansion of their fisheries, it was in terms of deep-sea fishing that they should think. From being possible sellers of permits, those countries might, however, become purchasers, namely might buy from other coastal States the right to exploit the living resources of the high seas; in other words, pay to do what they could do at present free of charge. Such a system, if accepted, would be prejudicial to the economic interests of a good number of developing countries and, in his delegation's view, would be incompatible with the principle of equity.

Some people imagined that in order to create modern fishing fleets in the developing countries it was sufficient to establish, beyond the limits of territorial waters - in other words on the high seas - vast exclusive fishing zones open only to fishing boats flying the flag of the respective coastal State, or a complementary fishing resources conservation zone in which the coastal State would exercise control and would apply measures for regulating fishing. There were

several variants to that formula, for example, the establishment of a zone, so-called economic, although its régime and its aims were not clearly distinguishable from those of the jurisdictional fishing zone. It seemed that the proponents of the economic zone wanted to give the coastal State the possibility of exploiting the resources of the high seas, as it saw fit and at will, over vast tracts adjacent to its territorial waters, without considering the interests of other countries. Without any doubt, the creation of such a zone would in practice mean the end of technically well-equipped and very economically run deep-sea fishery, and its replacement by small fleets of coastal tramp-vessels.

The developing countries would thus soon find themselves condemned to the use of old fishing methods and forced to put a brake on technical progress and to abandon the economic use of rational methods of exploiting marine resources; for they would come up against the same obstacles in the coastal zones of other States as they had created for foreign fishing fleets in their own coastal strips.

The Soviet representative then referred to the efforts and sacrifices made by his country to provide itself with a deep-sea fishing fleet after the Second World War. That fleet's activity contributed to the feeding of 250 million human beings. It was for that reason that the Soviet Union could not subscribe to proposals which failed to recognize its legitimate rights and interests and which submitted as an equitable proposal the extension of national jurisdiction and the recognition of the coastal State's interests in matters pertaining to fishing beyond the limits of its territorial waters.

Referring to a comment made by the representative of Kenya, he said that the activities of the Soviet fishing fleet, which were conducted in conformity with the standards of international law, corresponded to the interests of the USSR and of the international community.

At the same time, being aware that rational exploitation of the resources of the sea was not possible for a country which only possessed small coastal vessels, the Soviet Union was providing assistance to countries which had recently started to develop their sea fishing.

It was sometimes argued that the establishment of extensive zones of state jurisdiction over fishing in the adjacent maritime zones would guarantee the expansion of fisheries of the country concerned. To refute that thesis, he quoted from the fishery statistics for 1969 published by FAO (the statistics for 1970 would not appear until the end of the year).

The catches of Peru, the world's leading fishing country, had diminished by 1.25 million tons in 1969 as compared with 1968. That figure was slightly lower than that for the combined catches of all the developing countries of Africa. Peru was in a privileged position, since close to its coasts there were extensive anchovy shoals, the size of which could be kept constant thanks to sea currents which flowed near the coast of Peru and to other exceptionally favourable natural conditions. In Chile, Peru's neighbour, the catch in 1969 had diminished by 300,000 tons compared with 1968. The catches of Ecuador, the third signatory to the 1952 Declaration of Santiago, which had established the 200-mile zone, were twice as low as those of Uganda or Tanzania, three times lower than those of Senegal and four times lower than those of Morocco, countries which had not established similar zones.

In 1969, the catches of Panama in its 200-mile zone had diminished by more than half. There were still other countries in Latin America whose catches had diminished, although they had extended the width of their territorial waters to 200 miles and although their fishing resources had in no way been affected by the activities of a foreign fishing fleet.

He wondered whether those examples did not show that, when a developing country extended its maritime jurisdiction over a larger area of the high seas, far from obtaining a guarantee of stability for its fisheries, the extension of national jurisdiction was found to encourage a unilateral and very specialized concept of the exploitation of fishery resources, which made such exploitation very vulnerable to changes in environmental conditions, fluctuations in the economy and other factors.

It should be noted that the Peruvian fishing industry's very high specialization in anchovies for manufacture into fish-meal meant that the catching in large quantities of species which fed on that fish was carried out on an insignificant scale. The stocks of fish other than anchovies were insufficiently exploited. In the circumstances, participation by foreign deep-sea fishing fleets in fishing for the predatory species would benefit the Peruvian fishermen who were interested in conserving stocks of anchovies, fishing for which by a deep-sea fishing fleet would be unprofitable in most cases because of the distance at which that type of expedition operated. For want of harmonization of the interests of coastal and deep-sea fisheries, fish stock was not exploited and was dying without benefiting mankind. After Argentina had extended the breadth of its territorial waters to 200 miles, its catches of fish had not stopped decreasing: the totals

were 250,000 tons in 1966, 240,700 tons in 1967, 223,000 tons in 1968 and 202,800 tons in 1969. In the meantime, scientific research had shown that in the waters covering Argentina's continental shelf, it would be possible, without damage to the replenishment of reserves, to catch almost as much fish as along the coastline of Peru, namely up to 12 million tons. That showed, in a specific case, that the government of this coastal State caught only 2 per cent of the maximum possible total. Thus nearly 12 million tons of fish died each year without benefiting the population of Argentina and of other countries in any way. How many starving people could be fed on the fish stock thus wasted? In the seas covering the Patagonian shelf five times as much fish died as had been caught in 1969 by all the developing countries in the Indian Ocean area and nine times as many as were caught by all the developing countries in Africa combined.

It followed, in the first place, that establishment beyond the limits of territorial waters of an exclusive, preferential fishing zone and a fish conservation zone, or a so-called economic zone, as well as the creation of an international organization for the regulation and control of fishing, in which only countries from a given sea area would participate without outside intervention, would be detrimental to the developing countries, as it would deprive them of a stimulus to develop their ocean fisheries and would condemn them to engage only in coastal fishing. In the second place, such measures would entirely fail to recognize the legitimate rights and interests of countries engaged in deep-sea fishing. In the third place, such measures were against the economic interests of land-locked countries and would prevent them for all time from obtaining an equitable share of the income derived from the exploitation of fish resources and other living resources of the sea, to which they had a legitimate right by virtue of the principle of freedom of the high seas. Countries which had a very narrow coastal strip and those which did not have plentiful fish resources would be in a similar position. In practice, the land-locked countries would in such cases always be denied the possibility of engaging in sea fishing. That was obviously contrary to the principles of equity and to the decisions of the United Nations General Assembly concerning the need to take due account of the interests of land-locked countries. Countries which only had a very limited coastline and those whose coastline was not rich in fish would only have slight prospects of developing their fisheries - if, in such circumstances, it was possible to talk of development.

The Soviet representative recalled that a proposal had recently been put before the Committee under which States would be divided into maritime States and ocean States, the ones having territorial waters twelve miles wide while the others would have much more extensive territorial seas. The sponsors of that proposal had obviously failed to take certain circumstances into account. For example, a country with a coastline on the Mediterranean, which, as was known, had only limited stocks of fish, would not be able to develop its fisheries appreciably in that inland sea, but, at the same time, would be denied the possibility of developing its fisheries in the Atlantic if the Atlantic coastal States had the right to establish large exclusive fishing zones for themselves. In the USSR delegation's view, the limits of territorial waters and of the fishing zones should be the same for all States.

The Soviet delegation had learned with regret that the Government of Iceland intended from 1 September 1971 to extend its fishing limits to 50 miles to cover the waters of its continental shelf. It regretted the Icelandic Government's unilateral decision all the more since it had been taken at a time when governments were actually preparing for the Third United Nations Conference on the Law of the Sea and were planning practical measures to resolve existing problems which would be acceptable to all. The Soviet Government did not recognize the right of a coastal State to fix, beyond the limits of its territorial waters, fishing zones whose outer limit would deviate more than twelve miles from the base line, in other words from the coastline. The measures taken by Iceland to establish a recognized fishing zone could not but complicate the situation and render more difficult all efforts to draw up during the Third Conference on the Law of the Sea equitable provisions that took the interests of all States into account.

Other proposals were designed to confer on the coastal State responsibility for controlling and managing fishing resources in the zones contiguous to its territorial waters. But the coastal State was not necessarily competent to determine fully the biological productivity of its zones, to judge whether catches were adequate and to prepare other measures.

To recognize a State's rights over the living resources of the high seas in that way amounted to making it responsible to the international community for a full and rational exploitation of the fish stocks and, moreover, to placing an obligation on it not to permit over-exploitation which might be detrimental to the

replenishment of the stocks. It was very unlikely that the coastal State could fulfil such a task on its own without international co-operation and without the help of scientists and specialists from other countries concerned. In the circumstances, the conferring of responsibility for such functions on the coastal State could bring no advantages, but could be contrary to the interests of States, including the coastal State itself. No State could claim that it alone had the right and capacity to protect the resources of the zones adjacent to the high seas.

In his delegation's view, in the drawing up of articles dealing with fishing, special guarantees should be provided for the owners of small coastal fishing vessels who were unable to move into other high seas zones. Such guarantees might, for example, consist in the recognizing of the right of the coastal State to reserve for such fishermen a suitable portion of the catch required for the maintenance of that type of fishing. It had been argued that by giving preferential rights exclusively to small fishing craft, the coastal State would be encouraged not to build large fishing vessels. That argument ignored the fact that large fishing vessels had never been built anywhere in the world for inshore fishing, since a simple economic calculation showed that such use of vessels intended for operations on the high seas was not profitable.

Similarly, an appropriate part of the catch, required for conservation of stocks and for promoting their replenishment, should be reserved for States which invested capital in fish-breeding enterprises.

It was also advisable to stimulate efforts made by States to improve productivity in the exploitation of the living resources of the sea in the interests of all countries.

In stating its position, the Soviet delegation was not only anxious to protect the interests of the USSR. It also has the sincere desire to find a flexible solution which would fully meet the interests of all. The articles of the treaty which the Committee was to draft must be universal in character and must be acceptable to all countries. As the Mexican representative had suggested at the eleventh meeting, the Committee must find a compromise between the claim to exercise the right of sovereignty over an arbitrarily-determined large part of the high seas and denial of the right of the coastal State to reserve for its nationals, in the zones contiguous to its territorial zones, part of the fish stocks and other living resources when they were in a position to exploit them

effectively. The realistic way to arrive at an equitable solution of the problem was to recognize the specific rights of the coastal State to exploit marine resources beyond the twelve-mile territorial limit, taking into account, in an equitable manner, the interests of States engaged in deep-sea fishing. For its part, the Soviet Union was ready to make every effort to bring the work to a successful conclusion.

Mr. DJALAL (Indonesia) said that the list of subjects and issues which Sub-Committee II was to prepare should be as comprehensive as possible, although it should not necessarily be exhaustive. A non-exhaustive list would give delegations an opportunity to bring up new subjects and issues during the discussions.

Referring to the régime of the high seas, he said that Indonesia was a party to the 1958 Convention on the High Seas. Thus it recognized the freedoms of the high seas formulated in that Convention but considered that, in order to take account of the changed circumstances, these freedoms should be coupled with certain responsibilities. They should not endanger the interests of coastal States, nor those of other legitimate users of the high seas; they should not endanger the ecology and the environment of the oceans; and they should be exercised only for peaceful purposes in the interests of mankind.

The freedoms mentioned in the 1958 Convention (freedom of navigation, freedom to fish, to lay submarine cables or pipelines, and to overfly the high seas) were more advantageous for the developed maritime Powers than for the developing countries. The freedom of navigation, for instance, had been used by the maritime Powers for trade purposes but also for purposes of war and conquest. History had evolved but today it was necessary that, while recognizing this freedom, the coastal States should have the right to take action to protect themselves against the dangers caused by the passage of foreign ships and particularly against the danger of pollution. In fact, that right had been recognized as far as the territorial sea was concerned by the Convention on the Territorial Sea and the Contiguous Zone[2/] and, more recently, by the Brussels Convention of 1969,[3/] which permitted coastal States to take action to avoid the dangers of pollution by hydrocarbons.

2/ United Nations, Treaty Series, vol.516, p.205

3/ IMCO Publication, Sales No. IMCO 1970. 3.

With regard to the freedom of fishing, not to limit it would be tantamount to making fishing on the high seas the monopoly of the developed countries. It had been argued that the developed countries which fished in distant waters should be able to fish close to the coasts of other countries when the fisheries resources of those countries were under-utilized. But then the developed countries concerned should make suitable arrangements with the coastal States. In view of the migration of fish between the territorial sea and the adjacent high seas, intensive fishing on the high seas could seriously affect the resources of the coastal waters of developing countries. For that reason coastal States had special rights with regard to the fisheries adjacent to their territorial seas. That was the way in which the Indonesian Government interpreted article 6, paragraph 1 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas[4/]. That paragraph gave coastal States a special right and they should be able to decide for themselves how it should be implemented (conservation measures, exclusive fishing zones, etc.). In that connexion, the ideal solution would be to fix a uniform limit to exclusive and preferential fishing zones. If that was not possible, it was essential that coastal States should be able to fix clear and reasonable limits, having regard to their needs, to geographical and biological factors, etc. Regional arrangements could be helpful in solving that issue. If a universal limit was adopted, Indonesia would favour a concept of progressive special interests according to which there would be first an exclusive fishing zone adjacent to the territorial sea, then a preferential zone or a conservation zone adjacent to the exclusive fishing zone.

He was extremely interested in the proposal made by the representative of Kenya at the eighth meeting that an economic zone of 200 miles from the baseline of the territorial sea of each State should be created. That solution would be satisfactory, the more so as the developed countries, being the only ones able to fish beyond that limit, would be compensated in that way. Compensation should also be granted to land-locked and shelf-locked countries, in the form of priorities in the management and the sharing of the profits and benefits derived from the exploitation of the sea-bed beyond the limits of national jurisdiction, as the Indonesian delegation had proposed at the sixteenth meeting of Sub-Committee I.

4/ United Nations, Treaty Series, vol.559, p.285.

Indonesia considered that its exclusive right to fish in its territorial waters extended to all the waters of the Indonesian archipelago, since the latter constituted a single unit. The Indonesian territorial sea extended to a limit of twelve miles from the baselines connecting the outermost points of the archipelago. Indonesia recognized the right of innocent passage for foreign ships in its territorial sea.

Turning to the question of the breadth of the territorial sea, he said that the fixing of a uniform breadth was not absolutely necessary and that it could have inequitable results. A more flexible formula could be adopted enabling States to select a limit between three and twelve miles: a proposal to that effect had already been made at the 1958 Conference on the Law of the Sea. The adoption of the maximum limit of twelve miles should not be conditional upon agreement on a broad range of issues, as some representatives wished, since a number of States were already applying it without any conditions being imposed on them. However, the figure of 200 miles adopted by the Latin American countries would also have to be taken into account without, of course, going so far as to affirm that any country whatsoever, irrespective of its geographical location and the needs of its people would be entitled to such a breadth.

The right of innocent passage should be redefined in order to take fuller account of the need of the coastal States to protect themselves from the danger of pollution caused by super tankers. In that connexion, he understood the position of Canada, which had taken unilateral measures to protect its environment. Indonesia, with the second longest coastline in the world (20,000 miles) was seriously exposed to the dangers of pollution by tankers. The right of innocent passage in relation to warships should be considered from the standpoint of the peaceful uses of the sea and the security interests of the coastal States.

Mr. OLSZOWKA (Poland) drew attention to the considerable interest of the problems under consideration for all countries, whether they were coastal or land-locked. The 1958 Conventions had mainly codified maritime customary law and their value and usefulness had been proved in the time that had elapsed since their adoption. The Conventions had already solved a good many problems, and the Sub-Committee should concentrate its efforts on those that had not been satisfactorily resolved in 1958.

His delegation had carefully studied the proposals submitted by Belgium and Bulgaria concerning the preparation of the list of subjects and issues to be submitted to the 1973 Conference. In its view, the two proposals included all problems requiring a prompt settlement.

The most urgent of those problems was that of fixing the maximum breadth of the territorial sea and the fisheries zone, since it was mainly on that subject that the divergent interests of many states were in conflict. All legitimate rights and interests must be taken into consideration. The problem should not be approached only from the point of view of coastal States. Disregard of the interests of the international community and the extension of national jurisdiction over vast areas of the high seas would cause international tension and conflicts.

The fact that the overwhelming majority of the developing States as well as the developed ones had established limits to their territorial sea and fisheries zones not exceeding twelve miles proved that that was the reasonable maximum limit of the coastal States' jurisdiction.

Poland, like many other countries, considered that international law did not allow the extension of the territorial sea and fisheries zones beyond twelve miles.

Furthermore, the recent FAO studies had shown, on the one hand, the urgent need to exploit to the maximum the fisheries resources of the seas in order to ensure an adequate quantity of protein for all peoples and, on the other, to distribute that exploitation more rationally by re-establishing the equilibrium which had too often been destroyed by over-exploitation of some fisheries zones, which depleted or was likely to deplete resources and by under-exploitation of other zones. The only way in which that vast programme could be carried out was by developing and strengthening the regional fisheries commissions, in whose activities all coastal States concerned should have the right to participate. The representative of FAO had also stated that over seventy States were at present members of such commissions, which sufficed to prove their utility.

In view of the urgent needs of the developing countries, particularly of those whose economies were based to a large extent on sea fisheries, the Polish delegation would be ready to consider the idea of giving the coastal States certain preferential rights concerning fisheries in the areas of the high seas adjacent to their coasts, provided that those preferential rights would not either substantially reduce or prevent other States from fishing in those areas and that they would be applied under supervision by a proper regional fisheries commission.

The Polish delegation understood, however, that preferential rights would be accorded to coastal States provided the twelve-mile limit to the territorial sea and fisheries zones was generally accepted.

The Polish delegation considered that the principle of the freedom of navigation on the high seas was of the greatest importance to all States and that all vessels and aircraft in transit should enjoy freedom of passage through and overflight of straits used for international navigation. That was particularly important for Poland because the Baltic sea was only accessible through straits.

The Polish delegation would be ready to discuss all the problems involved in a spirit of co-operation and mutual understanding in order to achieve results that would meet the legitimate interests and needs of all countries.

Mr. TRANOS (Greece) considered that the most important questions referred to in General Assembly resolution 2750 C(XXV) were the maximum breadth of the territorial sea, the régime of international straits, the question of fishing and conservation of the living resources in the zones adjacent to the territorial sea, the fixing of the outer limits of the continental shelf, the prevention of pollution, and scientific research. In addition to those questions, there was no doubt that any other subjects and issues which it seemed useful to study could be included in the list.

It was well known that the Conferences of 1958 and 1960 had not been able to resolve all the problems discussed by them; the 1973 Conference would have to find suitable solutions to the unresolved problems, drawing not only on the written law but also on customary law which, several centuries earlier, had established certain basic principles such as the freedom of the high seas and the freedom of navigation.

The question of the territorial sea was undoubtedly the most difficult. Greece, which had adopted the figure of six miles, did not see any urgent need to change it; on the other hand, most States seemed to favour a uniform breadth of twelve miles. At all events, his delegation considered that the establishment of a limit to territorial waters should not in any way be linked with the questions of the right of passage through and of overflight of international straits located within territorial waters. Similarly, agreement on the limit should not be linked with any change in international law on that point.

His delegation shared the view of those who did not consider necessary a general revision of the régime to which straits located within territorial waters were at present subject. Customary law had been changed by the 1958 Convention on

the Territorial Sea and the Contiguous Zone and the situation was now satisfactory: no serious case was known in which the exercise of the right of innocent passage had endangered the sovereignty of the State concerned. The application of the régime of the high seas to international straits within territorial waters would, on the contrary, run into serious difficulties. In addition to the fact that the limitation of the sovereignty of the State concerned which would follow would raise difficult, even insoluble, constitutional problems, and to the fact that the surveillance of straits would raise extremely difficult issues, the right of passage without discrimination would actually benefit only warships and military aircraft which, as the representative of Spain had pointed out at the seventh meeting, were the only ones for which the existing régime laid down restrictions: it could not be said that national peace and security would be strengthened as a result.

If the breadth of the territorial waters was increased to twelve miles, the rules governing innocent passage would have to be revised so as to apply to the new international straits that would be created.

His delegation might wish to revert to the question of fisheries after it had been able to study carefully the various proposals submitted on the subject.

Mr. EVENSEN (Norway) recalled that the Sub-Committee had a dual mandate: on the one hand, to draw up a comprehensive list of subjects and issues relating to the law of the sea; and, on the other, to prepare draft treaty articles thereon. His delegation considered that the Sub-Committee should deal with those two points one after the other. As the time allowed to the Sub-Committee was very short, the delegation had thought it advisable, in order to speed up the work, to circulate a working paper in which it proposed a list of subjects and issues relating to the law of the sea (A/AC.132/52). It was obvious that it did not consider the list complete but only a basis for discussion; it was precisely to avoid prejudging the results of the discussions that it had been anxious to adopt the most neutral position possible.

Mr. RUIZ MORALES (Spain) thanked the Secretariat for having circulated, annexed to its note A/AC.138/50 the excellent FAO study entitled "Limits and status of the territorial sea, exclusive fishing zones, fishery conservation zones and the continental shelf (with particular reference to fisheries)" (FID/C/127); that working paper would certainly be of great assistance in advancing the Sub-Committee's work.

His delegation wished nevertheless to point out that, although according to the statement made in the document, "the years shown in brackets in the column indicate the year in which the relevant legislation was enacted", the date 1957, indicated for Spain in the column "Territorial Sea", corresponded, not to the date on which Spain had fixed the breadth of its territorial sea at six miles (which had been done in 1960), but probably to the date on which the Spanish Government had communicated to the Secretary-General of the United Nations the information which the latter had requested from it in connexion with the preparatory work for the first Geneva Conference on the Law of the Sea. As to the date 1967 which appeared in the column "Exclusive Fishing Zone", that was when, after Spain had acceded to the European Fisheries Convention of 1964, an additional six miles zone had been created for fishing purposes. Lastly, it should have been stated that in 1968 Spain had created, for customs and fiscal purposes, a contiguous zone of six miles. Since different countries used different criteria, for the sake of uniformity it would be helpful if all countries gave the date of the first or the last measure they had taken regarding the breadth of the territorial sea, or both dates if they wished, but not one or the other indiscriminately.

Furthermore, his delegation would have liked the reference system used for the explanatory notes to have been simpler. Thus, footnotes 36 and 46, relating to the fisheries convention concluded between Morocco and Spain in 1969, and footnotes 25 and 34, relating to the agreement on the continental shelves concluded between Indonesia and Malaysia, were identical; a single footnote and hence a single reference figure would have been enough. Moreover, in the body of the publication itself, it seemed that the frequent references to other footnotes could have been avoided; it would have been preferable, in the interest of clarity, for each footnote to relate to a single subject.

Mr. ZEGERS (Chile), exercising his right of reply, wished to challenge the allegations made by the representative of the USSR concerning a decrease in his country's fishing catch.

The only valid comparisons would be between the figures for the years before and after the Declaration on the Maritime Zones of 1952, which had been signed by Chile, Ecuador and Peru. It was a well-known fact that before that Declaration, the fishing catches of Chile and Peru had been very small, whereas, since they had extended their fishing area to 200 miles, Peru had become the leading fish-producing country of the world and Chile was now the second in Latin America and among the first 15 or 16 world power.

He regretted not having the yearly statistics before him, but he thought that he was right in saying that the average figure for catches in Chile, since 1952, was around 1,000,000 tons, and the figure for Peru was around 10,000,000 tons. The changes to which the representative of the USSR had referred were due in fact to the application of conservation regulations, which were not normally applied on the high seas, and to ecological and geological causes - for instance, earthquakes in the case of Chile, which had deflected the course of the Humboldt current in which the fish lived.

The Soviet delegation was certainly not unaware of the economic reasons which had led the Government of Chile in 1947 to extend its national jurisdiction, the decisive factor having been the danger of the extermination of the whales, and it seemed hardly suitable to protest against the unilateral nature of that measure since, even before the 1917 Revolution, Russia had fixed its own limits of jurisdiction at twelve miles, a measure which had been strongly opposed by countries such as Japan and the United Kingdom.

His delegation had been glad to see that the Soviet delegation had been in favour of recognizing the preferential rights of coastal States and had even shown interest in the Mexican proposal, which implied an economic zone of 200 miles; in that attitude, it found once again confirmation of the legitimate economic grounds for the legislation his country had thought it necessary to adopt.

Man was closely attached both to the land upon which he lived and to the waters adjacent to his country, and the exploitation of marine resources was closely linked with economic development. It could also be pointed out that there was no distinction between river beds and the marine subsoil. The Conference to be held in 1973 would have to reaffirm the right of a country as a whole to make use of the marine resources adjacent to its coasts which were necessary for its development.

The main problems, moreover, were not met with in coastal fishing but on the high seas, where the resources were threatened with early exhaustion not only because of pollution, but also through excessive and indiscriminate fishing which in some seas endangered the survival of species such as salmon and whiting, and the unsuitable methods of fishing that were too often used on the high seas. Experts of international reputation were not hesitating to state that the principle of freedom of fishing on the high seas was no longer applicable.

Mr. ARIAS SCHREIBER (Peru), although reserving his right to revert later to the arguments put forward by the representative of the USSR, said that he could not remain silent, as reference had been made to his country. Without repeating what had been well said by the representative of Chile, on the effects which the extension of the limits of jurisdiction had had on the fishing catch, he wished to express his surprise that an accidental drop in the catch figures had been used as a basis for drawing inexact and tendentious conclusions, giving a false interpretation of the statistics.

According to some views, the developing countries should not extend their territorial seas but should simply keep the fishing catch at the present level; others maintained that by increasing the extent of their territorial waters they would slow up the catch, which would have an adverse effect on general food economics. It should be pointed out that the developing countries were unwilling to submit their development to the conditions which the great powers sought to impose upon them. They simply wished to control their fishing so as to develop the industry, without, however, refusing to let other countries benefit from their halieutic resources, in view of the world food needs on the one hand, and of the well-being of their own people on the other.

Mr. ABDEL HAMID (United Arab Republic) noted the list of questions submitted by the Norwegian delegation with a view to speeding up the work. That delegation had indicated that it would accept the addition of further questions to the list. He thanked the delegation and commended its attitude, particularly because to exclude certain questions would be to show partiality, especially if those questions were recognized in international law and contested only by a minority of States.

Mr. AYALA-LASSO (Ecuador) said that, in replying to the representative of the USSR, the representatives of Peru and Chile had revealed the true consequences of the extension of their national jurisdiction to 200 miles. The representative of the USSR had not mentioned a decrease in the over-all fishing catch in Ecuador, but had simply said that the catch of that country would be considerably lower than that of countries which had not extended their jurisdiction to 200 miles. Account should be taken of the fact that the countries which had extended their national jurisdiction had become the main users of their halieutic resources. In fact, since Ecuador had taken that step, fishing had become one of its essential industries, employing a large portion of its manpower.

The reasons given by the representative of the USSR were reasons of self-interest which clashed with the idea that biological resources should be exploited by the countries to which they belonged.

Mr. OBOTE (Kenya) said he thought that the comments made by the representative of the USSR recalled the spirit of capitalist exploitation. The representative had said that East Africa was not an area rich in fish and that Kenya should obtain authorization to fish in other areas. If Kenya had to take that step, it would do so, but it had never exploited the resources of other countries. The representative of the USSR had accused Kenya of wanting to withdraw fishing fleets from the protection of international law. He replied by criticizing the use of factory-ships by nations fishing in distant waters, as land installations in the neighbouring countries would be less expensive. The nations using factory-ships were not serving the interests of the international community and it would not be justified to protect them in international law. His country was not in favour of protecting countries which exhausted the living resources of the areas lying off its coasts.

Lastly, he regretted that the USSR had opposed the granting of fishing rights to coastal countries beyond their territorial sea and the establishment of an "economic zone".

Mr. DE LA GUARDIA (Argentina) said that his delegation had already explained at the tenth meeting the significance of the legislation extending the limits of Argentina's national jurisdiction to 200 miles and that the representatives of Chile, Peru and Ecuador had just explained the reasons for similar measures in their countries.

The arguments submitted by the representative of the USSR were not convincing - they had a political flavour. He would also like to know the origin of the statistics quoted. The aim of the legislation which the representative had criticized was to encourage the development of the countries concerned: the idea was to assure their future. The representative of the USSR had criticized the results obtained today, but tomorrow's results should also be considered.

Moreover, his country did not prevent other countries from fishing within the limits of its national jurisdiction, provided they observed its legislation and paid the appropriate charges and taxes. He recalled that in 1967 a Soviet fishing fleet had been intercepted by the Argentine fleet; once it had paid the appropriate charges, it had been able to fish freely under the protection of the Argentine laws.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, if the work of Sub-Committee II was to be successful, there would have to be a constructive exchange of views on all questions, including fishing. The representative of the USSR had mentioned concepts which might perhaps have been new to some delegations, but he had based his statements on statistics and facts not only from the USSR but also from FAO.

On the contrary, some of the replies to those statements had not been based on fact or on the analysis of complex processes, but were of a subjective nature. He hoped that if the argument submitted by the USSR was to be refuted, it would be by means of statistics. However, his delegation had listened to the Latin American countries with interest and would continue to do so.

The USSR agreed that the high seas should not be polluted and the fishing resources exhausted. But how was that to be achieved? It did not seem that the 200-mile limit was the best way. The representative of the USSR had shown that in the countries which had adopted that limit, the fishing catch had decreased. Perhaps the countries involved could prove the contrary by means of statistics. He hoped once again that subjective views would not be expressed: replies should be based on figures and analyses of real situations, which was the only way to obtain results.

Mr. ZEGERS (Chile) said that he had listened to the representative of the USSR with interest, and hoped for a constructive exchange of views. However, the arguments of his delegation were not emotional; they were based on statistics published in the reports before the Committee.

Mr. ARIAS SCHREIBER (Peru) agreed with the representative of the USSR that discussion should be based on facts; those facts must, however, be complete. A number of elements had been omitted from the Soviet figures. It should be pointed out, for example, that the fishing catch in Peru had risen from 50,000 to 10 million tons.

The meeting rose at 6.40 p.m.

SUMMARY RECORD OF THE THIRTEENTH MEETING

held on Monday, 16 August 1971, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. MENDOZA (Philippines) said that no effective rules would result from the current session of the Committee or the 1973 Conference on the Law of the Sea unless they recognized the individual interests of all States and the need for an equitable balance between them. The problem was to harmonize national interests with the international interest. Many of the questions before the Sub-Committee had never been settled either by tradition or convention. The national interests involved were in most cases vital to economic survival and the preservation of national identity. They were often conflicting, involving such factors as whether a State was coastal, an archipelago, land-locked or shelf-locked; what stage of development it had reached; whether it had a strong maritime fleet; and how far its economy depended on the waters and sea-bed surrounding its territory.

He agreed with the suggestion made by a number of representatives that all States represented at the Conference should state clearly and frankly the considerations that would influence their final decisions. Unless those considerations were known, it would be impossible to reach a consensus. It was necessary that participants should understand, for example, the Latin American delegations' reasons for proposing a 200-mile limit, the concern of the land-locked or shelf-locked countries over any attempt to narrow the high seas, the apprehensions of the maritime and developed countries, the desire of the developing States to ensure that the benefits derived from the international régime were equitably distributed, and the position of archipelago States such as his own.

Among the more important questions facing the Sub-Committee were the breadth of the territorial sea, the extent of the continental shelf and special jurisdiction for fisheries. All of those were vital to his country and to others similarly situated.

Many representatives viewed the question of the breadth of the territorial sea solely in terms of distance. In his opinion, the question had two aspects; the breadth itself and the baseline from which it should be measured. It was no use talking of limits of 200, twelve or three miles before deciding the point from which these distances were to be measured. He wished to deal with the question of the baselines of archipelagos, and the Philippine archipelago in particular.

An archipelago had been defined in a variety of ways, but all the definitions contained the idea of the sea and the islands as a single unit or State. No international conventions had as yet laid down any clear and specific rule for determining the territorial seas of archipelagos or the way in which their baselines should be drawn. In the 1958 Convention on the Territorial Sea and the Contiguous Zone[1/], for example, article 4 (1) referred to "a fringe of islands along the coast in its immediate vicinity" and article 10 (2) to the "territorial sea of an island"; but there was no reference to mid-ocean archipelagos.

A review of proposals made at earlier conferences, of States' practice and of the opinions of international law experts indicated a number of differing viewpoints with regard to the definition of baselines for archipelagos: firstly, that each island in an archipelago had its own territorial sea and that a baseline should therefore be drawn round each island; secondly, that a single baseline could be drawn round archipelagos provided that the islands and islets were not separated by more than a certain maximum distance - usually twice the breadth of the territorial sea; and thirdly, that the baseline from which the territorial sea of an archipelago should be determined consisted of straight lines joining appropriate points of the outermost islands of the archipelago, so that connected baselines would be drawn to enclose the entire archipelago.

The difference between the first two views was more apparent than real: the two could therefore be considered together. The Philippines - and, he believed, other archipelagos - would reject both viewpoints because they would destroy the integrity of an archipelago as a State; because they were inconsistent with the theoretical and practical basis of territorial and internal waters; and because they were unjust.

1/ United Nations, Treaty Series, Vol.516, p.205.

The Philippines consisted of more than 7,000 islands ruled by a single Government, bound by the same traditions and united politically, economically and socially as one nation. The suggestion that each island in such an archipelago should have its own territorial sea and that a baseline should be drawn round each island would mean splitting the Philippines into more than 7,000 pieces. In certain cases, depending on the breadth of the territorial seas, there would be small pockets of high seas - of no more than five, ten, or fifteen square miles - through which any vessel would be able to penetrate into the middle of Philippine territory.

The unity of the country was demonstrated by the fact that the Seat of the Government was in Manila on the island of Luzon, from which the three main branches of the Government functioned; and the Congress, which was composed of representatives from all the provinces, also met in Manila. It was obvious, therefore, that the Government needed unimpeded and continuous communication with all the islands in order to function effectively. Industry and agriculture were not fully diversified on a regional or island-by-island basis and many processing and manufacturing plants were still located in the neighbourhood of Manila. No island in the Philippine archipelago was self-sufficient. A comprehensive and integrated transport network, which was essential for marketing the islands' products, was in process of construction and would entail heavy government expenditure, particularly for building bridges, tunnels and ferries to connect the islands. In those circumstances, a rule that each island should have a separate territorial sea and that to move from one island to another would entail crossing pockets of high seas would be unjust and illogical. It would also entail vast problems of national security, which his country would be unable to face at the present time. The coastline, or the baseline from which the territorial sea would be measured, would have a total length of about 21,000 miles, which would be grossly disproportionate to a land area of 115,000 square miles and many times longer than the coastlines of many larger States.

His country had for centuries regarded its 7,000 islands as one nation, the people inhabiting them as one people and the waters between them as integral parts of its land. It was an inescapable circumstance of geography. The integration between land and sea was far more complete in the case of an

archipelago than between the waters and the land of a coastal State; yet a coastal State had sovereignty over its territorial seas; so why should an archipelago State have lesser rights or share those rights with all the other States in respect of the waters between its islands?

The only rule that would be consistent with the idea of an archipelago as a single State would be one which required a baseline to be drawn round the islands of an archipelago by joining appropriate points of the outermost islands with straight lines. The Philippines had followed that rule and had defined by legislation the baselines from which its territorial seas should start. The waters within those baselines were internal waters and the waters seaward of them, within defined limits, constituted its territorial sea.

The rule was not a new one, as would be seen from document A/CONF.13/18.[2/] True most States had not followed that rule, because archipelagos - and particularly mid-ocean archipelagos - were few in number, but it had not been denounced as contrary to the accepted rules of international law. As also stated in document A/CONF.13/18, "No hard-and-fast rule exists whereby a State is compelled to disregard geographical, historical (and economical) peculiarities of outlying archipelagos. Frequently the only natural and practical solution is to treat such outlying archipelagos as a whole for the delimitation of territorial waters by drawing straight baselines from the outermost points of the archipelago that is from the outermost points of the constituent islands, islets and rocks - and by drawing the seaward limit of the belt of marginal seas at a distance of X nautical miles outside and parallel to such baselines."

In that connexion he also referred to the decision of the International Court of Justice in the Anglo-Norwegian Fisheries case[3/], in which the Court had found that straight baselines were appropriate not only in the case of well-defined bays or inner curvatures of the coast but also "between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay".

2/ United Nations Conference on the Law of the Sea, Official Records, Vol.I: (pages 301 and 302). Sales No: 58.V.4, Vol.1.

3/ I.C.J. Reports 1969, p.3.

With regard to the question of the length of the baselines drawn across the waters lying between the various formations of the Skjaergaard, the Court had ruled that the practice of States did not justify the formulation of any general rule of law; and that the attemps made to subject groups of islands or coastal archipelagos to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles) had not gone beyond the stage of proposals. It had further ruled that apart from any question of limiting the lines to ten miles, it might be that several lines could be envisaged, and in such cases the coastal State seemed to be in the best position to appraise the local conditions dictating the selection.

The fears expressed that the rule followed by the Philippines in defining its baseline might open the door to unlimited and exaggerated claims over the high seas were unfounded. Most of the adjacent islands in the Philippines were separated by distances of less than twenty-four miles, only a few by more than fifty miles and none by more than eighty-three miles. The total water area within the baselines was only about 170,000 square miles and was distributed over the whole archipelago between and around the islands; the only compact body of water of any significant size was the Sulu Sea, but even that had an area of only about 80,000 square miles and was much smaller than some of the single bodies of water claimed by other States.

In those circumstances, to adopt a certain breadth of territorial sea and ignore the straight baselines followed in the Philippines would result in pockets of high seas between islands, but they would be so small that the benefit, if any, to the international community would be grossly disproportionate to the damage done to the unity of his country. If national interests had indeed to be balanced against the interests of the international community, the drawing of one continuous baseline round the Philippine archipelago would hardly tip the scales against the world at large. Its dangerously long coastline of about 21,000 miles entailed a greater drain on its resources for national security, greater exposure to the hazards of the seas and pollution and far more difficulties in communications and transport. The baselines it had adopted would alleviate those geographical handicaps by giving it full sovereign rights over the waters that created those conditions.

The United States of America had tabled draft articles on the territorial sea, straits and fisheries (A/AC.138/SC.II/L.4) which, like the 1958 Conference, remained notably silent concerning the baselines of archipelagos and dealt solely with the breadth of a State's territorial sea. The United States delegation had, however, at least referred to the situation of Fiji as an archipelago.

Mr. Pardo of Malta had submitted a draft ocean space treaty (A/AC.138/53) which the delegation of the Philippines had read with great interest and regarded as a significant contribution to the international law of the sea. The draft treaty showed an awareness of the peculiar geographical circumstances of archipelagos and the resulting situation concerning their baselines. Article 37 provided that the jurisdiction of an archipelago State should extend to a belt of ocean space adjacent to the coast of the principal island or islands, its breadth being 200 nautical miles. Article 40, paragraph 5, provided that the manner of measuring the breadth of national ocean space should be determined in a special convention. Although he doubted whether the rule laid down in article 37 was workable without a clear definition of baselines, he thought that the proposals nevertheless reflected an awareness that archipelagos were different from other States and that the difference should be taken into account.

The representative of the United States had mentioned at the 8th meeting that many nations were dependent upon air and sea mobility to guarantee their ability to exercise the inherent right of individual and collective self-defence. He had also expressed doubts whether any State would wish to subject its sea communications or defence preparedness to the consent or political goodwill of another State. Those observations were highly relevant to the situation in the waters between islands of a single State. In such a case, what was involved was not communications with the rest of the world but internal communications and defence. It would be an anachronism of the highest order if, because archipelagos were treated like coastal or island States, warships of other States were able to engage in exercises in the middle of his country's islands. The baseline of the Philippine archipelago was vital not only to the country's interests, but also to its integrity as a single State. It was inconceivable that rules concerning baselines should serve to divide a country up rather than to unite it.

For the moment, he would not deal with the breadth of the territorial sea as such, since his country's position on the subject had been stated at previous conferences and would be reiterated and amplified at an appropriate moment. There was, however, the question of the status of the waters within and outside the baseline of an archipelago. The rule his country followed was that waters within the baseline were internal or national waters while those outside, up to a certain limit, constituted the territorial sea of the State. He was aware of the fact that some representatives were apprehensive that the rule might hinder access to certain waters used for international navigation. His Government was not sure that the degree of hindrance would be of any great significance, but it would give thorough consideration to the matter and undertake the closest study of the passage of international navigation under special arrangements.

An updated FAO publication had been circulated showing the limits and status of the territorial seas of all States (FIO/C/127).[4/] It was a work of considerable value but, regrettably, did not fully state the Philippine position.

Mr. KAMBONA (United Republic of Tanzania) said he intended to concentrate mainly on the question of fisheries. He was well aware that it was closely linked with such questions as the breadth of the territorial sea, international straits and rights of navigation and overflight, but they were still separate issues which required separate treatment.

By far the greatest part of the mineral resources known to be economically worth exploiting within the next few decades were likely to be within the area of national jurisdiction; and those that were not clearly within that area bordered upon it. To develop such resources economically would, in most cases, require logistic support from the adjacent land. Practical arrangements had therefore to be made between the exploiter and the adjacent sovereign State, regardless of jurisdictional aspects, and it was unlikely that the State in question would permit such exploitation without exercising sufficient control to protect its own interests.

In the case of living marine resources, the picture was somewhat different. Their nature and the factors connected with their harvesting depended on natural processes which could not be modified by legal or political action. They were

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4/ Distributed during session: A/AC.138/50

renewable, highly mobile, unevenly distributed throughout the ocean and greatly affected by natural environmental changes. All those factors should tend to warn mankind that, if it wished to continue enjoying such resources, co-operation was essential. The balance of the system was so delicate that, if it were disturbed by over-fishing or pollution, the effects upon mankind would be serious. The catch of fish had increased from 4 million tons in 1900 to a current level of about 60 million tons and it was estimated that by the year 2000 the figure would be 400 million tons. Time would show whether that level of exploitation would have an adverse impact on the balance of the living resources of the sea.

References had frequently been made to freedom of fishing in the high seas. If that meant freedom to plunder the riches of the seas, it was a freedom that was not to anybody's advantage. It was high time to appraise the entire system and review the rules of the game before irreversible damage was done to the natural resources mankind had inherited. Fortunately, however, it appeared that all nations were agreed on the need for conservation and sound fisheries management practices. There was a welcome awareness of the fact that those resources were not inexhaustible and that a concerted effort should be made to conserve them. The term "conservation" meant intelligent or rational use of the resources and not merely their preservation, which would lead to gross under-utilization. All other systems of utilization of natural resources were thrived on freedom under the law and there was no reason why fisheries should not do the same.

The introduction of enforceable regulations in the exploitation of marine resources would neither lead to their under-utilization nor imply an unnecessary curb on the traditional rights of some maritime nations. Some stocks were already over-exploited while the industry itself was in many instances over-capitalized. The rapid increase in the total world catch of fish had been largely achieved through the activities of the long-range vessels of a few maritime nations, but the rational management of the resources and the long-term maintenance of good catches would require increasingly close co-operation between all countries interested in living resources of the sea. In that connexion, it should not be forgotten that the developing countries had been making far more rapid progress in fishery development over the past decade than had the developed countries and they would increasingly demand to be heard in the management of international fisheries.

To achieve that rapid rate of development, the Third World countries had had to make a substantial investment in a hitherto unfamiliar field, so they had every reason to be genuinely interested in sound international fishery management.

The biggest single cause of friction in the world fishing industry was the fact that fisheries beyond national jurisdiction were open to all and the fish belonged to anyone who could catch them. The only objective of the few large maritime States fishing the high seas appeared to be to catch as much as possible. They had little or no interest in turning control of such fisheries over to any international body and showed a marked reluctance to seek arbitration for the settlement of jurisdictional disputes. Even when they agreed to prevent physical over-fishing, they resisted application of conservation regulations to their fishermen.

It was hardly surprising, therefore, that it had been concluded that the cure for many of those ills would be the creation of an international body with powers to assign rights of entry to fish particular stocks in the area beyond national jurisdiction, to establish and enforce the necessary regulations and to undertake scientific research and management. The idea was probably still Utopian, but the existing international conservation bodies deserved support, since they represented the first practical attempt to control the exploitation of the resources of the high seas. During their seventy years of existence, however, those international bodies had not been markedly successful and nations would have to be prepared to relinquish some of their sovereignty in order to make them more effective. For instance, the members of international fishery commissions should be under a legal obligation to comply with conservation measures formulated by the bodies to which they were parties. An anomaly that should be done away with immediately was the principle that the enforcement of regulations on the high seas was the responsibility of the flag State. The direct consequence was to penalize the citizens of law-abiding coastal States situated near the resources, since their Governments were able to take quick action, while long-range fleets were able to continue to plunder with impunity and with a minimum of surveillance from their home Governments. Greater powers should be vested in the coastal States in order to ensure more effective control of the resources of the high seas.

In that connexion, there had been a healthy trend towards a certain delegation of powers by members of some fishery bodies, whereby each member country was given the right to check the general application of regulatory measures by the contracting parties on the high seas.

Tanzania was a young nation that was committed to developing all the natural resources available to it and his Government had no intention of subscribing to the restrictive fishery conventions upholding the so-called principle of abstention on the high seas, under which the contracting parties refrained from entering a "fully utilized" historical fishing ground. Unless that situation was carefully reviewed, it would tend to perpetuate the status quo and prevent the young nations from developing their fishing industries. While management measures should be so framed as to achieve a rational utilization of the resources concerned, they should also afford the opportunity to other countries to build up their fishery industries within a reasonable time and to associate themselves with programmes of rational utilization on a basis of equality.

His country, which had an 800-kilometre coastline was economically very dependent on the adjacent waters. It would have to take more stringent measures to conserve the resources of those waters, to expand its own industry and to ensure a heritage for future generations. Hence it was much attracted by the idea of an economic zone for fisheries extending for a reasonable distance beyond the territorial sea. The subject was a wide one and his delegation would speak on it in greater detail at a later date. For the moment, it was sufficient to say that the preferential position of a coastal State should be recognized.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) welcomed the fact that most speakers had related the progressive development of international maritime law to the 1958 Conventions. These Conventions had been the first multilateral instruments to codify international maritime law and to replace customary by contractual rules. The way to future progress thus lay, not in undermining existing law as reflected in the Conventions, but in strengthening it and seeking a solution to those questions which they had not settled. His delegation fully appreciated the desire of the developing countries to protect their economic interests. However, the problem was not to be solved by subverting the existing system or by unilateral action. The only sound approach was business-like and mutually beneficial co-operation between States for the purpose of exploiting the living resources of the sea, preserving the marine environment, and developing maritime communications

One of the most important questions before the Sub-Committee was the breadth of territorial waters. In international practice, several different limits to the territorial sea were known, but in the great majority of cases did not exceed twelve miles. That had led the International Law Commission to conclude that international law did not permit the extension of the territorial sea beyond the twelve-mile limit. The fact that the Conferences of 1958 and 1960 had been unable to settle the question of the breadth of the territorial sea by no means meant that States had acquired the right to fix it arbitrarily.

As the Mexican representative had rightly emphasized at the eleventh meeting conventions were not the only form in which the will of States was expressed in international law, there was also international custom confirmed by uniformity of practice.

Such a customary rule of international law already existed with regard to the breadth of the territorial sea. As was clear from document A/AC.138/50 prepared by FAO, the rule was adhered to by the overwhelming majority of States, which had established the limit of their territorial waters at twelve miles. That showed that the rule was effective and that States were agreed not to exceed that limit. Thus, even though States might fix the breadth of their territorial seas by domestic legislation, they were not free, when doing so, to apply an arbitrary criterion not accepted by the majority of States. The mere fact that a State declared its territorial sea to have a certain breadth meant that it recognized that beyond the limits of that sea lay the high seas, open to all countries on an equal and universal basis; thus, by arbitrarily extending the limits of its territorial sea beyond the limits accepted by the majority, a coastal State was appropriating sea areas which all States were entitled to use. Hence the attempt by certain States to extend the frontiers of their territorial seas unilaterally beyond the twelve-mile limit could not be justified. It gave other States the right not to recognize such an act, and would surely lead to conflict and to a deterioration of international relations. Accordingly, his delegation fully supported the view that the question of the breadth of the territorial sea should be settled by a convention. It also supported the view expressed by the delegations of Lebanon, Madagascar and other countries that the maximum limit of the territorial sea should be established at twelve miles.

An extension of territorial seas beyond the twelve-mile limit not only had no basis in international law; it was also against the political and economic interests of both individual States and the world community as a whole. At present, almost everyone was agreed that a general improvement in the international climate depended on the development of trade. More extensive and stronger trade ties meant better relations between States and less international tension. It was also undeniable that world trade was closely linked with maritime transport, which currently accounted for over three quarters of all international freight. Therefore, any deterioration of navigational facilities would clearly lead to additional difficulties and, in the long run, would affect the economic ties between States and the political climate as a whole. The doctrine of the high seas and the associated freedom of navigation was one of the cornerstones of contemporary international law. A contraction of the limits of the high seas as the result of an extension of the territorial sea would inevitably affect the freedom of navigation and would lead not only to a weakening of economic ties, but also to an increase in freight rates. The reasons for that had been analysed in detail in the statement of the USSR representative; the view that nothing would be changed by extending the limits of territorial waters had been shown to be economically unsound.

Some delegations had attempted to link the question of the breadth of the territorial sea with the establishment of additional areas in which their countries would enjoy exclusive fishing rights. Some States, had territorial seas of less than twelve miles. It would be quite right that they should be able to exercise exclusive fishing rights in the area adjacent to their territorial sea, provided that the limit of the two areas together did not exceed twelve miles. In so far as international law recognized that each State had the right to establish the limits of its territorial sea in an area up to twelve miles, a State could establish a different status for different portions of that area. The claims of some coastal States to exclusive fishing rights on the high seas had no basis either in international law or in equity. States with long coastlines and an abundance of fish off their shores would obviously benefit from the establishment of such an area, but land-locked States and States with short coastlines, and even States with long coastlines but without fish resources off their shores, would lose, as would States engaging in distant-water fishing operations. It was hardly right that the few should benefit at the expense of the many.

In some circumstances, of course, it might be recognized that coastal States had certain preferential fishing rights in adjacent areas outside the twelve-mile limit, provided that such arrangements were made on an international, and not unilateral basis. All questions connected with the conservation of fish stocks and the regulation of fishing in those areas must be decided by agreement between the coastal States and the relevant international organizations or the countries engaging in distant-water fishing in those areas of the high seas.

The Ukrainian SSR is a maritime State. The vessels registered at its ports called at hundreds of ports throughout the world. However, in order to gain access to the ocean, they had to pass through straits, and his country was therefore vitally concerned with freedom of passage. The straits in question were not ones whose status had already been settled in international agreements or which had a purely local significance. They were straits through which passage was essential if the freedom of the high seas was to have any meaning. Whether or not some States extended their territorial waters to twelve miles, the freedom of passage through international straits must at all events be preserved. A proper settlement of that problem would be very important for the development of international law.

With regard to the progress of work, he pointed out that the General Assembly had given the Committee the task of preparing for the 1973 Conference on the Law of the Sea. Some progress had undeniably been made: despite the complexity of the problems involved and the conflicts of interest to be resolved, it had been possible to overcome procedural difficulties, to move on to substantive aspects, and even to consider a few specific questions. Nevertheless, the progress recorded could hardly be called satisfactory. The end of the second session was near, and the Sub-Committee had only just reached the stage of considering specific proposals on the subjects and issues. His delegation therefore felt that the Chairman's suggestion that the list of speakers in the general debate should be closed was timely. Formal proposals had been submitted by Belgium, Bulgaria, Turkey, Norway and Iceland, and several delegations had submitted oral proposals. The Sub-Committee thus had a basis on which to discuss the questions awaiting settlement.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FOURTEENTH MEETING

held on Tuesday, 17 August, 1971, at 10.15 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. SARAIVA GUERREIRO (Brazil), after expressing appreciation of the pragmatic and unprejudiced approach adopted by most delegations, stressed the need to recognize that every State had the right and the duty to assess the interests and needs of its own people. There was no rule in the law of the sea, either written or customary, fixing the limits of national jurisdiction, and the differing views expressed in the Sub-Committee clearly showed that it would be premature to hope for international agreement on that point. The Sub-Committee's work was still in a preliminary phase and his delegation considered that its most urgent task was to prepare as comprehensive a list as possible of the subjects and issues which could be dealt with at the 1973 Conference. No controversial issue should, of course, be omitted from the list, but each delegation should show an understanding attitude and accept the fact that subjects and issues might not be worded in the way that it would have chosen. Furthermore "comprehensive" did not necessarily mean "exhaustive" and there was no reason why additions should not be made to the Sub-Committee's list at the request of States.

It was unfortunate that some delegations had made the question of innocent passage in distant waters a focal point of the debate, setting it against the sacrosanct principle of freedom of the high seas. It had been claimed that the adoption by coastal States of a 200-mile territorial sea would be disastrous for international trade, as if it would necessarily follow that those States would harrass merchant shipping in their waters. The fact that the principle of innocent passage had been consistently and universally respected sufficed to demolish such figments of over-fertile imaginations. It was not by trying to make ferocious giants out of serene windmills that reasonable solutions would be found. There was no connexion between the breadth of the territorial sea and an increase in freight rates, so detrimental to developing countries; the real reasons for increases in those rates were to be found in cost inflation in the big maritime

countries, port congestion and the arcane practices of liner conferences. In the light of what actually took place in areas where absolute freedom of navigation applied - military manoeuvres, displays of naval power, carriage of nuclear warheads, radiotransmission for non-navigational purposes, research and exploration for economic and strategic purposes, plunder of living resources, dumping of all kinds - it might well be asked whether it would not be more in accordance with the principles and purposes of the Charter of the United Nations to extend some of the features of the concept of innocent passage to the high seas.

At the fifth meeting, the Japanese representative had expressed the view that preservation of the marine environment and marine resources would be impossible if coastal States possessed a broad territorial sea, and that the only solution lay in international co-operation. But was it not Utopian to believe that international action would be more effective than action by the coastal States, which certainly had a primary interest in preserving their national resources? International co-operation was desirable and useful, provided that each State retained direct responsibility for all matters affecting its own prosperity. It nevertheless remained true that marine pollution could be eliminated only by measures of international control.

Reference had often been made to freedom of fishing and other freedoms of the high seas, but it might well be asked whether the rich and powerful countries did not derive more benefit from those sacrosanct freedoms than poor countries, which, because their fishing industries were still in their infancy, could not compete with industrialized countries in their own waters. If developing countries had to pay undue respect to traditions established in another era by a few maritime Powers, they had better renounce their goal of economic development.

Mr. GRAHAM (United Kingdom) said that the main problem the Sub-Committee had to solve with regard to fisheries was how best to reconcile the interests of coastal and non-coastal States to ensure that the living resources of the sea made their full contribution to the feeding of mankind. That proviso was especially important because there were economic advantages to the fisherman in keeping a fishery under-exploited. But it would be misleading to speak as if coastal and non-coastal States were mutually exclusive categories, as most States which engaged in fisheries in distant waters also depended to a greater or lesser degree on the resources of their own coastal waters. For example, a substantial proportion of the United Kingdom's catch was taken from within, or close to, its territorial waters. It

would perhaps therefore be better to describe the problem as one of striking a fair balance between the claims of individual States to an exclusive right to exploit the waters in the vicinity of their coasts and the general freedom of all States to fish in the high seas.

It would appear that the very notion of freedom of fishing on the high seas was suspect to some countries, which believed the defenders of that principle to be its only beneficiaries and considered the notion to be empty and lacking any moral basis; they therefore wished to bring virtually all the fishery resources of the world within the exclusive jurisdiction of coastal States. It should, however, be pointed out that such a solution would limit access to the resource to a few well-placed but not necessarily poor States. Furthermore, where a right could not be enjoyed because of the lack of the material means, the remedy did not lie in abolition of the right, but in the development of the means, and fisheries were in fact one of the fields in which modern technology was most easily exploited by developing countries.

His delegation considered that no country should be denied the right to fish on the high seas, and that, to prevent abuse, which was always possible, a regulatory power should be granted to regional commissions on which all States with an interest in the fisheries would be represented. It was true that several delegations had argued that existing commissions had shown their incapacity to secure the proper conservation of the stocks and had expressed the opinion that such a power should be delegated to the coastal States by the international community. The problem of the accountability of the delegatee had been fully analyzed by the Netherlands representative at the seventeenth meeting of Sub-Committee I. He would, however, like to point out that existing international institutions had perhaps not been quite as inadequate as some had tried to make out. For instance, since the establishment of the North-East Atlantic Fisheries Commission, the total catch in that area had increased substantially, having risen from six million metric tons in 1953 to nine millions in 1966, at which level it had remained ever since. The Commission had had its failures, notably with regard to the conservation of a herring stock in the northern part of its area: in the 1950s, the annual catch had averaged about a million tons; it had risen to 1.72 million tons in 1966 only to decline to a mere 20,000 tons in 1970. That collapse had been due to a rapid ex-expansion of purse-seining not by fishing fleets from States engaged in deep-sea

fishing, but it so happened, by the fishermen of the coastal States. Catches of other stocks had also fallen, but on the whole the North-East Atlantic Fisheries Commission could not be said to have been unsuccessful in conserving the stocks for which it was responsible. In the specific case of the herring, the reason lay in the increasingly rapid adoption of new techniques which demonstrated that the rate of exploitation of the parent stock could, contrary to accepted scientific theory, affect the rate of recruitment. The Commission was now strengthening its regulatory powers to take account of its new understanding of the dangers of new techniques and of the scientific theory.

With regard to the Icelandic Government's decision to claim fisheries jurisdiction over the waters above the whole of the Icelandic continental shelf, that decision would inflict grave damage on the United Kingdom fishing industry, and especially on the major ports, the mainstay of whose economies was provided by the distant-water fleet and its ancillary industries. He could not see the justification for the infliction of such crippling damage, which, without regard to international law, would set aside rights that had been exercised for the best part of a century without damage to the Icelandic industry.

The nearest to a justification was the analogy which certain delegations had attempted to draw between the living resources of the sea and the resources of the sea-bed. So far as the sea-bed was concerned, there seemed to be general agreement that the position of the countries already exploiting those resources should be protected. There had been no suggestion that existing users should be expropriated. That, however, was what was entailed by an extension of fisheries jurisdiction by a coastal State. It was not merely a claim to ownership over what had previously been res nullius, but a claim to deprive other States of a right they already possessed under international law and had long exercised. It would still be appropriation even if execution was delayed until the coastal State could itself fully exploit the resources that would otherwise be under-utilized.

Although the United Kingdom rejected the claims of any State to extend its exclusive fisheries jurisdiction beyond twelve miles, it understood the concern of any country, especially one so dependent on its fishing industry as Iceland, to safeguard its resources. The United Kingdom was ready to take part in multilateral discussions to secure such limitations of catch as might be necessary to prevent overfishing. It also recognized that any conservation scheme should take into account the special position of coastal States. But all that could be and should be

done within the framework of existing organizations or organizations of the existing patterns.

The United Kingdom had always advocated the principle of a multilateral solution to the question of the territorial sea and straits and to that of fisheries jurisdiction. In that respect, it endorsed the proposal submitted by the United States delegation on 3 August 1971 (A/AC.138/SC.II/L.4).

Like the United States, the United Kingdom saw the problem as being to strike a right balance between the interests of coastal and other States, rather than totally subordinating one interest to another. His delegation considered that responsibility for the regulation of fisheries should be given to regional or international fisheries organizations, and it agreed that the objective of those organizations was to enable the maximum sustainable yield to be obtained from the fisheries. However, it doubted whether bodies established for that purpose could at the same time assume responsibility for the development of coastal and distant-water-fishing industries in developing countries. Such a function would be more appropriate to the various organizations which had been established to promote development, as it required economic and technical expertise in such matters as the designing of vessels and gear, marketing and processing. That was something which the conservation organizations, which were more interested in the biological aspects of the matter, were not well equipped to provide. They were, however, better equipped to assess the potentialities of particular fishing grounds.

With regard to sub-paragraphs 2C and 2E of article III of the draft submitted by the United States delegation, his delegation did not believe that the United States proposal on the sharing of catches struck an equitable balance between the interests of coastal and non-coastal States. The reserved share of the coastal State could, under 2C, expand indefinitely. In those circumstances, no guarantee of a minimum share, of the sort 2E purported to provide, could be accorded to other States, nor could there be meaningful negotiation. It was desirable that developing countries should be able to extend their fishing operations beyond their coastal waters, and some had already done so. But he did not see where the newly created deep-sea fleets of developing countries were to fish, if not in areas where the expanding fleets of coastal States would be exploiting the resources theoretically available to other States. In such a situation, there could be no future security for the distant-water fleets of any country, and without such security, a State would be ill-advised to undertake the

capital investment involved in building distant-water vessels with a life of fifteen to twenty years.

While recognizing the special needs of coastal States, the United Kingdom did not believe that those needs entailed an absolute and unlimited preference. Where a coastal State was allocated a share of the allowable catch, that allocation should be made on the basis of general criteria for relating the share to the needs and interests of the State concerned. The detailed application of those criteria, and of the necessary safeguards for non-coastal States, should be left to the appropriate regulatory organizations.

His delegation believed that jurisdictional extensions would lead to inequities and would not contribute to better conservation or full utilization. The effectiveness of regional regulatory bodies could be improved. For instance, in areas where the intensity of fishing was low, they could guard against sudden upsurges by a limitation of the annual increase in the catch of individual States. Again, to prevent minority obstruction, commissions could be empowered to take certain binding decisions by a suitably qualified majority vote. On the other hand, it believed that those objectives could be achieved by international co-operation within the framework of organizations such as now existed, in a way which would protect the legitimate interests of coastal States without depriving others of their long-established right to freedom of fishing on the high seas.

Mr. ARIAS-SCHREIBER (Peru) said that there were many arguments, scientific, economic, technical, social, political and legal, in favour of extending national jurisdiction beyond the limit of twelve nautical miles that had hitherto been generally accepted; and it was surprising that they were now objected to by representatives of nations that had previously fought to defend the rights and expectations of the least developed peoples. The coastal States were not prompted by egoistic motives in advocating the abandonment of the present rule. Should such motives not rather be looked for among certain Powers which wished to increase their prosperity at the expense of others? For the coastal States, the extension of national jurisdiction was a means of defending themselves against the claims of a minority of States which sought to obtain the greatest freedom for themselves in order to exploit the resources located off their shores and the coast of foreign States. With the ample resources at their disposal, they crushed the competitive efforts of the less developed countries and thus limited in the short-or the medium-term their opportunities to improve their welfare and to progress. It was also an

oversimplification to regard the interests of the developing coastal States as being in conflict with those of the international community, as if those States were not members of the international community. Since the developing countries constituted the majority of the States of the world, there was no reason for a few maritime powers to use the name of the international community to justify the defence of their private interests.

The representative of a large maritime Power had said that fisheries resources were very unevenly distributed in the world and that extensive zones rich in fish were found only in the waters close to the coasts of a limited number of ocuntries. A map just published by FAO (A/AC.138/47) in fact showed how phytoplankton production was concentrated along the coasts of certain States, especially to the south of the 30th parallel in the northern hemisphere, in other words, off the coasts of developing countries, except for concentrations located in the north, off the coasts of Canada, Greenland, Iceland, the Scandinavian countries, Spain, the Soviet Union, China and Korea. The same map also showed that all those concentrations extended considerably beyond the twelve-mile limit. But the fact that nature had been lavish along the coasts of certain countries as far as fisheries resources were concerned in no way entitled the distant maritime Powers to claim the right to exploit those resources for their own benefit and to the detriment of the development possibilities of the coastal States concerned.

The principles of distributive justice used as an argument for the exploitation of the marine prairies constituted by the plankton concentrations should also be used as an argument for the exploitation of the submarine prairies, namely the continental shelves within the 200 metre isobath, whose resources should be accessible to all or subject to an equitable international distribution. The injustice which nature had committed in apportioning the sea-bed unequally would be thus rectified, because there were countries which had an extensive and rich continental shelf and countries which were more or less deprived of one.

It would be preferable to be realistic and to recognize that, while certain countries were favoured by nature as far as land resources were concerned and possessed an extensive and rich continental shelf, certain other countries were similarly favoured by the presence of important fishery resources in the seas adjacent to their coasts, resources which it was their right and duty to protect and exploit in order to speed up their development and improve the living conditions of their peoples.

Certain maritime powers proposed measures of conservation that would allow the coastal States to maintain their fisheries at their present level and to promote their further expansion provided that did not affect the interests of the developed nations. The latter should understand that such proposals were unrealistic in times when the developing countries had decided to use the resources existing in the vicinity of their territories in order to achieve progress in accordance with the needs and possibilities of their peoples and not in accordance with the conditions imposed by some major powers.

It had also been maintained that an extension of the coastal State's zone of jurisdiction would be prejudicial to the interests of land-locked countries, since it would increase the distance separating them from the sea. Under agreements concluded with their neighbours, the developing land-locked countries could use the seas under relatively satisfactory conditions irrespective of the maximum breadth of the continental sea. It was true that a developing State without access to the sea was in a very difficult position because of the limitations of its own economy and even of the economy of the neighbouring country. But the real conflict of interests was not between land-locked States and States which had an outlet to the sea, but between States which had reached an advanced stage of development and had a modern fishing industry, and the developing States. If a developing land-locked State suddenly obtained access to the sea, it would be no better off than a neighbouring coastal State which also belonged to the category of developing countries.

According to certain maritime Powers, the extension of the national jurisdiction of coastal States would be contrary to the interests of land-locked countries. However, it was not the land-locked countries which were affected but the maritime Powers themselves. In point of fact, all the developing countries, whether coastal or not, had common problems and interests and he was convinced that the land-locked countries would be realistic and sympathize with the attitude of countries which had decided to extend the zone coming within their jurisdiction as a means of defending the interests of the developing countries as a whole against the exploitation of the seas by the powers whose economical and technical advantages made effective competition with them impossible.

With regard to the international sea-bed zone, the great Powers were clearly anxious that the international authority whose establishment was envisaged should be simply a spectator of the activities of private or national enterprises, to which it would issue exploration and exploitation licences; the benefits accruing to the

technically less advanced Member States would therefore be very small. The developing countries, on the other hand, wanted that authority to carry out, directly or through contracts or partnerships with national enterprises or other legal entities, exploitation, production and marketing activities; it would thus obtain substantial benefits and not merely royalties and fees. Consideration should be given to the possibility of granting of priority rights to land-locked countries in the distribution of those benefits. The question of that international zone was directly related to the question of the limits of national jurisdiction and, in that connexion, he wished to refute the argument that the extension of national jurisdiction endangered the common heritage of mankind. Those who advocated the choice of the 200-metre isobath as the limit of the international zone were in fact aiming at an arbitrary curtailment of rights which had already been recognized as pertaining to coastal States with regard to the continental shelf. Some claimed that if the limit of national jurisdiction was fixed at 200 miles, that jurisdiction would apply to 25 per cent of the total surface of the seas - or even to 40 per cent according to another estimate; such calculations were, however, based on the 200-metre isobath, which bore no relationship to the 200-mile limit.

Lastly, he wished to draw attention to an error which the representative of one of the great Powers had made in speaking of the consequences of the extension of national jurisdiction; taking the example of Peru, that representative had said that in that country the total fish catch in 1969 had been 1 million tons less than in 1968. That decrease had actually been attributable to a labour dispute and to the efforts made by local fishermen to protect and conserve the marine fauna. According to the latest estimates, the total catch in Peru had exceeded 12 million tons in 1970, a figure which was considerably higher than that for 1969. It was a good illustration of results achieved by a developing country through the extension of its national jurisdiction. There was therefore factual evidence to corroborate those results; it was not a question of mere statements based on sentiment.

Mr. RIPHAGEN (Netherlands) said that his delegation, as it had already stated several times, favoured a functional rather than a "territorial" approach to the rights of States with respect to the sea, and believed that the necessary adjustments should be achieved by means of international organization rather than by hard and fast rules. With regard to navigation, he did not think that any delegation present questioned the principle of freedom of international communication, which formed the basis of the present law of the sea. Indeed, all States benefited

from that freedom, whether or not ships were sailing under their flag. It should therefore be the concern of all States to prevent any one State from hampering communications between other States. Transit of ships and aircraft through territorial waters or the air-space above did not in itself affect the territory of a coastal State. Such transit might, of course, have consequences which did affect that territory. The remedy should not be to give coastal States the right to prohibit transit in their territorial waters, but rather to establish international rules preventing conduct by ships and aircraft which adversely affected the territory of those States.

His delegation was not in favour of a wide belt of territorial waters, and considered that a three-mile limit would be sufficient. It was, however, prepared to accept the twelve-mile limit, which had been supported by many States, provided freedom of transit was adequately protected. The United States proposal in articles I and II of document A/AC.138/SC.II/L.4 was a good basis for discussion of the matter.

With regard to fisheries, it would be remembered that, at the March session, his delegation had made a statement in favour of exploring the possibilities of supplementing the present rules and strengthening the existing machinery in order to arrive at international measures for conservation which duly recognized the preferential requirements both of States which were dependent upon fisheries and of States which, owing to their economic structure and level of development, were in need of protective measures for their fishing activities. It was not sufficient to grant coastal States exclusive sovereign rights over large areas of sea; that solution would not cover the great variety of situations. There again his delegation was in favour of a functional approach based on international organization, as would seem to be suggested by article III of document A/AC.138/SC.II/L.4. The international organization or organizations involved should be structured in such a way as to be able to take the necessary decisions on the adoption of rules and the allocation to States of their percentage of the allowable catch. The best solution would therefore be to set up an impartial expert body which would be empowered to make proposals and in general to prepare for the taking of decisions.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that as the end of the session was approaching, his delegation proposed to sum up the work that could be done in the time remaining and the work that could be done at future sessions.

The tasks facing the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction were difficult, as they involved, among other things, complicated political and economic problems. As had already been seen at the Conference for the Codification of International Law (the Hague, 1930), the law of the sea always gave rise to complex issues. In spite of those difficulties, close attention should be given to the progress which could be made by the Committee and Sub-Committee II.

In the first place, in the few days that remained at its disposal, the Sub-Committee should complete the task assigned to it of preparing a list of subjects relating to the law of the sea. The Committee could hardly inform the General Assembly that it had not achieved that objective. Moreover, to leave the list unfinished would hamper preparations for the Committee's subsequent sessions. The list would be studied in capital cities and would enable Governments and their representatives to prepare for those sessions. Reservations would obviously be made, but all delegations would have the opportunity to propose additions to the list.

That list did not, however, really constitute the central point of the Sub-Committee's work. Its most important task was to find solutions to the main problems - breadth of the territorial sea, fishing, and straits. As the discussions had shown, those three questions were fundamental and interrelated.

The debate had shown that opinions on the question of the territorial sea were divided. As ninety States had accepted a twelve-mile limit, it had been requested that that limit should be recognized and codified. The USSR shared that view. Other States, however, had requested that a distance of 200 miles should be adopted in order to protect the interests of coastal States. In his opinion, the distance of twelve miles ought to satisfy all States, and he hoped that the States which had asked for a greater distance would withdraw their claims, so as to avoid further difficulties and pave the way for a compromise solution.

The question of fishing was related to that of the territorial sea. It was a difficult issue, but agreement had already been reached on the principle of rational exploitation of living resources; all countries had stated that they were taking steps to ensure the conservation of those resources. While Sub-Committee II should find formulae for expressing those ideas, difficulties arose when one began to consider what measures could be proposed on the basis of those points of agreement.

Some delegations held that the living resources of the high seas belonged to all countries, others that they belonged to the coastal State. A solution might be reached by enlisting the help of the international scientific organizations and the co-operation of the States practising deep-sea fishing. An equitable solution must be found which would take account of the rights of coastal States.

With regard to straits, Sub-Committee II should try to define them more precisely. It had been pointed out that many straits would be affected if the breadth of the territorial sea was set at twelve miles. Only the main straits, which played an important part in international navigation, should, however, be considered, and a list of such straits should be drawn up. The concerns and interests of the coastal States should obviously be taken into account in that connexion. What was wanted by countries like the USSR, which had requested freedom of transit in the territorial seas, was a reasonable, but not an absolute freedom of transit. He suggested that the Sub-Committee might include in its draft articles provisions covering the interests of coastal States in that respect.

In his view it was along those lines that an agreement could be reached. With that in mind, each country should make a special effort to co-operate; the USSR, for its part, was ready to do so.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

held on Tuesday, 17 August 1971, at 3.15 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. OLMEDO VIRREIRA (Bolivia) commented on the extremely high technical level to which the preceding statements had raised the discussion and said that his delegation would confine itself to stating its concern about the fact that, on the whole, no account had been taken of the particular characteristics of certain countries, including his own.

By 1973, the deadline granted to it for preparing the Conference on the Law of the Seas, the Committee had to seek the best possible solutions and work out a formula for ensuring the fairest and most equitable sharing of what were the only resources on earth not yet exploited, namely, those of the marine environment.

The task would not be an easy one and could be accomplished only if men changed their traditional attitude and renounced their individual interests for those of the international community. A step forward had been taken, however, since it had been accepted that the resources of the marine environment were mankind's common heritage and should be used for the benefit of mankind as a whole.

The Sub-Committee was in fact trying to work out regulations and mechanisms which would translate that principle into fact. Its responsibility was weighty, because depending on the results achieved, the above-mentioned principle would either remain a dead letter or become a part of the onward march of mankind.

But the solution adopted would also have to guarantee that the advantages derived from the exploitation of the sea-bed would go more particularly to those who most needed them; it should not be a victory for the interests of the powerful, nor should it channel the advantages to a particular group of countries. His delegation therefore wished to stress the importance and priority nature of some problems which appeared to have been overlooked but whose omission would have regrettable repercussions on countries like Bolivia.

For instance, if - as was the case - there had for several decades been a tendency to safeguard the common interests of humanity by means of general or multilateral agreements, why was unilateral delimitation of the zone under national

jurisdiction still preferred in the Committee? There was no denying that, so far as international justice was concerned, the advances made and advantages gained by the developing countries had been made possible by the action of international bodies. That was why those countries, including his own, wished to see the exploration, exploitation and marketing of sea-bed resources entrusted to as powerful an authority as possible. In the circumstances, it was paradoxical to contemplate any unilateral delimitation of the zone under national jurisdiction, since such a solution would be contrary to the recognized principle whereby all countries, whether coastal or land-locked, should participate in the discussion and preparation of the law of the sea; indeed, such a solution would be a violation of that right.

The land-locked countries had on various occasions stated that any extension of the limits of national jurisdiction would have the effect of removing them even further from the sea. Those countries feared the increasing strangulation of their economies, for a country's level of economic development was directly related to its distance from the sea.

Then again, many delegations had affirmed that there was an indissoluble bond between man, the earth and the sea. Was that only true of coastal States? Did it not also hold good for peoples who were once in close contact with the sea and whom it was now being attempted to isolate in a determined manner.

Although the Convention on the Territorial Sea and the Contiguous Zone[1/] contained provisions on the subject, not everybody was in agreement on their interpretation and many arguments had been advanced for amending them. In that respect, his delegation considered that priority should be given precisely to the question of establishing the limits of national jurisdiction.

According to the estimates made, the establishment of a 200-mile width as the limit of national jurisdiction would automatically mean reserving forty per cent of the exploitable zones of the seas and oceans to the coastal States. The concept of "mankind's common heritage" would thus be enshrined for all time, but without offering any benefits to the land-locked countries. Not only would the latter be

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1/ United Nations Treaty Series, vol. 516, p. 205.

deprived of the benefits in question but their situation would become even worse, since the need to modify maritime trade routes in virtue of the extension of territorial seas and the resulting limitation of international rights would involve them in additional expenditure.

Moreover, the principle of proportional representation of States according to the category to which they belonged had been applied up to the present, and it was to be wondered why the same rule should not be followed in connexion with the setting up of the proposed international authority: that form of representation was one way of preserving the legal equality of States within the present-day multinational systems. It was therefore regrettable that of all the proposals submitted to the Sub-Committee concerning the proposed international authority and the council which was to be one of its organs, it should have been the draft presented by the developing coastal States which envisaged the smallest representation for the land-locked countries.

Then again, if it was recognized that there were fundamental differences between developing countries, why generalize a system of preferences in their favour? That point had already been raised by the representative of Ecuador. It was well known that different economic indicators had demonstrated that the gap between the least-developed countries and the other developing countries could be greater than that between the latter and the developed countries. That was, in any event, true in the case of Latin America, where there were fundamental differences in the level of development from one country to another.

His delegation therefore believed that it was a case not of contemplating favourable treatment by establishing discrimination between the various developing countries but of providing a rule whereby the benefits accruing from the exploitation of the sea-bed would be distributed in inverse proportion to certain orders of magnitude such as the national product, per capita income or the social capital of the countries considered.

The Sub-Committee should therefore strive to fill the gaps and to take account of factors which were of capital importance for its future work: the Committee and the 1973 Conference should study simultaneously all the issues raised by the codification of the law of the sea so as to ensure that future negotiations had a chance of providing a worldwide solution.

In that respect, he felt bound to refer once more to the need for taking into account the position of countries which were only beginning to develop and which, in effect, did not enjoy maritime rights. Their difficulties were aggravated by the fact that they were subject to an extreme degree to the market for and the prices of mineral commodities and that characteristic handicap accentuated the risks involved in a fragmentary codification of the law of the sea. Speaking on behalf of the countries which supplied mineral commodites, he wondered whether, in the event of any extension of the present limits of national jurisdiction as a result of unilateral agreements or decision, the exploitation of resources within those limits would depend on the sole dictate of each coastal State. Indeed, neither in the various drafts presented to the Sub-Committee nor in most of the statements made was any proposal to be found regarding the maintenance of the balance of markets for, or price levels of, the ores at present supplied by the land-locked countries, which would soon have to face competition from the privileged countries exploiting the vast underwater areas placed under their national sovereignty.

Finally, if the 1973 Conference resulted in the setting up of an effective system advantageous to the developing coastal States, to what extent would the setting up of that system guarantee that the countries so favoured would help to promote the legitimate aspirations of the newly-developing but land-locked countries?

His country did, of course, support the other developing countries when they appealed to the industrialized countries for a better world based on the principle of international solidarity and co-operation. Indeed, that was why the Latin American countries had unanimously supported the Declaration of Principles contained in General Assembly resolution 2749 (XXV) and had all agreed that marine resources should be declared the common property of mankind. Bolivia fervently hoped that the work of the Sub-Committee would be crowned with success. Such would not be the case, however, unless the wealthy countries became truly conscious of the above-mentioned principles and selfish individualism gave way to international justice. Moreover, the same appeal should be made to the developing coastal countries so as to ensure that the benefits obtained as a result of the efforts of the entire group - but which, in fact, they would be the only ones to enjoy - should also bring advantages, as a result of their multiplier effect and their

interaction, to the least-developed and land-locked countries. The headway made thanks to concessions or changes of attitude on the part of the industrialized countries should be reflected in a basic modification in the relations between the developing countries themselves, since co-operation between developing countries, the abandoning of positions of strength and the elimination of national selfishness would offer better chances of advancement to the land-locked countries which were only now entering on the process of development.

Essential measures had to be taken to ensure that the land-locked countries could effectively benefit from the resources of the marine environment, which were the common heritage of mankind: but those countries could do so only if specific agreements with the States which separated them from the sea were included in the regulations of the new law of the sea. His country believed that the present situation of land-locked countries could not be disregarded in the codification of the law of the sea. The right of land-locked countries to enjoy freedom of the seas on an equal footing with coastal States had to be recognized without ambiguity. To that end, the States situated between the land-locked countries and the sea had to guarantee the land-locked countries transit rights across their territory; such rights should include, inter alia, permission for the land-locked country to build for its own use on the territory of the coastal State the communication and transport facilities needed for the effective exercise of its transit rights. Moreover, States whose territory lay between a land-locked country and the sea should guarantee to ships flying the flag of the land-locked country the same treatment as they gave to their own vessels with regard to access and use of sea-ports.

The subject had been in large measure covered in document A/AC.138/37, and the Sub-Committee should now envisage agreements on the matter, which had to be settled before 1973.

The views he had just expressed did not reflect his Government's final position; they merely reflected some of its areas of concern and were intended to identify certain problems which his delegation deemed of the utmost importance. The Bolivian delegation reserved the right to speak again on questions of particular concern to its own country.

Mr. BRAZIL (Australia) said that he wished to make some comments on the questions of the breadth of the territorial sea, of international straits, and of certain other related matters.

The failure of the 1958 and 1960 Conferences on the Law of the Sea to agree on a maximum breadth of the territorial sea had left a serious gap in the conventional rules of the law of the sea. That question was too important to be left to the decision of individual States or even to regional agreements. As the International Court observed in the Anglo-Norwegian Fisheries Case[2/]: "The delimitation of the sea has always an international aspect; it cannot be dependent merely on the will of a coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act because only the coastal State is competent to undertake it, the validity of the limitation with respect to other States depends on international law". Australia, for its part, claimed and recognized a territorial sea of a breadth of three miles, measured from baselines drawn in accordance with the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone. It had always supported the concept of a narrow limit of the territorial sea in order to secure the widest possible high seas where the right of free passage of shipping and overflight applied. Since, however, the narrowest limit on which general agreement was at present possible appeared to be twelve miles, his delegation would be prepared to accept it, provided the question of passage through and over straits and the fisheries question were satisfactorily settled. Of course, even if an international agreement were reached laying down twelve miles as the breadth of the territorial sea, it would not preclude any country from maintaining a lesser territorial sea, if it chose to do so.

Concerning the fisheries question, he pointed out that the failure to reach agreement on territorial sea limits at the 1958 and 1960 Conferences had been partly due to the fact that they had not succeeded in achieving a satisfactory balance between the interests of the distant-waters fishing countries and the special rights of coastal States in the living resources of adjacent high seas areas. In his delegation's view, the question of jurisdiction over fisheries resources could and should be separated from the rights of a State over its territorial sea.

The freedom of passage through international straits was another matter that was even more intimately related to the question of the limits of the territorial sea. It had two aspects: one was that the freedom of passage and overflight

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2/ ICJ Reports 1951, p. 132

through straits was regarded by some countries, including major maritime countries, as an important issue that had to form part of the final settlement at the forthcoming Conference on the Law of the Sea; the other was that reservations had been expressed on the question whether freedom of passage should exist in an international strait in which the shipping channel ran through part of the territorial sea of a coastal State. It had been suggested that the right of innocent passage, as laid down in the 1958 Convention on the Territorial Sea and the Contiguous Zone, was sufficient. His delegation was prepared to recognize that that right, as codified by the Convention in question, meant a full right of innocent passage through the territorial sea for all ships, without any prior authorization or notification being necessary. Reservations had, however, been formulated by a number of countries concerning the content of the rights of transit provided for by the provisions of the 1958 Convention on the Territorial Sea which dealt with innocent passage. Those reservations were not shared by Australia, but their existence had to be noted. As a result, a measure of subjectivity had entered into the concept of innocent passage. Lastly, he drew attention to the general principle of the law of the sea to the effect that, where coastal waters that had been high seas ceased to have that status, rights of communication should nevertheless be preserved. That principle had found expression, for example, in article 5, paragraph 2 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, which dealt with the case where straight baselines were used to enclose waters previously part of the territorial sea or the high seas.

The forthcoming Conference could not merely rest on the 1958 solutions and would be obliged to consider carefully the régime to be applied to international straits. He agreed on the need to take into account the existing law on the subject but there was a risk of over-simplification on an important and complex question if it were considered purely in terms of the problem of innocent passage. In Bruel's view[3], the straits that enjoyed a legal position sui juris so far as passage was concerned were those that had a sufficient degree of importance to international sea commerce, taken in the sense covering both mercantile ships and warships. The International Court of Justice had, moreover, defined international straits in the Corfu Channel Case.[4] The conclusion his delegation had drawn was

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3/ International Straits, 1947, p.38, 39, 42

4/ ICJ Reports 1959.

that a legal position sui juris was involved. That conclusion was confirmed by the 1958 Convention, which provided that the right of innocent passage could not be suspended in straits.

It followed that two extreme positions could be put aside. One was that the rights of passage enjoyed in territorial sea forming part of an international strait were only those enjoyed in the generality of the territorial sea. To take a hypothetical but illuminating example, ordinary territorial sea could be filled in by extension of the land territory but it would be unthinkable that an international strait could be filled in. The other extreme position to be rejected was that territorial sea in an international strait enjoyed the character, in every respect, of high seas.

In his view, a reasonable régime for international straits should cover the duties as well as the rights of the users and those rights should be limited to transit through and over international straits. The right that was needed was a right only to transit and not a right to manoeuvre or to be in the particular territorial sea for any other purpose than simply passing from one area of high seas to another. Even if the navigable area was wide enough and deep enough to allow for navigation and overflight over a broad band of territorial sea, it would be reasonable that the coastal State should be able to limit the transit to specified corridors. The purpose would be to allow maximum freedom of movement provided the passage came squarely within the concept of transit.

The straits régime could provide that reasonable rules of navigation could be applied by the coastal State to ensure the safety of vessels and the protection of the marine environment. There should, for example, be rules designed to avoid pollution through such hazards as oil discharge, deliberate or accidental, by large tankers. Such rules should not, of course, hamper the basic right of passage.

The foregoing comments were not directed to those straits that were the subject of special multilateral agreements such as the Montreux Convention.5/ Such agreements illustrated the fact that those straits had a sui generis character and that they had special strategic significance; but as far as the States parties to those agreements were concerned, they would continue to constitute a separate category and would not be affected by the general régime for straits which he had just discusse

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5/ League of Nations, Treaty Series, Vol. CLXXIII, p.24.

Mr. D'ANDREA (Italy) wished to discuss straits from the historical, legal and political points of view. The 1958 Convention on the Territorial Sea and the Contiguous Zone regulated international navigation of the territorial sea and of straits within territorial waters. As everyone knew, articles 14 and 16 of that Convention provided for the right of innocent passage. That right, which was a reasonable compromise between the interests of the coastal State and those of the international community, had not been uniformly applied. It had been interpreted in various ways according to the positions taken with regard to the limit of the territorial sea and as a result of differences of opinion on the scope of the concepts used. While on the one hand an extension of the territorial seas had subjected an increasing number of straits to the principle of innocent passage, coastal States, on the other hand, had sometimes interpreted "innocent passage" in a highly subjective way. That state of affairs, particularly the fact that many States had declared their intention of extending their territorial seas, had led the United States delegation, in a draft (A/AC.138/SC.II/L.4), and other delegations, in statements, to propose new regulations for navigation in straits. His delegation saw no objection to a revision of existing regulations, on condition that all the relevant factors were taken into account. Those were in particular the interests that the coastal State had the right and duty to protect, the interests of the international community in the freedom of the high seas and the geographical and political position of straits of which the special importance had to be recognized. The idea of a strait had a geographical and a legal aspect. Legal problems arose only in cases of straits less than 24 miles wide. Beyond that width, there would always, in his delegation's opinion, be a zone of the high seas. His country favoured as narrow a limit as possible for the territorial sea. At most it could accept the 12-mile limit on condition that such a limit was uniform and applied everywhere. It would like to see a total lack of restrictions on the right of free passage of straits more than 24 miles wide. In those straits as elsewhere beyond the 12-mile limit, the international community should for all time recognize the existence of the free sea. That point of view explained the position of his delegation on the theory of the archipelago.

Turning to the question of the legal aspect of straits, any régime of international navigation was based on the need to strike a balance between the various interests involved. Regarding the navigation of straits, a suitable

solution had to be found that would take into account the general interests of the international community and the particular interests of each State. That was why all straits could not be treated alike, nor one single solution adopted in terms of standard regulations. The other extreme should also be avoided, namely that of envisaging only individual cases. An effort should be made to define the features peculiar to some types of straits in order to examine the possibility of establishing sufficiently general principles which would indicate the circumstances in which a solution suitable for one strait ceased to be applicable in respect of another. One could first consider the case of straits with a geographical position such that States could enjoy the freedom of the high seas only if granted absolute freedom of passage through those waters. Those were straits that would of necessity be used by vessels going from a territorial sea to the high seas or that provided the natural means of communication preventing, from a legal point of view, the formation of a closed sea. It was unacceptable that the navigation of a strait which was a vessel's only means of access to the high seas or escape from a sea that had no other outlet might be impeded by a State or States with sovereign rights over the coasts of the strait.

If there were no straits, some seas such as the Baltic, the Red Sea and the Persian Gulf would, geographically, be closed seas. Straits at the mouths of these seas should therefore not constitute an obstacle to freedom of navigation. That was one reason for which the general interests of the international community had to take precedence over the particular interests of coastal States, even though that entailed a considerable limitation of the sovereignty of those States. In the other cases, where the fundamental interests of the international community were not in question, the search for a balance that could satisfy the various requirements was sometimes difficult. There was no question of treating in the same way a strait with shores that were quite separate one from the other, and straits where the shores were connected by a man-made construction. Perhaps a further distinction should also be made between the case of a strait with coasts and waters belonging to two or several States and that of a strait where they belonged to one and the same State. The first of those two assumptions could give rise to further provisions, given for example the case of an area where waters belonging to different States overlapped in the middle of the strait.

There was obviously a divergence between the interests of the international community and those related to the exclusive sovereignty of each State. When it was no longer necessary to sacrifice the privileges inherent in national sovereignty in order to take account of the interests entrusted to the international community as a whole, then all could abide by the limits set by contemporary international law.

Given the situation as he had described it, two aspects of the question had to be considered. There were, on the one hand, straits which formed natural waterways that were necessary if a given sea was not to be closed, from the legal point of view. In such cases the general interests the safeguard of which had been entrusted to the international community had to be taken into account to the maximum extent. There were also, on the other hand, straits that were of limited breadth, the coasts and waters of which belonged to one and the same State. Such straits could be described as national. In those cases, the interests of the State in question took priority, without those vested in the international community being affected. Total freedom of passage in such straits would not be compatible with the safeguard of the safety and of the fiscal and commercial interests of the coastal State. In any case, why should a State renounce its sovereignty over part of its territorial sea when the general interests of the international community did not so require? Those interests were already guaranteed by the right of innocent passage recognized in the 1958 Convention on the Territorial Sea and the Contiguous Zone. The application of that right, which would apply only in the case of the small number of straits mentioned above, should present no problem at the legal or practical level. Nevertheless, when the principles discussed were being turned into regulations under a convention, it would hardly be wise to use expressions such as "straits of limited breadth subject to the sovereignty of a single State", since that type of expression could give rise to divergent interpretations. Specific limits should be set that would be absolutely unequivocal.

For that purpose, and given the fact that there was no standard limit for the territorial sea, a reasonable solution could be found by establishing a width of six miles for straits, that being twice the three-mile limit of the territorial sea that had never been contested. For those straits, the régime of the territorial sea permitting innocent passage would not be changed. Some delegations had asked that the concept of innocent passage should be revised, and that question had been

mentioned with particular reference to the problem of straits. According to his country's proposal on the régime of straits, application of the principle of innocent passage did not seem as important as it had been so far, but a traditional principle hallowed by time could hardly be abandoned, and it would be difficult to modify the régime of the territorial sea in such a way as to remove the concept of innocent passage. If the limit of the territorial sea was to be extended, it would therefore be essential to maintain the concept of innocent passage. The 1958 Convention had, however, not succeeded in ensuring the uniform application of that principle, and his delegation would be happy to help in the search for a better formulation of the concept, particularly so that it could rest on essentially objective data. Between the two extremes he had described, there was doubtless a category constituting an intermediate zone that could, in the last analysis, be treated in the same way as the zone of free passage. But, before reaching such a conclusion, much patient work and research would have to be done, and types of straits examined in order to assign some to a class lying between the two extreme cases. It was a delicate question, and in that respect, he supported the proposal of the Ethiopian representative (A/AC.138/SC.II/SR.11) that a working party should be set up to study the various aspects of the problem.

The United States delegation seemed, in its draft, to want the freedom of maritime navigation of straits to go hand in hand with the freedom of overflight. That last question did not seem to fall within the competence of the Sub-Committee. At the legal level, the air navigation problem did not appear to have any close connection with that of maritime navigation. Indeed the 1958 Convention had not mentioned the right of overflight. The question had been dealt with, however, in the 1944 Chicago Convention,[6/] which had taken over the principles of the Paris Convention of 1919.[7/] It would, however, be difficult to apply the same régime to maritime navigation in straits and to the overflight of straits. In the Italian delegation's opinion, the question of overflight should not be considered as part of the new effort to codify the law of the sea.

6/ United Nations, Treaty Series, vol. 15, p.295

7/ United Nations, Treaty Series, vol. XI, p.173

Mr. HERRARA MARCANO (Venezuela) said that the international law of the sea was obviously an organic whole, the result of negotiations and compromises between States. It was consequently impossible to establish new standards or to modify existing ones without taking into account existing international law as a whole.

The list to be adopted must, therefore, be detailed enough to cover all aspects of the problem. That did not mean that all the provisions of existing international law necessarily had to be revised. The Venezuelan delegation believed that many of those provisions, unless they were open to criticism or had gaps that needed filling, could and should be maintained without change. However, even the rules that were to be kept intact should be examined with a view to arriving at the general agreement that was indispensable for the formulation of new rules.

If the listwere very short, there would be a risk of losing sight of the overall question, and that might bring about a hardening of positions. A flexible attitude, leaving open the possibilities of negotiation and harmonization, was therefore needed. Whatever list was established, it should not be restrictive. Delegations must have the right either to draw the Sub-Committee's attention to any matter they believed to be worth consideration, or, if necessary, to submit drafts on a given aspect of the law of the sea, without risk of objection on the ground that the item in question was not on the list.

At the 64th plenary meeting, his delegation had put forward concrete suggestions on the way in which it believed that one of the most complex problems to be examined by the Conference should be solved. That problem was the determination of the various zones and the legal regime applicable to each. Since the interests of the various States in that regard differed almost infinitely, the only way to obtain results was by way of a universal consensus; but that was impossible unless States negotiated with sincere intentions and were prepared to make the necessary concessions.

For that reason his delegation had suggested, as a compromise solution, the establishment of a 12-mile limit for the territorial sea within which the present régime would be maintained, and of a "patrimonial" sea zone of a maximum breadth of 200 miles from the coast, in which the sovereign State would have the exclusive right to exploit all resources. The sea beyond those limits would be declared an international zone.

In its patrimonial sea the coastal State would have exclusive fishing rights as well as the right to explore and exploit all the resources of the sea-bed and its subsoil. It would also have the right to take the necessary measures to protect those resources. Those rights should be governed by very specific international rules and should be exercised exclusively for economic purposes.

The obligations of the coastal State included, firstly, that of refraining from any act hindering freedom of navigation, overflight and transit in the patrimonial sea. Consequently, installations for exploiting resources and facilities for protecting the coastal State'sresources from contamination and destruction must not impair those freedoms. Secondly, the coastal State must ensure that its activities in its patrimonial sea did not cause pollution or destroy resources in the international zone or in the waters of other states. Thirdly, the coastal State must ensure that the exploitation of the living resources of its patrimonial sea did not affect the conservation of species whose life cycle was not spent exclusively in that zone.

The international community would have wide freedom of surface and underwater navigation for ships and of overflight for civil and military aircraft. It would also have the right to lay cables and to use the zone for its communications. Moreover, it would be obliged to observe the rules laid down by the coastal State for protecting the resources of its patrimonial sea.

It had been noted that the objections raised to any extension of national jurisdiction were designed to protect freedom of navigation. The idea of the patrimonial sea would remove those objections. The countries most strongly opposed to any mention of the figure of 200 miles were the very ones with large maritime and aerial fleets, both merchant and military, the technical know-how necessary to exploit the resources of the sea-bed, and a higher than average *per capita* income. Those countries should examine the Venezuelan proposals, which in many ways might well serve their interests.

Under existing international law, the coastal States enjoyed certain rights. No modification of those rights could be decided upon by a majority vote, and the present regime could be modified only by general concensus. When rational and generally-accepted arrangements had been established, States would probably agree to replace their present rights by those conferred under the new arrangements, but for that to happen, the arrangements must strike a fair balance between the various

interests. Venezuela hoped that fair and effective arrangements could be concluded as quickly as possible, but meanwhile it could not give up any of its present and potential rights under the existing regime.

Regional and sub-regional arrangements played an important part. There were so many different situations and interests involved that the future rules would probably take the form of a general framework specifying the maximum limits of the various regions and the maximum rights of States in each, so as to avoid future extension of jurisdiction. Within that framework, regional and sub-regional agreements might be concluded under which the countries directly concerned could make the arrangements best suited to their interests. For instance, the arrangements for implementing the regime might vary between the northern part of the American continent and Latin America, or between the North Atlantic, the Caribbean and the Pacific coast. Neighbouring States or countries sharing a coastline might grant each other reciprocal concessions on fishing rights. Agreements taking account of particuly economic and historical facts might also be concluded. Negotiations conducted in a spirit of international co-operation might finally eliminate many problems that had arisen because of the vagueness of the present regime and that were sources of friction in international relations.

Mr. MCKERNAN (United States of America) stressed the importance which many countries assigned to the subject of fisheries. If the 1973 Conference on the Law of the Sea was to be brought to a successful conclusion, the Sub-Committee would have to consider all the views expressed and to formulate a fisheries regime that would ensure conservation of the living resources of the sea and give coastal States the opportunity to exploit them.

His delegation had prepared a background paper on the nutritional importance of fish, the behavioural characteristics of the different species and the present trends in fish production. That paper, which supplemented the data and maps prepared by FAO (FIO/C/126) in document A/AC.138/47, would be distributed to members of the Sub-Committee.

The world catch of marine fish had increased rapidly since the Second World War. Between 1948 and 1968, fish catches had risen from 15 million to 57 million tons. In the last few years, however, catches had levelled off and a report by FAO on fisheries resources implied that the rate of growth in world fisheries would probably decline over the present decade. His delegation's view was that the world fish catch

could be increased, provided better conservation methods were adopted and the possibility of reducing fishing activities in a number of over-exploited areas was considered. According to one FAO document, larger catches could be obtained from some parts of the ocean lying off the coasts of many developing countries. But before maximum exploitation of the resources available in those areas could be achieved, it would be necessary to acquire further knowledge of those latent resources and to develop a new fishing technology.

It had been stated that there must be changes in the rules governing high sea fisheries and that the present practices strongly favoured the distant-water fisheries of the highly-developed nations. He agreed that it was not an easy matter to reconcile the right to fish freely on the high seas and the right to ensure protection of coastal stocks of fish.

In submitting positive proposals in the form of draft fisheries articles (A/AC.138/SC.II/L.4), his delegation had hoped to promote serious discussion between States holding widely divergent points of view. The United States' proposals took into account the coastal States' interest in increasing their participation in the exploitation of the fisheries adjacent to their coasts. They provided for coastal States' preferential rights based on fishing capacity and recognized the right of the coastal State to apply that preference unilaterally, in accordance with certified procedures and standards. On the other hand, the exclusive jurisdiction of the coastal State was precluded beyond its territorial sea. In its proposals his delegation had emphasized the role of regional and international organizations, and had included provisions designed to promote the use of their services. Special treatment for migratory ocean species was also provided for. Finally, the draft articles indicated that negotiations could usefully begin between the States concerned who were participating in the Sub-Committee's work, on the question of the extent to which a tradition of fishing in coastal waters by foreign fishermen should limit the extent of the coastal States' preferential rights.

The Sub-Committee should also discuss the international arrangements to be made for registration of vessels and maintenance of records concerning the quantity of fish taken, as well as the possible establishment of a world-wide commission under the auspices of FAO to assist developing countries in widening their technical knowledge in order to deal with conservation and the development of resources in their adjacent coastal waters.

His delegation welcomed the extended discussion of the question of fisheries which had taken place in the Sub-Committee and hoped that the various delegations would consider carefully the factual information that had been made available to the Sub-Committee and discuss with their respective Governments ways and means of accommodating the different points of view expressed. His delegation considered that the Sub-Committee's fisheries negotiations should facilitate and not impede an overall law of the sea agreement which would be both equitable and generally acceptable.

Mr. KAZEMI (Iran) said that his delegation considered that the list of subjects for discussion would logically have to be comprehensive in order to cover all the views expressed during the debate. Also, in view of the new political, economic, technological and scientific developments that had taken place since 1958, the list should be progressive and in line with the legitimate aspirations and interests of all countries, particularly the developing nations, whether coastal or land-locked. It should also aim at safeguarding the rights of the coastal States with regard to the resources of the seas adjacent to their coasts, and at respecting their interest in the protection of their marine environment against the hazards created by technological and scientific advancement in the uses of the sea. However, the list and the preparatory work for the forthcoming Conference on the Law of the Sea should not seek to change the fundamental principles of international law of the sea. In other words, the approach to the basic problems must be constructive rather than destructive, and agreement should be reached through accommodation and compromise. It was obvious, however, that a compromise solution could hardly be found for all the principles of the law of the sea, particularly those which had remained undisputed for centuries.

One of those principles was that the territorial sea formed an integral part of the territory of the coastal State, whose sovereignty was not subject to any restriction except that of innocent passage. That principle applied to the whole of the territorial sea, but the breadth of the territorial sea had not yet been established. A clear distinction should therefore be made between the regime and the breadth of the territorial sea. The principle of innocent passage was clearly defined in Article 14(4) of the 1958 Convention on the Territorial Sea and the Contiguous Zone. However, in view of the new developments in the use of the sea, particularly the problems presented by pollution, conservation and preservation of

the marine environment, further clarification of that formula might prove necessary. In that case, an effort must be made to safeguard rather than undermine the rights and interests of the coastal States.

As far as the breadth of the territorial sea was concerned, it seemed that a 12-mile maritime belt might be generally acceptable. Reservations made by the countries advocating a narrower width did not seem to be relevant. In fact acceptance of the new limit would merely amount to recognition of a rule applied by the majority of States.

Secondly, his delegation wished to mention the inherent right of the coastal States to the resources of the sea adjacent to their coast. As had been stated by the International Court of Justice in the North Sea Continental Shelf[8/] cases, the rights of the coastal States derived from the fact that the continental shelf is the natural prolongation of the land domain into and under the sea. Under the 1958 Convention on the Continental Shelf,[9/] the coastal State had the exclusive right to explore and exploit the sea-bed and the sub-soil of the submarine areas adjacent to its coast, at least to a depth of 200 metres.

His delegation had already stated, with reference to the criterion to be adopted for the delimitation of the international sea-bed area, that it was in favour of a distance criterion, provided the distance was reasonable, so as to protect the rights of coastal States under the existing law of the sea. His delegation thought that the distance criterion should be applied wherever the 200-metre isobath criterion proved to be discriminatory. In that connexion he emphasized that, until the new concepts relating to the sea-bed under national jurisdiction had been appropriately formulated and recognized, his country would adhere to the concept of the continental shelf, which remained valid and operative in international law.

With regard to the right of the coastal State to the living resources of the sea adjacent to its coast, his delegation considered that there was a close geological, biological and ecological link between land, man and the marine environment, and that the interests and needs of the coastal States, particularly

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8/ ICJ Reports 1969, p.3

9/ United Nations, Treaty Series, vol. 499, p.311

in the developing countries, justified the right of those States to use the resources in question. It seemed to be generally accepted that the jurisdiction of the coastal States over the fishing areas was not necessarily linked with sovereignty over the territorial sea. There was a growing tendency to link the notion of fishing area with that of continental shelf, a tendency which seemed to be justified by the fact that many of the world's more productive fisheries were situated in the relatively shallow shelf waters, where plankton was the main source of nourishment for fish.

As the Chairman had rightly pointed out in his statement at the 63rd plenary meeting, freedom of the high seas was a prime interest of the international community as a whole and should be preserved; but it should be rationalized so as to avoid benefiting only a few countries. Indeed, technological and scientific progress and the geographical, economic and ecological characteristics of the sea had made that rationalization all the more necessary, and the forthcoming Conference on the Law of the Sea should therefore make a genuine effort to adapt the old rules to present realities. During the previous session, his delegation had had occasion to express its views on one aspect of the rationalization of the freedom of the high seas, when it had stated that the regime applicable to the high seas could not be indiscriminately applied to all parts of the sea, without prejudice to the rights and interests of the coastal States. One example was the case of enclosed and semi-enclosed seas which in most cases were geologically part of the continent and biologically part of the same ecosystem. Furthermore, the marginal seas were of special social and economic importance for the riparian communities which were increasingly dependent on the resources of those seas for their subsistence and development.

Lastly, he expressed the hope that the forthcoming Conference on the Law of the Sea would seriously consider the weak points in the existing international law.

Mr. AYALA-LASSO (Ecuador) recalled that, after the adoption by the General Assembly of resolution 2750 C (XXV), which had enlarged the mandate of the Committee in order to enable it to prepare for the Conference on the Law of the Sea, many consultations had taken place and many statements made with a view to organizing the Committee's work in such a way as to enable it to make an effective contribution to the success of the Conference. Delegations, in spite of initial differences of opinion, had agreed to instruct the Sub-Committee to draw up a list of subjects

and issues relating to the law of the sea, which was to include, in particular, the subjects and issues set out in operative paragraph 2 of resolution 2750 C (XXV), it being understood that the Sub-Committee might decide to draft articles before completing the list of those subjects and issues. It was on the basis of that agreement that the work of the present session had been organized.

While most delegations had agreed that a comprehensive and detailed list of the subjects and issues to be considered should be drawn up, several of them to judge by their statements and the fact that they had prepared draft articles on very specific subjects and issues, had apparently forgotten the principle set out in General Assembly resolution 2750 C (XXV), to the effect that the problems of ocean space were closely interrelated and needed to be considered as a whole.

In his delegation's view, both the arguments put forward in favour of the inclusion of certain subjects and issues in the list and the substantive statements on those subjects and issues showed clearly that they should be included in the list that the Committee was called upon to prepare.

Accordingly, his delegation would not comment on the substance of the statements made to the Sub-Committee but might wish to revert to them in detail at the appropriate time. It wished, however, to state forthwith that it could not accept the draft articles on the breadth of the territorial sea, the straits and fisheries submitted by one delegation, the purpose of which was, inter alia, to ensure the permanent validity of rules relating to jurisdiction and maritime sovereignty which were in conformity with the interests of powerful States, while ignoring the legal principles through which the developing countries would be able to enforce their right to progress.

His delegation felt it must once again express its disagreement with the opinions expressed by a certain delegation which, on the basis of incorrect statistical data, sought to cast doubts upon the substantial progress made by Ecuador in the fisheries field over the last twenty years, which had been due to the fact that that country had extended the limits of its maritime jurisdiction to 200 miles, in conformity with its geographical, geological and biological characteristics, and by virtue of its lawful right to explore, preserve and exploit the marine resources essential to the development of its economy and the raising of its level of living.

Ecuador, which was anxious to assist the Sub-Committee to carry out its work in an orderly and efficient manner calculated to ensure the success of the Conference on the Law of the Sea, had participated in the preparation of a draft list of subjects

and issues which would be submitted to the Sub-Committee in the near future. In his delegation's view, that list should be sufficiently comprehensive to reflect the unity of the various subjects and issues relating to ocean space and should not be limitative, so that any new subject or issue could be included in it. Furthermore, that list could not involve any criterion with respect to preferences or priorities, on some aspects of which the Sub-Committee would have to take decisions as its work advanced.

Referring to document A/AC.138/50,[10] in which FAO studied the limits and status of the territorial sea, exclusive fishing zones, fishery convervation zones and the continental shelf, he was in full agreement with the representative of Spain regarding ways in which that publication could be made easier to consult. As far as Ecuador's position with regard to the question of the continental shelf was concerned, he recalled that by virtue of the Declaration of Santiago of 1952 and the Supplementary Agreement of 1954, Ecuador's sovereignty extended over the sea bed and the sub-soil thereof to a distance of 200 miles.

The FAO study was a revised version of brochure No. 8 in the FAO Legislative Series which had been brought up to date by the introduction of various changes designed to improve the objective and technical character of the first study without taking a position on the subjects and issues dealt with.

Mr. SOBOLEV (Byelorussian Soviet Socialist Republic) noted with satisfaction that the Sub-Committee had had an extensive exchange of views on the subjects and issues coming within its mandate and that a number of delegations had submitted draft articles. With regard to the preparation of the list of questions relating to the law of the sea, his delegation agreed with those who had brought out the need to draw it up as quickly as possible. That list, which would remain open so that any new subject or issue could be included in it, would be of great assistance to the Sub-Committee in making a thorough study and in taking the necessary decisions. A study of questions of general interest was particularly necessary and Bulgaria should be thanked for having drawn attention to those questions in its working paper (A/AC.138/45 and Add.1).

10/ FAO reference: FID/C/127

In the debate, many delegations had stressed the need, in preparing for the Conference on the Law of the Sea, to draw on the principles set out in the 1958 Conventions and other related conventions. It would be desirable, inter alia, on the basis of those principles, to define the limits of the continental shelf and the breadth of territorial seas more precisely.

With regard to the question of limits, his delegation wished to remind the Sub-Committee that the delegation of Nepal had, at the last session, shown in a striking manner the differences between coastal and land-locked States. The latter had no possibility of extending their territory by encroaching upon neighbouring States and, in order to have access to the sea, were forced to sign agreements or conventions with coastal States. When a coastal State extended its jurisdiction over the ocean floor, it invoked the principles of international law or reasons of economic interest or national defence, without considering that it might in so doing inflict injury on other States, particularly land-locked States.

As a number of delegations had said, some confusion was arising between the concepts of territorial zone and national jurisdiction. The delegation of Mexico had been able to show how they differed. A State's territory, comprising the whole of its land surface, maritime space and air space, came within the jurisdiction of the State to which it belonged. As for the territorial waters, the application of the rights of the coastal State was based on recognition of the sovereignty of that State. That was made clear in article 1, paragraphs 1 and 2 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, which stated that the sovereignty of a State extended to its territory and to a belt of sea adjacent to its coast, described as the territorial sea, and that that sovereignty was exercised subject to the principles of international law.

The delegation of Mexico had shown that the sovereignty of the State over territorial waters could not extend beyond its maritime territory, in other words its internal waters and its territorial sea. The ocean beyond the limits of the sovereignty of coastal States constituted the high seas and could be used by all on equal terms. No State could claim special rights over the high seas, nor subject them to its sovereignty, nor exercise any jurisdiction. The freedom of the high seas was a basic principle of the current international maritime law.

However, the breadth of territorial seas was one of the most complex questions in international maritime law and had been discussed for several decades. Three

international conferences had been in large part devoted to it - the Hague Conference for the Codification of International Law of 1930 and the Geneva Conferences of 1958 and 1960.

The existing legal régime of the sea was changing rapidly and various international agreements and national provisions were continually introducing new elements into it: In recent years, changes in the breadth of territorial seas had occurred. Fishing zones had been established by coastal States that had exercised their rights under international law, either unilaterally or by international agreement, to establish special maritime zones beyond their territorial waters. Most coastal States had, in fact, established such contiguous zones. However, they could not be fixed arbitrarily and should not impede the freedom of navigation and of fishing on the high seas. Provision was made for the establishment of those zones in the 1958 Convention on the Territorial Sea and the Contiguous Zone which, however, specified that they might not extend beyond twelve miles from the baseline. As far as the limit of territorial waters was concerned, it seemed to be accepted, in accordance with international practice and the rules of international law, that it was established at twelve miles, a figure which, moreover, a large number of delegations seemed ready to accept.

If the creation of contiguous zones was accepted, it was nonetheless a fact that the creation of vast areas placed under national jurisdiction would be detrimental to the interests of a large number of States, particularly land-locked States. The position of land-locked States was brought out very clearly in the Secretary-General's report A/AC.138/37. However, that document did not make clear what the position of land-locked States would be when the limits of the international sea-bed zone had been fixed; nor did it deal with the question of free access to the sea by land-locked States or of their participation in the exploitation of marine resources.

His delegation was prepared to participate in a further study of those subjects and issues which had not yet been resolved in a spirit of conciliation and co-operation with a view to finding an acceptable solution to them. It strongly urged countries to refrain from taking unilateral measures designed to extend their territorial seas beyond the twelve-mile limit and to adopt an understanding attitude which would facilitate the formulation of constructive decisions and ensure the success of the Conference on the Law of the Sea.

His delegation supported the Belgian delegation's proposal that consideration should be given to the measures to be taken to enable any State to accede to the 1958 Conventions, whether or not it was a member of the United Nations or of a specialized agency. In fact, various conventions and a large number of bilateral agreements concluded by land-locked States were based on the 1958 Conventions. They were playing an important part in the development of the international law of the sea and constituted a sound international legal basis for activities on the high seas. That was why all States should be able to become parties to them.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

held on Thursday, 19 August 1971, at 10.50 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. ORIBE (Uruguay) said that his Government considered it unnecessary and unwise to amend the definition of the continental shelf contained in article 1 of the 1958 Convention on the Continental Shelf.[1/] The definition was of Latin American origin and had thus far adequately served the interests of the coastal States, which had progressively extended their sovereign rights along the continental slope to increasing depths as a result of advances in the general techniques of exploiting the natural resources of submarine areas. Any attempt to revise the definition could be prejudicial to the existing sovereign rights of coastal States, in so far as the occasion might be used to push back the limits of such rights to lines of depths or distances nearer the coast - the 200-metres isobath or a distance of fifty miles. Nevertheless, if the Secretary-General's consultations revealed that a majority of States were in favour of a third United Nations conference on the law of the sea, his Government would support the convening of such a conference to review the regimes of the high seas, fishing and conservation of the living resources of the high seas, and to deal with the other matters mentioned in General Assembly resolution 2574 A (XXIV), including the partial revision of the 1958 Convention on the Continental Shelf.

If that Convention was partially revised, his Government would take the view that the new definition of the continental shelf should include not only the sea-bed as far as the 200-metres isobath, but also the continental slope beyond that isobath, as far as the geological and geographical base of the slope. According to the latest reliable information, the base of the continental slope corresponded approximately to the 2,500-metres depth line. The 2,500-metres isobath should therefore be adopted as the outer limit of the continental shelf.

His Government would also take the view that the concept of the full territorial sovereignty of the coastal State over the continental shelf and slope

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1/ United Nations, Treaty Series, Vol.499, p.311

adjacent to its shores must be definitively accepted, instead of the compromise solution adopted in 1958 whereby sovereign rights were limited to rights for the purpose of exploring the shelf and exploiting its natural resources.

His Government would also propose that the 1958 text should be supplemented by rules governing the rights of States over epicontinental waters, over the installations used for the exploitation of the resources of the continental shelf, and over the sea area contiguous to those installations. In the case of discontinuous continental shelves, it would be necessary to determine the maximum width and depth of gaps or fissures for the purpose of preserving the fiction of continuity.

During the session several delegations, especially that of Kenya, had objected to the use of the geographical criterion to define the area of national jurisdiction, maintaining that it was discriminatory in that it accommodated the interests of only those coastal States which really had a continental shelf in the geographical sense of the term. His delegation was prepared to recognize the validity of that objection, provided the geographical criterion was not altogether abandoned. In that case, it would be possible to reach general agreement on a mixed definition of the area under national jurisdiction if the geographical criterion was supplemented by the uniform horizontal distance method advocated by some delegations. The result would be that, where there was a geographical continental shelf, the limit of national jurisdiction would be the 2,500-depth line. Where there was no geographical continental shelf, the limit of national jurisdiction would be determined by a horizontal distance line of 200 miles, calculated from the baselines. Thus, coastal States without a geographical continental shelf would be amply compensated. The mixed criterion just outlined was perfectly equitable and reasonable, and it protected the interests of coastal States; it was to be hoped that it would serve as a basis of agreement with those African and Asian delegations that had expressed reservations.

In commenting on the position adopted by Latin American States which had extended their sovereignty to sea areas larger than those traditionally recognized, several delegations had emphasized the economic and conservational motives which had led the States concerned to claim more than three, six or twelve miles. Some delegations had even affirmed that, since the only important motives were economic and conservational, the new sea areas placed under the jurisdiction and sovereignty of coastal States might be called patrimonial seas or economic seas. In his delegation's view, however, to base the extension of territorial waters to such

areas solely on economic and conservational grounds would be to ignore other factors of a political and security nature which had also been decisive when many Latin American States had extended their territorial seas. In that connexion, certain aspects of the relationship between the territorial sea and the high seas could not be disregarded. According to the 1958 Convention on the High Seas,[2/] the concept of the high seas was essentially based on two factors. The first was the absence of national sovereignty: the high seas were those parts of the sea that were not included in the territorial sea or in internal waters of a State. The second was the applicability of the four freedoms mentioned in article 2 of the Convention - namely, freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. Article 2 also expressly referred to the existence of other freedoms of the high seas, but did not state what they were. However, experts held that there was a relatively large number of such freedoms or uses of the high seas, and that the list could be amplified as the result of technological progress. A number of them had been discussed at the Conference on the Law of the Sea and had actually been referred to in some of the resolutions adopted. If a list was drawn up, it would include, in addition to the freedoms mentioned in the Convention, the following activities: (1) scientific research and exploration, (2) exploitation of the natural resources of the high seas, (3) naval operations and manoeuvres, (4) nuclear weapon testing, (5) testing and operation of remote-controlled projectiles and rockets, (6) the depositing and dumping of radio-active materials and other noxious products, (7) the drilling of submarine tunnels, (8) the stationing of submarines carrying nuclear weapons, (9) the establishment of permanent submarine bases, whether or not equipped with nuclear weapons, (10) the establishment of naval blockades and "quarantines" in the event of internal or international conflicts, (11) the recovery of astronauts and artificial satellites, (12) off-shore information-gathering by by electronic "spy" ships, (13) the operation of radio and television transmitters on ships or on the sea-bed near the coast but outside territorial waters, (14) the extraction of petroleum, gas and solid minerals from the sea-bed, (15) the harvesting of organic and inorganic marine foods, in addition to fishing and hunting, and

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2/ United Nations, Treaty Series, Vol.450, p.82

(16) scientific weather control. Attempts had recently been made to regulate and even to prohibit some of those activities by means of international conventions.

When a State extended the breadth of its territorial sea, the legal status of the sea area thus incorporated in its territory changed radically in that the sovereignty of the coastal State was extended to it, thereby depriving it of its high sea status. As an inescapable consequence, the so-called freedoms of the high seas, both those mentioned in the Convention and those recognized in international law and practice but not mentioned in the Convention, ceased to be applicable to the area concerned.

The other freedoms of the high seas he had listed had considerable political and economic significance. A coastal State therefore had a special political and security interest in extending its full sovereignty - and not just one or more special jurisdictions - to a prudent distance from its shores by increasing the breadth of its territorial sea. The effects of such an extension of sovereignty were much more far-reaching than if jurisdiction over the contiguous zones of the high seas were assumed solely for economic, conservational or anti-pollution purposes. Moreover, according to the doctrine of sovereignty, the coastal State extending the breadth of its territorial sea could, either concurrently or subsequently, partially restrict its sovereign powers and decide to maintain some of the freedoms of the high seas in part or the whole of the new areas of its territorial sea. Such was the case with some of the Latin American States which had already extended their sovereignty to contiguous sea areas larger than those traditionally accepted. In vast portions of those areas they had expressly preserved the freedoms of navigation and overflight in order to avoid the unnecessary obstruction of international communications. The freedoms of navigation and overflight were not therefore incompatible with national sovereignty.

Another aspect of the relationship between the territorial sea and the high seas should be mentioned in order to show how the extension of the territorial seas of coastal States was important from the political and security standpoints as well as from the economic. In international law the generally accepted definition of the high seas was a negative one - the absence of sovereignty, and that idea had been incorporated in the 1958 Convention. From a political point of view, however, if account was taken of the doctrine of naval power first formulated by Admiral Mahan of the United States and subsequently accepted by all the maritime Powers, the high seas were nothing more than the area in which the naval Powers

freely exercised their naval power, with all the ensuing consequences for themselves, the coastal States, and even for land-locked countries. That naked fact had been recognized in the political thought of both ancient and modern times.

The main consequence of the exercise of naval power in peace-time by the large maritime Powers was that coastal States found themselves in the position of being neighbours of the dominant naval Powers, with which their common frontier was determined by the outer limit of their territorial waters. Since the big naval Powers had never recognized a breadth of more than three miles for the territorial seas of coastal States, the common frontier had been, and still largely was, situated three miles from the shores of coastal States. Consequently, the legal definition of the high seas in terms of an absence of sovereignty was quite inadequate, since the political reality was that no such lack of sovereignty existed. On the contrary, there was a de facto and permanent exercise of maritime power by the dominant naval Powers, both in peace-time and in war-time. Similarly, the definition of the territorial sea had to be viewed in a different light: it certainly was that portion of the adjacent sea subject to the sovereignty of the coastal State, but it was also that portion of the adjacent sea which was not under the maritime control of the big naval Powers. Viewed from that standpoint, the present confrontation between the small and medium-sized coastal States, which wished to extend their exclusive sovereignty as far as possible into the high seas, and the big maritime Powers, which wished to resist such attempts to reduce the area subject to the so-called freedom of the high seas, acquired a new significance. In such a conflict of private and national interests, the maritime Powers' claim that they were defending the inviolability of an international public domain or protecting the common heritage of mankind lost much of its force. On the other hand, the efforts of the small and medium-sized coastal States to expand their territorial seas represented an attempt to achieve a redistribution of powers and jurisdictions over large sea areas on the basis of a functional decentralization, which was more in accord with the prevailing power relationships and took more account of the new methods which technological progress had placed at the disposal of coastal States for the defence of their interests beyond the old three-mile limit.

It had been maintained in the Sub-Committee that a maximum limit of twelve miles had been established for the territorial sea by a rule of customary international law. His Government did not share that view, which was contrary to fact. In the first place, very few countries would be prepared to support it. The

biggest maritime Powers had remained faithful to the three-mile limit and did not recognize claims to territorial seas beyond that breadth, except in the case of the Scandinavian countries, which had territorial seas of four miles. If the maritime States, especially the United States, the United Kingdom and Japan, were in favour of three miles, they obviously could not agree that there already was a rule of customary law endorsing the twelve-mile limit. The only countries in favour of the twelve-mile limit were the USSR and the States which usually supported its views.

Secondly, the question of whether or not a rule of customary international law existed could not be resolved by unilateral assertions alone, or by reference to purely statistical data. The jurisprudence of the International Court of Justice was perfectly clear in that respect: anyone alleging that a rule of customary international law existed had to prove it, and in order to prove the existence of a custom, it was not sufficient to enumerate data regarding the practice of States at a given moment. Account had to be taken of the time factor as well as of the "subjective element" of the custom.

Thirdly, those members who had maintained that there was a rule of customary international law establishing a limit of twelve miles for the territorial sea had not indicated when such a custom could be said to have arisen. It could not have been at the Conference for the Codification of International Law held at The Hague, in 1930 because at that time only two States - the USSR and Portugal - had been in favour of twelve or more miles. Neither could it have been in 1958 or 1960, during the First and Second United Nations Conferences on the Law of the Sea. According to the analytical summary prepared by the Secretariat, only ten States had established the breadth of their territorial seas at twelve miles. Since then one of them - Ecuador - had extended its territorial sea to two hundred miles, and another - Guatemala - had signed the 1970 Declaration of the Latin American States on the Law of the Sea (A/AC.138/34). Thus the alleged rule of customary law must have arisen later than 1960. In that case, the alleged rule of general international law must have been formed at the same time as another, opposite, rule. Since the latter, which was based on the practice of the States of South and Central America, was of a special and regional nature, it took precedence over the alleged general and universal rule. It had been formed during the years 1946-1970 and, contrary to the alleged customary rule of twelve miles, it upheld the rights of coastal States to establish unilaterally the extent of their sovereignty and jurisdiction on the basis of reasonable criteria, having due regard for geographical, geological and biological

characteristics and the need for a rational exploitation of resources. The principal stages in the formation of that regional rule were constituted by the 1952 Santiago Declaration on the Maritime Zone, the 1956 Principles of Mexico on the Juridical Régime of the Sea,[3] Article 3 of the Treaty for the Prohibition of Nuclear Weapons in Latin America,[4] the measures taken by the Latin American States extending their jurisdiction and their sovereignty, and in the 1970 Montevideo and Lima Declarations on the Law of the Sea (A/AC.138/34) and (A/AC.138/28) respectively.

Mr. CHAO (Singapore) said that he proposed to comment on four of the questions falling within the Sub-Committee's terms of reference. The first was the breadth of the territorial sea. In his delegation's opinion, it was vital to fix a uniform limit for the territorial sea; otherwise, with the current tendency of coastal States to extend their territorial jurisdiction, there might one day be no high seas left. That tendency threatened the fundamental principle of freedom of navigation, which was the cornerstone of the law of the sea.

Although existing law did not lay down an exact maximum limit for the breadth of the territorial sea, it did not follow, in his view, that coastal States were free to claim extensive breadths of territorial sea without restriction. Article 24, paragraph 2, of the Convention on the Territorial Sea and the Contiguous Zone[5] provided that the contiguous zone might not extend beyond twelve miles from the baseline from which the breadth of the territorial sea was measured. Since the contiguous zone was the zone of the sea adjacent to and seaward of the coastal State's territorial sea, any claim by a State to territorial waters extending beyond the twelve-mile limit was clearly contrary to current international law.

Singapore, although a coastal State, was shelf-locked, being situated in close proximity to its neighbouring States. It at present claimed territorial waters of three miles, but it understood the reasons why many other coastal States found it necessary to extend their territorial waters beyond that limit and could accept a universal limit of twelve miles if the forthcoming Conference on the Law of the Sea so decided and the new treaty so provided.

3/ See Yearbook of International Law Commission, 1956 (Publication of the United Nations, Sales No. 1956.V.3, Vol.II p.249).

4/ United Nations Treaty Series, Vol.634, p.281.

5/ United Nations Treaty Series, Vol.516, p.205.

The second subject on which he wished to comment was the related question of international straits. It was a subject of particular concern to Singapore, which was essentially a port so that shipping was vital to its economy. His country attached the greatest importance to navigation through international straits and related issues, although its interest was purely economic. As a very small State, it had no military or strategic interest: all it wished to ensure was that navigation through international straits which had for centuries past been used as part of the high seas should not be impeded or jeopardized. The sea was a vital link between the peoples of all nations and was essential to their economic well-being.

It had been suggested that the concept of innocent passage as defined in the 1958 Convention would be inadequate and inappropriate if it were also to be applied to new straits which would become the territorial waters of the coastal States in the event of recognition of the twelve-mile limit. The concept had also been critised as being too subjective. Innocent passage might have been reasonable in the circumstances prevailing at the time of the 1958 Conference on the Law of the Sea, as it had probably been intended to apply only to straits of not more than six miles, but with straits up to a limit of twenty-four miles wide becoming the territorial seas of coastal States, it might be desirable to examine whether the considerations applying to narrow straits necessarily also applied to broader straits.

The question of international straits was one of the subjects and issues which the General Assembly had requested the Committee to study. In that context, it would have to consider whether the concept of innocent passage as at present formulated needed revision. The primary consideration in any revised formulation should be to strike a balance between the interests of the coastal States and those of the international community. In that connexion, the draft ocean space treaty submitted by the representative of Malta (A/AC.138/53) contained some useful proposals which merited serious consideration.

His delegation shared the concern of the representatives of Malaysia and Indonesia regarding the danger of pollution from oil tankers, because the Singapore Straits joined the Strait of Malacca at the southern end and any serious pollution caused to the Strait of Malacca would almost certainly affect Singapore. Like many other countries, Singapore was actively studying measures to prevent pollution of its waters, but it recognized that marine pollution was a universal problem which

should be approached on a global basis. His delegation hoped that the forthcoming Conference would adopt more effective anti-pollution regulations which would assist coastal States. Consideration might also have to be given to the possibility of empowering coastal States to enforce universally adopted measures of prevention.

The third question was that of the precise delimitation of the continental shelf, which, as many delegations had pointed out, was, in fact, the same question as the precise delimitation of the limits of national jurisdiction. His delegation had explained its views on it in detail at the thirteenth meeting of Sub-Committee 1. Briefly, it did not favour a general limit of 200 miles, as suggested by some delegations, since such a limit, though beneficial to the majority of coastal States, would certainly be detrimental to the interests of other States in a less fortunate geographical situation. The present law as embodied in the 1958 Convention on the Continental Shelf was weighted in favour of coastal States which had extensive continental shelves or which bordered on an open sea. In the process of amending the law so as to ensure the equitable sharing of the common heritage of mankind, existing inequities should be rectified and not perpetuated.

The group of land-locked and shelf-locked States represented in the Sub-Committee, which shared common interests concerning the law of the sea, had prepared a working paper, to be submitted to the Sub-Committee shortly, covering certain vital questions relating to the international regime.

The last question he wished to discuss was that of fisheries. His delegation understood the concern of the coastal States, particularly those from the developing world and those whose economies depended to a great extent on fisheries. He was disturbed, however, by the general trend of discussion in the Sub-Committee, which seemed to suggest that the present conflict of interests concerning fisheries was only one between the coastal States and the distant-water-fishing States. The land-locked and shelf-locked States also had interests in fisheries and he had therefore welcomed the United Kingdom representative's statement at the fourteenth meeting to the effect that the problem with which the Sub-Committee was concerned in regard to fisheries was how best to reconcile the interests of coastal and non-coastal States. In the latter part of his statement the United Kingdom representative had also recognized the interests of shelf-locked States in fisheries.

With regard to the meaning of the term "shelf-locked", he believed it had been coined within the past two years. His delegation understood it to mean the group of States which either bordered on a very narrow sea or had a very narrow coastline. In accordance with that criterion, the shelf-locked States in the developing world

would seem to be Iraq, the Democratic Republic of the Congo and Singapore, although other States might also fall within the category.

Under the present law, fishing on the high seas was open to all States by virtue of article 2 of the Convention on the High Seas and article 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas.6/ Moreover, article 6 of the latter Convention provided that a coastal State had a special interest in the maintenance of the productivity of the living resources of the area of the high seas adjacent to its territorial sea.

Many delegations had placed considerable stress on the danger of over-exploitation of the living resources of the sea, particularly the more valuable species. He agreed with those delegations that had urged the adoption of conservation measures.

Many delegations had also suggested that coastal States should be accorded certain exclusive or preferential fishing zones in the area of the high seas adjacent to their territorial seas. His delegation was agreeable to such a suggestion in principle, provided adequate consideration was given to the fishing interests of developing land-locked and shelf-locked States, which would not generally be able to enjoy such privileges. The fishing industries of those countries were primitive. Under the existing law, their fishermen could fish in the high seas outside the territorial waters of other coastal States. The adoption of a 200-mile exclusive fishing zone would, however, mean that they would have to go much further afield to fish, which, in the present state of the industry, would be virtually impossible. Moreover, catches were better nearer the coast. He therefore urged the Sub-Committee, in considering the question of the coastal States' fisheries, to take into account the interests of those developing States which were essentially non-coastal and see how they could be accommodated within the general scheme for regulating fisheries. The people of those essentially non-coastal developing States needed the sea's proteins as much as did the people of the coastal States.

Mr. ENGONE (Gabon) said that the list of subjects and issues relating to the law of the sea which the Sub-Committee was to prepare need not be either exhaustive or final. It should include all the questions left in abeyance at the

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6/ Ibid., Vol.559, p.285

previous conferences on the law of the sea and should take into account the relevant provisions of General Assembly resolution 2750 (XXV). He supported the many useful suggestions made by other delegations.

A particularly important question which had not been settled at the 1930 Conference at the Hague or the 1958 and 1960 United Nations Conferences was the maximum breadth of the territorial sea. It was a problem that had often divided and still divided the doctrine and practice of States. It was of basic importance to the Sub-Committee's work and had many implications.

The problem of appropriating the sea dated back to the Middle Ages. Various attempts to monopolize the seas had finally led to the formulation of the principle of the freedom of the high seas, but the adoption of that principle had given rise to the problem of where those seas started. In the Middle ages it had been thought that a certain stretch of coastal sea should be attached to the coastal State, and that stretch had become known as the territorial sea. The concept of the territorial sea as such had never been contested; it was a universally accepted fact. Differences of opinion mainly concerned its breadth. The 1930 Conference at the Hague had reached general agreement on the legal status of the territorial sea and on the definition of the baseline from which it should be measured, but neither that Conference nor the United Nations Conferences of 1958 and 1960 had reached agreement on its breadth, and no limit had ever been fixed.

The diversity of views on the matter showed the importance that States attached to the question. One legal expert had written that the notion of the territorial sea was not an independent one the territorial sea being only conceivable as connected with a part of a land area - the submerged part. That meant that wherever the sea touched the land, it became part of the coast and contributed, primarily as a means of communication, to its protection and enrichment.

The Republic of Gabon recognized the need for some extension of territorial waters, in the interests of control and protection, and considered that a breadth of twenty-five miles would be appropriate to present-day needs. Such a limit would not violate any standard of international law, nor would it cause any confusion. His country had not participated in the United Nations Conferences of 1958 and 1960 nor had it acceded to the Conventions. It therefore felt free to adopt a breadth criterion corresponding to its interests. It could not accept the breadth of twelve miles which seemed to be provided for in article 24, paragraph 2, of the 1958 Convention on the Territorial Sea and the Contiguous Zone, because it could not support a provision rooted in the custom of the old maritime Powers.

Laws and regulations were not permanent: they had to evolve and be adapted to changing ideas. Otherwise crises would arise, as in the case of the law of the sea. International law, in particular, had to take account of changing circumstances because it had no machinery for applying sanctions in the case of contraventions. The 1958 and 1960 United Nations Conventions had been drawn up at a time when most States were merely spectators of the competition between the developed States. The achievement of independence by more than two-thirds of the countries of the world called for a new conference on the law of the sea and the total revision of that law so as to take into consideration the interests of the developing countries.

Some delegations had said that the extension of the territorial sea would interfere with freedom of navigation. His delegation did not share those apprehensions, perhaps because it was not a maritime Power. The coastal Powers had always granted free passage through their territorial waters as a matter of international courtesy and for the benefit of their own ports. That rule would survive in the form of innocent passage, and he suggested that it should be incorporated in the new convention.

The extension of the territorial sea would, of course, restrict fishing zones and cause losses to the countries affected. But such an extension would only be just, for it would save the developing countries from competing with the technically and economically stronger countries in fishing and would restore the balance between the developing and the developed countries. It would also strike a blow at maritime espionage by making the movement of arms and troops more difficult. The principle of freedom of the high seas in the interests of shipping would remain intact. The coastal States without defences would benefit because they would be further removed from the effects of possible accidents to nuclear ships.

Regarding the international straits which would become national as a result of the extension of the territorial seas, his delegation supported the principle of the right of innocent passage and did not particularly favour the notion of international corridors, since they would be detrimental to the sovereignty of coastal States.

Dr. PANIKKAR (India) said that he intended to give his delegation's views on the subject of fisheries and the conservation of the living resources of the sea.

Coastal fishermen had fished the seas long before the modern concept of the freedom of the high seas had been developed. Fish had initially been caught from seas near the coast but, with assured freedom of navigation, more distant fishing grounds had been successfully sought and the rights of fishing had come to be

regarded as sacrosanct, whether the fish stocks in question really formed part of world ocean resources or of the natural resources of the coastal State.

Though India was one of the few States in the world catching over one million tons of sea fish a year, that catch was taken by over a million fishermen and, consequently, the annual per capita yield was one of the lowest in the world. His Government regarded that natural resource as the indisputable property of India and intended to utilize it more effectively to raise the living standards of the fishermen and to supply protein to the population as a whole. It was against that background that his delegation supported the rights and responsibilities of coastal States in fishing and in the conservation of the living resources of the sea.

The slow emergence of the concept of the fishing rights of coastal States was one of the most progressive developments in international law. Although, in 1954, at the United Nations Conference on the Conservation of the Living Resources of the Sea, many countries had rejected the idea of a coastal State having any fishing rights, those rights had since been increasingly recognized and the 1958 Convention on Fishing and Conservation of the Living Resources of the Sea had attempted to balance the interests of the fishing nations with those of the coastal States. Since a substantially larger number of countries vitally concerned with coastal fishing were members of the Committee and would be represented at the 1973 Conference, a clearer picture of the problem and possible solutions could be expected to emerge.

One of the chief inadequacies of the 1958 Convention was its assumption that agreement would be reached on the breadth of the territorial sea, but that had not proved possible at either the 1958 or the 1960 Conference. In the absence of a decision on the breadth of the territorial sea, the coastal States could have little satisfaction in the operation of the Convention, although it was useful to the extent that it recognized the special interests of the coastal State in the high-seas fisheries adjoining its territorial waters. The Convention made no attempt to distinguish between the territorial sea and exclusive fishing limits and, during the last decade, a number of countries had found it necessary to adopt new unilateral provisions, in some cases introducing full fisheries jurisdiction up to 200 miles from the coast. It was equally noteworthy that a few fishing nations which had stoutly opposed the extension of fishing jurisdiction beyond three miles had subsequently concluded bilateral agreements on the basis of the very ideas they had rejected at the Conferences. It could be concluded, therefore, that many

coastal States felt the need for a wider exclusive fishing zone than had hitherto existed and that territorial seas and fishing rights should be considered as separate issues.

Like the representatives of France and Japan, among others, he considered that the freedom to fish should also entail an obligation to conserve and feared that the provisions of the 1958 Convention did not go far enough in the direction of scientific conservation of coastal stocks.

Another defect of that Convention was the absence of any recognition of a separate area between the territorial sea and the high seas for the protection of fisheries. There were two possible ways of conceiving such an area: The first was the creation of a definite conservation zone, but that would be fully valid only if detailed scientific knowledge of the species involved was available. Nevertheless, a definite distance criterion would allay the fears of many developing coastal States, and in 1956 his own Government had proclaimed a 100 mile conservation zone. The second solution would be to give exclusive or preferential rights to coastal States, including economic incentives to developing countries, which would diminish in the direction of the high seas, the coastal States gradually losing their rights and the international community gradually assuming responsibility. Even if that solution was adopted, sufficiently large areas of the world oceans would still be available to prevent any serious harm to the economies of the developed fishing nations.

A simple expansion of the territorial seas to include the fishing zone would not be in keeping with the overall interests of international navigation, shipping and commerce. In his delegation's opinion, any enlargement of the fishing zone beyond twelve miles should be for fishing purposes only and should not affect freedom of navigation, the laying of submarine cables and overflight. Two distinct lines of thought had emerged on the problem. The first was that the continental shelf concept should be extended to the superjacent waters, giving a State exclusive jurisdiction over the living resources above the shelf. Many fisheries experts supported that approach, since the major coastal fishery resources were situated within those waters. It would also eliminate problems pertaining to sedentary fisheries in the superjacent waters. In view of the inequalities in the continental shelves, however, a solution on the basis of the depth criterion alone seemed as impossible for living resources as for sea-bed resources.

The second line of thought advocated adoption of the distance criterion on a basis of resource jurisdiction alone, as embodied in the draft ocean space treaty presented by Mr. Pardo (A/AC.138/53). The question then arose whether fishing wealth in terms of distance from the coast was comparable in all parts of the world. It was well known that the fish stocks of tropical waters were generally much smaller than those of the temperate waters of the northern hemisphere. The conclusion would seem to be that each nation should be conceded the right to decide its own fishery limits according to its own needs and the nature of the fish stocks. His delegation could not, however, accept that viewpoint, since it would contain the seeds of future conflict. It was desirable that a closer technical study should be carried out to evolve common criteria on the basis of which the claims or needs of coastal States could be compared in terms of yield.

Like many other developing countries, India attached great importance to the utilization of its fishery resources and took the view that distant-water-fishing fleets should not be permitted to endanger coastal fishing stocks. Many coastal States quite legitimately felt that, unless they had an exclusive fishing zone, it would not be possible to ensure protection of the stocks which were so vital to their coastal fishermen and their population. The countries surrounding the Indian Ocean were inhabited by nearly one quarter of the world's population, yet, according to FAO statistics, only one twentieth of world sea-fish production was available to them. The question arose, therefore, whether it was just that the fishery resources of the Indian Ocean should be used by distant nations to augment the calorie and protein intakes of their already well-fed populations.

It had been argued that distant-water-fishing fleets utilized only resources which were not utilized by the coastal States. That might currently be the case in view of the technological backwardness of many coastal States, but there was no assurance that, when the coastal States had achieved the requisite competence, the countries with distant-water-fishing fleets would withdraw in their favour. Many of the so-called historical rights to fish dated from the colonial period, and the developing countries had to secure a rightful place in the utilization of the resources involved, as the representatives of Kenya and Tanzania had rightly maintained at the eleventh and thirteenth meetings respectively. In addition, the developing countries were entitled to secure their rightful share of the world trade in fish and fish products.

For those reasons, his delegation believed that the operation of distant-water-fishing fleets should be confined to strictly oceanic species of fish and mammals

and should not impinge on the pelagic stocks on which the coastal communities depended. With respect to conservation and management, it supported the Canadian representative's view that the coastal State should be the principal agent for the international community. There was immense scope for international co-operation in that field and in improving the developing countires' fisheries. More could also be done on a regional basis for the development and management of resources through international fisheries commissions.

Mr. PINTO (Ceylon) said that the subject of fishing and the conservation of the living resources of the sea was of great importance to his country, since a large proportion of its population lived by the sea and had done so from time immemorial. Fish was a prime source of protein for the population in general while, as a result of recent vigorous measures initiated by his Government, fish and sea-food were fast becoming a regular and lucrative export.

From the earliest times, his country's historic rights to certain pearl banks in the Indian Ocean beyond the territorial sea had been universally acknowledged, and those banks were now protected by legislation as were other aspects of the fishing industry. In 1957, Ceylon had proclaimed a fish conservation zone a hundred miles wide, adjacent to its twelve-mile territorial sea. That had been done with a view to protecting the fish stocks from severe depletion by distant-water fleets of massive capacity. Since 1964, the Government had established a fisheries corporation which had taken over several major areas of the fishing industry and had also set up a separate Ministry of Fisheries.

In its statement at the fifty-ninth meeting of the Committee, his delegation had indicated that his Government was considering the possibility of resolving fisheries questions on a broad regional basis. Thus, for instance, the coastal States of a broad region or ocean zone might seek recognition of the principle that they had preferential fishery rights and the right to take fishery conservation measures in that region or zone. No exclusive fishery zone other than the territorial sea would be reserved for a single State, but the States of the region would be encouraged to enter into an arrangement for regulating fishing and fishery conservation. All States, including those from outside the region, would be bound by the arrangement. The regional institution established might be empowered to determine the permissible catch for each member on the basis of conservation criteria, with due regard for the degree of investment in, and prospective expansion of, its fishing industry. The remainder could then be allocated to

countries from outside the region so as to avoid under-fishing. The institution might also be empowered to prescribe conservation measures relating, for instance, to types of gear, protected species, catch limitations and closed seasons.

If management on a broad regional or ocean basis was not feasible, his delegation would be prepared to consider other proposals designed to protect the fishing industries of the developing countries, such as the establishment of one or more zones of special fishery jurisdiction adjacent to the territorial sea. The historic fishing rights of neighbouring countries within such zones would, of course, have to be protected. The coastal State might even wish to admit distant-water fleets to the zone in exchange for payment of an appropriate fee and an undertaking that they would abide by its rules and regulations, particularly with respect to conservation.

In considering its first preference, the regional solution, over the ensuing months his Government would be examining in detail the various existing regional and international arrangements for the regulation of fisheries and conservation of the living resources of the sea. Many and varied views had been expressed regarding such arrangements: some advocated that they should be strengthened and given a primary role in high seas fishery management and conservation; others tended to dismiss them as unsatisfactory and impracticable. The various proposals put forward could be much more easily assessed if FAO could be requested by the Committee to prepare a purely factual paper on the scope and functions of existing regional organizations active in the marine resource management field. Such a paper might describe their activities in detail, with particular reference to the problem of catch limitations and allocations, eligibility for membership and the enforcement question.

The shortcomings of regional management techniques to which attention had been drawn included the slowness with which decisions were reached owing to disagreement between experts on the interpretation of scientific data, the inadequacy of enforcement mechanisms and the fact that participation was not always compulsory. If such problems could be eliminated, it might be possible to make future regional institutions more operationally effective. It would also be desirable for such institutions to have functions relating to the transfer of technology to the developing countries of the region, with a view to increasing their fishing capacity. In that connexion, his delegation would suggest that a regional institution be empowered to allocate a preferential share of the catch, even in the

high seas, to developing coastal States expanding their fishing industries until such time as they were able to compete effectively with the fishing fleets of the developed countries. Two of the regional bodies established within the FAO framework, the Indian Ocean Fishery Commission and the Fishery Committee for the Eastern Central Atlantic Ocean had adopted measures of considerable value to the developing countries. The first of those bodies had stated, with respect to tuna, that management measures should be so framed that, while conserving the resources, they would afford the opportunity to countries not yet significantly participating in the fisheries to build up their industries within a reasonable period so as to associate themselves effectively with programmes of rational utilization on a basis of equality. That statement would no doubt apply to fish stocks other than tuna. Moreover, under the auspices of that body, the Indian Ocean Fishery Survey and Development Programme was about to enter an operational or project phase which should be of real assistance to all the developing countries in the area. The phase would be undertaken in association with the United Nations Development Programme and a number of developed countries.

The second FAO institution to which he had referred had recommended that the industrialized countries should contribute on a bilateral basis to the efforts of coastal States to organize scientific research by furnishing equipment and experts and should support research programmes, especially those directed to a better knowledge of fish stocks. It had also invited industrialized countries fishing the region to increase their efforts to assist in training scientists and technicians for fishery purposes in the developing countries. That, too, was a welcome trend, and it was to be hoped that the developed countries would respond accordingly.

Like a number of other developing countries, Ceylon was faced with the problem of inadequate information and statistics on the living resources of the nearby seas, particularly concerning the location and movement of stocks of fish. Consequently, his delegation wished to support the request made by the Chilean representative that FAO should prepare an additional world map showing, to the extent that it was possible, the location of the living resources of the sea and, where appropriate, the paths of their migration.

Mr. ANDERSEN (Iceland), speaking in exercise of his right of reply, said that when his delegation had initially submitted its views concerning fisheries jurisdiction to the Sub-Committee at its ninth meeting, discussion of the subject had only just begun. Many other delegations had since dealt with the problem and, in the light of what had been said, he wished to make some additional comments.

Reference had been made to the declared policy of his Government to extend the Icelandic fisheries limits before 1 September 1972. It had been stated that such a step would not be in conformity with international law and would not contribute to international co-operation. However, the statements made by various delegations on the Sub-Committee, together with the extremely valuable FAO list of limits of national jurisdiction, clearly showed that a great number of States would not consider his Government's policy to be contrary to international law. That policy was based on the need to protect vital Icelandic interests and the record clearly showed that his Government had long done its utmost to further international co-operation in that field. The Government had declared its policy by enacting, in 1948, the Act concerning the Scientific Conservation of the Continental Shelf Fisheries which, to date, had been implemented only to the extent of twelve miles from the coast. As early as 1949, his country's delegation to the United Nations Generaly Assembly had successfully proposed that the International Law Commission should be entrusted with the task of dealing with the law of the sea in its entirety, on the basis of the progressive development of international law. His Government was still waiting for action to be taken on that proposal. In that connexion, it might be recalled that, when Iceland had extended its fishery limits to twelve miles in 1958 following the Conference of that year, suggestions had been made that it shcuild have waited until the 1960 Conference. His Government had replied that it had already waited a long time and that there was no assurance that the 1960 Conference would solve the problems involved. In fact, it had not succeeded in doing so. A similar situation had now arisen. His Government did not know whether it would be possible to convene a conference in 1973 or whether, if such a conference were convened, it would succeed in reaching any agreement. If it should be maintained that the Icelandic Government was making it more difficult to arrive at an agreement whereby a maximum limit of twelve miles could be fixed for fisheries jurisdiction, his delegation's answer was that such an agreement would be completely unjust and it would not wish to contribute to any result of that nature.

His Government considered that Iceland had to protect its interests at the present time. It was quite clear that the highly developed fishery fleets of distant-water-fishing countries would be increasingly directed to the area of Iceland. For some time, those fleets had made huge catches in the Barents Sea but fishing there was no longer as profitable as before and they had begun to direct their attention to the area of Iceland. United Kingdom fishing interests had

declared that they intended to double their efforts in that area in the near future. The existence of highly developed fishing techniques and fishing capacity, with huge factory trawlers, electronic equipment, etc. could do irreparable harm to the area. In that connexion, he might mention that the three nations mostly concerned in the Barents Sea area had for some time been unsuccessfully trying to establish some kind of quota system for the area. In any case, his Government could not run the risk of remaining inactive.

His delegation was convinced that the forthcoming Conference would eventually produce a system under which the measures his Government was about to take - and was obliged to take - would be entirely lawful, just and equitable. His Government's action was in conformity with its strong conviction that progressive international law would soon replace the system which had been tolerated for far too long.

In that connexion, the report on the Consultation on the Conservation of Fishery Resources and the Control of Fishing in Africa, held under FAO auspices in Casablanca in May 1971, had stated, inter alia, that several delegates felt, for technical and scientific reasons, that the outer limit of exclusive fishing zones should coincide with the edge of the continental shelf, while others had expressed a preference for a limit determined by a fixed depth. His delegation fully agreed with those views. They were based on the general principle that the coastal State should determine its jurisdiction over fisheries on the basis of all relevant local conditions. He was convinced that that principle was supported by most members of the international community. Until that support had been formally endorsed, however, his country would have to protect its vital interests by implementing its 1948 Act in the way already announced. As pointed out in his delegation's previous statement, the coastal fisheries in Iceland were the basis of the Icelandic economy and they alone made the country habitable.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE SEVENTEENTH MEETING

held on Thursday, 19 August 1971, at 3.20 p.m.

Chairman: Mr. YANKOV Bulgaria

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 ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued)

Mr. KURIYANA (Japan) supported the suggestion made by the representative of Ceylon at the previous meeting that FAO might be asked to prepare a factual paper on the scope and function of the existing regional fishery commissions. Although interesting ideas had been put forward during the Sub-Committee's discussions on the matter, such a complex issue as fisheries could not be discussed properly on the basis of abstract concepts which might have different meanings for different delegations. An equitable solution to the fisheries question could only be found on the basis of adequate knowledge of the successes and failures of the regional fishery commissions.

Mr. ZEGERS (Chile) said that his own and other delegations had asked FAO to provide information on the conservation of living resources and methods of fishing on the high seas together with maps showing the worldwide distribution of the living resources of the sea and of vital plankton.

Mr. POLLARD (Guyana) supported those requests and suggested that FAO should also be asked to make an assessment of the success of regional fishery schemes and to provide country profiles showing the extent of the fishery resources of each country and the part played by fishing in its total economy.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) wondered whether FAO could evaluate the activities of regional organizations, even with respect to fishing.

Mr. CARROZ (Food and Agriculture Organization of the United Nations) said that at the 54th meeting of the Committee, the representative of FAO had indicated his Organization's willingness to provide the Committee with any information and technical and scientific documentation it required. That offer had been repeated at the 9th meeting of the Sub-Committee. The Head of the Fisheries Department of FAO would be attending the Committee's meetings the following week and would be able to answer questions in person.

Mr. MALINTOPPI (Italy) agreed that the kind of documentation suggested would greatly help the Sub-Committee's work but wondered whether the request should not be made by the Committee rather than by the Sub-Committee.

The CHAIRMAN expressed the Sub-Committee's gratitude for FAO's co-operation and assistance. In order to avoid duplication, the various requests for documentation could be co-ordinated by the Committee and submitted to the Head of the Fisheries Department of FAO when he attended the Committees' meetings.

Mr. SIMPSON (United Kingdom), referring to the list of subjects and issues to be drawn up by the Sub-Committee, said that it would not in fact constitute the agenda of the Conference on the Law of the Sea. Under operative paragraph 3 of General Assembly resolution 2750 C (XXV), that was to be decided by the General Assembly itself after reviewing the reports of the Committee at its twenty-sixth and twenty-seventh sessions. The resolution made it clear that the Committee was, in effect, the preparatory committee of the Conference and that the list would form part of the preparatory work on which the General Assembly would take the necessary decisions. The list would therefore be provisional until the Assembly finally adopted the agenda of the Conference and any member of the Committee or, in the General Assembly, any Member State would be able to propose the addition or deletion of any items.

The two tasks allocated to the Sub-Committee - the preparation of the list and the preparation of draft treaty articles - were connected, in so far as the draft articles would concern subjects and issues included in the list with a view to discussion, if the General Assembly so decided, at the Conference. To suggest, however, that the Sub-Committee was required to draft treaty articles on every item on the list would be to give the list a significance that could not have been intended by the General Assembly. The Committee must be free to prepare draft articles as and when it considered that to do so might further the purposes of General Assembly resolution 2750 C (XXV).

Of the proposals already before the Sub-Committee, his delegation could support a list substantially on the lines of the one submitted by the Norwegian delegation (A/AC.138/52 and Add.1).

Mr. BOZHILOV (Bulgaria) said that at the present stage of the Sub-Committee's work, it seemed appropriate to draw attention once more to the motives that had led his delegation to submit its list of subjects and issues (A/AC.138/45). Although the list was a short one, it had been formulated in the

most general and flexible terms and, without being exhaustive, dealt with basic problems relating to issues which the Committee might have to consider. It was intended to enable the Sub-Committee to tackle its work in a businesslike manner, without prejudging the conclusions that might be reached. The discussion in the Sub-Committee had, in fact, corresponded to the framework outlined in the working paper and had confirmed his delegation's position.

Mr. BURCHAK (Ukrainian Soeiet Socialist Republic) expressed satisfaction that the Sub-Committee had completed the general debate and had now started on the substance of its work - the preparation of the list of subjects and issues. Various considerations should be borne in mind when assessing the proposals: first, the list was not an end in itself but should help to determine the range of matters to be dealt with at the forthcoming Conference; secondly, it must be flexible, and the Sub-Committee must be able to include additional subjects which might arise in the course of its work; thirdly, it should not be worded in such a way that it prejudged the action to be taken by the Conference and it should include, in particular, questions which had not already been solved by international law.

The Bulgarian proposal, which contained a list of questions requiring urgent solution, should be fully acceptable to the Sub-Committee.

His delegation was still studying the list submitted by the Norwegian delegation and would comment on specific points raised in it during the discussion of individual proposals, developing in greater detail the views it had put forward in the general debate.

The meeting rose at 4.15 p.m.

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held on Friday, 20 August 1971, at 10.55 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. KEDADI (Tunisia), speaking as Chairman of the Group of 77, said that the Group had made every attempt to arrive at a joint list of subjects and issues relating to the law of the sea, but had been unable to do so owing to lack of time. The Group, which was more and more aware of the importance of ocean space, wished to play a significant part in the coming Conference on the Law of the Sea, since it represented two-thirds of mankind and most of its members had not taken part in earlier conferences on the subject.

Although a number of lists would be presented by individual members of the Group, the possibility that a common list might yet be put forward was not excluded. In the meantime, he appealed to the Sub-Committee to support any list emanating from members of the Group.

Mr. ZEGERS (Chile), introducing the working paper on the comprehensive list of subjects and issues relating to the law of the sea submitted by a number of Latin American delegations and Spain (A/AC.138/56), said that the sponsors would have preferred to submit a list on behalf of all the developing countries but, as the Chairman of the Group of 77 had just explained, that had not been possible for lack of time. Nevertheless, since it was not unlikely that such a joint list might be submitted later, the working paper he was introducing should be regarded as of an open and tentative nature.

The sponsors were putting forward their own list at the present stage because they thought it useful for the Sub-Committee to be made aware of the concerns and interests of as many nations as possible, especially those which had been unable to take part in earlier conferences on the law of the sea.

The list of subjects and issues was one of the most crucial items in the Committee's terms of reference as set out in General Assembly resolution 2750 C (XXV). The two fundamental tasks which that resolution entrusted to the Committee were the preparation of draft treaty articles embodying the international régime for the sea-bed and the preparation of a list of subjects and issues and draft articles on those subjects and issues.

The list of subjects would in effect be a tentative agenda for the preparatory work of the third United Nations Conference on the Law of the Sea, scheduled for 1973. The agenda itself would, of course, be decided upon by the General Assembly, at its twenty-seventh session, or whenever the preparatory work was sufficiently advanced.

In defining the nature and scope of the preparatory work, the Committee would, in a way, be tracing the outline of the future Conference. Hence the importance of the list and the need to ensure that it was in keeping with the character which the General Assembly wished the Conference to have. The Assembly had expressed the wish that the Conference should be "comprehensive", i.e. that it should cover all problems of the law of the sea and should consider the problems of ocean space as a whole. It was obvious, therefore, that the preparatory work, and, consequently, the list of subjects and issues, should also be comprehensive and consider the problems as a whole.

The sponsors of the Latin American list hoped that it was, in fact, comprehensive. In its headings and sub-headings, they had attempted to make a list of major subjects and to group under them every item which was a live issue in the law of the sea. At the same time, the issues were linked together logically so as to give them a uniformity corresponding with the legal and physical reality of the ocean.

The fact that the Conference and the preparatory work for it were to be broad and comprehensive did not, however, mean that the whole law of the sea was to be, or ought to be, re-shaped. The intention was to cover all the problems that actually arose at present with regard to ocean space.

In principle, three types of issues could be distinguished. The first was new subjects or facts. That category undoubtedly included the international régime for the sea-bed (item 5 on the list) while other questions which fell into the same category were the possible uses of ocean space (item 7) and the preservation of the marine environment (item 6.4). The second category included problems arising from the need to modernize international practice to bring it into line with contemporary reality. Such were, for instance, the regulation of the so-called freedoms of the high seas (items 6.2 and 6.3), the territorial sea with plurality of régimes (item 1) and zones of special jurisdiction (item 2). The third category covered matters which had been a subject of discussion, dispute or conflict of interest

between two or more States. That category included the question of the natural resources of the continental shelf (item 3.4) and the rights of coastal States with respect to the prevention of pollution (item 2.4). The list did not include any theoretical or academic issues which were unrelated to contemporary reality.

The introduction to the working paper explained what the list was intended to be and what it was not. The list of subjects and items was simply a framework for discussion, and the inclusion of an item in the list did not necessarily mean that draft articles should be prepared concerning it. Nor, of course, would the Conference be precluded from considering any of the items on the list, whether or not articles had been drafted on them. Consequently, it was stated that sponsorship or acceptance of the list did not commit the position of any State with respect to the items on it or to the order or classification according to which they were presented. In other words, the acceptance of an item as an "issue" did not mean any prejudgment of its substantive merit.

Resolution 2750 C (XXV) instructed the Committee to promote the progressive development of international law, a basic concept contained in the Charter of the United Nations. Consequently, the list should be in keeping both with the terms and categories employed by international custom or embodied in codifications and with the political, economic, technical and scientific realities to which the resolution referred. The new realities of the last two decades, the new countries which had become independent during that period and the possibilities and problems arising from technical advances had to be taken into account when formulating and presenting the issues.

With that realistic conception of the progressive development of international law, it appeared more appropriate to divide maritime problems and spaces into those under national jurisdiction and those beyond it, rather than to adhere to the headings of the 1958 United Nations Conventions. In actual fact, the "high seas" no longer necessarily included everything beyond the territorial sea. In other words, it was beyond national jurisdiction that the so-called "freedoms of the high seas", or some of them, came into play, i.e. beyond economic, fishing and pollution zones. The list had attempted to provide for that fact in its two major divisions. Such an approach made it possible to allow for the existence of a variety of solutions. The list was such that it could cover either a plurality of régimes and limits or the unitary approach to ocean space proposed by Mr. Pardo.

Similarly, it would make it possible to envisage a plurality of solutions for a plurality of situations and problems. In fact, the sponsors had attempted to ensure that the list would cover all the various interests involved in ocean space in a realistic way.

He did not intend to analyse the working paper issue by issue. It was self-explanatory and it would be preferable to clarify in the discussion any points which might not appear sufficiently precise. All in all, the sponsors believed that the subjects and issues they had included were real problems in the contemporary law of the sea. He wished, however, to refer to one specific topic under the heading "Continental shelf" entitled "Question of the delimitation between States". It was understood that, when considering the topic, the Committee would be free to examine all the relevant criteria, whether those referred to in the 1958 United Nations Conventions, international agreements or opinions given by the International Court of Justice, including, of course, the median line, equidistance, the prolongation of territorial jurisdiction and other related criteria.

Lastly, it should be noted that the order of the subjects and issues did not presuppose any priority or degree of importance. The order was entirely due to the classification into "zones within national jurisdiction" and "zones beyond national jurisdiction". Thus, for example, the international régime for the sea-bed, although the priority item in the Committee's work, did not appear in first place.

Mr. IMRU (Ethiopia) introduced a list of subjects and issues relating to the law of the sea submitted by a number of African and Asian delegations and Yugoslavia (A/AC.138/58). They had made the list as comprehensive as possible in the hope that it would give all delegations an opportunity to express their views.

Mr. YANGO (Philippines) said that, on behalf of most of the Asian States, and in particular its co-sponsors, his delegation wished to lend its support to the list of subjects and issues relating to the law of the sea which had been submitted jointly by the Asian and African States and had just been introduced by the Ethiopian representative. The effort made by the two groups to prepare a single list on behalf of the developing countries was in conformity with General Assembly resolution 2750 C (XXV). The list was comprehensive but not necessarily

complete. Some subjects had not been broken down into specific issues, but it was expected that such issues would become clear in the course of the discussions, when the list would be added to accordingly.

The question of the new law of the sea had been approached systematically. The list followed a logical sequence, but that did not necessarily imply or establish an order of priority as far as consideration of the various subjects and issues was concerned. The list was open and subject to modification. It took into account the interests of the international community as a whole, particularly the developing and land-locked States. It was hoped that the new legal order to be based on the list would be fair and stable.

Mr. BRAZIL (Australia) said that his delegation agreed with the view that the list of subjects and issues would not be definitive or exhaustive and would be open to modification by the General Assembly. The adoption of the list would not necessarily mean that it should be used as the basis for preparing the draft treaty articles, nor should any of the subjects or issues included in the list be regarded as in any way prejudging the substantive position of any delegation.

The list proposed by Norway (A/AC.138/52 and Add.1) was the kind of document appropriate at the present stage. It was comprehensive, objective and well balanced. His delegation would support it or any other similar proposal, although the lists introduced by Chile and Ethiopia would also have to be studied before any decision was reached. In any event, the Committee had an obligation to annex a list, however tentative, to its report on its current session. It would be a good idea for the list to include a preliminary or final paragraph indicating the provisional status of the document, as in the Afro-Asian list.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the list of subjects and issues must be based on General Assembly resolution 2749 (XXV) and 2750 (XXV). It must therefore be closely linked with the establishment of a régime for the sea-bed and must be comprehensive. It should not, however, be too voluminous, since experience had shown that conferences with a heavy agenda rarely succeeded in completing their work. Experience had also shown it to be advisable that Governments should receive a clearly formulated programme and appropriate documentation well in advance of a conference.

Item 6 of the Norwegian list - the high seas, their nature and characteristics was a vast subject and required much research; it was not directly connected with the régime of the sea-bed. It would therefore be unwise to include it in the list. To do so, moreover, would not be in accordance with the Declaration of Principles (General Assembly resolution 2749 (XXV), operative paragraph 13 of which specifically stated that nothing therein should affect the legal status of the superjacent waters or the air space above those waters.

The list should be drawn up in such a way as not to prejudge the substantive discussion of the subjects and issues involved. It should be formulated in a balanced and neutral fashion.

According to operative paragraph 6 of General Assembly resolution 2750 C (XXV), the Committee's terms of reference also included the preparation of draft treaty articles. Failure to do so would create difficulties when the preparations were being made for the Conference. Draft treaty articles should therefore be prepared in addition to a list of subjects and issues.

His delegation appreciated the initiative of those members who had submitted lists of subjects and issues. It was prepared to adopt a flexible approach and would comment on the lists in detail at a later stage.

Mr. ZOTIADES (Greece) reminded the Sub-Committee that his delegation had submitted a proposal (A/AC.138/54) for the inclusion of the item "Archaeological and Historical Treasures of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction", without which the list of subjects and issues relating to the law of the sea would be incomplete. Mankind should be given the opportunity of enjoying the rich archaeological and historical treasures of the sea-bed, which it should be one of the functions of the international machinery to protect. He therefore welcomed the fact that the African and Asian States had seen fit to include the item in their list.

His delegation interpreted operative paragraph 3 of General Assembly resolution 2750 C (XXV) to mean that the Assembly would review the Committee's reports and then determine the agenda for the conference. That would provide an opportunity for all States to make further suggestions.

Mr. CASTAÑEDA (Mexico) said that his comments on the list of subjects and issues would be of a preliminary nature, as he had not had time to study all the proposals in detail. His delegation considered that the list finally adopted should

be comprehensive and reasonably detailed: otherwise it would not be a useful guide to the General Assembly or the Conference. The list submitted by certain Latin American countries in document A/AC.138/56 was generally acceptable, although some of the proposals were perhaps too detailed. He welcomed the indication in the first sentence of the third introductory paragraph that submission of a list did not signify acceptance that draft articles should be prepared on all the items in it. Restraint should be exercised in including items, so that the list would not be too long. The list submitted by certain African and Asian countries (A/AC.138/58) achieved a better balance between brevity and detail. He hoped that the two groups of delegations concerned would continue their negotiations with a view to producing a generally acceptable list.

He did not agree with the idea that the list should be regarded as a preliminary agenda for the Conference. In accordance with operative paragraph 3 of General Assembly resolution 2750 C (XXV) it was for the General Assembly to decide on the agenda. The agenda of the earlier Conferences had usually been short - in the case of the 1958 Conference for example, it had been simply "Codification of the law of the sea", and the International Law Commission had prepared comprehensive basic documents. The General Assembly would convene the new Conference when the basic document - the draft treaty - was ready.

In connexion with the Chilean representative's statement, when introducing the Latin American proposals, that the list should serve as a framework for discussion and would not prejudge any issue, he said that too much detail could, in fact, prejudge an issue. For example, the reference in item 1.1. to a plurality of régimes in the territorial sea would prejudge the issue, for that was only one possible system. The territorial sea could also have a single régime, the sovereignty of the coastal State. Either both possibilities - and any others - should be mentioned, or the item should be formulated as in the Afro-Asian draft: "Nature and characteristics of the territorial sea."

Again, with regard to the Latin American classification into zones within national jurisdiction and zones beyond national jurisdiction, he did not agree with the classification of zones of special jurisdiction under the former heading. It could be argued that, under international law, zones of special jurisdiction were zones in the high seas where coastal States had some measure of jurisdiction.

On the whole he supported the Latin American list, but it might be simplified by eliminating some of the sub-headings. He hoped that in pursuing their negotiations the sponsors of the various lists would not depart too far from the terms of reference laid down in General Assembly resolution 2750 C (XXV). He agreed with the USSR representative on that point and on the need for objectivity.

Mr. OKAWA (Japan) said that his delegation had an open mind on the items to be included in the list. The crucial ones were the breadth of the territorial sea and certain directly related questions, such as fisheries and international straits, but the list need not be limited to those items. His delegation would have no objection to the inclusion of issues not resolved at the previous Conferences, or of new issues, if other delegations thought they deserved it. Since the agenda of the Conference would be determined by the General Assembly, any list agreed upon by the Sub-Committee at the present session would only be provisional and should remain open until the time came for the General Assembly to take a decision. He hoped the agenda would not be overloaded with minor items, since that would prevent the Conference from dealing effectively with the key issues crystallized during the present year's discussions. All the lists submitted so far reflected the general recognition in the Sub-Committee that they should be provisional.

In connexion with the statement in the third introductory paragraph of the Latin American draft that the decision on which items should be the object of draft articles should be taken after preparation of the list and after debate, study and negotiation on the items in it, he pointed out that according to the "Agreement Reached on Organization of Work" at the Committee's forty-fifth meeting "the Sub-Committee may decide to draft articles before completing the comprehensive list of subjects and issues related to the law of the sea." He hoped that the sponsors of the Latin American list did not mean to preclude the possibility of such a decision being taken by the Sub-Committee, because in order to save time it might prove necessary to start drafting articles on some subjects before completing the substantive discussion on all the items.

Mr. BEESLEY (Canada) said that his first impression of the lists submitted was that they varied in length. He did not favour too brief a list. He hoped all the delegations concerned would meet as soon as possible to work out a combined list. He did not see any insuperable obstacles if they kept to the terms

of reference: it had already been decided that a third Conference on the Law of the Sea should be convened and that its scope should be comprehensive. It was also generally agreed that the agenda should not be prejudged; the list should not be regarded as a provisional agenda.

The main task of the Conference would be to settle unresolved issues. The identification of those issues was of crucial importance. The basic resolution which laid down the Committee's terms of reference was General Assembly resolution 2750 C (XXV). It should not be confused with resolution 2749 (XXV), containing the Declaration of Principles, which was confined to the sea-bed beyond national jurisdiction. While respecting the views of the USSR representative, he could not agree with his interpretation of the terms of reference as set forth in operative paragraph 6 of General Assembly resolution 2750 C (XXV). That paragraph referred to paragraph 2 convening the Conference, which stated that it should deal with the establishment of an international régime and international machinery and a broad range of related issues including those concerning the régimes of the high seas, the continental shelf, the territorial seas, the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research. That task could not be carried out without affecting the high seas régime. If every issue had to be discussed in relation to the sea-bed, the terms of reference would be so restricted that a new General Assembly resolution would be needed. Resolution 2749 (XXV) had been arrived at by a process of negotiation and compromise. It would be highly regrettable if a difficult decision were reopened and the same process had to be repeated.

Mr. IMRU (Ethiopia) said that it was only lack of time that had prevented the developing countries from producing a single list of subjects and issues. He hoped that agreement would be reached shortly.

Mr. YANKOV (Bulgaria) said that, while appreciating the efforts of those delegations which had submitted lists, he felt that things would have been easier if the lists had been produced sooner, so that they could have been discussed more thoroughly. Every effort should be made at the present session to at least identify the points of general agreement and, if possible, arrive at a single list for submission to the General Assembly.

He supported the Canadian representative's suggestion and was ready to participate in any negotiations or other procedure with a view to the formulation of a generally acceptable list.

Mr. ZEGERS (Chile) said that the statement in the Latin American proposals to which the representative of Japan had referred, expressed the view of the sponsors: it did not commit the Sub-Committee. The Committee had already agreed that the Sub-Committee could decide to prepare draft articles on any item before completing discussions on the whole of the items, but no such decision had yet been taken.

The most logical method of proceeding would be first, to reach agreement on a list of subjects and issues meriting consideration; secondly, to hold a detailed discussion in order to ascertain which of those items warranted the drafting of articles; and thirdly, to start drafting. Despite the problems of priorities and possible procedural and political difficulties, it was essential to select items on their merits, in order to avoid drafting articles on all the subjects and issues proposed.

In reply to the Mexican representative's objection to the division into zones within national jurisdiction and zones beyond national jurisdiction, he considered that the Latin American classification was logical. Zones in which States exercised special jurisdiction - for example, in respect of fisheries, scientific research or pollution, were, in fact, under national jurisdiction even if it was not complete. "National jurisdiction" meant jurisdiction of any kind. The conventional classification into territorial and high seas would not serve for the purposes of the codification of the progressive development of international law. As for item 1.1, it should be noted that it referred to "the question of" the plurality of régimes. It could not be denied that there was such a question, since various countries took the view that there should be a plurality.

With regard to the comments of the USSR delegation, he agreed with the Canadian representative, who had introduced General Assembly resolution 2750 C (XXV) on behalf of its sponsors at the twenty-fifth session of the General Assembly and had explained its scope quite clearly. What the sponsors had intended was a general comprehensive type of conference, as was clear from the resolution itself. That had also been confirmed in the agreement reached at the previous session of the Committee on the organization of work.

Although the Declaration of Principles (General Assembly resolution 2749 (XXV)) might say that nothing in it affected the legal status of the superjacent waters, that status still had to be determined.

Mr. POLLARD (Guyana) said his delegation wished to join the sponsors of the Latin American draft.

Mr. STEVENSON (United States of America) said that a number of delegations were seeing the lists for the first time. It would be helpful if they could express their views before the various sponsors completed their negotiations.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE NINETEENTH MEETING

held on Monday, 23 August 1971, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. JACKSON (Assistant Director-General, Fisheries Department, Food and Agriculture Organization of the United Nations) said that FAO had taken due note of the comments made on the two documents it had submitted in response to the Committee's request at its March session, namely, the illustrative atlas on the living resources of the seas (A/AC.138/47) and the limits and status of the territorial sea, exclusive fishing zones, fishery conservation zones and the continental shelf (A/AC.138/50). He assured the representative of Chile that FAO would produce the two maps to which he had referred at the Sub Committee's ninth meeting: a world map on zooplankton and a world map showing, as far as possible, the location of the living resources of the sea and, where appropriate, their migrations. It was also intended to supplement the illustrative atlas by a number of regional maps which had not been ready in time for inclusion in the edition distributed at the present session.

A number of requests had been made at the Sub-Committee's sixteenth and seventeenth meetings for FAO to prepare documents for the next session. In response to the request by the representative of Ceylon, supported by a number of delegations, FAO could certainly prepare a factual paper on the scope, functions, composition and activities of existing regional fishery bodies, with particular reference to conservation measures, including limitation and apportionment of catches, and to enforcement schemes. With regard to the wish expressed by the representative of Guyana for FAO to provide a realistic assessment of the achievements of regional fishery bodies and to the doubts expressed by the Ukrainian representative as to whether that could be done, he said that FAO could not attempt to evaluate the successes and failures of regional fishery bodies, but would endeavour to provide enough factual information to enable delegations to make their own assessments.

The representative of Chile had proposed that FAO should prepare a document on the conservation of the living resources of the sea and on fishing methods, dealing with the general question of rational management of the living resources of the sea,

mainly on the high seas, with particular reference to recent developments in fishing technology, gear and equipment. The paper should also discuss the main causes of over-exploitation and indicate where stocks were being depleted or were in danger of depletion. FAO could prepare a document on those lines.

With regard to the proposal by the representative of Guyana that FAO should be requested to provide "country profiles" showing the part played by fisheries in the economy of each country, FAO would be in a position to produce such profiles for a significant number of developing countries in Latin America, Africa, and Asia at the next session. Regarding developed countries, arrangements were being made to obtain the assistance of the Organization for Economic Co-operation and Development (OECD) in gathering information on States which were members of that Organization. The country profiles would provide basic information on the role of fish and the fishing industry in the economy of each country and on the structure of the fishing industry, the possibilities for development and the financial aspects of development.

As indicated at the previous session, FAO was ready to provide any technical or scientific information or documentation that might be relevant to the Committee's work. The FAO Committee on Fisheries had been informed in April of the Committee's deliberations and had agreed to respond positively to any requests for co-operation either in the preparation of documents or in the secondment of staff to the secretariats of the Committee and of the Conference on the Law of the Sea. He hoped that his Organization's contribution would be of help to the Committee in dealing with the extremely complex problems before it.

Mr. PARDO (Malta) said that, although his delegation had not yet had an opportunity of studying the working paper submitted by a number of African and Asian delegations and Yugoslavia, it had studied with interest the other working papers on subjects and issues and wished to make some suggestions concerning future work.

The most restrictive list, that submitted by the representative of Bulgaria (A/AC.138/45.Add.1), contained items - such as the maximum breadth of the territorial sea - which could be considered without modifying the substance of the existing law of the sea as embodied in the 1958 United Nations Conventions. It also contained a subject - the question of fishing and conservation of living resources in areas adjacent to the territorial sea - which would inevitably involve a review of the substance of the 1958 Convention on Fishing and Conservation of the Living

Resources of the High Seas.[1] The same subject was proposed in a variety of forms in most of the other working papers. Obviously the wishes of such a large proportion of the Sub-Committee's membership could not be ignored and draft treaty articles would have to be prepared which at the very least would substantially modify the 1958 Convention. A large number of delegations had submitted lists of subjects and issues which would also involve a review of the 1958 Conventions on the Territorial Sea, and the Contiguous Zone,[2] on the High Seas[3] and on the Continental Shelf.[4] The representative of Bulgaria, moreover, had indicated that his list, though comprehensive, was not necessarily exhaustive. Thus it seemed evident that apart from the creation of an equitable international regime, including international machinery, for the sea-bed and the ocean floor and its resources beyond national jurisdiction, a subject being dealt with by Sub-Committee I, future work would also involve a fundamental reappraisal of the 1958 Convention on Fishing and of substantial portions of the other three 1958 Conventions.

In the circumstances, the existing name of the Committee was misleading. It should have a name more closely reflecting the actual content of its work, one which was neutral in the sense of not prejudicing future discussions even by implication. In that connexion, he had noted with interest that the recently circulated texts of statements by the representatives of Peru and Canada both referred to the "preparatory Committee for the third Conference on the Law of the Sea".

He therefore formally proposed that the Sub-Committee should recommend to the Committee and through it to the General Assembly that the Committee's title should be changed to "United Nations Preparatory Committee for the Law of the Sea Conference". He also formally proposed that the Sub-Committee should recommend to the Committee that the change in title should not in any way affect the present composition of the bureaux of the Committee or its three Sub-Committees. Although a change in name was not a change in substance, he believed that it would create an atmosphere which would facilitate the conduct of future work.

1/ United Nations, Treaty Series, vol.559, p.285

2/ Ibid., vol.516, p.205.

3/ Ibid., vol.450, p.82.

4/ Ibid., vol.499, p.311.

In accordance with operative paragraph 6 of General Assembly resolution 2750 C (XXV), the Sub-Committee's next step would normally be to combine the lists submitted by different delegations into a single comprehensive list and then discuss and negotiate on the items before deciding which should be the subject of draft treaty articles. After that task was completed, if it ever was, consideration would presumably be given to the Turkish proposal (A/AC.138/48) concerning the relationship between the draft treaty articles and conventions prepared in pursuance of General Assembly resolution 2750 C (XXV) and their effect on the 1958 Conventions on the Law of the Sea. That would mean a debate and a decision on one basic aspect of the 1973 Conference: whether the purpose was to amend the 1958 Conventions slightly or to draft a new basic convention or conventions, using, if necessary, such parts of the existing Conventions as were still viable. Finally, work would start on drafting treaty articles item by item.

If that procedure were followed there would be no conference on the law of the sea in 1973 - nor indeed in 1983 - and the chances of a general conference on the law of the sea taking place at all with useful results would be practically nil. The length and complexity of the procedure envisaged before reaching the decision-making stage did not take into account the rapidly accelerating growth of technology and its consequences for the use of the oceans: much in the current debates was already out of date. Unless a new and equitable legal order for ocean space founded on general international agreement was created within the next four or five years no generally recognized legal order of any kind would be possible for the oceans and the sea-bed of the world.

His delegation was concerned at the Sub-Committee's slow progress. That might be due to the excessively deliberate and laborious procedures favoured by some delegations, or to an organization of work which did not allow for issues to be examined in their proper context. He was beginning to think that the present allocation of subjects and functions between the three Sub-Committees strictly on the basis of General Assembly resolution 2750 C (XXV) might not be adequate.

The underlying assumptions of the present Sub-Committee structure were: first, that it was possible to proceed with the preparation of draft treaty articles embodying an international regime for the sea-bed beyond the limits of national jurisdiction without regard to the regime of the superjacent waters; secondly, that treaty articles on the preservation of the marine environment and scientific

research could be drafted in isolation from the remainder of the law of the sea; and thirdly, that draft treaty articles could be successfully negotiated one by one, outside their natural context. But a number of subjects would inevitably involve some change in the 1958 United Nations Conventions and the changes required might be so substantial as to necessitate the drafting of an entirely new general convention or conventions - at least with regard to fisheries.

In such a situation, a re-arrangement of functions between the three Sub-Committees would be essential if work was to proceed smoothly. All the items so far proposed for the comprehensive list of subjects and issues could be grouped into three broad categories: first, general items concerning the seas and oceans as a whole, such as regulation of the freedom of navigation, the legal status of installations and artificial islands, scientific research and the right of land-locked States to access to the ocean; secondly, items concerning coastal-State jurisdiction over the sea-bed and the oceans; and thirdly, items concerning the sea-bed and the oceans beyond national jurisdiction. There would be considerable advantages if the Sub-Committees' functions were re-arranged in the following way.

Sub-Committee III would be concerned with the preservation of the marine environment and scientific research, together with all subjects and issues concerning the oceans as a whole, such as marine installations, artificial islands and their legal status. That would involve reviewing and updating much of the 1958 Convention on the High Seas.

Sub-Committee II would be concerned with all subjects and issues regarding the rights and duties of coastal States within national jurisdiction, including baselines and the delimitation of national jurisdiction. That would involve reviewing and updating much of the 1958 Conventions on the Territorial Sea and the Contiguous Zone, on the Continental Shelf and on Fishing and Conservation of the Living Resources of the High Seas.

Sub-Committee I would be concerned with subjects and issues concerning the sea-bed and the oceans beyond the limits of national jurisdiction, including settlement of disputes and the preparation of draft treaty articles embodying an international regime, including international machinery, for the area and the resources of the sea-bed beyond the limits of the national jurisdiction.

The Committee would discuss any matters requiring consideration in a context broader than that provided by the Sub-Committees and would remain competent regarding the question of peaceful uses.

A re-arrangement of functions on those lines would make it possible to dispense with the laborious process of compiling a single comprehensive list of issues and would also provide an organizational framework within which all delegations could submit the items of interest to them for consideration and negotiation.

He did not intend to press his suggestions, which might be somewhat controversial, at the present late stage in the session, but he hoped to revert to them and elaborate on them at an early opportunity.

The changes he proposed should also be accompanied by some re-organization of the secretariat. At the Committee's previous session, he had expressed the view that the time was approaching when a secretary-general could usefully be appointed to direct the secretariat's preparatory work for the 1973 Conference. A number of delegations had agreed with that view and he was therefore disappointed to learn from a reply given by the secretariat to the representative of Iceland that no action had been taken on the question.

The Committee and the Sub-Committees had hitherto been admirably served by the Secretariat, but the fact remained that the Secretariat reported to the Secretary-General of the United Nations through three separate departments: - the Department of Political and Security Council Affairs, the Department of Economic and Social Affairs and the Office of Legal Affairs - whose heads had wide responsibilities and could not give full attention to the work of the Committee. Thus secretariat services for the Committee had been handled at the senior professional - or essentially technical - level. That had been adequate in the past, but it could not be adequate now that the Committee was beginning to approach the consideration of questions of substance, with less than two years remaining before the new Conference on the Law of the Sea convened. The problems that the Committee would soon be tackling were not exclusively political or economic or legal and no one department of the Secretariat could thus have exclusive competence. Moreover, there were several aspects such as technology that were not reflected at all in the organization of the Secretariat. Without competent guidance about the effects of technology on the future use of the marine environment, there could be no hope of the work reaching a satisfactory conclusion. He drew attention in that connexion to General Assembly resolution 2581 (XXIV) on the United Nations Conference on the Human Environment, operative paragraph 5 of which requested the Secretary-General "to set up immediately a small conference secretariat by drawing, with the agreement of the

specialized agencies concerned, particularly upon regular staff of the United Nations system, and to appoint at the appropriate time a Secretary-General of the Conference." The time had come to consider the inclusion of a similar paragraph in a resolution concerning preparations for the 1973 Conference on the Law of the Sea.

Mr. SALLEH-ABAS (Malaysia) said it would be most unfortunate if the various lists of subjects and issues which had been submitted to the Sub-Committee were to give rise to any competition. In drawing up the list, the Sub-Committee had to be guided by General Assembly resolution 2750 C (XXV), which instructed the Committee inter alia to prepare: "a comprehensive list of subjects and issues relating to the law of the sea ..... and draft articles on such subjects and issues." The list must thus be a comprehensive one which, in addition to topics relating to the law of the sea, included issues having a bearing on those topics. A certain amount of detail was therefore unavoidable.

Of the various working papers submitted to the Sub-Committee, only three were really comprehensive. Most of the others related to the inclusion of individual items, which were perfectly acceptable and could be included in the comprehensive list. The Bulgarian list (A/AC.138/45 and Add.1) was limited in scope and implied that all other substantive issues relating to the law of the sea had already been settled.

The three lists which merited the description of comprehensive were those submitted by Norway (A/AC.138/52 and Add.1), a group of Latin American countries and Spain (A/AC.138/56 and Add.1), and the Afro-Asian and Yugoslav group (A/AC.138/58). Each of those lists contained a variety of subjects and issues relating to the law of the sea and they had a great deal in common. It appeared, therefore, that it would not be too difficult to produce a common list from them. His delegation would therefore suggest that the sponsors of the three lists should meet together for the purpose of agreeing on a common list. Malaysia would support any comprehensive list containing a variety of subjects bearing on the law of the sea and related issues, it being understood that the inclusion of any subject or issue in the list in no way prejudiced his Government's stand on the substance of such a subject or issue.

There remained the working paper submitted by the delegation of Turkey (A/AC.138/48), which proposed that an item should be included to read: "Relationship of the draft articles and conventions prepared in pursuance of resolution 2750 C (XXV) to, and their effects on, the 1958 Conventions on the law of the sea." His

delegation did not think that such an item was needed; the subject would be discussed automatically, since the draft articles to be prepared would necessarily be either similar to or different from the corresponding articles in the 1958 Conventions.

Mr. RUIZ-MORALES (Spain) said that his delegation was convinced that, if time allowed, it would be possible to produce a common comprehensive list. There was a fairly general consensus that the coming Conference should consider the problem of the law of the sea as a whole and that, consequently, the list which the Sub-Committee was responsible for preparing should be a comprehensive one. Nevertheless, the idea of a small conference with a tiny agenda, though rejected time and again in the United Nations, continued to haunt some delegations and had inspired some of the proposals submitted to the Sub-Committee. However, forty-nine of the seventy-nine delegations present had sponsored comprehensive lists, which others had supported, showing clearly what was the wish of the great majority of members of the international community.

The wording of the items in the list should not prejudge the decisions to be reached on them. His delegation could not, for example, accept a wording concerning the problem of straits reading: "The question of freedom of passage through, and flight over, international straits which are within the territorial sea of a coastal State (or States)", as in the Bulgarian proposal. The list which his delegation had co-sponsored avoided that type of prejudgment and sought formulas acceptable to the greatest possible number of countries. For example, with respect to fishing, on which the positions of the sponsors varied considerably, the aim had been to find a wording which did not take a stand in favour of any one of those positions.

Nevertheless, the fact that the list had to be objective and not to prejudge any issues did not mean that it should be too plain and simple. There was a danger that, in the search for a neutral formula, the Sub-Committee might be led to simply reproduce the indications given in resolution 2750 C (XXV). Although they covered virtually all the problems in the law of the sea, it would not be sufficient to repeat those indications as chapter headings; it was necessary to highlight the most salient and difficult problems under each item. Although the list submitted by most members of the Latin American group and Spain might not be ideal or perfect, it was comprehensive, reasonable, feasible, flexible and open. The Afro-Asian and Yugoslav list was similar, as was, to some extent, the Norwegian list. The differences were more in form than in substance.

Although the introductory note to the Latin American working paper stated that sponsorship or acceptance of the list did not commit the position of any State with respect to the items on it, he wished to make it quite clear that, where there was a reference to freedom of navigation through the territorial sea and freedom of overflight, his delegation understood it to refer to zones outside a certain coastal strip, which, in the case of Spain, might be greater than but was certainly not less than six miles.

His delegation strongly supported the proposal by the delegation of Greece (A/AC.138/54) that the list of topics should include an item on "archaeological and historical treasures of the sea-bed and the ocean floor beyond the limits of national jurisdiction".

Mr. STEVENSON (United States of America) said that the objective of the Sub-Committee's current session was to establish a provisional list of subjects and issues relating to the law of the sea and, if possible, to agree on the order in which they would be discussed. For the moment, every attempt should be made to avoid discussing the substance of any issue in preparing the list. His delegation's approach was a flexible one; it thought that any subject a delegation wished to discuss should be covered in the list, either explicitly or generally. The wording of the various items should not be such as to prejudice the substantive discussion.

Three of the lists which had been submitted were comprehensive, namely the Norwegian proposal, the working paper submitted by a group of Latin American countries and Spain and the working paper submitted by the Afro-Asian group and Yugoslavia. Any one of the three lists would, in general, form an excellent basis for the Conference and his delegation did not wish to express any particular preference. It did, however, think it would be helpful if a common list could be worked out.

In terms of the actual wording of the items, the Norwegian list was the most generally satisfactory. In the Afro-Asian list, for example, item 5 was entitled "Exclusive Economic Zone beyond the Territorial Sea". The word "exclusive" might have two interpretations, either of which would pre-judge the substance of the discussion. It might mean that there was jurisdiction in respect of all resources in the zone or it might mean that the coastal State had complete jurisdiction. Since his delegation wished to discuss the desirability of a mixed coastal State and international jurisdiction, it preferred the Norwegian formula: "Zones of

special jurisdiction". In item 3 of the Afro-Asian working paper, there was a reference to innocent passage but not to freedom of passage. That again might prejudice discussion of the item. His delegation preferred either the Bulgarian wording or the simple reference in the Norwegian working paper to "Straits". Item 10.2 of the Afro-Asian working paper referred to regulation of scientific research but not to freedom of scientific research. There again, there was a lack of neutrality in the wording.

A number of the criticisms he had made of the Afro-Asian working paper also applied to the Latin American working paper. In addition, the preamble to that paper did not make it plain that the list of subjects and issues was a purely provisional one until such time as the General Assembly decided upon the agenda for the Conference. In that connexion, his delegation supported the suggested explanatory statement submitted by the United Kingdom (A/AC.138/57), which was both accurate and neutral. Item A.1.1 of the Latin American paper referred to a "plurality of regimes" but there was no reference to a unitary and generally applicable regime. There was also a lack of neutrality in the inclusion of various zones under the general heading "Zones within national jurisdiction" despite the fact that many of the zones mentioned were not, in the view of all delegations, under national jurisdiction. Item B.6.2 referred to regulation of the freedom of navigation. If that reference was to be retained, he thought there should also be a reference to freedom of navigation without restriction. The reference in item 6.3(a) to the "Regulation of the freedom of fishing" was not very clear. If it meant conservation and protection of living resources, that was covered by item 6.3(c).

All in all, he thought some items were unnecessarily detailed and that to treat only some items in that way implied that details of other items would not be included in the agenda. With regard to the topics of "Preservation of the marine environment" and "Peaceful uses of ocean space", he preferred the formulation in the Afro-Asian working paper.

His delegation thought that it should not be too difficult to work out a common list and hoped that the comments he had made would help.

Mr. BEESLEY (Canada) said that his delegation had become a sponsor of the Norwegian list (A/AC.138/52 and Add.1). It hoped that the Sub-Committee would be able to produce a common list and regarded the Norwegian one as being closest to the ideal. It was comprehensive, legally sound, politically acceptable and, as far

as possible, neutral. Although it might not be as detailed as some of the other lists, it nevertheless contained all the items which they included.

His delegation strongly supported the first of the Maltese representative's proposals concerning a change in the name of the Committee, since it would more adequately reflect the Committee's new mandate. With regard to the second proposal, the representative of Malta had made a rational and persuasive case to which the Canadian Government would give its careful consideration.

Mr. PAVIĆEVIĆ (Yugoslavia) said that his delegation was a sponsor of the Afro-Asian list, which was comprehensive and flexible enough to serve as a basis for the preparation of a common list. The Latin American list was extremely close to the Afro-Asian one and he felt sure that they could easily be merged. The Norwegian list, which was also comprehensive, had been taken into account in the preparation of the Afro-Asian one. The various other proposals that had been made were more limited in scope and would not provide an adequate framework for the Conference.

It would be pointless to indulge in a further debate about the scope of the Conference, since the matter had been settled by General Assembly resolution 2750 C (XXV).

The next phase of the Committee's work should be focused on the discussion of specific questions and topics. Only after a full discussion had been held on all specific questions which were eventually to appear on the Conference agenda would it be possible to begin the decisive phase of the work, namely, the drafting of the relevant articles and paragraphs of the convention. Consequently, it was of the utmost importance that a common list of subjects and issues should be prepared as soon as possible so that the Committee could discuss and clarify the various questions.

His delegation had listened with great interest to the proposals by the Maltese representative concerning changes in the title and arrangements of the Committee and would give them careful study. Its first reaction, however, was that, for the time being, the Committee should concentrate on the substance of its work rather than on the possibly controversial question of changing its nature, when it had been given a clear mandate and seemed capable of carrying it out.

Mr. GOWLAND (Argentina) said that Argentina had been omitted from the list of sponsors of working paper A/AC.138/56.

It had sponsored the working paper because it considered it a very useful contribution to the Sub-Committee's future work. It attached particular importance to the statement in the third paragraph of the introduction that "The inclusion in the list of one or of several questions, or the presentation of the list as a whole, does not signify acceptance that draft articles to be submitted to the Conference must be prepared on each and every article on the list. Therefore sponsorship or acceptance of this list does not commit the position of any State with respect to the items on it ...".

He welcomed the submission of the working papers before the Sub-Committee and hoped that, as a result, it would be able to produce a comprehensive list of subjects and issues that was generally acceptable.

Mr. YANKOV (Bulgaria) said that, after hearing the various comments which had been made in the Sub-Committee on the Bulgarian working paper (A/AC.138/45), he felt that he should offer some explanations. Firstly, his delegation had considered that subjects and issues which had been dealt with in Sub-Committees I and III should not be given substantive consideration in Sub-Committee II. Accordingly, although they would obviously have to be considered by the Conference on the Law of the Sea in 1973, they had not been included in the Bulgarian working paper.

His delegation had also felt that it was desirable to include in the list of subjects and issues only the most important items relating to the law of the sea which had acquired particular significance for the international community as a whole, and not specific regional or local problems. If too lengthy a list was prepared, including each and every issue relating to the law of the sea, the Conference would never be able to complete its agenda. The Conference would be most productive and useful if it sought in the first instance to solve those problems which had not been solved at the 1958 and 1960 Conferences on the law of the sea.

As indicated in the working paper, Bulgaria was open-minded with regard to the list of subjects and issues to be drawn up by the Sub-Committee; the list which it had submitted was not necessarily exhaustive but was designed to provide a basis for productive consideration by the Sub-Committee and for the drafting of articles. His delegation was quite prepared to consider other subjects and issues which had been suggested during the discussion. The list was not comprehensive in the sense that it covered every single subject and issue relevant to the law of the sea but it was sufficiently flexible to cover the key items. The items in the list could be

sub-divided later when the Sub-Committee had had a more thorough discussion of the individual subjects and issues.

The first item in the Bulgarian list - the question of the territorial sea, and more particularly its maximum breadth - was an extremely important issue and was also included in the other lists submitted.

The next item was the question of fishing and conservation of living resources in zones contiguous to the territorial sea. Again, his delegation had not gone into any details, since it felt that they could be worked out when the substantive discussion took place. The formula selected was deliberately as neutral as possible.

The third item was the question of freedom of passage through, and flight over, international straits which were within the territorial sea of a coastal State (or States). After hearing the comments made, he was inclined to agree that there were perhaps some grounds for saying that it prejudged the outcome of the debate on the regime of the different types of straits. His delegation, however, considered that the main issue was not so much the extension of the limits of the territorial sea but rather the question of passage through international straits which were not regulated by specific arrangements and which might under the new law come within the national jurisdiction of a specific coastal State or States.

The next item on the list was the question of determining the outer limits of the continental shelf. The outer limits were the key issue as far as the continental shelf was concerned. The question of the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction was being dealt with by Sub-Committee I and his delegation would have no difficulty in accepting the inclusion of the international regime for that area in the list of subjects and issues.

The last item on the list was the question of the measures to be taken in order to provide for the accession to the 1958 Conventions on the law of the sea by any State, irrespective of its membership of the United Nations or of a specialized agency. He had been gratified to note that in the discussions no objections had been raised to the inclusion in the list of the question of the principle of universality with respect to either the international regime for the sea-bed or the law of the sea as a whole. He attached the utmost importance to that principle, and wondered why the question had not been referred to in some of the more detailed lists; presumably the sponsors would not object to its inclusion.

His delegation was prepared to discuss the merits of those lists with their sponsors, and felt convinced that a generally acceptable solution could be found.

Turning to the working paper submitted by a number of Latin American States and Spain, he said that it did not just list items; it also took a position on certain of them.

With regard to item 1.1, he wondered what the sponsors meant by the "nature and characteristics" of the territorial sea. If it were left in the list, he could foresee an interminable scientific discussion at the Conference which would not serve any practical purpose. With regard to the question of plurality of regimes in the territorial sea, he endorsed the views expressed by previous speakers.

As far as item 1.3 was concerned, he could not agree to the inclusion of "Regional criteria" or "Open seas and oceans, semi-enclosed seas and closed seas". They should not appear in a neutral list of subjects and issues.

The same observation applied to item 2.4. The question of the prevention of pollution was too important to be dealt with only from the standpoint of the rights of coastal States. International, regional and bilateral co-operation should also be considered. He would prefer the item to read: "Prevention of pollution and other hazardous and harmful effects arising from the uses of the seas".

Item 3.2 was also too detailed. It would suffice to mention only the outer limits of the continental shelf. Item 3.4 should refer only to the natural resources of the continental shelf.

With regard to item 4, he would prefer either an item which spelt out the different possibilities, in other words freedom of passage or innocent passage, or which left the matter open, as other delegations had suggested.

As for item 6.2, he could not understand why specific reference was made to the protection of the merchant navies of developing countries. It might be desirable that merchant navies should be protected, but if so, it was desirable for the navies of all countries. It was not clear, moreover, how they were to be protected.

The examples which he had given made it clear why his delegation did not find the Latin American working paper acceptable in its present form.

The list of subjects and issues set out in the Afro-Asian working paper also anticipated conclusions on certain points. Such references should likewise be deleted.

His delegation, generally speaking, would not have any great difficulty in accepting the Canadian and Norwegian working paper.

As far as the proposal made by Iceland (A/AC.138/51) was concerned, he considered that it could easily be dealt with within the framework of fisheries and conservation.

The Greek proposal was acceptable to his delegation.

The Turkish proposal (A/AC.138/48) could be dealt with only at the conclusion of the Sub-Committee's deliberations, after it had studied the draft articles and considered the extent to which the existing law of the sea would be affected by the progressive development of international law.

With regard to the proposal which the representative of Malta had just made, he would urge the Committee to act with circumspection. Lengthy negotiations had taken place at the March session of the Committee and if the discussions were to be re-opened its substantive work might be delayed. He himself did not experience any difficulty with regard to the title of the Committee and its terms of reference. To change the Committee's title would not necessarily change the nature of its work. In any case, the Committee had been given a clear mandate by the relevant General Assembly resolutions.

Mr. SIMPSON (United Kingdom), introducing document A/AC.138/57, said that, as he had stated earlier, his delegation felt that a liberal attitude should be adopted towards the inclusion of items in the comprehensive list with a view to their discussion in the Sub-Committee. However, it considered that it was very important that the Sub-Committee, when adopting whatever list was agreed upon, should do so subject to certain understandings. Those were firstly, that the adoption of the list in no way prejudiced the position of any delegation with regard to the inclusion of an item in the agenda of the Conference, or the drafting of articles upon it, or the substance of the item, and secondly, that the list would not impose a rigid framework for the Sub-Committee's work at its next session.

He thought there was general agreement on the first objective. However, his delegation had submitted its proposals because it was concerned about the divergent views which seemed to be emerging with regard to the second objective. It was highly desirable that the Sub-Committee should retain a flexible attitude towards the organization of its work and should not attempt to lay down at the present juncture a rigid procedure which would govern its future work. It would not be

wise for the Sub-Committee to take any decision at the present stage as to how it would proceed from the discussions and negotiations concerning any one particular issue to the drafting of articles upon it. The Sub-Committee should take that decision at the appropriate time, namely, when in its discussion of a specific issue it felt that it had arrived at the point at which it would be useful to begin drafting. It would be wrong for the Sub-Committee to bind itself at the present juncture to abstain from preparing draft articles on any subject, however ripe for drafting it might be, until each issue on the list had been exhaustively discussed and negotiated. He hoped that the following year it would be possible for work to proceed on several planes at once. He was not trying to force the Sub-Committee to draft articles prematurely on any issue. It was for the Sub-Committee as a whole to decide whether or not a sufficient accommodation of views had been reached to enable drafts to be prepared.

Mr. HOLDER (Liberia) said that the representative of Malta, in proposing that the title of the Committee should be changed, had shown by reference to General Assembly resolution 2750 C (XXV) that the title was no longer appropriate. He agreed that the title did not accurately reflect the scope of the Committee's work and the purpose which it was designed to serve. Accordingly, he would not oppose a recommendation that its title should be changed. He would suggest, however, that the new title should be "Preparatory Committee on the Law of the Sea Conference and on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction". It would be inappropriate to omit any reference to the sea-bed, which was a vital aspect of the Committee's work.

He also had some doubt about the propriety of submitting the proposal in the Sub-Committee rather than in the Committee itself.

Mr. CASTAÑEDA (Mexico) said that, in his view, the Sub-Committee had not yet reached the point where it could merge the various lists of subjects and issues which had been submitted to it into a single comprehensive list. There were several proposals which contained common elements but were formulated differently. He suggested that the best procedure would be to set up a working group consisting of representatives of the various groups of sponsors. To ensure efficiency the membership should be not more than eight or nine; the members should be appointed by the Chairman, who should either preside over the group himself or appoint the Rapporteur or Vice-Chairman to do so. He hoped that the working group would be able to meet that afternoon and produce an agreed list the following morning.

Mr. RUIZ-MORALES (Spain) said that the sponsors of working paper A/AC.138/56 had sought to avoid prejudging any of the questions and issues. That was certainly the case with regard to item 4. The inclusion of a reference to innocent passage did not prejudge any decision which might be taken by the Conference on the subject. It was necessary to start from existing customary and conventional law, which in the matter of navigation through the territorial sea confirmed the principle of innocent passage. Two basic positions had been adopted in the Sub-Committee. Some delegations upheld the principle of innocent passage as stated in the 1958 Convention on the Territorial Sea. Others wished to redefine it or make it more precise. Among those who took the latter view three slightly different approaches had been adopted. Some simply referred to the need for redefinition; others wished to increase the powers of the coastal State because of the increased risks due to technological progress; others wished to increase the guarantees afforded by the international community. All those views had their origin in the concept of innocent passage, and he did not see how it could be removed from the list of subjects and issues. To do so, would be tantamount to prejudging the issue and would give the victory to what was clearly a minority view.

He supported the Mexican proposal that a working group should be set up forthwith to draw up a generally acceptable list of subjects and issues.

Mr. JAGOTA (India), speaking as a sponsor of document A/AC.138/58, said that the list had been prepared in accordance with the directives given in General Assembly resolution 2750 C (XXV). That was why certain crucial items, such as the international regime for the sea-bed and the ocean floor beyond national jurisdiction (item 1) and exclusive economic zone beyond the territorial sea (item 5) had been elaborated in some detail; it did not mean that conclusions or solutions had already been envisaged or that the sponsors had firm positions on such items. If the Conference was to achieve any success it would have to concern itself with a new legal order, not the existing one. The drafting of the items would in no way prejudge their inclusion in or exclusion from the final list. The sponsors had taken into account certain ideas in the lists proposed by other delegations, since there was no difference of substance between them and their own ideas. They would bear in mind the comments and suggestions of the representatives of the United States of America, Bulgaria and other countries and they shared the view that efforts should be made to reach agreement as soon as possible on a single comprehensive list.

With regard to the proposals of the representative of Malta, he appreciated the reasoning behind them, but felt that as a result of the organizational changes agreed on at the twenty-fifth session of the General Assembly, the Committee had in effect already become a preparatory committee for the Conference. He was concerned lest the Maltese representative's proposals should give rise to prolonged procedural and even constitutional discussions in the Committee and the General Assembly and felt that a formal change of title was unnecessary.

His delegation would give careful consideration to the Maltese representative's proposals concerning the reorganization of the functions of the Committee and the Sub-Committees and comment on them at the following session.

He agreed with the views expressed in the United Kingdom proposal but hoped that there would not be too much discussion on the drafting of articles, since there seemed to be general agreement on the main issues. It would be best to abide by the Agreement Reached on Organization of Work adopted by the Committee on 12 March 1971. He saw no difficulty in drafting articles on any subject; but too much controversy and suspicion would make it impossible to draft any articles at all. The Sub-Committee should keep an open mind on the question and deal with problems as they arose. He would not, however, be in favour of drafting articles on any unresolved issues of the 1958 Conference that were not yet sufficiently mature.

He was ready to support the Mexican representative's proposal and would defer to the views of the majority; but he doubted whether any working party could prepare a single list in so short a time. At best, it could complete its task by the end of the present session or by the beginning of the twenty-sixth session of the General Assembly.

Mr. PARDO (Malta) said that in view of the comments made by the representatives of Liberia and India he was prepared to modify his proposal. He accordingly proposed that the Sub-Committee should recommend to the Committee, and through it to the General Assembly, that the words "and Preparatory Committee for the United Nations Law of the Sea Conference" should be added to the title of the Committee. He maintained his proposal that the Sub-Committee should further recommend that the change should not in any way affect the present composition of the bureaux of the Committee or its three Sub-Committees.

Mr. OLSZOWKA (Poland) supported the Mexican representative's proposal. It was important that all groups of countries should be adequately represented in the proposed working group. He accordingly proposed that the members of the working group should not be confined to the sponsors of the various proposals, since that would result in an unfair balance for example, the Bulgarian and Norwegian proposals - both of which he himself supported - were obviously supported by far more more than the one sponsoring delegation. The composition of the working party should be representative of all groups of States and should be decided on by the Chairman in consultation with those groups.

With regard to the proposal by the representative of Malta, he had serious doubts about the advisability of the proposed changes in the Committee's structure and feared that they might give rise to prolonged procedural discussions. There was comparatively little time left to carry out the complex task of preparing for the Conference and the Committee would do better to get on with its real work.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that the Maltese representative's proposal concerned the Committee as a whole and was therefore beyond the competence of the Sub-Committee.

The meeting rose at 1.30 p.m.

SUMMARY RECORD OF THE TWENTIETH MEETING

held on Monday, 23 August 1971, at 4 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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

Mr. JEANNEL (France) welcomed the quality of the lists of subjects and issues relating to the law of the sea and of the proposals on specific items which had been submitted to the Sub-Committee. Both were the result of considerable work. His delegation hoped that, in view of the general agreement within the Sub-Committee that the list adopted should be neither definitive nor exhaustive, it would soon be possible to amalgamate the lists into a single joint document. His delegation had perhaps a preference for the list submitted by Norway (A/AC.138/52 and Add.1), which was more complete and better integrated than the others, but the introduction to the list submitted by some Latin American countries and by Spain (A/AC.138/56) was also very important and the list could be usefully supplemented by the suggested explanatory statement submitted by the United Kingdom (A/AC.138/57), since it was desirable that the Sub-Committee should take account of the role to be played by the General Assembly in determining the agenda of the Conference on the Law of the Sea. The proposals made on certain specific items by Greece (A/AC.138/54), Iceland (A/AC.138/51) and Turkey (A/AC.138/48) would also have to be taken into consideration.

The sponsors of the various lists should get together with a view to drawing up a joint document; in that connexion, the proposal made by the Mexican representative at the previous meeting would be acceptable.

Mr. ABDEL-HAMID (United Arab Republic) considered that questions relating to the law of the sea represented one of the main obstacles to the establishment of good neighbourly relations between States and that lasting solutions could be based only on a mutual understanding of each other's difficulties. International law, which protected territorial integrity, political independence and the right to live in peace, had thus far settled many problems and could continue to do so if it was fully respected. His delegation was accordingly making every effort to contribute towards a better understanding of the questions at issue. It would therefore support a list which would permit Governments to express their views

freely without prejudging their final decisions. The list should be complete, as requested in General Assembly resolution 2750 (XXV), which enumerated some of the subjects and issues to be included. It should also be flexible, so that as wide a range of opinion as possible could be taken into consideration.

It was difficult to decide whether the list should be completed before the Sub-Committee began drawing up draft treaty articles. Circumstances might require that the list should be revised, but in view of the scope of the terms of reference laid down by the General Assembly, that would be no easy matter. Nevertheless, the compilation of a complete list must not delay the Sub-Committee's work unnecessarily.

The objectivity which had characterized the debates was welcome, and it was to be hoped that the Sub-Committee would continue to seek to identify areas of agreement and disagreement so that it could subsequently consider the various suggestions and proposals and then move on to the very difficult task of amalgamating the different lists into a single document. His delegation accordingly supported the list submitted by the Afro-Asian countries. It could not, however, endorse the proposal made by the Maltese representative at the previous meeting that the Committee's work should be re-organized, since such a decision would only impede the smooth conduct of its proceedings.

Mr. FRANCIS (Jamaica) regretted that his delegation could not support the Maltese representative's proposal that there should be a re-distribution of work between the three Sub-Committees and that Sub-Committee III should be made responsible for questions relating to the 1958 Convention on the High Seas[1/] and Sub-Committee II for questions relating to the 1958 Conventions on the Territorial Sea and the Contiguous Zone,[2/] on the Continental Shelf,[3/] and on Fishing and Conservation of the Living Resources of the High Seas.[4/] Too much time had already been spent on procedural matters at the March 1971 session, and it was undesirable to challenge the agreement reached at that time. Furthermore his delegation, like

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1/ United Nations, Treaty Series, Vol.450 p.82.

2/ Ibid, vol.516, p.205.

3/ Ibid, vol.499, p.311.

4/ Ibid, vol.559, p.285.

other delegations which sometimes found it impossible to send representatives to several meetings at the same time, had had difficulty in accepting the idea of distributing work between three Sub-Committees, two of which - Sub-Committees I and II - were to deal with the most important questions. It was therefore unthinkable that delegations such as his could now agree to refer to Sub-Committee III the complex matters referred to in the 1958 Convention on the High Seas.

The second part of the Maltese representative's proposal at the nineteenth meeting that the Committee's name should be changed was not so fundamentally unacceptable. There was, however, no real need for it and the question required further consideration.

The list of subjects and issues to be submitted to the Conference on the Law of the Sea should be in keeping with the spirit of General Assembly resolution 2750 (XXV). It should therefore be complete, but not so voluminous that it could not be adequately dealt with by the Conference. Some of the subjects and issues to be included in the list were mentioned in the General Assembly's resolution, which seemed to reflect the view that certain aspects of customary law would be taken into account when the regime for the sea-bed and ocean floor was established. His delegation also felt that problems arising out of the present practice of States should be taken into consideration, in addition to the proposals on specific items made by several delegations.

The areas of agreement between the different lists proposed, rather than the areas of disagreement, should be emphasized. It seemed unlikely that a joint list acceptable to all could be drawn up quickly. The Sub-Committee had now before it straightforward proposals concerning specific items, and documents containing lists of subjects and issues relating to the law of the sea. It was not so much a question of deciding which subjects and issues should be included in the final list but which items should be deleted from the lists already submitted. Several solutions had been proposed for the attainment of a joint list. The Brazilian and Australian representatives had suggested that the sponsors of the various drafts should meet and draw up a single list. The Malaysian representative had pointed out that the different lists must not be made to compete with one another and had asked the Afro-Asian countries and Norway to hold consultations with a view to amalgamating their respective lists. The Mexican representative had suggested

that the Chairman should appoint a group of eight or nine representatives, who would be selected from among the sponsors of the different lists and who would be responsible for compiling a joint list before the end of the Committee's session. The Jamaican delegation, as a participant in the current efforts to compile a joint list, considered the last suggestion to be too optimistic and could not entirely approve of it, since it was unlikely that a joint list could be agreed upon before the end of the Committee's session. It therefore supported the suggestion that it should be left to the Chairman to appoint a working group which would meet after the session, continue its work in New York, and ultimately report to the General Assembly, provided that account was taken of the Polish representative's request that the working group should be constituted in such a way that all regions were represented in it.

Mr. PARDO (Malta) wished to remind the Sub-Committee, in order to dispel any misunderstanding, that his delegation had made it quite clear that it was not asking for an immediate decision on its proposal that the Committee's work should be re-organized. It expected to re-submit the proposal in a more precise form at an appropriate future date.

Mr. SERAZZI (Chile) supported the proposal made by the Maltese representative at the previous meeting that the Committee's work should be re-organized and that there should be a redistribution of functions between the three Sub-Committees, and also that the Committee's name should be changed to "United Nations Preparatory Committee for the Law of the Sea Conference". The list of subjects and issues relating to the law of the sea should faithfully reflect the spirit of General Assembly resolution 2750 (XXV). It should therefore be long and complete. However, before amalgamating the different lists into a single document, it might be well to await the results of the negotiations between the countries of the Group of 77.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he was happy to see that the views of his delegation concerning the question of the list of subjects relating to the law of the sea were reflected in the documents submitted by Belgium (A/AC.138/35), Turkey (A/AC.138/48), Iceland (A/AC.138/51), Bulgaria (A/AC.138/45 and Add.1) and Greece (A/AC.138/54) and that the delegations of those countries had included the issues which had been left in abeyance in the 1958 Conventions.

The USSR delegation was ready to give proof of its understanding by participating in efforts to elaborate a joint list; it had listened with interest to the views of those delegates who favoured a longer list than it itself thought necessary and who consequently supported the lists submitted by Norway (A/AC.138/52 and Add.1), some Afro-Asian countries (A/AC.138/58) and some Latin American countries (A/AC.138/56 and Add.1).

An examination of those three lists showed that they did not differ in any way as to basic principle; their most striking characteristic was the objective and neutral formulation of the different subjects and issues. That concern for objectivity seemed, moreover, to have inspired Norway and the Afro-Asian countries more than the Latin American countries. Indeed, in the list submitted by the last-mentioned countries, section A (Zones within national jurisdiction), subsection 1 (Territorial sea), paragraph 1.3 covered open seas and oceans, semi-enclosed seas and closed seas; the inconsistency was obvious, since there were seas that could be considered as closed seas - the Baltic Sea, for example - and to which the territorial sea regime had never been applied. Perhaps in some cases semi-enclosed seas would be considered as territorial seas, but that did not justify the inclusion of that issue under the heading of territorial seas. On the other hand, in the list submitted by the Afro-Asian countries, enclosed and semi-enclosed seas fell under a separate heading (item 14), and that more neutral formula was beyond question preferred by his delegation.

Likewise, sub-section 6 of the Latin American countries' list was entitled "High seas or zones beyond national jurisdiction". It was known that for some of those countries the high sea, or open sea, was that part of the sea surface which extended beyond national jurisdiction. It was also known that many delegations applied the 1958 Convention on the High Seas, in which it was clearly stated that the high sea was that part of the sea extending beyond territorial waters. The title of that sub-section thus already prejudged the position of the Sub-Committee, and the USSR delegation preferred the way the question was phrased, using the simple words "high seas", in the list submitted by the Afro-Asian countries (item 6).

Those remarks did not mean that the USSR delegation objected to the list submitted by the Latin-American countries. It fully understood the wish of other delegations to establish a longer list, especially since the list was a preliminary one and since the establishment of the final list of subjects to be

included in the agenda of the Conference on the Law of the Sea would be preceded by still further discussions.

The USSR delegation considered that Norway's was the most rational list, but it was prepared to give its assent if a majority should decide in favour of the Afro-Asian countries' list, to which, however, some improvements could be made. For example, the questions relating to straits (3,3.1 and 3.2) could be drafted more clearly and in more general terms to prevent any misunderstanding, particularly in respect of the nature of the relevant regime. Likewise, with regard to item 10.2, "Regulation of Scientific Research", the use of the word "regulation" should be avoided, since in Russian at least, it had too precise a meaning; the heading might read "Legal questions concerning scientific research". Those, however, were merely matters of detail, and the USSR delegation was prepared to approve that list and also the suggestion made by the Mexican representative, and supported by several delegations, that a small working group should be set up to establish a joint list.

With regard to the proposal made by the Maltese representative concerning the reorganization of the Committee's work, the USSR delegation was unable to agree, since it considered that the Committee had already spent too much time on procedural matters, and the changing of the Committee's name was a matter of secondary importance to which it would doubtless be better to revert at a later date.

Mr. ARIAS SCHREIBER (Peru) supported the Mexican delegation's proposal for the setting up of a working group composed of the sponsors of the different lists. He saw no objection to that group including amongst its members two representatives from each regional group.

Further, the Peruvian delegation did not object to the United Kingdom delegation's suggestion that the list should remain open and should be submitted to the General Assembly so that the countries which were not members of the Committee could have an opportunity of commenting on it.

Since several delegations had expressed doubts about the reference in the list proposed by the Afro-Asian countries to the exclusive economic zone, the point could be met by drafting the item in such a way as not to prejudge the issue. As to the question of the plurality of regimes in territorial seas mentioned in the Latin American countries' list, it corresponded to a factual situation and must therefore be included.

In connexion with the comments of several delegations to the effect that the Latin American countries' proposals departed from the traditional notion of the law of the sea, it should be realized that the role of the Committee was precisely to revise the old criteria to make them conform more adequately to the needs of the developing countries and to new realities. It was only by drafting a comprehensive list in a spirit of realism and logic that it could be hoped to elaborate fairer and more suitable standards for issues which were still controversial.

Mr. OLSZOWKA (Poland) said that he too supported the Mexican proposal. He hoped the working group would be able to elaborate a joint list before the end of the session.

Mr. van der ESSEN (Belgium) wished to draw the attention of the proposed working group to the question of artificial islands, in which Belgium was particularly interested. In the list proposed by the Latin American countries, the item was placed under the heading of zones beyond national jurisdiction, which amounted to prejudging the solution of the issue without, however, entirely reflecting the problem which was preoccupying Belgium. What was involved was the question of constructing an artificial port for the unloading of large-tonnage tankers, at a distance of 27 km from the coast, namely, far beyond the three-mile territorial sea limit. That would in no way affect the legal status of the surrounding waters as high seas, since article 3 of the 1958 Convention on the Continental Shelf stipulated that the rights of the coastal State over the continental shelf did not affect the legal status of the superjacent waters as high seas. The aim of an artificial port, however, was to carry out surface activities on the high seas. Belgium was faced with a problem, because according to the opinion given by the Belgian Conseil d'Etat on the draft law of 1969, the country would not have jurisdiction over artificial islands not intended for the exploration or exploitation of the natural resources defined by the 1958 Convention. It was a question of a port and not of exploration of natural resources; by placing artificial islands under the heading of zones beyond national jurisdiction, the Latin American countries were thus prejudging the possible recognition of a new right of the coastal State over the continental shelf. The problem was, indeed, a wider one, since for Belgium it was a matter of ascertaining both its rights and its duties vis-à-vis neighbouring States, since a port in a shallow sea,

such as the North Sea off the Belgian coast, might hamper navigation and alter the tidal pattern. The international law of the sea, as it stood at present, provided no answer. What was involved was a specific point, which must be included separately in the list of subjects and not under any particular heading.

Mr. KEDADI (Tunisia) thought that the Maltese delegation's proposal to change the title of the Committee was interesting, since it took into account the fact that the Sub-Committee's debates were more concerned with the law of the sea in general than with the peaceful uses of the sea-bed beyond the limits of national waters. The proposal to set up a secretariat was equally pertinent; nonetheless those proposals would be best submitted to a higher body rather than to the Sub-Committee, whose agenda was already very full.

As to the Mexican proposal for setting up a working group, it would perhaps be preferable, since the various lists had only just been distributed, for the Chairman to invite the authors of those lists to enter into consultation and to agree on a joint list.

Mr. WOLDE-GIORGIS (Ethiopia) supported the Tunisian proposal. Without doubting the wisdom of the Mexican proposal to set up a working party responsible for amalgamating the various lists into a single comprehensive list, he thought that it would be better to give the various groups time to enter into consultation and to harmonize their views, which in several cases were clearly divergent.

Mr. CABRAL de MELLO (Brazil) said that he would carefully study the proposal of the Maltese delegation to change the title of the committee in order to conform with the extension of its mandate, as laid down in General Assembly resolution 2750 C (XXV).

Some delegations had raised objections regarding the procedure proposed in the preamble to document A/AC.138/56, according to which the choice of subjects on which draft articles were to be drawn up would only be decided after the preparation of the list and after the debate, study and negotiation of matters included in that list. In his delegation's opinion, it would be pointless to begin drafting articles before agreement had been reached on the fundamental issues, in the hope of making up with words for the absence of dialogue.

With regard to item 1.1 in that same document, "Nature and characteristics of the territorial sea", he wanted the question of the right of coastal States over territorial waters to be discussed under that heading, taking into account trends in technology and the new facts that had come to light.

Several delegations had pointed out that item 4 relating to straits prejudged the freedom of navigation in international straits. In that respect, he had nothing to add to the relevant statement made by the Spanish representative at the previous meeting.

With regard to the regulation of the freedom of navigation, there was no thought of contesting that freedom; it was rather a matter of revising the former concept of freedom of navigation on the high seas, in view of the evolution which had taken place. Much the same could be said of items 6.3(a) "Regulation of the freedom of fishing", and 6.5(b) "Regulation of scientific research".

As the representative of Bulgaria had said, the draft submitted by Latin America did not mention the need for the convention or conventions adopted at the next Conference to be universal in type. That, however, was an essential condition if such conventions were to be ratified by the greatest possible number of States.

With regard to the creation of a working group, he agreed with his Ethiopian colleague that it would be premature to take action forthwith.

Mr. KAZEMI (Iran) agreed with the statements of the representatives of Tunisia and Ethiopia, who had advocated setting up a working group. He in turn earnestly requested the Chairman to invite the various groups to attempt to establish a joint list during the session. If need be, they could continue their work until the session of the General Assembly.

Mr. LAPOINTE (Canada) thought that it would be preferable to draw up a joint list immediately without wasting precious time on private consultations.

Mr. STEVENSON (United States of America), using his right of reply, pointed out that he had suggested at the nineteenth meeting that the inclusion in both the proposed lists of the right of innocent passage should be coupled with a reference to freedom of passage. The representative of Spain had pointed out that it was sufficient to mention innocent passage, since that reflected the current legal position. Even if that were so, however, the task of the Committee did not consist in drawing up a list of current legal positions for the Conference: the regime currently applied to straits over six miles in width was more a matter of freedom of passage than of innocent passage.

Since he was convinced that no effort should be spared to draft a list of subjects and issues, he supported the suggestion to set up a working group.

Mr. STANCHOLM (Norway) agreed with his colleagues from Poland and Jamaica that the working group to be set up should not only include the authors of the lists but also an equitable representation of the various geographical groups on the Committee.

Mr. D'ANDREA (Italy) found the proposal to set up a working group acceptable, provided it was given guidelines for making the necessary selection from among the items in the various lists submitted. The working group, which would include not only the authors of the list but also the representatives of national groups, would have the task of drawing up a single comprehensive list that did not prejudge basic solutions.

Mr. RATSIRAKA (Madagascar) thought that the proposal of the Maltese delegation to change the name of the Committee was judicious. He agreed with his Tunisian colleague, however, that it would be preferable to postpone the question of reorganizing the Sub-Committeesand the setting up of a secretariat to a later date.

With regard to the working group, it would be better to leave the authors of the lists the time to harmonize their views before setting it up.

Mr. FRANCIS (Jamaica) supported the proposal of the Mexican representative, while considering it preferable to leave to the group the possibility of pursuing its work until the next session of the General Assembly. The Italian representative had suggested the drafting of guidelines, but that might take too long. Members of the working group would be sufficiently well acquainted with consultation procedures to be able to do without such guidelines.

It was necessary to draw up the lists requested of the Committee, because they would enable the General Assembly to assess the Committee's work. The Committee should, however, make a further effort to draw up a single list of subjects and issues. Prior consultations would be required in order that the list was to receive the support of all delegations. It might be possible during the current session to set up a working group which could continue its work until the session of the General Assembly, or even beyond if that were necessary.

The CHAIRMAN, summing up the situation, said that there seemed to be no basic opposition to the creation of a working group but some doubts had been expressed as to its chances of success.

He again appealed to the authors of the lists to establish a joint list, and requested all delegations immediately to agree to set up a working group. That group, taking into account the proposals made by various delegations, would be made up of nine delegations chosen according to a double criterion, in order to include both the authors of the draft lists and the representatives of the regional groups on the Committee. It would include two representatives of Western European countries, two of Latin American countries, two of Afro-Asian countries, two of Socialist countries and a representative of Yugoslavia. The Rapporteur would take part in its work and help it to draft its report. On the basis of that report, the Sub-Committee would, before the end of the session, decide how to proceed with its work in full knowledge of the facts.

Mr. HOLDER (Liberia) had no objections to the creation of a small working group as proposed by the Chairman. The members of the African and Asian groups had held discussions with a view to drawing up a joint list. If they had thought that by so doing they would compromise their position, each group would have submitted its own list. According to the distribution proposed by the Chairman, each of those groups was being deprived of a member.

The CHAIRMAN had thought that the Afro-Asian groups might be represented by two members because they had submitted a joint list. There was no reason, however, why each of those groups should not have two representatives.

Mr. KHLESTOV (Union of Soviet Socialist Republics) supported the Chairman's comment and congratulated him on the spirit of fairness that he had shown.

He noted that the members of the Sub-Committee seemed to be in agreement on the creation of a working group of eleven members. The question now was whether those members would be appointed by the Chairman or by the regional groups.

Mr. CASTAÑEDA (Mexico) said that consultations would be necessary if the regional groups were to appoint the members. Such consultations would take time, and as it was desirable for members to be appointed immediately, he suggested that the Chairman should take the responsibility of doing so, subject to his decision being ratified by the Sub-Committee as a whole.

Mr. FRANCIS (Jamaica) suggested that the Chairman should hold prior consultations with the chairmen of the various regional groups.

Mr. IMRU (Ethiopia) and Mr. McKERMAN (United States of America) supported the suggestion of the Jamaican representative.

Mr. TRAORE (Ivory Coast) made a formal proposal that the meeting should be suspended to enable the Chairman to consult with the chairmen of the different regional groups, so that the membership of the Working Group could be made known without further delay.

Mr. KHLESTOV (Union of Soviet Socialist Republics) supported that proposal.

The meeting was suspended at 6.15 p.m. and resumed at 6.50 p.m.

The CHAIRMAN announced that after consultations with the chairmen of the various regional groups, it had been decided that the Working Group would be made up of the following countries: for Asia, Iran and Indonesia; for Eastern Europe, Bulgaria and Poland; for the Western group, Norway and Canada; for Latin America, Trinidad and Tobago and Peru; for Africa, Ethiopia and Kenya; and lastly, Yugoslavia. The Working Group would meet the following morning and would report to the Sub-Committee the next day.

Mr. KEDADI (Tunisia) said that he had already stated the position of his delegation at the beginning of the meeting, as well as the position of the members of the Group of 77, of which he was the Chairman, with regard to the establishment of a limited Working Group. Although they had no objection to such a group, the members of the Group of 77 feared that there would not be enough time for consultations in order to give guidance to their respective representatives within the Group that had been proposed. The Chairman had believed that the necessary consensus for the establishment of the Group existed. The representative of Tunisia accepted his decision, but hoped that, in a spirit of compromise, the Group would be allowed to meet the next afternoon so that consultations could take place.

Mr. BALLAM (Trinidad and Tobago) agreed with the observations of the representative of Tunisia. As Chairman of the Latin American Group, he wished to make the same request.

Mr. IMRU (Ethiopia) and Mr. KAZEMI (Iran) supported the request of the representative of Tunisia.

Mr. STANGHOLM (Norway) wished to know whether Canada and Norway had been appointed as the representatives of the Western group or as the co-sponsors of the

list which they had submitted. It would perhaps be necessary to request the countries of the Western group to ratify the Chairman's choice. He hoped that the Group would be able to start work immediately, but given the present situation, he wished to consult with the representative of Canada and the other members of the Western group.

Mr. STEVENSON (United States of America) said that, if account was taken of the criterion of group representation rather than of the criterion of the submission of a list, his delegation would have some difficulties, because it did not belong to any geographical group.

The CHAIRMAN assured him that both of those criteria had been taken into consideration. He had been given to understand that the Western group had agreed on the appointment of Norway and Canada, who had been the co-sponsors of a single list.

Mr. RUIZ-MORALES (Spain) had not objected to the Chairman's decision, but wished to stress that another European country, namely Spain, had submitted a list.

Mr. CASTAÑEDA (Mexico) was of the opinion that it was perhaps not necessary to dwell on the criterion of geographical representation within the Working Group. All the countries that had been appointed, with the exception of one, were co-sponsors of a list. The membership of the Group should reflect the mandate entrusted to it. Those countries were thus taking part in the Working Group as co-sponsors of a list rather than as the representatives of regional groups. In addition, the need for consultations should not be exaggerated. The Group should now meet to see whether it was possible to draw up a single list. It should start working without delay, or else it would no longer have any purpose.

Mr. OLSZOWKA (Poland) said that in order to facilitate the work of the Sub-Committee, the Polish delegation wished to be considered as a co-sponsor of the list submitted by Bulgaria.

Mr. D'ANDREA (Italy) noted that the Chairman had appointed a certain number of countries which had submitted their own lists. Those countries had thus assumed a responsibility, and because they seemed to be most qualified to solve the problem of drawing up a single list, the Sub-Committee had given them its trust. It now seemed, however, that they no longer considered themselves capable

of carrying out that task. Instead of accepting their responsibilities, they were stating that they had to refer to the regional groups, which were beginning to assume an over-important role in the discussion. In turn, the regional groups wished to consult with the super-regional groups. The members of the Group of 77 had made some solemn declarations. It could be asked what was the use of the Sub-Committee? Was not the principle of regional representation ensured? He hoped that the countries that had been appointed would begin work without delay, in the interests of all the members.

Mr. DEUSTUA (Peru) could not accept what the representative of Italy had just said. Trinidad and Tobago, as well as Peru, had been appointed by the Chairman and not by the regional group. The representative of Trinidad and Tobago had supported the request made by the representative of Tunisia in his capacity as Chairman of the Group of 77. The list submitted by the Latin American Group had fourteen co-sponsors, and it was normal that a request should have been made to delay the meeting of the Working Group so that consultations could take place. It was regrettable that the representative of Italy should have spoken so heedlessly.

Mr. ZEGERS (Chile) said that during the meeting of the Group of 77, it had been decided that the various groups would work together in order to arrive at a single list. Paragraph 6 of General Assembly resolution 2750 (XXV) had instructed the Committee to draw up a comprehensive list of subjects and issues relating to the law of the sea referred to in paragraph 2. A list which was not comprehensive would not respond to the request of the General Assembly, and that was why attempts were being made to draw up a single list. The Chilean delegation had no objection to the establishment of a Working Group, but it felt that the countries that had been appointed had at least the right to hold consultations. In addition, no delegation had the right to disparage the work of the Group of 77.

Mr. KHLESTOV (Union of Soviet Socialist Republics) was glad that the question of the establishment of the Working Group had been settled so quickly. The criterion according to which the members of that Group had been appointed mattered little, for the important thing was that they should begin their work immediately. It was normal that the countries should wish to be able to hold consultations, but perhaps those consultations could take place concurrently, so that the Group would not be prevented from meeting the following day.

Mr. KEDADI (Tunisia) regretted that one delegation had thought it its duty to use somewhat discourteous language with regard to representatives who were duly accredited to become members of the Group. That was even more regrettable in that he had stated that he was prepared to accept the Chairman's decision to establish the Working Group. Since the members of the Working Group had been appointed, the issue was settled and there was no need to embark on a procedural debate or to indulge in polemics. The problem had been the date of the meeting of the Group. The Tunisian delegation, supported by other delegations, had requested that it should meet in the afternoon rather than in the morning. Moreover, it had to be accepted that the regional groups and the Group of 77 existed, and it was a democratic principle that the members of those different groups should be allowed to hold consultations before giving their final opinion to the Sub-Committee.

Mr. D'ANDREA (Italy) said that the regrets were shared. If it was indeed a question of date or hour, there was no problem. But if it was a question, as he had understood it, of representation, he could not agree. The Sub-Committee had shown confidence in appointing certain countries. He had been given to understand that some of them did not consider themselves to be duly appointed and had to request confirmation of their powers of representation. He had therefore considered it necessary to intervene in the belief that a question of substance had been raised.

The meeting rose at 7.30 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held on Wednesday, 25 August 1971, at 3.35 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

The CHAIRMAN informed the Sub-Committee that he had received a letter from the Chairman of the plenary Committee requesting him to ensure that the Sub-Committee's work was completed by noon on 26 August at the latest, so that the Committee could begin consideration of its report. In principle, therefore, the Sub-Committee had three meetings to complete its work.

Mr. LAPOINTE (Canada), speaking as Chairman of the Working Group set up by the Sub-Committee to review, consider and if possible harmonize the four draft lists of subjects on the law of the sea submitted to the Sub-Committee, said that the Group had concluded that the best approach would be to allow the sponsors of the two longest draft lists to continue unofficial consultations so as to produce a common list. In view of the progress they had made, the participants in those unofficial consultations had unanimously requested permission, which had been granted, to continue their consultations.

If those unofficial consultations produced a positive result, he thought that the Working Group could then be asked to endeavour to harmonize the list so prepared with the two remaining draft lists and report back to the Sub-Committee.

The CHAIRMAN suggested that if there were no objections, the course proposed by the Chairman of the Working Group should be approved.

It was so decided.

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, introducing his draft report (A/AC.138/SC.II/L.5), said that he had done his best to give an accurate reflection of the work done by the Sub-Committee during its session.

The introduction to the document gave an account of the manner in which the Sub-Committee's work had been carried out. In the second section he had attempted to provide an objective presentation of the debate which had been held on the questions referred to the Sub-Committee by the Committee under the terms of the "Agreement reached on organization of work", as read by the Chairman at the forty-fifth plenary meeting.

He hoped that the text he had prepared would help delegations to reach agreement and thanked the Secretary of the Sub-Committee for his assistance in preparing the draft report.

The CHAIRMAN proposed that the Sub-Committee should consider the draft report paragraph by paragraph.

It was so decided.

Paragraphs 1-3

Paragraphs 1-3 were adopted.

Paragraph 4

Mr. BRITTEN (United States of America) proposed that the words "as observers" should be added at the end of the last sentence in the paragraph.

It was so decided.

Paragraph 4, as amended, was adopted.

Paragraphs 5-10

Paragraphs 5-10 were adopted.

Paragraph 11

Mr. SETTER (Australia) proposed that the following words should be added at the end of the penultimate sentence in the paragraph: "including country profiles indicating the status of national fishing industries, a report on international fishery bodies, and additional maps indicating the distribution of fishery resources".

Mr. KANIARU (Kenya) supported the Australian representative's proposal.

Mr. SIMPSON (United Kingdom) proposed that, for greater precision, the words "international fishery bodies" in the Australian proposal be replaced by the words "international fishery regulatory bodies".

Mr. SETTER (Australia) accepted the United Kingdom sub-amendment.

The Australian proposal, as amended, was adopted.

Paragraph 11, as amended, was adopted.

Paragraph 12

Paragraph 12 was adopted.

Paragraph 13

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that, in the sixth line of the first sentence in that paragraph, the word "issues" should be replaced by the word "issue".

Mr. BRITTEN (United States of America) proposed that, in the fourth and sixth lines of the paragraph, the words "or exclusion" should be added after the word "inclusion".

The amendment proposed by the representative of the United States was adopted.

Paragraph 13, as amended, was adopted.

Paragraph 14

Mr. ITURRIAGA (Spain) said, with relation to the words in brackets in the first part of the sentence, that he did not fully understand the meaning of the translation of the English expression "shelf-locked". Consequently, he requested that the formula used in the Spanish text be replaced by the words: "Estados llamados de plataforma encerrada (shelf-locked)". Moreover, for greater accuracy the words "Estados formados por archipiélagos", in the same parentheses, should be replaced by the words "Estados-archipiélagos".

Mr. AGUILAR (Venezuela) supported the Spanish representative's proposal.

The CHAIRMAN said he thought that a translation problem was involved which could be settled by the Secretariat.

Mr. SMALL (New Zealand) requested that, in the first phrase between brackets, the words "island States" should be added before the words "shelf-locked States".

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the English expression "shelf-locked States" had not been satisfactorily translated into Russian either. It was a question not of States without a continental shelf but of States whose access to the deep ocean bed was cut off by the continental shelves of other States. The solution might, perhaps, be to say: "States not having access to the deep ocean bed".

Mr. HOLDER (Liberia) said that his delegation also did not know what was meant in English by the expression "shelf-locked". Consequently, he requested that it be put in inverted commas in the English text of paragraph 14.

Mr. DEJAMMET (France) said he agreed with the comments made concerning the translation of the English expression "shelf-locked" and, more particularly, with the suggestion by the Spanish representative, whose formula could be translated into French.

Mr. RAKOTOMANANA (Madagascar) proposed that the English expression "shelf-locked States" should be translated by "pays riverains n'ayant pas un accès national aux fonds marins".

Mr. SHIKALA (Democratic Republic of the Congo) said that he too was dissatisfied with the translation of the English expression "shelf-locked". He proposed that it should be reproduced directly in the French text without translation.

Mr. BRAZIL (Australia) supported the Liberian proposal that the expression "shelf-locked" should be in inverted commas in the English text. His delegation also supported the New Zealand proposal that the words "island States" should be inserted before the expression "shelf-locked States" since that would give a more accurate reflection of the Sub-Committee's discussions.

Mr. BEESLEY (Canada) said that, though he would not insist upon his proposal, he would like the words "sea-locked and shelf-less States" added in the first phrasein square brackets.

Mr. BOS (Netherlands) took the view that if there was still some doubt as to how the English expression "shelf-locked States" should be translated, it would be better to retain it textually in all the working languages.

Mr. CHAO (Singapore) said that in his opinion, "shelf-locked States" meant coastal States which bordered on a very narrow sea or had a very narrow coastline. In any case, it would be undesirable to attempt a full definition of the expression for the moment. The best solution would be to adopt the Liberian proposal that the expression "shelf-locked" should be put in inverted commas until a more satisfactory term was found.

Mr. PINTO (Ceylon) said that since the interests of "all States" were concerned, there was no need to give an exhaustive list of all the types of States which could exist.

Mr. JAGOTA (India) supported the Ceylonese representative's suggestion. At the present stage, the best solution would be to adopt the Liberian representative's proposal.

Mr. STEEL (United Kingdom) proposed as a compromise that the list in brackets should be replaced by the following words: "whatever their size and whatever their direct access to the sea or to the deep ocean bed".

Mr. BEESLEY (Canada) said that the United Kingdom proposal was inadequate in that it attached the greatest importance to the problem of access to the sea or to the deep ocean bed although the responsibility of coastal States arising from the fact of their proximity to the marine environment also deserved consideration.

Mr. YANGO (Philippines) thought it better to keep the list in brackets, since it highlighted the varying interests of States according to their size and geographical situation. It was a question not so much of watching over the interests common to all States but over the particular interests of each one of them. The United Kingdom proposal would not meet that requirement.

In any case, if the difficulty arose from the meaning of the English expression "shelf-locked", it could hardly be solved by simply deleting the passage in brackets in which that expression occurred.

Mr. PINTO (Ceylon) said he had proposed that the list in brackets should be deleted because there was no possibility of giving a complete list of the various types of countries, the more so in that some of them, such as Ceylon, could well figure in several categories.

Mr. YANKOV (Bulgaria) proposed that, in order to speed up its work, the Sub-Committee should agree to include the expression "shelf-locked" in inverted commas in its Report, together with a footnote explaining the meaning given to that expression by various delegations.

Mr. TUKURU (Nigeria) said he thought that the most flexible possible solution should be adopted. Consequently, he favoured the deletion of the passage in brackets.

Mr. PARDO (Malta) said that his delegation preferred the interpretation of the expression "shelf-locked" given by the representative of the USSR. However that might be, the meaning of the expression was in no way linked with the width of the continental shelf bordering on the territory of the country involved.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the list in brackets did not claim to be exhaustive but was given simply for purposes of illustration. That fact would be clearly indicated if the words "for example" or "such as" were added to the text.

With respect to the meaning of the expression "shelf-locked", the best solution might perhaps be to adopt the proposal of the Bulgarian representative and to add to the Report a footnote stating that the meaning of that expression would be defined in due course within the framework of the activities of the Sea-bed Committee.

Mr. BEESLEY (Canada) agreed that it would be pointless to try to give between the brackets an exhaustive list of all types of States.

Mr. BOS (Netherlands) said he thought it would be rather difficult at that stage to define in the report what was meant by "shelf-locked". It had emerged from the discussion that the expression should be put in inverted commas and its meaning explained in due course.

Mr. FRANCIS (Jamaica) said that, like the representative of Ceylon, he had thought when reading paragraph 14 that the words in brackets should be deleted but, in United Nations legal circles, the expression "all States" was used to mean the participants in a treaty. If he had understood the Rapporteur's thinking correctly, it was not a question of giving examples but of quoting the types of States which had been mentioned during the discussion. He thought that the list could be retained, as the representative of the Soviet Union had proposed, by inserting "such as" or some similar expression and leaving the word "shelf-locked" in inverted commas.

Mr. ITURRIAGA (Spain) said that the term "shelf-locked" lent itself to confusion in several languages. The expression "so-called shelf-locked States" might be used in inverted commas and the list be preceded by "for example" or followed by "etc.".

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said he thought that the Jamaican representative had discovered a way of avoiding the difficulty and that the list of types of States could be preceded by the expression "such as" and followed by "etc.". The phrase would then be sufficiently flexible to take account of all the interests involved.

Mr. PINTO (Ceylon) said that the most logical solution would be to delete the words in brackets.

The CHAIRMAN said that the proposal by Jamaica and the Rapporteur seemed to meet with the approval of the Sub-Committee. He wondered whether the expression "island States", suggested by the representative of New Zealand, should be added to the list.

Mr. FRANCIS (Jamaica) took the view that the list should be restricted to the types of States mentioned during the discussion.

Mr. SMALL (New Zealand) said that, since the list was not an exhaustive one, he would not insist that island States should be mentioned.

The CHAIRMAN said that the term "etc." added at the end of the list would cover those States which were not expressly mentioned.

Mr. PARDO (Malta) suggested that the words "together with the general international interests" should be added after the words "geographical considerations" at the end of the paragraph.

Mr. SERAZZI (Chile) said that the expression "shelfless States" could well be added to the list.

Mr. CHAO (Singapore) said he wished to emphasize that the text under consideration was a report on the Sub-Committee's discussions. He was not opposed to any proposal that a given category of State should be included but, to the best of his knowledge and belief, there had been no suggestion concerning "shelfless States".

Mr. HOLDER (Liberia) said, on a point of procedure, that consideration of paragraph 14 should be suspended and taken up again at a later stage.

The CHAIRMAN said he considered that the proposal of the Jamaican representative and the Rapporteur had been accepted, as well as the proposal by the Maltese representative, and that it would be better to return at a later stage to the expression "shelfless States" suggested by the representative of Chile and opposed by the representative of Singapore.

Mr. CABRAL DE MELLO (Brazil) supported the Chilean proposal. The subject of "shelfless States" had, in fact, been discussed.

Mr. BEESLEY (Canada) said the important thing was that the text of the report should reflect the diversity of States; otherwise, the list in brackets should be deleted.

Mr. FRANCIS (Jamaica) supported the statement by the representative of Singapore. It was not a question of establishing categories of States but of indicating the types of States mentioned during the debate and the Committee should hold to that objective.

Mr. BEEBY (New Zealand) said that his delegation had withdrawn its proposal that the expression "island States" should be included, on the understanding that the list was not a complete one. He asked the representative of Chile to adopt the same position.

Mr. de SOTO (Peru) said that the only controversial point was the establishment of a complete list. He supported the proposal of the Chilean representative that "shelfless States" should be mentioned in the list.

Mr. HOLDER (Liberia) recalled the procedural proposal he had made.

The CHAIRMAN said that if there were no objections, he would take it that that proposal was accepted.

It was so decided.

Paragraph 15

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that there were two minor errors in the text: in the fifth line of the English text, "s" should be added to the word "Delegation" after the words "Working Paper submitted by" and, in all versions of the text, the words "and Add.1" should be added after "A/AC.138/45" in the same sub-paragraph.

At the request of Mr. Iturriaga (Spain), the CHAIRMAN asked the Secretariat to bring the Spanish version into line with the English and French versions by adding Guyana to the list of Latin-American countries which had submitted a list of subjects and issues (proposal contained in document A/AC.138/56).

Paragraph 15, as amended, was adopted.

Paragraph 16

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that it was difficult to give a definitive form to the paragraph until the Working Group had finished its work. He proposed that the Sub-Committee should consider paragraph 17.

Mr. PARDO (Malta) endorsed the Soviet proposal. In addition, he proposed that, after paragraph 16, a paragraph 16A should be inserted to read:

> "One delegation suggested that in view of the wording of resolution 2750 C (XXV) and of the comprehensive content of some of the lists of subjects and issues submitted for consideration, it would be appropriate were the Sub-Committee to recommend to its parent Committee, and through it to the General Assembly, that the title of the present Committee be changed to "United Nations Committee for the Peaceful Uses of the Sea-Bed and Preparatory Committee for

the Law of the Sea Conference", or some similar title. This would reflect more closely the actual work of the Sub-Committee and of its parent Committee.

The same delegation suggested that the functions of the three Sub-Committees of the United Nations Committee on the Peaceful Uses of the Sea-Bed should be re-arranged to reflect in a more rational manner both the comprehensive nature of the responsibilities of the Committee with regard to ocean space as a whole, and the broad categories in which the items proposed for discussion by various delegations could be grouped. In addition, this delegation was of the opinion that it would be useful were a general secretary appointed to direct the Secretariat of the Main Committee, and of its Sub-Committee. The delegation in question expressed the view that unless such action were taken in a near future, it might be difficult for the work of the Committee to proceed smoothly for much longer."

Mr. OLMEDO-VIRREIRA (Bolivia) said that, in view of the length of the text proposed by the Maltese representative, its consideration should be postponed until a later stage.

Mr. KHLESTOV (Union of Soviet Socialist Republics) asked whether delegations were entitled to submit their ideas on that proposal immediately.

The CHAIRMAN said that, at the request of the Bolivian representative, and if there were no objections, the text in question would be considered at a later stage, after it had been distributed, and after paragraph 16 had been considered.

It was so decided.

Mr. OLSZOWKA (Poland) said that there was a point he wished to clarify. The Sub-Committee should consider the report and the new proposals immediately.

After having submitted his text, the representative of Malta had, in view of the opposition indicated by many delegations, stated that he would limit himself to making his ideas known and would not submit a formal proposal. Strictly speaking, therefore, there was no Maltese proposal before the Sub-Committee. If such a proposal was mentioned in the Report, the real situation would not be faithfully reflected.

The CHAIRMAN said that it was a question not of adopting the proposal but of considering at a later stage whether the text should be included in the report.

Mr. OLSZOWKA (Poland) said that the second statement by the Maltese representative definitely meant that he had withdrawn his proposal. If the representative of Malta had made a new proposal, that had not been done at the proper time.

Mr. PARDO (Malta) said he wanted to clear up any misunderstanding. His delegation had tabled proposals relating to the title of the Committee, reorganization of the Sub-Committee's terms of reference and the possible appointment of a secretary-general. It had declared that it would not insist on those proposals, but that did not mean that it did not wish its views to be reflected in the draft report.

The CHAIRMAN said that any delegation could ask for its views to be cited in the draft Report. The Sub-Committee would decide at a later stage whether the Maltese proposal had been withdrawn, as the Polish representative maintained, or whether it had been reiterated as stated by the Maltese representative.

Mr. OLSZOWKA (Poland) said he accepted that procedural proposal, in view of the reasons given.

Paragraph 17

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that, after the words "Draft Ocean Space Treaty", in the last sentence of the paragraph, an asterisk should be added referring to a footnote reading: "Not yet circulated".

Mr. DE SOTO (Peru) was surprised at the difference in treatment between the two sets of draft treaty articles quoted, the first of which appeared in Annex X and the second of which was not annexed to the report. He recalled that under paragraph 1 of the Report and in accordance with the Agreement on the Organization of Work of 12 March 1971, the Sub-Committee was authorized to prepare draft articles before completing the comprehensive list of subjects and issues related to the law of the sea. It seemed to him that that decision had not really been followed. Paragraph 9 of the draft report quoted the Chairman's statement authorizing delegations to submit concrete proposals, including draft articles, and to make statements explaining those proposals. According to paragraph 12, the Sub-Committee had concluded the first stage of its work, namely the general debate on the questions referred to it, and had started the preparation of a comprehensive list of subjects and issues relating to the law of the sea.

Opinions were divided on the question of drafting the articles before completing the list. He considered that it would prejudice the Sub-Committee's decision if draft articles concerning specific issues were annexed to the report before the list of subjects and issues had been drawn up. The position of Governments and delegations which had not participated in the work of the Sub-Committee did not seem clear, and he therefore hesitated to approve paragraph 17.

Mr. CABRAL DE MELLO (Brazil) agreed with the comments made by the representative of Peru concerning the annexes to the report. The American proposal (A/AC.138/SC.II/L.4) was the only one which dealt with a basic issue. As it had not been discussed by the Sub-Committee, it was important to wait until a later stage of the work before it was taken into account.

Mr. TRAORE (Ivory Coast) said that he did not understand why the Sub-Committee was hesitating to include in paragraph 17 the statement in question, which did not involve its responsibility; a reference to an annex in no way implied that the draft articles had been adopted.

Mr. FRANCIS (Jamaica) said that the mere fact that delegations had referred many times to the draft articles would justify their inclusion as an annex.

Mr. CABRAL DE MELLO (Brazil) said that although he opposed the inclusion of the draft articles as Annex X, he was quite prepared to accept a reference to those articles in the body of the report.

Mr. DE SOTO (Peru) said that he wished the report to state clearly that no decision had been taken on the subject of that document.

Mr. PARDO (Malta) asked whether the working paper submitted by his delegation would be annexed either to the report of the Sub-Committee or to that of the plenary Committee.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, replied that the text submitted by the delegation of Malta was not solely of interest to Sub-Committee II and that the plenary Committee should decide if that document (A/AC.138/53) was to be annexed to its report.

Mr. ITURRIAGA (Spain) said that his delegation supported the proposal submitted by the delegations of Peru and Brazil to the effect that the draft articles should not be annexed to the report.

Mr. OLSZOWKA (Poland) considered that the inclusion of the draft articles as an annex would facilitate the work of the Committee, of the General Assembly and later of the 1973 Conference.

Mr. DE SOTO (Peru) maintained his proposal.

Mr. DEJAMMET (France) said that the fact that the Sub-Committee might decide to include a document as an annex did not mean that it had given its formal approval to that document. While understanding the reasons behind the proposals of Peru and Brazil, his delegation felt that it would be preferable to annex both the draft articles submitted by the United States and the working paper submitted by the delegation of Malta.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) pointed out that if some delegations had submitted practical proposals in the form of draft articles or working papers, it was on the express invitation of the Chairman, made on 3 August 1971 as stated in paragraph 9 of the report. It would be a contradiction on the part of the Sub-Committee not to annex the drafts which had been submitted in reply to a formal invitation by the Chairman.

Mr. TUKURA (Nigeria) said that his delegation accepted paragraph 17 in its present form.

Mr. STEVENSON (United States of America) thought that the inclusion of the draft articles as an annex would be in accordance with the well-established procedure of the Committee. His delegation saw no risk in following that procedure, especially if the text of the report made it quite clear that the annexed documents had not received the formal approval of the Sub-Committee.

Mr. KHLESTOV (Union of Soviet Socialist Republics) stated that the report was a means of communication between the Sub-Committee, the Committee and the General Assembly. In order that the General Assembly might be fully informed before coming to a decision, delegations should be in possession of the documents which had been submitted to the Sub-Committee. His delegation therefore considered that it would be a normal procedure to include as an annex, for information purposes, the draft articles submitted by the United States, even though those draft articles had not been adopted by the Sub-Committee. With reference to the working paper submitted by the delegation of Malta, it appeared

that it had not been translated into all the languages, at any rate not into Russian; nor had it been discussed. In those circumstances his delegation approved the present version of paragraph 17, which did not mention the inclusion of the Maltese working paper as an annex.

Mr. BRAZIL (Australia) proposed that it should be stated, at the end of paragraph 17, that the proposals in question had been submitted in accordance with the procedural arrangements mentioned in paragraphs 1 and 9.

Mr. PARDO (Malta) said that he would like to be assured that the working paper submitted by his delegation would be annexed, either to the report of Sub-Committee II or to that of the Committee. He would revert to the question at the plenary meeting.

Mr. STANGHOLM (Norway) said that he was in favour of inserting as an annex the draft articles submitted by the United States and the working paper submitted by the delegation of Malta.

Mr. HOLDER (Liberia) thought that the draft articles submitted by the United States should be annexed to the report, but that the Malta working paper, which had never been submitted to the Sub-Committee, ought not to be annexed.

Mr. MALINTOPPI (Italy) thought that the inclusion as an annex of the draft articles presented by the United States was in accordance with established practice. With reference to the working paper submitted by the delegation of Malta, the Committee would decide whether or not it should be annexed to its report.

Mr. KANIARU (Kenya) shared the opinion of the delegations of Australia and the USSR and requested that the draft articles submitted by the United States should appear as an annex.

Mr. AGUILAR (Venezuela), taking up and re-phrasing the Australian proposal, suggested that the text should convey that, in accordance with the decision adopted by the Committee, as quoted in paragraph 9 of the Sub-Committee's report, the proposals submitted would be discussed when the Sub-Committee considered it advisable.

Mr. DEUSTUA (Peru) proposed the insertion at the beginning of the first sentence of the following phrase: "Although the Sub-Committee had not decided that it had reached the stage where it could begin to draft articles..." The rest of the text of the paragraph would follow in its present form, ending with the phrase proposed by the delegation of Venezuela.

Mr. KHLESTOV (Union of Soviet Socialist Republics) proposed to convey that the discussion of those draft articles would be pursued and that the Sub-Committee would pass on to the preparation of the text in due course.

Mr. JAGOTA (India) thought that the annexing to the report of the draft articles submitted by the United States would be in accordance with the invitation of the Chairman, as stated in paragraph 9 of the report. His delegation would accept, however, that the text of those draft articles should be inserted elsewhere, for example as an annex to the full Committee's report.

The CHAIRMAN proposed to invite the sponsors of amendments or proposals, namely the representatives of Australia, Venezuela, Peru and the USSR, to meet in order to prepare an agreed text which could be approved by the Sub-Committee.

Mr. D'ANDREA (Italy) wished to state that the American draft articles had been examined by at least one delegation, namely his own delegation. On that occasion Article 2 had been mentioned. His delegation had not referred to Article 3, but it had certainly intervened regarding the draft articles, as had been noted in the relevant summary record.

On all those grounds of procedure, his delegation was prepared to accept paragraph 17 with no addition. Comments had indeed been made on those draft articles, and discussion of them had not been postponed until the next session.

Mr. ITURRIAGA (Spain) supported the opinion of the representative of India with regard to the interpretation of the decision of the Chairman of the Sub-Committee authorizing delegations to submit concrete proposals and make statements explaining those proposals. A delegation which had gone against that decision could hardly be rewarded by having its intervention included in the report. The Sub-Committee seemed to have come to an agreement on the Indian proposal, with which the proposals of Australia, Venezuela and Peru should be associated.

Mr. STEEL (United Kingdom) said that he entirely shared the view of the Italian delegation. He had been very surprised to hear it said that there had been no discussion concerning the draft articles. The American draft articles had indeed been the subject of a number of statements, not only from the Italian delegation, but also from the United Kingdom delegation and, if he recollected rightly, those had not been the only interventions. There would

appear to be a certain amount of confusion in the Sub-Committee. Of course the draft had not been studied article by article, but the substance of some articles had been discussed. His delegation therefore thought that it would be wrong for the Sub-Committee to state in its report that the draft articles in question had not been examined.

The CHAIRMAN invited the sponsors of the various proposals (Australia, India, Peru, Union of Soviet Socialist Republics and Venezuela) to discuss the matter with the Rapporteur, after the meeting, in order to prepare a text which would be satisfactory to the Sub-Committee as a whole.

It was so decided.

The meeting rose at 6.30 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

held on Wednesday, 25 August 1971, at 9.15 p.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

Paragraph 18

Mr. RAGEL (Mauritania) proposed that, at the end of the first sentence, the words "exclusive and" should be inserted before the words "preferential rights" in document A/AC.138/SC.II/L.5.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, pointed out that the wording used for the various questions listed in the first sentence had been taken from operative paragraph 2 of General Assembly resolution 2750 C (XXV). It would be therefore difficult to depart from that language in the manner just suggested. The point raised by the representative of Mauritania was covered in the first sentence of paragraph 22.

Mr. RAGEL (Mauritania) replied that the first sentence of paragraph 18 made no reference to the resolution; it described the matters discussed during the debate, matters which had included not only the preferential rights but also the exclusive rights of coastal States.

Mr. SIMPSON (United Kingdom) said that the opening words of the first sentence of paragraph 18 did not accurately reflect the proceedings of the Sub-Committee. In actual fact, there had been a discussion in some depth, and not just a preliminary debate, on the matters mentioned in that sentence. He therefore suggested that the opening words should read: "The debate covered aspects of the régime of the high seas..."

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) opposed the proposal by the Mauritanian delegation. The introduction of a reference to "exclusive" rights of coastal States would upset the delicately balanced compromise reflected in the terms of operative paragraph 2 of General Assembly resolution 2750 C (XXV); it would also represent a departure from the course of action adopted by the Sub-Committee and by the main Committee at the March session. He therefore urged retention of the present wording.

Mr. YANKOV (Bulgaria) said that paragraph 18 was an introductory paragraph which enumerated the subjects specified in General Assembly

resolution 2750 C (XXV), while paragraphs 19 to 25 described the actual debate on the various subjects. He therefore suggested that a specific reference to General Assembly resolution 2750 C (XXV) should be introduced into paragraph 18.

Mr. LAPOINTE (Canada) said that paragraph 18 would be quite superfluous if it were merely to repeat parts of General Assembly resolution 2750 C (XXV). In fact, however, the purpose of the paragraph was to indicate the subjects which had been discussed by the Sub-Committee, as was shown by the opening words: "The debate ...". The Sub-Committee had to choose between two courses: either to refer in paragraph 18 to the contents of General Assembly resolution 2750 C (XXV) or to reflect the actual debate, in which case the proposal by the delegation of Mauritania should be adopted.

Mr. ARIAS SCHREIBER (Peru) suggested that the difficulty could be overcome by leaving the list of subjects as it stood, in line with operative paragraph 2 of General Assembly resolution 2750 C (XXV), and adding at the end of the first sentence of paragraph 18 the words "and other related matters".

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, suggested that the opening words of the first sentence of paragraph 18 should be amended to read as follows: "The debate covered topics referred to in General Assembly resolution 2750 C (XXV) relating to the régime ...".

Mr. SIMPSON (United Kingdom) accepted the wording suggested by the Rapporteur.

Mr. RAGEL (Mauritania) said that the Rapporteur's suggested wording did not fully satisfy him. Paragraph 18 should either quote General Assembly resolution 2750 C (XXV) or else describe the subjects dealt with during the debate; in the latter case, it was essential to refer to the question of the exclusive rights of coastal States, which was one of the points discussed by the Sub-Committee.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said he could support the Rapporteur's suggestion for the opening words, but opposed the Mauritanian proposal to insert a reference to the "exclusive" rights of coastal States.

Mr. FRANCIS (Jamaica) suggested that the first sentence of paragraph 18 should start with the words "The debate covered topics referred to in General Assembly resolution 2750 C (XXV)", as proposed by the Rapporteur and continue

"namely, the regime ...". The passage which followed would remain unchanged but would be placed between quotation marks. The words "and other related matters" would be inserted at the end of the sentence and outside the quotation marks. That wording should meet the point raised by the representative of Mauritania.

Mr. ANDERSEN (Iceland) supported the Jamaican proposal.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that the Jamaican proposal was quite acceptable to him.

Mr. LAPOINTE (Canada) said that he persisted in his view that paragraph 18 should either quote General Assembly resolution 2750 C (XXV) or faithfully reflect the debate which had taken place in the Sub-Committee.

Mr. RAGEL (Mauritania) supported that view.

The CHAIRMAN suggested that the Sub-Committee should suspend its consideration of paragraph 18 in order to enable the Rapporteur to discuss its wording with the various delegations and attempt to produce an agreed text.

It was so agreed.

Paragraph 19

Mr. PARDO (Malta) said he was not certain what was meant by the expression "and its components and regulation" in the third line of the paragraph. He wished to ask the Rapporteur what the "components" of the freedom of the high seas were and whether the word "regulation" referred to the freedom of the high seas. In the fifth line, he suggested that the words "fishing and regulation" should be replaced by: "commercial fishing and management". The reference to "jurisdiction over artificial islands" was not quite accurate, since the paper submitted by the representative of Belgium (A/AC.138/35) had been concerned with the legal status of artificial islands rather than jurisdiction over them.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that the freedom of the high seas comprised four separate freedoms and the term "components" referred to them. He would be willing to insert the word "management" after the word "regulation" in the fifth line of the paragraph. The expression "jurisdiction over artificial islands" had been point 4 in the letter from the representative of Belgium dated 23 April 1971.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said that regulation of freedom was an unfortunate expression. It was possible to speak of the scope or content of freedom but hardly of its regulation.

Mr. ARIAS SCHREIBER (Peru) said that the freedom of the high seas was not total or absolute. There were certain restrictions in relation to pollution and other aspects.

Mr. BARABOLIA (Union of Soviet Socialist Republics) agreed that the expression "regulation of freedom" was an unfortunate one. He suggested "regulation of types of activity", which was both simpler and more comprehensive.

Mr. DEJAMMET (France) also thought the expression an unfortunate one. Freedom subjected to regulation was a contradiction in terms. He did not, however, think it would be difficult to agree that there was a principle of "freedom of the high seas" on the one hand and, on the other hand, regulation of activities. He consequently supported the proposal made by the USSR representative.

Mr. ARIAS SCHREIBER (Peru) said that a point of substance was involved. Freedom with no regulation at all was licence. Although some delegations had supported the concept of the absolute freedom of the high seas, there were others which considered it should be regulated. The report had to reflect what had actually occurred in the debate.

Mr. RAZAKANAIVO RABEVAZAHA (Madagascar) proposed that the words "and regulation" in the third line should be replaced by "as well as conditions of exercise of this freedom".

Mr. DEJAMMET (France), Mr. ARIAS SCHREIBER (Peru) and Mr. BARABOLIA (Union of Soviet Socialist Republics) said they were able to accept the proposal by the representative of Madagascar.

It was so decided.

Mr. MCKERNAN (United States of America) said that the reference in the sixth line should be to paragraph 22.

Mr. SETTER (Australia) suggested that in the fifth line the words "fishing and regulation" should be replaced by "fishing, management of fisheries".

Mr. PARDO (Malta) and Mr. MBOTE (Kenya) supported the Australian proposal.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that his own and other delegations had talked specifically about "regulating" the fishing industry. The term "management" suggested direct administration and was thus not appropriate. There were no international organizations which could "manage" the fishing industry but there were organizations which "regulated" it.

Mr. PANIKKAR (India) said that his delegation still preferred the Australian wording.

Mr. FRANCIS (Jamaica) said that the word "management" had the connotation of an establishment or enterprise, whereas the word "regulation" signified the bye-laws and administrative decisions covering the enterprise. He suggested including both words.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said he could accept the Jamaican proposal.

The Jamaican proposal was adopted.

Mr. PARDO (Malta) proposed the addition of the words "legal status and" before the word "jurisdiction" in line 7.

It was so decided.

Mr. FARHANG (Afghanistan) proposed that the words "and related issues" should be inserted after the words "land-locked States" in the seventh line.

It was so decided.

Paragraph 19, as amended, was adopted.

Paragraph 20

Mr. PINTO (Ceylon) said that the expression "continental shelf of islands" was rather obscure. If the reference was necessary at all, the word "isolated" should be inserted before the word "islands" or, better still, the phrase should read "to the regime of the continental shelf of isolated islands".

Mr. LAPOINTE (Canada) said that the point raised by the representative of Ceylon was a valid one. The islands concerned, however, need not necessarily be isolated; they might even be offshore.

Mr. BARABOLIA (Union of Soviet Socialist Republics) proposed that the words "(excluding island States) separate, isolated and remote from continents" be inserted after the word "islands".

Mr. LAPOINTE (Canada) said that islands might be isolated without being remote from continents; they might belong to a State remote from the continent to which they were close. He proposed that the word "certain" should be inserted before the word "islands".

Mr. ARIAS SCHREIBER (Peru) said he would prefer the word "various" to the word "certain".

Mr. PINTO (Ceylon) said that the Peruvian amendment did not meet the case. The islands had specific characteristics; they were remote from their administering Powers, were usually small and had tiny populations.

Mr. HERRERA MARCANO (Venezuela) suggested that the text should read: "the special problems related to the continental shelf of certain islands".

It was so decided.

Mr. MCKERNAN (United States of America) proposed that the word "its" in the third line of the paragraph should be replaced by the word "the". His own country had ratified the 1958 Convention on the Continental Shelf,[1/] which gave sovereign rights to the coastal State with respect to the exploration and exploitation of the resources of the continental shelf but did not regard the continental shelf as being the property of the coastal State. Other nations had different views on the subject. He was therefore suggesting a neutral wording.

Mr. D'ANDREA (Italy) proposed that the word "sovereign" in the second line should be deleted.

Mr. DE LA GUARDIA (Argentina) said that the proposals by the representatives of the United States and Italy were quite appropriate from the point of view of parties to the 1958 Convention. Other countries, however, including his own, were not parties to the Convention and had proclaimed their sovereignty over the continental shelf adjacent to their coasts. The formula used by the Rapporteur exactly reflected that situation.

Mr. ARIAS SCHREIBER (Peru) said he agreed with the representative of Argentina that the Rapporteur's wording was perfectly satisfactory.

Mr. MCKERNAN (United States of America) said that the existing wording was completely unacceptable to his delegation. He was not trying to impose the views of his own delegation but to provide a completely neutral formula. Since his first attempt had not met with success, he proposed that the words "adjacent to its coast" should be inserted after the word "shelf" in the third line.

Mr. KANIARU (Kenya) proposed the phrase: "the sovereign rights of coastal States with respect to continental shelves".

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that he would be able to support the Kenyan proposal if the word "sovereign" was omitted.

Mr. TUDOR (Romania), asked the Rapporteur to include a mention in the report of the question of the delimitation of the continental shelf between States, either separately or in the context of the continental shelves of islands. In the general debate, his delegation had raised a certain aspect of that question, which appeared to be of concern to other States, since it was included in the various draft lists of subjects and issues.

1/ United Nations, Treaty Series, Vol. 499, p.311

Mr. MCKERNAN (United States of America) said that his delegation was able to accept the Kenyan proposal.

Mr. BROWN (Australia) said his delegation would have difficulties with the Soviet amendment to the Kenyan proposal. Points had, in fact, been made by a number of delegations concerning the sovereign rights of coastal States with respect to the continental shelf.

Mr. NLEND (Cameroon) said that, since the sentence began with the words "As to the continental shelf", the words "with respect to its continental shelf" in the third line could be omitted.

Mr. DE LA GUARDIA (Argentina) proposed that, in the second line, the word "relevant" should be inserted between the words "the" and "sovereign" and the words "with respect to its continental shelf" deleted.

Mr. MCKERNAN (United States of America) and Mr. BARABOLIA (Union of Soviet Socialist Republics) agreed to the Argentine proposal.

The Argentine proposal was adopted.

Paragraph 20, as amended, was adopted.

Paragraph 21

Mr. PANIKKAR (India) said that paragraphs 21 to 23 were extremely concise and constituted little more than a catalogue of the items discussed. He would have preferred an approach whereby the extent of the differences of opinion within the Sub-Committee would have been broadly indicated.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that, if the Sub-Committee had had more time to deal with the matter, he would have agreed with the Indian representative. In the circumstances, however, he was not in favour of approving paragraph 21. The summary records were available and reflected all the viewpoints put forward.

Mr. ARIAS SCHREIBER (Peru) said that, in principle, he favoured the Indian approach but there had simply not been time for it.

Mr. CABRAL DE MELLO (Brazil) proposed that, in the ninth line, the word "concerned" should be replaced by the word "concerning", and that the brackets should be deleted.

Mr. SMALL (New Zealand) proposed that in the last line but one, the words "Existing civil aviation regulations were" should be replaced by the words "The existing international law as to civil aviation was". The expression "civil aviation regulations" normally referred to something extremely specific such as the regulations of the International Civil Aviation Organization.

Mr. MALINTOPPI (Italy) said that the reference had been to the 1944 Chicago Convention[2/] and he could see no reason why the Convention was not specifically mentioned. The existing wording might be regarded as referring to texts other than the Chicago Convention or even to customary law.

As for the proposal by the Brazilian representative, his own delegation preferred the Rapporteur's original version. The part of the sentence in brackets had been included by way of example.

Mr. DEJAMMET (France) asked the Brazilian representative whether the aim of his amendment was to refer to the interests of all coastal States or simply to coastal States bordering on straits.

Mr. CABRAL DE MELLO (Brazil) said that he had intended to refer to the interests of all coastal States. His only aim was to reflect more adequately the views expressed by delegations concerning the security requirements of coastal States, and he did not see that that could in any way upset the balance of the paragraph.

Mr. AYALA-LASSO (Ecuador) proposed that in the fourth line, the words "which should be followed" should be deleted.

It was so decided.

Mr. LAPOINTE (Canada) said that the paragraph, as originally drafted, referred to the interests of coastal States bordering on straits. That was the significance of the word "concerned". He fully agreed with the Brazilian representative that the rights of coastal States should be stressed at an appropriate point in the report, but paragraph 21 was not that point.

In the seventh and eighth lines, there were references to the "question of straits used for international navigation" and "innocent passage through these straits", while two lines further on, there was a reference to "free transit through and over straits and the interests of international navigation". He wondered what interests international navigation could have in straits which were not international

Mr. DEJAMMET (France) said he could accept the Brazilian proposal if the English word "concerning" was translated by the French word "concernant".

2/ United Nations, Treaty Series, Vol. 15, p.295.

Mr. ITURRIAGA (Spain) said he preferred the existing text, which referred to the interests of coastal States bordering on straits.

The CHAIRMAN suggested that the Sub-Committee defer consideration of the paragraph until the following meeting.

Paragraph 17

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that an agreement had been reached concerning paragraph 17. There was a joint proposal supported by all the delegations which had sponsored amendments to that paragraph that the following words should be added at the end of the paragraph "Some comments on these proposals were made in the course of the general debate. Detailed examination will take place subject to the guidelines contained in paragraph 9 and the decision to be taken on the drafting of articles referred to in paragraph 1."

The CHAIRMAN said that, if there were no objections, he would take it that the text read by the Rapporteur was approved.

It was so decided.

Paragraph 17, as amended, was adopted.

The meeting rose at 12.30 a.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

held on Thursday, 26 August 1971, at 3.45 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE

Paragraph 18

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, read a revised version of paragraph 18 of the draft report (A/AC.138/SC.II/L.5) which was based more closely on General Assembly resolution 2750 (XXV) than the original text.

Mr. RAGEL (Mauritania) considered that the new version was an improvement on the original.

Paragraph 18, as so revised, was adopted.

Paragraph 21

The CHAIRMAN recalled that paragraph 21 had been passed to a drafting group for rewording.

Paragraph 22

Mr. OLSZOWKA (Poland) asked for the question of the legitimate interests of other States and that of the contribution of the Intergovernmental Fishery Commissions to be added to the list given in paragraph 22.

Mr. PINTO (Ceylon) requested that after the reference to preferential zones mention should be made of the question of such zones in relation to certain islands.

Mr. FARHANG (Afghanistan) supported the idea of mentioning the legitimate rights of other States, as requested by the representative of Poland.

Mr. PANNIKAR (India) requested that the reference to exclusive and preferential rights of coastal States should be replaced by a reference to exclusive fishing zones and to the preferential rights of coastal States in areas adjacent to the exclusive zone.

Mr. DJALAL (Indonesia) supported the proposal made by the representative of India.

Mr. SETTER (Australia) requested that the fishery management zones should be mentioned.

Mr. PINTO (Ceylon) supported the suggestion of the representative of India.

Mr. CHAO (Singapore) requested that reference should be made to the special situation of land-locked and shelf-locked countries.

Mr. LAPOINTE (Canada) proposed that the sponsors of proposals and amendments should meet to prepare a text which could be approved by the Sub-Committee.

It was so decided.

Paragraph 23

Mr. STEVENSON (United States of America) wondered whether it was advisable to include paragraph 23 in the report, since it referred mainly to questions entrusted to Sub-Committee I.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, pointed out that all those questions had been mentioned and discussed at length in Sub-Committee II: this justified the reservation of a special paragraph for them in the report.

Mr. AYALA-LASSO (Ecuador) requested that paragraph 23 should be retained.

Paragraph 23 was adopted.

Paragraph 24

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, stated that after consultation with several delegations, he considered it advisable to mention the question of enclosed or semi-enclosed seas.

Mr. PINTO (Ceylon) proposed the replacement of the phrase "reference was made to questions such as universal arrangements", in the first sentence, by the words "reference was made inter alia to universal arrangements". He also proposed the replacement of the words "training and sharing of knowledge and transfer of technology" by the words "the need for training and sharing of knowledge and transfer of all types of ocean oriented technology".

Mr. NJENGA (Kenya) proposed the insertion of a new sub-paragraph to read as follows:

> "As regards training and sharing of knowledge and transfer of technology it was proposed that the Sub-Committee through the parent Committee should recommend to the General Assembly to request the relevant United Nations Specialized Agencies and the industrial and developed States to expand or accelerate training of personnel from the developing States in all aspects of marine science and technology."

Mr. NLEND (Cameroon) said he thought that instead of speaking of conservation of the marine environment it would be preferable to refer to the preservation of the marine environment.

Mr. RAGEL (Mauritania), Mr. BARABOLIA (Union of Soviet Socialist Republics) and Mr. PERISIC (Yugoslavia) supported the proposal of the representative of Kenya.

Paragraph 24, as amended, was adopted.

Paragraph 25

Mr. PINTO (Ceylon) thought that it would be justifiable to attribute to the Sub-Committee itself the views formulated in the second and third sentences of the paragraph.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, thought that the representative of Ceylon would be satisfied if the paragraph began as follows:

> "The work accomplished by the Sub-Committee in 1971 constitutes an indispensable step forward to the completion, at a later stage, of the tasks entrusted to it. Delegations were mindful of the complexity and interrelation of the subjects and functions allocated to the Sub-Committee. They were also mindful that consultations and negotiations among delegations were important ...".

Mr. BRAZIL (Australia) supported the proposal of the representative of Ceylon and the way in which the Rapporteur had suggested including it in the report. He also proposed to add, at the end of paragraph 25, a new sentence to read as follows:

> "The Sub-Committee noted that delegations would be assisted by the early presentation, in accordance with paragraph 9 above, of any other proposals intended for consideration by the Sub-Committee in accordance with paragraph 1 above."

In view of the approaching Conference on the Law of the Sea, it would be advisable for the Sub-Committee to have positive proposals upon which to concentrate its efforts.

Mr. DE SOTO (Peru) proposed the replacement, in the third sentence, of the words "workable and viable" by the words "workable, viable and equitable" and the addition of the words "the economic and social progress of the developing countries" after the words "friendly relations among States".

With regard to the new sentence proposed by the representative of Australia, many delegations were hoping that the Sub-Committee would avoid going too quickly and telescoping the various stages of its work, as that could have adverse effects on the nature and scope of the conference on the law of the sea.

He therefore proposed the following sentence in place of the Australian amendment:

"The Sub-Committee noted that delegations might be assisted by the presentation, in accordance with paragraph 9 above, of any proposals intended for consideration by the Sub-Committee in accordance with paragraph 1 above."

Mr. BARABOLIA (Union of Soviet Socialist Republics) requested the Rapporteur to make an amendment which concerned the Russian text only, by replacing in the seventh line the word "discussion" by the word "examination". He supported the text proposed by the Rapporteur and considered that the amendment to the original version of paragraph 25 resulted in a very well-balanced text.

He also thought that the Australian proposal would improve the wording of the paragraph. Finally he saw no objection to the proposal made by the representative of Peru; he simply wondered whether the words "the economic and social progress of the developing countries" might not be replaced by the words "the economic and social progress of all States, including the developing countries". The sentence would thus gain in clarity.

Mr. THOMPSON-FLORES (Brazil) opposed the proposal concerning the nature of the progress that had been made and proposed to say simply, in the first and second lines, "constitutes a step forward towards the completion, at a later stage, of the tasks entrusted to it". His delegation was prepared to accept the addition of the word "fair" or "equitable" after the word "viable" and also the addition proposed by the representative of Peru concerning the economic and social progress of the developing countries, which he considered to be a significant improvement to the text. With regard to the comment made by the representative of the Union of Soviet Socialist Republics, it was well known that the highly developed countries were responsible for their own progress, and it would be sufficient to say "to contribute to the economic and social progress of the developing countries".

His delegation found some difficulty in accepting the amendment proposed by the representative of Australia, even as modified by the representative of Peru. In paragraph 9 of the draft report to which reference was being made, it was stated that delegations might submit concrete proposals, including draft articles and might make a statement explaining those proposals. It was not stated that it would be useful if delegations submitted proposals. To accept the Australian text would amount to saying that the Sub-Committee had decided that delegations would be assisted by the presentation of those proposals. In fact, the Sub-Committee had

come to no such conclusion. Such proposals could, of course, be formulated and commented on by their sponsors, but the main issue was the method of work, i.e. the preparation of a list of subjects and issues relating to the law of the sea, of which the order of priority would be settled later. It was important not to prejudice the decisions of the Sub-Committee and his delegation could not therefore accept the Australian proposal.

The CHAIRMAN pointed out that the proposal made by the representative of Brazil to delete the word "valuable" would mean that progress had been slight or unimportant.

Mr. YANKOV (Bulgaria) said he supported the Rapporteur's proposal, since it constituted an improvement to the text. His delegation could also accept the Australian suggestion concerning the Sub-Committee's future work and the requirements it entailed. It seemed clear, however, that the task of the Sub-Committee would be simplified if delegations put forward proposals in conformity with paragraph 9 of the report. It would be a pity to close the present session, after such lengthy discussions, without appealing to delegations to do all in their power to help the Sub-Committee in its future work. Admittedly, the latter's task comprised several stages, but that was no reason for not making every effort to accelerate the work by all possible means. The most reasonable method was therefore to formulate precise and specific proposals in accordance with paragraph 9.

He could also support the amendment proposed by Peru provided it specified, as did the text initially suggested by the Australian representative, that "The Sub-Committee noted that ..." and went on to state that delegations would be assisted by the "early" presentation of other proposals. Moreover, his delegation accepted the addition of the word "equitable". So far as the economic and social progress of the developing countries was concerned, a balanced solution might be to refer to the "economic and social progress of all States and more particularly of the developing countries".

The CHAIRMAN noted that there seemed to be some support for the Rapporteur's proposal.

Mr. PARDO (Malta) asked the Peruvian representative whether, in the English text, the word "fair" might be replaced by "equitable", and whether he would agree to the words "workable, viable and equitable solutions which would promote the general interests of the international community".

The CHAIRMAN said that if there was no objection, he would consider the Rapporteur's proposal accepted, together with the Maltese representative's proposal to delete two words from the second line of the text.

Mr. DE SOTO (Peru) saw no difficulty in replacing the word "fair" by "equitable".

The CHAIRMAN said that in the absence of any objection, he considered as accepted the Peruvian proposals (a) to add the word "equitable" in the third sentence and, (b), as amended by the Bulgarian representative, to refer to "the economic and social progress of all States and more particularly of the developing countries".

It was so decided.

The CHAIRMAN recalled that the representative of Peru had sought an amendment to the text proposed by Australia; he therefore requested him to consult the Brazilian representative on the matter with a view to presenting a text likely to satisfy all participants.

Mr. PARDO (Malta) reminded the Chairman that he had proposed to add, after the words "workable, viable and equitable solutions", the phrase "which would promote the general interests of the international community".

Mr. DE SOTO (Peru) pointed out that the addition proposed by Malta matched the wording advocated by Bulgaria and already adopted, namely, "the economic and social progress of all States and more particularly of the developing countries"; the Maltese proposal therefore lost much of its value.

Mr. PARDO (Malta) replied that, however important economic development undoubtedly was, the international community had general interests which should be safeguarded in any circumstances and which were not necessarily related to economic development.

The CHAIRMAN said that if there was no objection, he would consider the Maltese proposal adopted.

It was so decided.

The CHAIRMAN requested the members of the Sub-Committee to pronounce on the amendment proposed by the Peruvian representative to the text presented by Australia, and to which the Brazilian representative had objected.

Mr. THOMPSON-FLORES (Brazil) accepted the text proposed by Australia, as amended by the representative of Peru, and proposed the addition of a sentence reflecting the view of those delegations which had stressed the value of adopting a rational method of work.

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, suggested that the meeting should adjourn to allow those delegations interested in the paragraph under consideration, as well as those who wished to amend paragraph 22, to meet with a view to formulating a final text.

The meeting was adjourned at 5.25 p.m. and resumed at 5.55 p.m.

Paragraph 21

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, said that following the consultations held after the preceding meeting, it had been agreed that the first sentence of paragraph 21 should be amended as follows:

(1) After the words "plurality of régimes", add: "the protection of interests and security of coastal States";

(2) Replace the words "free transit ... and the interests of international navigation" by "the interests of international navigation and free transit through and over the above-mentioned straits."

The amendments proposed by the Rapporteur were adopted.

Paragraph 21, as amended, was adopted.

Paragraph 22

Mr. SETTER (Australia), speaking on behalf of the delegations that had drawn up a compromise text, said that agreement had been reached on an amended version of paragraph 22, which he read to the Sub-Committee. For the benefit of the Polish delegation he said that owing to the difficulties of defining the various zones to be considered, it had not been possible to insert the amendment proposed by the representative of Poland in exactly the place requested by the latter.

The new version of paragraph 22, as read by the representative of Australia, was adopted.

Paragraph 25

Mr. THOMPSON-FLORES (Brazil), presenting the compromise text worked out during the adjournment of the meeting, proposed that the following two new sentences should be added at the end of paragraph 25:

"It was noted that delegations would be assisted by the presentation, in accordance with paragraph 9 above, of proposals intended for consideration by the Sub-Committee in conformity with paragraph 1 above. However, emphasis was also placed on the desirability of following an adequate method of work according to which the preparation of a comprehensive list of subjects and issues relating to the law of the sea should precede the consideration of specific issues."

Mr. STEVENSON (United States of America) expressed concern over the fact that under the amendment proposed by the Brazilian representative, the Sub-Committee would not be able to examine specific issues at its next session, which would be devoted entirely to the preparation of the list of subjects and issues relating to the law of the sea.

Mr. THOMPSON-FLORES (Brazil) said that his delegation was not prepared to delete the second sentence of its amendment unless the first was also deleted.

Mr. BARABOLIA (Union of Soviet Socialist Republics) remarked that the proposed Brazilian amendment would mean a backward step on the part of the Sub-Committee, since its adoption would modify the method of work already ratified and clearly defined in paragraph 1 et seq of the draft report, which had already been adopted. The purpose of the proposed text was to oblige the Sub-Committee to confine itself to the consideration of a list of subjects and issues. At the present session, however, only two days had been devoted to the study of that list, whereas forty days had been spent on the thorough discussion of basic questions. Specific proposals had even been made.

If the Brazilian representative maintained his position, it would be better to reject both the proposed sentences.

Mr. BRAZIL (Australia) said that in view of the position adopted by the Brazilian representative, he would not insist that the first sentence proposed by his delegation should be inserted in the report of the Sub-Committee.

Paragraph 25, in the form proposed by the Rapporteur, was adopted.

Mr. YANKOV (Bulgaria) said he wished to express his delegation's disappointment at the fact that, at the end of the present session, the Sub-Committee was unable to state in its report that it would be useful for delegations to receive at an early date proposals presented in accordance with the decisions already taken.

It was unfortunate that the attitude of the Brazilian representative had taken the Sub-Committee back to the position in which it had been on 12 March 1971, and that the only way of reaching a solution should be to delete a sentence which called upon delegations to take steps to accelerate the Sub-Committee's work.

His delegation wished to make it clear that it shared none of the responsibility for that state of affairs.

Miss MARTIN-SANE (France) agreed with the Bulgarian representative.

Mr. FRANCIS (Jamaica) supported the decision of the Australian representative and said he fully understood the position of the Brazilian delegation.

His delegation had no regrets over the fact that the compromise amendment proposed by Brazil should have been rejected. In any event, the General Assembly could itself appeal to Member States to submit proposals at the earliest possible date.

Mr. DE SOTO (Peru) expressed astonishment at the statement made by the Bulgarian representative, which seemed to convey a veiled criticism of the Rapporteur. No sentence had been deleted from the report since after proposing the addition of a text, the Australian representative had withdrawn his proposal.

Mr. ZEGERS (Chile) was surprised that some members of the Sub-Committee should be singled out for blame. In fact, the misunderstanding had arisen from lack of agreement on the method of work. The most important need was to establish a list of subjects and issues and then to conduct political negotiations so that delegations could begin the preparatory work and start drafting articles. Once political agreement had been reached, work could begin on the preparation of drafts, which was primarily a technical exercise.

Articles drafted without method did not produce satisfactory results; it was therefore important that a rational method of work should be adopted. In any event, two specific proposals had already been formulated.

Mr. ORIBE (Uruguay) remarked that nobody should be surprised that it had taken some time to establish the list during the present session; moreover, that task had been imposed by General Assembly resolution 2750 C (XXV). In fact, the Sub-Committee had worked at the task entrusted to it, since several lists had been compiled.

Mr. SOBOLEV (Byelorussian Soviet Socialist Republic) asked why the examination of the list of subjects and issues should be given precedence over the drafting of articles.

Mr. YANKOV (Bulgaria) regretted that his statement had elicited so many comments. In fact, his delegation had raised the question on the basis of the text which stated that the establishment of the list of subjects and issues should

precede the examination of specific issues. If that was really the case, the Sub-Committee should never have considered certain proposals, as it had done. If the establishment of the list had to precede the examination of specific issues, what was the Sub-Committee to do at its next session? There was no reason why a list should not be drawn up quickly, since its importance warranted it; indeed, the fact had been stressed at the Committee's forty-eighth meeting. That meeting had been held in March 1971, and it was surprising to hear proposals still being made to the effect that the establishment of the list should precede the examination of specific issues. The Sub-Committee should work rationally and its members should do all they could to acquit themselves of the task entrusted to them under the terms of the General Assembly resolution.

The CHAIRMAN said that if there were no objections, he would consider that paragraph 25 was to stand, as modified by the amendments adopted before the adjournment of the meeting.

Paragraph 25, as amended, was adopted.

Paragraph 26

Paragraph 26 was adopted.

Paragraph 14

The CHAIRMAN said that it simply remained to be decided whether or not to include the words "shelfless States".

Mr. BOS (Netherlands) repeated his assertion of the previous day, namely, that the question of such countries had not been dealt with at any meeting.

Mr. ZEGERS (Chile) objected; the question of shelfless States had been raised during the discussions. If shelfless States were to be included in the list, account would also have to be taken of the position of some developing countries which, even if they had a continental shelf, had difficulties of access to the high seas. If the sentence in question related to small, medium and large Powers, there was no reason why that particular case should not be mentioned.

Mr. CHAO (Singapore) was not opposed to the addition of that expression if it had been used during discussions which should be reflected in the report. However, the term did not seem to have been used and did not appear in the summary records of the meetings.

Mr. DE SOTO (Peru) supported the statement of the Chilean representative and declared that the term "shelfless" did not appear in the summary records since

the statement relating to such States had been made in Spanish. In his view, that very special category of States should be mentioned in the Sub-Committee's report. Instead of "shelfless States", reference might be made to "States having narrow shelves".

Mr. BARABOLIA (Union of Soviet Socialist Republics) proposed that those members holding views for or against the term should hold consultations, and that the examination of the question should be postponed.

The CHAIRMAN insisted that the matter be settled without further delay.

Mr. PARDO (Malta) agreed with the Soviet representative, but proposed that the difficulty might be solved by purely and simply deleting the list contained in brackets. If the list was maintained, and it was agreed to add the term "shelfless", a note could be inserted to the effect that the precise meaning of that expression had not yet been determined.

Mr. FRANCIS (Jamaica) recalled that on the previous day he had supported the perfectly adequate solution proposed by the Soviet representative. The question, which then seemed practically to have been settled, now appeared to have been re-opened.

His delegation wished to restate its position: as a small delegation it had not been able to attend all the meetings, but, since the report was intended to reflect all the statements made or ideas advanced during the meetings, the term in question should not be mentioned in the report unless it had been used. One solution would be to delete the list of categories contained in brackets and simply refer to the interests of all countries and to the interests and special requirements of the developing countries and land-locked countries, in keeping with the indication given in General Assembly resolution 2750 (XXV).

Mr. CHAO (Singapore) agreed to the inclusion of the term "shelfless" in the list, although his delegation was not convinced that it had been used during the discussions.

Mr. BOS (Netherlands) also agreed to the inclusion of the term.

Paragraph 14, as amended, was adopted.

Paragraph 16

Mr. LAPOINTE (Canada), speaking as Chairman of the Working Group set up to harmonize the four draft lists of subjects and issues relating to the Law of the Seas, said that the unofficial consultations to which he had referred at the

twentieth meeting gave grounds for optimism as regards the harmonization of two of the four lists mentioned. He therefore hoped that it would be possible to postpone the final examination of paragraph 16 so that the unofficial consultations might continue.

The CHAIRMAN suggested that in the circumstances, the Sub-Committee should adopt paragraph 16 in its present form and reserve the right to complete it subsequently in the light of the results achieved by the Working Group.

Mr. FRANCIS (Jamaica) pointed out that the Sub-Committee would not have the opportunity to hold another meeting and should therefore decide in advance on the solution to be adopted, whether the Working Group reached agreement or not.

Mr. BARABOLIA (Union of Soviet Socialist Republics) proposed the addition of the following sentence at the end of paragraph 16 of the draft report:

> "The wish was expressed that the Group should pursue its work and present a brief report thereon, to be attached to the report of the Sub-Committee."

The Sub-Committee could then adopt that completed version of paragraph 16 without amendment.

Mr. STEVENSON (United States of America) said that his delegation was not prepared to agree to the attachment to the report of the Sub-Committee of a document which the latter had not examined. He therefore preferred paragraph 16 in the form in which it appeared in the draft report.

Mr. LAPOINTE (Canada) supported the United States representative. His delegation would prefer the solution suggested by the Chairman.

Mr. d'ANDREA (Italy) recalled that, according to the information given to the Sub-Committee at its twentieth meeting by the Chairman of the Working Group, the latter had never held any meetings. Its members had simply held unofficial consultations in the hope of reaching agreement. Although some delegations who had participated in those consultations belonged to regional groups, there were others, such as Canada and Norway, who had taken part in an individual capacity in order to defend their own lists of subjects and issues.

In such circumstances, his delegation did not consider it opportune to adopt the proposal put forward by the Soviet representative.

Mr. LAPOINTE (Canada) confirmed that some groups of countries, such as the European countries, were not represented at the consultations. His delegation therefore supported the Italian position.

Mr. BARABOLIA (Union of Soviet Socialist Republics) withdrew his proposal in favour of the solution suggested by the Chairman.

Paragraph 16 was adopted, subject to the reservation made by the Chairman.

Proposal by Malta

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that the problems raised by the text of an additional paragraph to follow paragraph 16 submitted by the Maltese representative at the twenty-first meeting were highly complex, and requested the latter to reconsider his proposal. Otherwise, his own delegation would reserve the right to express its views on the substance of the proposal and insist that its statement be reflected in the Sub-Committee's report.

Mr. PARDO (Malta) pointed out that the report was intended to reflect what had actually been said during the discussions, and that during the general debate at the nineteenth meeting his delegation had presented proposals aimed at changing the name of the Committee and at a redistribution of the functions of the three Sub-Committees and which were now condensed in the document before the Sub-Committee.

By way of compromise, he would be prepared to delete the last six lines of his text and to shorten the remaining two paragraphs by merging them; none the less, he wished his proposal to be mentioned in the report, even if it had to be followed by a sentence stating that some delegations had expressed disagreement.

Mr. YANKOV (Bulgaria) recalled the statement he had made previously regarding the Maltese proposal, and said that not only was that proposal inopportune but that its adoption would serve little purpose. The Committee on the sea-bed and ocean floor had no need to change its name in order to deal with preparations for the Conference on the Law of the Sea. Indeed, the Maltese proposal might take the Sub-Committee even further back than the Brazilian amendment to paragraph 25 would have done.

If the proposal of the Maltese representative was retained, it should be completed by a sentence indicating that many delegations had considered it inappropriate and had felt that it would create difficulties, not only with regard to procedure but also in other respects.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that, since the Maltese representative insisted that his proposal be retained, his own delegation was requesting that it be completed by the following text:

"Objections were raised against the proposal by the delegation in question. In particular, it was pointed out that the adoption of such a proposal might complicate the work of the Committee and lead to further lengthy procedural discussions. It was also pointed out that the examination of the proposal fell within the competence not of the Sub-Committee but of the plenary Committee, since it dealt with the work of the Committee itself and of all the Sub-Committees."

Mr. PARDO (Malta) accepted the proposal of the Soviet representative.

Mr. YANKOV (Bulgaria) proposed, by way of a sub-amendment, that the following sentence should be inserted between the two sentences proposed by the Soviet delegation:

"In the view of those delegations, the present structure and terms of reference of the Committee and its Sub-Committees did not prevent the Committee from discharging its tasks with regard to preparations for the Conference on the Law of the Sea in conformity with the relevant resolutions of the General Assembly."

Mr. BARABOLIA (Union of Soviet Socialist Republics) accepted the sub-amendment proposed by the Bulgarian representative.

Mr. BROWN (Australia) said he favoured the Maltese proposal in so far as the name of the Committee was concerned.

It was unfortunate, however, that the proposals at present before the Sub-Committee should spell out the individual position of a delegation or a few delegations, in contrast to what had been done previously in the report, which did not refer to individual delegations' attitudes.

In view of the extremely complex problems raised by the Maltese proposal and the proposed amendments thereto, his delegation thought that it would be unwise for the Sub-Committee to take a decision without having written documents before it, especially at such a late stage in its discussions.

He therefore suggested that the Maltese delegation withdraw its proposal which, in view of its nature, should preferably be submitted to the plenary Committee itself or to the General Assembly.

Mr. ZEGERS (Chile) fully agreed with the Maltese representative as regards the proposed new title of the Committee.

Mr. PARDO (Malta) said that, in view of the statement by the Australian representative, he would withdraw his proposal which, indeed, might more effectively be presented in other forums.

The whole of the Sub-Committee's report to the Committee (A/AC.138/SC.II/L.5), as amended, was adopted.

The CHAIRMAN declared the session of the Sub-Committee closed.

The meeting rose at 7.40 p.m.