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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 FORTY-EIGHTH TO SIXTY-SECOND MEETINGS

Held at Headquarters, New York,
from 6 March to 5 April 1973

Chairman:	Mr. GALINDO POHL	El Salvador
Rapporteur:	Mr. ABDEL-HAMID	Egypt

The list of representatives appears in documents A/AC.138/INF.8 and Corr.1 and 2, A/AC.138/INF.8/Add.1 and Corr.1, A/AC.138/INF.8/Add.2 and Corr.1 and A/AC.138/INF.8/Add.3.

* Incorporating documents A/AC.138/SC.II/SR.54/Corr.1, dated 23 March 1973, and A/AC.138/SC.II/SR.62/Corr.1, dated 18 April 1973.

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SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

Held on Tuesday, 6 March 1973, at 4.05 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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ORGANIZATION OF WORK (A/AC.138/L.13)

The CHAIRMAN recalled, before turning to the organization of work, that in 1972 (document A/8721, para. 150), the Sub-Committee had decided that officers temporarily absent would be replaced, pending their return, by members of their respective delegations. He suggested that the Sub-Committee should follow the same practice at the current session. Moreover, the Chairman of the main Committee had submitted new proposals concerning the organization of work, the English text of which had been circulated as document A/AC.138/L.13/Add.1.

At the meeting they had just held, the Sub-Committee's officers had discussed the organization of the Sub-Committee's work for the current session. It was the task of the Chairman and officers to submit to the Sub-Committee suggestions which represented a balance between the various opinions expressed and might serve as a basis for discussions.

The Sub-Committee could take the following decisions concerning the organization of its work:

1. To hold formal meetings and working-group meetings during the current session;

2. To examine all the subjects and issues allocated to it, at formal meetings, at which the delegations could make one or more statements. The first such formal meeting could be held on 7 March; thereafter, meetings would be arranged when there was a sufficient number of speakers on the list;

3. To establish working groups forthwith. To that end, the Sub-Committee might decide: (a) to establish two working groups, to be known as Working Group A and Working Group B, each composed of 33 members; (b) to distribute the issues allocated to the Sub-Committee between Working Groups A and B, giving each issue the number it had in the list of subjects and issues relating to the law of the sea which had been adopted or in the document prepared by the main Committee; (c) to provide that the working groups should be open-ended, so that delegations which were not members of them could take part in their meetings, submit proposals and participate in the consideration of such proposals; (d) in accordance with the precedent set by Sub-Committees I and III, to constitute the working groups as follows: 10 representatives of African countries, 7 of Asian countries, 6 of Western European and other countries, 6 of Latin American countries and 4 of socialist countries; (e) to convene the geographical groups immediately, in order

(The Chairman)

that they might hold consultations, decide on the composition of the working groups and convey their decision to him as soon as possible;

4. Decide when the working groups would start their work.

The Sub-Committee's formal meetings would be held concurrently with the meetings of the working groups, which would report periodically on their work to the Sub-Committee in formal meeting.

Commenting on his suggestions, he said that some delegations might not deem it advisable to devote additional official meetings to a general debate, preferring to let the working groups get down to work immediately, but that others wished to speak on substantive issues. A similar problem had arisen in 1972, when the list of subjects and issues relating to the law of the sea was being prepared, but it had eventually been decided to allow delegations to speak on substantive questions concurrently with discussions on the list. The same procedure could be followed at the present session, provided that members were not verbose.

It was in order to avoid controversy that the working groups were designated by letters and the issues by numbers. Although the main Committee had not yet decided which issues would be allocated to the Sub-Committee, that should not prevent the Sub-Committee from deciding forthwith on the number of working groups to be established; he had suggested two, firstly because that number would permit a more logical distribution of issues and, secondly, because, in view of their other obligations, delegations, particularly those of the small countries, would not be able to participate in more than two groups. Moreover, the Secretariat had indicated that only in exceptional cases would it be able to service more than two groups simultaneously. The choice of two groups was only a suggestion, however, and if the Sub-Committee decided to establish three, or even more groups, as certain members had suggested, he would have no objection.

As to the other suggestions, he had merely followed precedent in regard both to the number of members in the groups and to their geographical distribution.

Sir Roger JACKLING (United Kingdom) expressed his satisfaction with the Chairman's suggestions; it was indeed very desirable to establish working groups forthwith and distribute the issues between them, so that they could get down to work as quickly as possible. It was to be hoped that delegations would not abuse their opportunity to speak in the general debate but would act with restraint, so as not to impede the progress of the working groups.

(Sir Roger Jackling, United Kingdom)

The best procedure for participation by delegations in the deliberations of the working groups was that all delegations should be free to take part in the meetings of each group whether or not they were members of that group.

Lastly, with regard to the number of working groups to be established, three seemed preferable even though some delegations had a small staff; there was no need for the groups to meet simultaneously, and if there were three, their work programmes would not be excessive.

The CHAIRMAN observed that his suggestions merely reproduced the procedure followed by the other Sub-Committees and represented an attempt to steer a middle course. Some delegations felt that the debate should be conducted subject by subject, but such a procedure might lead to endless debates and delay the work. That was why he had suggested that statements by delegations should relate not to one subject only but to all the subjects.

Mr. CASTAÑEDA (Mexico) said that, in so far as the operation of working groups was concerned, the Chairman had found a formula which reconciled the views of those who wanted a general debate and of those who wanted the working groups to start work immediately. He feared, however, that the doors of the general debate were being opened too wide. The Committee was in its fifth session and five to six months had already been devoted to the general debate, which meant that delegations had had ample time to present their arguments. While some delegations had not taken part in the general debate because they were waiting for the list of subjects and issues to be drawn up before tackling matters of substance, there were not very many such delegations, and they could be heard in two or three meetings.

He agreed with the Chairman that there should be two working groups. If the groups were to work simultaneously it would be difficult to have more than two, for it would be hard for the smaller delegations to be represented. Furthermore, the nature of the subjects was such that they could not be examined in isolation. A decision could not be taken on one specific item without referring to the others. His delegation was surprised at the division of the items into categories, as in document A/AC.138/L.13/Add.1; it would prefer a more concentrated study of the issues, and that would not be possible if more than two working groups were established.

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Mr. TUNCEL (Turkey) endorsed the idea of a general debate because some delegations, for valid reasons, had not spoken at any earlier session. He agreed with the Mexican representative, however, that the debate should be limited. As the Chairman had pointed out, the number of meetings devoted to it could depend on the number of speakers on the list. The advantage of a general debate was that it would bring out ideas on which the working groups could base their drafting work.

His delegation favoured the establishment of two working groups. It hoped that the Sub-Committee would take a decision on the matter at the current meeting and, pending the appointment by the geographical groups of representatives to the working groups, the general debate could begin.

According to the Chairman's proposals delegations would be able to take part in meetings of the working groups, participate in the debates and make proposals, in order to avoid reopening the discussion in plenary meetings. His delegation believed, in fact, that proposals made by the delegations should be incorporated in the draft articles as possible variants.

Mr. BEESLEY (Canada) said that, for basically administrative reasons, his delegation would agree to establishing two working groups, each comprising 33 members. With regard to the distribution of subjects and issues between the two groups, the Secretariat might perhaps prepare a working document in which the geographical groups could list their representatives, depending on their particular interest in the issues allocated to each working group.

While his delegation would like the general debate to be kept short, it felt that one was needed because new drafts had been prepared since the previous sessions on concepts such as that of the economic zone beyond the territorial sea and that of the patrimonial sea, and if the 1974 Conference was to be successful, those concepts must be precisely defined. No time would be wasted if the working groups were established while the general debate was going on.

Mr. ARIAS-SCHREIBER (Peru) said that the Chairman's proposals were aimed at reconciling the various arguments put forward. From the point of view of principles, it was impossible to consider a question involving the law of the sea without taking related questions into account. Problems concerning the law of the sea were interdependent and could not be compartmentalized; in that

(Mr. Arias-Schreiber, Peru)

connexion, his delegation shared the views of the Mexican delegation. The only logical way to divide the work would be on the basis of a distinction between questions concerning national jurisdiction and questions concerning the zone outside national jurisdiction.

With regard to the general debate, it was important that those delegations which had not taken part in the debate on substantive issues should be able to express their views. Only a few delegations had gone into the issues in depth. The majority were waiting until the list of questions had been drawn up before taking a position on the substance. Earlier debates had dealt with procedural questions, and no records of such debates had been kept. Some delegations might wish their views to be reflected in records. Since Sub-Committees I and III would be meeting on Wednesday, 7 March, the substantive debate might begin on 8 March.

From the practical point of view, it was important to be realistic and take into account the wishes of delegations, many of which wanted to participate in the work of the working groups. The delegations of developing countries had only a small staff and could not therefore attend meetings of the main Committee, three Sub-Committees and several working groups. Such delegations would find it difficult if Sub-Committee II established more than two working groups.

Mr. TRAORE (Ivory Coast) said that he shared the view of the Mexican delegation concerning the general debate. Since the other Sub-Committees could have a general debate, Sub-Committee II should have the same opportunity. However, a list of speakers should be drawn up and the debate should not be reopened once it had been closed.

His delegation felt that two working groups would be sufficient. A larger number would create difficulties for the smaller delegations. Moreover, the questions to be considered by the two working groups must be specified by the Sub-Committee before the regional groups could draw up the list of their representatives on the working groups. The attributions and terms of reference of the working groups should therefore be defined.

Mr. ENGO (Cameroon) said that, in view of the number of questions to be considered, the Committee should avoid procedural discussions. His delegation was ready to support any proposal which would make it possible to start work quickly.

The number of members who had taken part in the general debate in previous sessions indicated that the debate had not been adequate. Delegations that wanted

(Mr. Engo, Cameroon)

a general debate should make themselves known, but the debate should not take up more than two meetings. In the other Sub-Committees, statements in the general debate were limited to 10 minutes. To save time, delegations might also circulate working documents explaining their position.

His delegation shared the views of the Canadian delegation on the distribution of items between the working groups. On the other hand, it had no strong views with regard to how many members the working groups should have but hoped that they would be established with due respect for the principle of geographical distribution.

Mr. KOVALEV (Union of Soviet Socialist Republics) commended the Chairman of the Committee and the Sub-Committee for their efforts to ensure that work on the draft articles would begin as soon as possible. His delegation had stated on 5 March that any delay due to lengthy statements should be avoided. Therefore, in a spirit of compromise, his delegation was prepared to accept the proposals of the Chairman of the Committee. Similarly, it welcomed the limit that the Chairman of the Sub-Committee had decided to impose on its discussions.

The most important proposal made by the Chairman of the Sub-Committee was that concerning the reduction of the number of working groups proposed by the Chairman of the Committee. His delegation had no objection to reducing the number of categories of items allocated to Sub-Committee II, provided that they were not reduced too much. There should be a minimum of three working groups. As the representative of the United Kingdom had pointed out, if there were only two working groups, both would be overloaded and could not examine thoroughly enough the items allocated to them.

However, although his delegation favoured establishing three working groups, it would, in order to avoid creating difficulties for the Secretariat, agree to the provision that only two groups could meet simultaneously.

Finally, he said that one of the working groups would deal with the key problem of fisheries. In that connexion, he recalled the Soviet Union proposal concerning the preferential rights of coastal States. His delegation had a number of ideas as to possible additions to the Soviet draft. Those considerations had been drafted in English, and he would be grateful for any assistance the Secretariat could provide in bringing them to the notice of other delegations.

Mr. KASEMSRI (Thailand) shared the desire of the Chairmen of the Committee and the Sub-Committee to begin work on the substantive items as soon as possible.

(Mr. Kasemsri, Thailand)

Like the delegations of Cameroon, Canada and the Ivory Coast, his delegation felt that the composition of the working groups would depend on how the items were distributed. It might be asked whether the establishment of working groups would affect the general debate; he himself had no strong views on the subject. However, before the working groups were set up, their terms of reference should be defined, and that might take some time. The Sub-Committee might devote a few days to the general debate before taking up the more important items.

Attention should also be given to the way in which the working groups, particularly their drafting groups, would operate. It was essential that their members should be familiar with the questions and be informed of the views of delegations on each item. A general debate could therefore be useful, in so far as it would help to make clear the positions of delegations.

In any case, without losing sight of the need to define the functions of the working groups, his delegation would like to see them start work as soon as possible.

Mr. ZEGERS (Chile) felt, like the representative of Cameroon, that agreement should be reached at the present meeting on the method of work to be followed, so that discussion of substantive items could begin at the next meeting.

According to the Chairman's proposals, it would be logical to group the items for general debate in categories as soon as possible. Some delegations, including that of Canada, shared that view. His delegation thought it essential that questions relating to the law of the sea should be considered together as a unit.

If two working groups were established, his delegation felt that the first could consider the questions covered in the first proposal made by the Chairman of the Committee, namely the limits of the territorial sea, archipelagos, land-locked countries and the like. The second working group could consider items 8 and 24 in the list of subjects and issues relating to the law of the sea, both of which concerned the high seas and related matters. Thus the work would remain unified.

He felt that it would be sufficient to devote four or five days to the general debate and that it should be divided into two categories. However, in view of the need for an early decision, he would not insist on that point.

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Mr. SARAIVA GUERREIRO (Brazil) said that he could accept, in a spirit of compromise, the suggestions of the Chairman of the Sub-Committee. He recalled that in July 1971, there had been a consensus that the Sub-Committee should undertake the consideration of items on the list and, at the same time, hear statements of substance which a number of delegations had previously reserved the right to make. Furthermore, there might be interventions as a result of the statements made by other delegations. Finally, as the representative of Canada had pointed out, the situation had evolved in many respects in two years: suggestions had been made by certain regional groups, in relation, for example, to the concept of the patrimonial sea, on which delegations would probably wish to make general statements and which, however, might be brief. Finally, delegations might wish their views to be reflected in the summary records, which would not be possible in the case of the working groups. His delegation would have preferred that the working groups began to meet only after the general debate. However, it accepted the principle of simultaneity. It also favoured the establishment of two working groups, which would constitute the simplest solution. His delegation, like the Chilean delegation, wished to propose that the first working group should be entrusted with items relating to the sovereignty and jurisdiction of coastal States, while the second should concentrate on all matters relating to the international zone of the high seas. The fear that one of the two groups might be overburdened was unjustified, since it could hold more meetings than the other.

Mr. KEDADI (Tunisia) thanked the Chairman of the Sub-Committee for his suggestions and said that he felt that two main points had emerged from the proposals by the other delegations: first, the question of a general debate, within the Sub-Committee and, second, the composition of the working groups.

He noted a general desire that the Sub-Committee should begin work on the questions assigned to it so that it could not, at a later date, be reproached for impeding the work of the Committee. His delegation was reluctant to agree to an indefinitely protracted general debate while the working groups were meeting. If those two exercises overlapped, how would the working groups be able to take account of the general debate in their work? What was needed therefore was to divide the subjects between the two working groups, whose establishment his

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(Mr. Kedadi, Tunisia)

delegation approved of for the reasons adduced by other delegations, into those relating to coastal States and those relating to the high seas, as proposed by the Chilean representative.

He did not wish to deny the importance of the issues before Sub-Committee II. Neither did he dispute the fact that the participation of some delegations in the Drafting Committee, at the previous session, might have prevented them from expressing their views on questions of substance. He was not insensitive to the argument put forward by the Brazilian representative, who had pointed out that there had been a number of new developments and that some delegations quite rightly wished to state their views on them. However, he wished to warn his colleagues against the danger of impeding the work of the Sub-Committee. For that reason, he proposed, providing that members agreed, that a deadline should be established by requesting all delegations which desired to take part in a general debate to register with the Chairman on the following day.

Mr. HARRY (Australia) noted a broad consensus with regard to the need for a general debate and hoped that it would provide an opportunity for other proposals to be made and other papers submitted. However, the working groups should be set up expeditiously. He recalled the efforts made by his delegation and the Canadian delegation at the previous session with a view to arranging the items, and welcomed the fact that the Chairman of the Committee had taken account of them in his proposal.

Like the Canadian representative, he favoured the establishment of two working groups. Although there had been a proposal that their membership should be open, their terms of reference should, none the less, be spelled out. His delegation agreed with the Chilean delegation on the importance of preserving the unity of interrelated items submitted for consideration by the Sub-Committee. It therefore agreed that they should be divided into two main categories, 1 and 2. It should also be borne in mind that some other subjects might also be related to others on which the Sub-Committee would be working. In general, a very flexible attitude should therefore be adopted. If some of the items considered by working group B were related to those being considered by working group A, it should be possible to hold joint meetings to deal with them. If an item necessitated the drafting of a text, a drafting group should be set up.

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Mr. PARDO (Malta) felt that it would be useful to organize a general debate, on the understanding that it should be as brief as possible.

He had no objection to the formation of two working groups, but felt that it was difficult to take a final decision on the matter as long as it was not known which items would be allocated to Sub-Committee II, since it seemed likely that there would have to be a further distribution of items among the various sub-committees, in consequence of the adoption of the list of subjects and issues relating to the law of the sea, and it was not known how those items would be parcelled out among the working groups. In that regard, as the Canadian and Australian representatives had said, the Chairman would have to submit specific proposals. For his part, he felt that the first group could take up all questions relating to the jurisdiction of coastal States (territorial sea, contiguous zone, continental shelf, exclusive economic zone and straits), but that the second, contrary to what other representatives had said, should concentrate on questions relating to the limits of the jurisdiction of coastal States (baselines, islands and archipelagos. A certain number of other items would therefore remain to be allocated, in particular those concerning the high seas, and various others which were not of direct concern to the Sub-Committees; those items might, in due course, give rise to the establishment of another working group or be referred, either to another sub-committee, or to the main Committee.

Mr. JEANNEL (France) welcomed the proposals by the Chairman, which would make it possible for the Sub-Committee to make a start on the constructive work that was imperative if the Conference was to take place as anticipated. It was quite appropriate that delegations which so wished should be given the opportunity to make general statements; furthermore, the two working groups should be set up forthwith. A number of interesting proposals had been made, particularly by Canada and Chile, with regard to the allocation of items between the two groups; his delegation was anxious to maintain a reasonable balance and felt that the Chilean proposal erred in that regard. The most important questions would be allocated to the same group, and there might be frantic competition to participate in its work, but little interest in the other group.

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(Mr. Jeannel, France)

With regard to the general debate, as the representative of the Ivory Coast had suggested, it should be restricted as far as was possible.

Mr. NJENGA (Kenya) felt that it was not possible to deny some delegations which had not yet expressed the position of their Governments on matters of substance or on the positive proposals which had been submitted, the opportunity of doing so. Furthermore, it would be useful for the working groups which would thus be able to take account of all the views expressed; however, it did not mean that the discussions should be interminable; the list of speakers should be closed on a pre-determined date.

Two working groups seemed to be the maximum number, in view of the limited numbers of the smaller delegations; the Chairman should submit proposals on how the items should be distributed among the groups so that the various delegations could decide which was of greater interest for them.

Mr. OGISO (Japan) felt that while it would be appropriate to have a general debate, it should be of limited length. Delegations should also be encouraged to make specific proposals.

With regard to the working groups, he felt that it would be difficult to take a decision on their number without knowing how the different items would be allocated. His delegation felt that the proposal by the Chilean delegation was difficult to accept, since to divide the items into those relating to national jurisdiction and those relating to international jurisdiction would overburden one of the groups and might prejudge the way in which the items were studied. It was inclined to agree with the Canadian delegation that the Chairman should make proposals concerning the distribution of subjects between the working groups.

At the present stage, the Sub-Committee might decide not to allocate all the items to two working groups but only those from categories I and II. The other categories might be allocated later, depending on how work progressed.

His delegation hoped that the Chairman's suggestions would take account of the comments made by delegations.

Mr. OLSZOWKA (Poland) said that if only two working groups were established, each would have too much work, and he was inclined to believe that the

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(Mr. Olszowka, Poland)

Sub-Committee would not be able to complete its work on time. Thus, three groups should be established; besides, the 1958 Geneva Conference had had five Committees. His delegation understood the difficulties of the small delegations, but if three working groups were established, a system could certainly be found whereby those delegations would be able to take part in the consideration of the items which were of most interest to them. Finally, when the terms of reference of the working groups were defined, it would be essential to entrust to the same group, because of their similarity, the items concerning fishing beyond the limits of the territorial sea, the economic zone and resources beyond the territorial sea.

Mr. JAGOTA (India) said that after the list of speakers had been established, the duration of the general debate should be limited. However, if no delegation wished to speak, it was essential that the working groups should begin their work without delay.

His delegation felt that no more than two working groups should be established. With regard to their terms of reference, it would await the proposals by the Chairman. Certain items, such as the equitable distribution of the resources of the high seas, were vitally important to the success of the 1974 Conference. They therefore required careful formulation and consideration. His delegation agreed with the Japanese delegation that there was no reason to attempt to distribute all the items between the two working groups. The Sub-Committee had to be pragmatic and should select only those items which could be considered at the current session. The first working groups could take up the items in categories II and III, the items in categories IV and V would be set aside and the second working group would take up the items in category I.

Mr. MOORE (United States of America) agreed with other delegations that the Sub-Committee should begin its substantive work without delay and set up the necessary working groups. In that connexion, he wished to express his support for the proposal by the Chairman that in appointing the members of the working groups, the Sub-Committee should, as in previous years, conform to the prescribed regional distribution.

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Mr. LUNA TOBAR (Ecuador) thanked the Chairman for his proposals. On the other hand, he felt that delegations could not be denied the opportunity to intervene in the general debate and that it was essential to take into account recent developments concerning the law of the sea. He agreed to the establishment of two working groups for reasons which other delegations had already expressed. He also agreed that it was important to maintain the unity of items related to the law of the sea. Finally, he thought it advisable that the first working group should take up the items concerning the national jurisdiction of the coastal States, and that items regarding the area beyond the limits of national jurisdiction would be assigned to the second working group.

Mr. KOVALEV (Union of Soviet Socialist Republics) observed that all delegations wished to arrive at an early decision. He called the attention of members to the suggestions made by the representatives of India and Japan, which, in his opinion, could be grounds for a compromise between those delegations that were satisfied with two working groups and those that had asked for three. The Sub-Committee could decide forthwith to establish two working groups and to postpone a decision on the third until a later date when it could be determined if it was necessary. His delegation, however, had one condition: the allocation of the items should not depend on their relationship to national jurisdiction or the international régime; the distinction between those two régimes was not clear to his delegation. Furthermore, such an allocation could impair the work of the Committee. The establishment of two categories would lead to endless discussions concerning whether an item should be assigned to one or the other. Finally, his delegation was in favour of a pragmatic approach based on the proposals by the Chairman of the Committee and the Sub-Committee.

Mr. ZEGERS (Chile) pointed out that the two working groups which had been suggested represented a maximum for the smaller delegations. In suggesting the complement of the groups, he had not intended to prejudge the assignment, to one or the other, of items related to the national jurisdiction of the coastal States or those concerning the high seas. He therefore suggested that they should be called Group A and Group B. What he had wished to point out was the legal relationship which existed between the territorial sea and the continental shelf and their

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(Mr. Zegers, Chile)

relationship with the economic zone and the question of preferential rights. On the other hand, all the other subjects were related to the high seas: the régime of islands, international responsibility with regard to development, universal participation, etc. It should also be pointed out that certain problems were within the competence of one or the other group. Thus, some sort of co-ordination should be contemplated.

Another solution, suggested by the representative of Cameroon, would be to establish one working group entrusted with the consideration of two large categories of subjects. That solution would also be satisfactory.

The CHAIRMAN, in summing up, said that it appeared that there had been no objections to his proposals concerning the organization of official meetings devoted to a general debate and the composition of working groups. However, many delegations had insisted that the general debate should be limited, either by determining, in advance, the number of meetings which would be devoted to it or by setting a specific date for closure of the list of speakers.

With regard to the working groups, there had been difficulties on two points: the number of groups to be established (there was, however, a majority in favour of two) and the distribution of items among those groups. He therefore proposed that the Sub-Committee devote its next meeting, on Thursday afternoon, 8 March, to concluding the consideration of those procedural questions and hearing, should the occasion arise, delegations which wished to speak on substantive questions.

The meeting rose at 7.10 p.m.

SUMMARY RECORD OF THE FORTY-NINTH MEETING

Held on Thursday, 8 March 1973, at 3.35 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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ORGANIZATION OF WORK (A/AC.138/L.13 and Add.1)

The CHAIRMAN said that Mr. Holder (Liberia), the Vice-Chairman of the Sub-Committee, was unable to attend the current session, and therefore, in accordance with the decision taken earlier, he would be replaced by Mr. Tubman (Liberia).

Before embarking on the major question of deciding on the number of working groups and the allocation of items, he wished to point out that some delegations had expressed dissatisfaction over the fact that the groups were to be comprised of 33 members. In the interest of efficiency, he asked those delegations to postpone their proposals to increase the number of members until the number of groups to be established had been decided. Furthermore, he recalled that, in any case, the working groups would be open-ended and all members of the Sub-Committee could participate in their work.

At the previous meeting, the decision on the number of working groups and the allocation of items to them had given rise to differences of opinion, but the significant agreement reached seemed to indicate that delegations were ready to sacrifice their interests to some extent in order to reach a consensus which would enable work to proceed. In his view, there were several ways of allocating the items which were possible and acceptable, but no matter what the Sub-Committee finally decided, some delegations would have to compromise. If agreement was to be reached, it should be borne in mind that the distribution of items was for purely practical purposes and would not in any way prejudge the substance or nature of any of the subjects considered or commit any delegation.

It should also be remembered that physical unity and interrelation were not the same as legal unity and interrelation and that physically related subjects might be governed by different legal rules. Furthermore, the indivisible quality of unity and the homogeneity or diversity of its elements could vary in degree and both physical and legal subjects could be subdivided. All the subjects were undeniably interdependent; but, for the purpose of analysis and study, their immediate interrelationship and impact should be taken into account, for otherwise all their aspects would have to be dealt with simultaneously, a course which would undoubtedly lead to difficulties, in view of the limited powers of the human mind. Political factors might make it necessary to use two or more criteria simultaneously in

(The Chairman)

allocating the items. The idea that the most closely related subjects should be studied together could be tempered by the view, expressed at the previous meeting by the representative of France and others, that, if all the important matters were dealt with in one working group, there would be little interest in the other group or groups. Both logical and political arguments must be taken into account.

The items must be considered without detracting from their unity, and any attempt to allocate the subitems arbitrarily must be avoided. Furthermore, the items listed under separate numbers, and sometimes in different places, on the list of items and subitems (A/AC.138/L.13) could be allocated to groups in the same way. Thus, for example, items 16 (archipelagos) and 17 (enclosed and semi-enclosed seas) could be considered separately from item 2 (territorial sea) so as to lighten the workload of the working group concerned. Item 5 (continental shelf) could be considered separately from the items relating to maritime zones with which it was physically related. If item 5 was allocated to working group B, a certain balance would be achieved in the distribution of subjects according to their importance, the amount of work entrusted to each group and the interest of delegations in participating in the various groups. It could also be decided that each working group would be authorized to consider any matter that was relevant to its work, even though it had officially been allocated to another group, and the groups could hold joint meetings.

The Sub-Committee had not yet decided whether it would establish one, two or three working groups. If two working groups were set up, he suggested that working group A should consider items 2, 3, 4, 6 and 7 and working group B items 5, 8, 9, 10, 11 and 14 to 21. If three working groups were formed, the items listed under category I in the document prepared by the Chairman of the Committee (A/AC.138/L.13 and Add.1) would be allocated to group A, the items in categories II and III to working group B, and the items in categories IV and V to working group C.

With regard to the actual number of working groups, the Sub-Committee could decide to establish only two working groups for the time being, on the understanding that it could reconsider the question at the appropriate time and, if necessary, establish a third working group at a later stage.

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(The Chairman)

Finally, he urged delegations to co-operate in finding a rapid solution to those procedural problems, so that the working groups could be set up and the geographical groups could begin consultations to decide on their membership.

Mr. PARDO (Malta) agreed that the intrinsic unity of the items assigned to the Sub-Committee should not be destroyed. However, in order to facilitate their consideration, the items could be grouped under four broad categories. The first would include the items concerning the nature, characteristics and scope of the rights and responsibilities of coastal States with regard to the exploration and exploitation of living and non-living marine resources, navigation, and so on, in those areas of the marine environment under their jurisdiction. The first category could include items 2 (except subitem 2.3), 3 (except subitem 3.2), 4, 5 (except subitems 5.2 and 5.3) and 6 (except subitems 6.5, 6.7.2 and 6.7.4), subitem 9.2 and most of item 10. The second category could cover items concerning the limits, extent and limitation of the coastal States' jurisdiction, including subitems 2.3 and 3.2 and the other subitems expressly excluded from the first category. The third category could cover the rights and duties of States in the high seas, including items 8 and 24; and the fourth category, covering general principles, could include questions such as subitem 9.1.

If the Sub-Committee attempted to cover all those items, distributing them between two working groups, the result would inevitably be a superficial and generalized approach. Therefore, his delegation would prefer the Sub-Committee to concentrate on the first two categories, which, in its opinion, were of primary importance, and leave the others until later. Although, strictly speaking, all the items relating to the delimitation of the jurisdiction of coastal States should be considered simultaneously, in other words, in a single working group, he realized that, if they were to be given the attention they deserved, they should be divided between two groups. Thus, the items in the first category would be allocated to one working group and those in the second category to another. Such a division of functions was intended to facilitate consideration of delicate subjects connected with the territorial sea, contiguous zone, and so on, since all matters relating

(Mr. Pardo, Malta)

to the delimitation of coastal States' jurisdiction were of a highly technical as well as a political nature.

Such a procedure did not differ radically from that suggested by the Chairman, and he hoped that his proposal would be favourably received.

Mr. VINDENES (Norway) fully recognized the importance of the principle of the unity of the items to be considered by the Sub-Committee. He agreed that the efforts of the Sub-Committee, the main Committee and, ultimately, the Conference on the Law of the Sea must be aimed at achieving a comprehensive solution encompassing all questions concerning the functional and territorial limits to jurisdiction. In order to achieve such a comprehensive solution, it would be necessary in the preparatory stage to separate to some extent the various items to be considered, either in time - although that might give rise to problems of priority - or in space, by allocating them to different working groups. A compromise solution would be to limit the number of working groups to two, and his delegation would be prepared to accept that solution, although it would have preferred a somewhat higher number of working groups.

With regard to the distribution of items between those groups, he agreed that, from the practical point of view, there were disadvantages in allocating all the jurisdictional issues to a single working group. Therefore, perhaps the wisest choice would be that suggested by the representative of India, namely to allocate the items included in category I (A/AC.138/L.13/Add.1) to working group A and those in categories II and III to working group B. Such a separation of the items would in no way compromise the unity or the comprehensive character of the solution which, it was to be hoped, would emerge from the Conference, since any agreement on individual items reached by the working groups would be provisional. The main lines of the compromise package solution should already be clear to all delegations and he was confident that they would be borne in mind in the preliminary phase of negotiations.

Mr. ZOTIADIS (Greece) also agreed that the unity of the items allocated to the Sub-Committee should be preserved; he therefore supported the idea of avoiding categorization which tended to create confusion without making the identification of priorities any easier. Unity could be preserved only within the framework of a single working group.

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(Mr. Zotiadis, Greece)

The importance of the unity of items was closely linked with the need to achieve a consensus. Although a small drafting group might possibly be more efficient, he thought that all States would certainly be interested in participating in the preparation of the draft articles on the items allocated to the Sub-Committee - which were not only highly technical but also of basic political importance. It would be very difficult for the geographical groups to reach agreement on a limited number of States that would have to express the views of all the others. Those considerations had led to the proposal that there should be an open-ended group similar in structure to a committee of the whole. His delegation supported that proposal, namely, that there should be a single working group in which all delegations could take part on an equal footing. It seemed to be consistent with the wish of the overwhelming majority of delegations that the work should proceed expeditiously, without any delegation of authority on questions relating to national sovereignty.

Mr. BOJILOV (Bulgaria) commended the Chairman's efforts to guide the Sub-Committee in the organization of its work and observed that the basic problem was to decide whether to set up two working groups or three. In principle, his delegation had no strong objection to either possibility. The establishment of two working groups would help the smaller delegations and facilitate the Secretariat's work. However, it would seem more logical to set up three working groups since that would make it possible to expedite the work and achieve definite results in a shorter period of time. Having considered the advantages of both possibilities, his delegation proposed that only two groups should be set up; working group A would deal with the items in categories I, III and V in the Chairman's proposals (A/AC.138/L.13/Add.1), and working group B with the items in categories II and IV. That solution, in addition to the advantages already mentioned, would make for a balanced distribution of items between the two groups, so that each would have an approximately equal volume of work. If one of the groups subsequently proved unable to take up all the questions allocated to it, the Sub-Committee could consider the possibility of setting up a third group. Furthermore, acceptance of the division of items proposed in document A/AC.138/L.13/Add.1 would help to ensure the efficient conduct of the Sub-Committee's proceedings.

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Mr. MOTT (Australia) said that his delegation wished to make a few preliminary comments. The problem now facing the Sub-Committee was not simply one of procedure, and it might prove very difficult to find a clear-cut solution. First of all, the Sub-Committee should seek a simple and flexible arrangement. His delegation realized that a decision to set up three working groups would overcome many difficulties, but it would inevitably create others which needed to be taken into account. For that reason, and since the Sub-Committee seemed to be coming round to the view that only two working groups should be set up, his delegation was ready to accept that solution.

Although there would no doubt be advantages in limiting the membership of the working groups, many delegations had expressed a wish to be represented in one or both groups, so that it would be better to decide that the working groups would be completely open. It was much more difficult to decide how the items should be distributed between the groups. His delegation saw difficulties in the solution suggested by the Chairman. It felt that item 5, which the Chairman had allocated in principle to working group B, belonged more logically with the items allocated to working group A. The Sub-Committee might also consider the possibility of including item 16 among those to be taken up by group A.

Consequently the Sub-Committee might perhaps agree, at the present meeting, to set up two working groups and to devote more time to consideration of the allocation of items.

Mr. TUNCEL (Turkey) reserved his right to refer at the appropriate time to the question of the composition and chairmanship of the working groups. Concerning the number of those groups, his delegation had already indicated that it would accept the solution agreed upon by the Sub-Committee. None the less, he shared the basic opinion expressed by the representative of Malta to the effect that all items and questions relating to the law of the sea constituted a single whole which, strictly speaking, was indivisible. The unity of the subject-matter should call for the establishment of a single working group, because any distribution of the items and questions between several organs would be artificial. However, that ideal solution would make it necessary for the Sub-Committee to determine the relative priority of each item, so as to decide on the order of discussion, and that would be a most difficult task.

(Mr. Tuncel, Turkey)

If the Sub-Committee eventually decided that there should be two working groups, his delegation would like a change to be made in the division of items suggested by the Chairman, so that items 5 and 11 could be studied jointly with items 6 and 7 by working group A.

Mr. YANGO (Philippines), speaking on behalf of 20 delegations belonging to the Asian group, announced that the group had met to consider the suggestions which the Chairman had made at the beginning of the meeting but had been kind enough to communicate to it beforehand. The Asian group had reached the conclusion that the Sub-Committee should set up two working groups and that each should consist of 33 members chosen on the basis of equitable geographical distribution, although participation in the work of the groups should be open to all delegations. That, incidentally, would be in keeping with the precedents established by Sub-Committees I and III. The Asian group had not been able to reach any conclusion concerning the allocation of items between the two working groups, and its members would prefer to hear the views of the other delegations before adopting a definitive position on the matter.

Mr. SARAIVA GUERREIRO (Brazil) supported the idea that there should be two working groups. The distribution of items between them would have to represent a compromise between the different points of view, and could not be expected to conform entirely to logical criteria. His own delegation felt that item 7, which actually relates to the restriction of fishing on the high seas, should be allocated to working group B so that it could be considered in conjunction with item 8, concerning the high seas. On the other hand, he had no objection to allocating item 5 to working group A.

It should be noted that, as the working groups would be open, all delegations would be able to participate in their work and the only difference between them and the plenary Sub-Committee would be that the former would not have summary records and would be able to work in a less formal manner.

Mr. ABDEL-HAMID (Egypt) felt that the basic difficulty lay in the close interrelationship between the items and the need to discuss them in a way that would not impair their unity. Various views had been expressed on the subject and, for his part, he felt it would be difficult to reach agreement until delegations had had an opportunity to consult their respective regional groups.

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(Mr. Abdel-Hamid, Egypt)

His delegation agreed with the suggestion - supported, inter alia, by the delegations of Greece and Turkey - that for the time being there should be only one working group in which all members of the Sub-Committee would participate. To facilitate matters, the deliberations of that group would be presided over by the Chairman of Sub-Committee II. If, on the other hand, the members of the Sub-Committee insisted on the establishment of two working groups, he would favour the distribution of items proposed by the representative of Turkey.

Mr. ZEGERS (Chile) pointed out that most delegations which had spoken had mentioned the need to preserve unity in the discussion of the items before the Sub-Committee. A number of delegations, including those of Turkey, Australia, Malta and Greece, had said they considered that the item on the continental shelf, which the Chairman had suggested should be allocated to working group B, should be assigned to working group A. That suggestion was fully in accord with the proposal of his own delegation, which had already stated that the items before the Sub-Committee could be divided into two main categories, namely, questions relating to national jurisdiction and those concerning the high seas. It was therefore quite natural that the different areas of ocean space should be considered jointly by a single body. It would thus be perfectly possible to combine political and juridical considerations.

If the possibility of setting up only one working group was considered, the items would have to be divided into two categories, and that again would entail the establishment of two working subgroups. The only objection to that procedure was that certain items came under both categories. The discussion of those items could be co-ordinated by the single working group, if it was decided to establish only one, or by the Sub-Committee. One such item was that dealing with land-locked countries, which his delegation would like to see allocated to working group A.

It had also been suggested that it would be inappropriate for a single group to consider the more important items. In his opinion, the questions relating to national jurisdiction were bound to be more important for countries than those concerning the high seas, but that would not necessarily lead to an unequal division of work among the groups since there were many items connected with the

(Mr. Zegers, Chile)

high seas, and their discussion would entail a considerable amount of work. The Chairman's proposal undoubtedly had great merits, but gave rise to one important objection, namely, that the item on the continental shelf would have to be considered by working group A together with the other questions relating to territorial jurisdiction.

His delegation would have no difficulty in agreeing to the suggestion that the working groups should consist of 33 members and should be open to participation by all, or that there should be only one working group in which all the members of the Sub-Committee would participate. The main advantage to having two working groups was that the work could be conducted more informally and efficiently.

Mr. ANDERSON (Iceland) said that, although he agreed with many of the Chairman's suggestions, he would have difficulty in agreeing to the notion of limiting the membership of the working groups to 33. The items to be considered were connected with national sovereignty and required full participation by all delegations on a basis of equality. All the questions connected with national jurisdiction should be allocated to one working group in the interests of maintaining their unity and it would therefore seem more sensible to establish a single working group or committee of the whole.

Mr. CISSE (Senegal) pointed out that the African group of countries had not yet met to decide on a common position regarding the question of establishing working groups and the allocation of agenda items to those groups. It would be particularly hard for the developing countries, which had small delegations, to attend meetings of different working groups discussing related items. The delegation of Senegal, in particular, would have difficulty in agreeing to the idea that the item on the continental shelf should be discussed separately from the question of the economic zone - in other words, that item 6 should be discussed separately from items 5, 10 and 11. He therefore hoped that the Sub-Committee would not take a decision on those procedural questions until the African group had made its position known.

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Mr. KOVALEV (Union of Soviet Socialist Republics) recalled that he had already stated his position on the allocation of the items assigned to the Sub-Committee. As for the suggestion that the items should be divided into two broad categories, according to whether or not they pertained to the question of national jurisdiction, he thought it presented difficult problems for the Sub-Committee to solve. His delegation therefore could not agree with the views put forward by the representatives of Malta and Chile.

With regard to the number of working groups, the Soviet delegation could agree to have two, as that would be helpful to the smaller delegations, although it would rather have three. The establishment of two working groups meant reaching an agreement on an allocation of agenda items that would not be detrimental to the legal and political interests of the States represented. He therefore favoured the Bulgarian proposal since it provided for a very fair distribution of the five categories of items proposed by the Chairman of the Committee (A/AC.138/L.13/Add.1) between two working groups, and would make it possible for all questions connected with fisheries, for example, to be dealt with in a single group.

Mr. KIKIC (Yugoslavia) felt that, although every effort should be made to ensure that the functions assigned to each working group were equally important, that consideration should not cause the Sub-Committee to overlook the connexion between certain items. For example, it would be impossible to consider separately the items dealing respectively with the territorial sea, the contiguous zone, straits used for international navigation and the continental shelf.

His delegation was in favour of the idea that each working group should consist of 33 members, provided that their membership was open, and all members of the Sub-Committee were fully entitled to take part in their deliberations.

Mr. CHAO (Singapore) reminded members that the main purpose of establishing working groups was to facilitate the efficient conduct of the proceedings. In fact, the Sub-Committee had to concentrate its efforts on reconciling differing points of view and preparing generally acceptable draft articles. That task should be assigned to working groups which did not include the entire membership of the Sub-Committee because the establishment of a plenary group would not make for efficient discussion of problems.

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(Mr. Chao, Singapore)

Some speakers had mentioned the disadvantage of dividing up closely connected items and assigning them to different working groups. However, it must also be borne in mind that strict acceptance of the view that all aspects of the law of the sea were interrelated was incompatible with the establishment of three sub-committees. Although it was true that all the items were closely interrelated, their distribution among various bodies was unavoidable for practical reasons. His delegation was in favour of establishing two working groups, each consisting of 33 members but open to participation by all members of the Sub-Committee. He pointed out that if Sub-Committees I and III had already set up working groups on that basis, and the groups were operating effectively, there was no reason to suppose that Sub-Committee II could not follow the same procedure.

The allocation of items suggested by the Chairman of the Sub-Committee could serve as a basis for further consultations. For the time being, his delegation merely wished to point out that, in its opinion, the items dealing with the exclusive economic zone beyond the territorial sea and coastal State preferential rights should not be considered separately from those dealing with land-locked countries, shelf-locked countries and countries with narrow shelves or short coastlines. As had already been suggested, it was important to ensure a certain equality in the importance of items assigned to each of the working groups because, otherwise, there was a danger that one of the groups would be unable to function for lack of interest in its items. To solve that problem, his delegation felt that the division of items suggested by the Chairman of the Committee in document A/AC.138/L.13/Add.1 should be taken into consideration, and he proposed that category I in that document should be allocated to working group A and the other four categories to working group B.

Mr. ARIAS (Peru) wondered whether, in view of the difficulty in agreeing on the number of working groups and deciding the membership of those groups and the allocation of agenda items among them, it might be possible to set up a negotiating group, which would include representatives of the various regional groups, to find a compromise solution.

Mr. TUNCEL (Turkey) thought that the question had already been sufficiently discussed. However, before taking a decision, it would be better to

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(Mr. Tuncel, Turkey)

wait until the following day to enable the regional groups to meet and notify other delegations of their position. It might then be possible to arrive at a solution without having to set up any negotiating groups.

Mr. ABDEL HAMID (Egypt) felt that the suggestion made by the representative of Peru was somewhat premature. In his view, the regional groups should first meet to consider the question, and only then should the merits of establishing a negotiating group be discussed.

Mr. ARIAS (Peru) said that, in view of the arguments put forward, his delegation wished to reserve its right to reintroduce its proposal at a later stage.

The meeting rose at 6.05 p.m.

SUMMARY RECORD OF THE FIFTIETH MEETING

Held on Friday, 9 March 1973, at 11.20 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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ORGANIZATION OF WORK

Mr. THOMAS (Trinidad and Tobago) said he felt the discussion so far showed that there was general agreement concerning the advisability of establishing one or more working groups. In view of the differing opinions as to the number of working groups necessary, his delegation had originally favoured the proposal by the representative of Peru that a negotiating group be set up. It would, however, be preferable for the Sub-Committee to establish forthwith a small body, on which all regions would be represented, which would discuss the question of the number of working groups and report to the Sub-Committee by a given date. While that body was meeting the Sub-Committee could continue its general debate in order to identify the items to which priority should be given by any future working group.

Mr. KEDADI (Tunisia), speaking on behalf of the group of African States, pointed out that States with small delegations would have difficulty in covering the meetings of a large number of working groups and other bodies. In addition, the nature of the items before the Sub-Committee was such that they could not readily be divided up between a number of separate bodies. There should, therefore, be one working group open to all interested members of the Sub-Committee. That would permit the discussion without further delay of the fundamental issues and, at a later stage, the consideration of items the Sub-Committee decided merited priority. The Sub-Committee would, of course, still be able to establish additional working groups should that prove to be necessary.

Mr. OGISO (Japan) recalled that the Asian States as a whole had favoured the establishment of two working groups, although his own delegation would not have objected to the setting up of a single, open-ended group with a basic membership of 33. If there were to be two working groups, it would be prejudging the issue to say, as some speakers had suggested, that they should deal with matters relating to national and international jurisdiction respectively. Nor should items 6 and 7 be considered by separate groups, as proposed by the representative of Brazil. To establish a negotiating group, as proposed by the

(Mr. Ogiso, Japan)

representative of Peru, would further delay the substantive work of the Sub-Committee which should, therefore, choose between the Chairman's original suggestion and the proposal just made by the representative of Tunisia.

Mr. RUIZ MORALES (Spain) said that his delegation favoured a single working group to which, in order to ensure proper respect for the equality of States, all members of the Sub-Committee should belong. With a view to facilitating the work of the working group, its items could be grouped, in accordance with the Chairman's suggestion, in two categories, without, however, at any time disrupting the intrinsic unity of the various items to be examined by Sub-Committee II.

Sir Roger JACKLING (United Kingdom) said that the suggestions contained in the Chairman's opening statement at the 48th meeting concerning the number and composition of working groups and the allocation of items to them seemed fair and reasonable. In particular, while he fully appreciated the difficulties which might be encountered by smaller delegations, experience showed that the establishment of two working groups would speed the work of the Sub-Committee. He fully agreed with the representative of Japan that the proposal by the representative of Brazil to consider items 6 and 7 separately was unacceptable. It was, indeed, contrary to the understanding on which agreement had been reached on the list of issues at Geneva.

Mr. MOORE (United States of America) commended the Chairman for his attempts to take account in his suggestions of the views of the various groups. Such an approach was important when dealing with procedural matters, but it was also vitally important to take up substantive questions as soon as possible. With that in mind, he could see little practical difference between an open-ended working group with 33 members and a group with no specified number of members; he was thus willing to support the establishment of the latter type of group. He could accept the Tunisian proposal that there should be one working group, although the Chairman's suggestion that there should be two, or even three if necessary, seemed preferable in view of the number and complexity of the items before the Sub-Committee. He agreed with the method of allocating items suggested by the Chairman, but was also sympathetic to the views of those States which felt that certain items should be allocated to the proposed group A.

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Mr. VELLA (Malta) appealed to the Sub-Committee to exercise common sense in its consideration of the allocation of work between the two working groups. Whether it chose to have one, two or three working groups, it would not be able to complete consideration of all matters referred to it because, for practical reasons, only a certain number of meetings could be scheduled at the same time and it would therefore be obliged to concentrate on certain items on its agenda.

What was crucial in the negotiations on the law of the sea was the nature, characteristics and scope of the jurisdiction of coastal States in the marine environment. If agreement could be reached on those questions, it would be comparatively easy to reach agreement on all other matters at the Conference on the Law of the Sea. If, on the other hand, no agreement was reached on them, it was highly unlikely that agreement would be reached on the other matters. It was therefore essential to give the most careful consideration to questions of national jurisdiction in connexion with ocean space. Those questions had to be considered together, not necessarily for reasons of principle, but because the various solutions proposed in connexion with coastal State jurisdiction in ocean space should be discussed in one forum. It would be necessary to compare, for instance, solutions based on traditional law of the sea, such as the distinction between the territorial sea, the contiguous zone, the continental shelf and fishing conservation zones, with solutions based on territorial sea plus exclusive economic zone, or with solutions based on territorial sea plus exclusive economic zone plus exclusive regional zone for resource exploration and with other solutions that might be proposed. Such discussions would have to take into account the rights and interests of land-locked countries, shelf-locked countries and countries with broad or narrow shelves.

It would only be realistic to anticipate that such a discussion would require considerable time before a harmonization of views was reached. Hence, there would be little time to consider in the same working group the connected questions of limits of national jurisdiction, base lines, basic definitions of islands, archipelagos and artificial islands, and perhaps other matters. His delegation agreed that those questions must be considered simultaneously with the other questions, but for practical reasons it did not think that they could be considered

(Mr. Vella, Malta)

in the same working group. A second working group was therefore needed to consider the question of limits, and in the view of his delegation, it could begin work by reviewing the question of base lines and the way in which they should be drawn. The solution of that highly technical and complex question would determine whether 2 or 3 million square miles of ocean space were to be considered as internal waters or not. Secondly, the second working group could consider the definition of archipelagos, and thirdly the question of artificial islands and their right to enjoy a territorial sea. In that way the group would be fully occupied at least for the current session without considering the question of limits of national jurisdiction, which depended upon some harmonization of views with respect to the zone or zones of coastal state jurisdiction.

If attention was focused on the matter of coastal State jurisdiction there was a real possibility that the Sub-Committee would achieve useful results. If, however, it dispersed its efforts in an attempt to cover the entire agenda, it seemed likely that the results achieved would fall short of expectations.

Mr. TUNCEL (Turkey) endorsed the African group's proposal that there should be only one working group. The existence of a single working group would benefit the Sub-Committee in several ways. For instance, the Sub-Committee would no longer be faced with the difficult task of allocating items between working groups and the group itself could decide the order in which it wished to examine the subjects allocated to it for consideration. Furthermore, if there was only one working group it might be possible, unless delegations wished to have their statements reported in summary records, to dispense with the general debate in the Sub-Committee: there should not be summary records of the proceedings in the working group. As the Egyptian representative had suggested at the previous meeting, the working group should be chaired by the Chairman of the Sub-Committee. If necessary, it would, of course, always be possible to establish subgroups of the working group. As to the proposal made by the representative of Peru at the previous meeting, the discussion in the Sub-Committee seemed to have reached a stage at which it was no longer necessary to establish a negotiating group.

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Mr. HAFNER (Austria) commended the Chairman on the efforts he had made to allocate items between two working groups. The unity and interrelationship of all the items had made his task all the more difficult. The question of the rights and interests of land-locked countries, for instance, was closely related to and influenced by all the other major questions. Therefore, should the Sub-Committee decide to establish two working groups, the question of the rights and interests of land-locked and shelf-locked countries should be discussed in both of them. It would seem, too, that the working groups should be open-ended so as to afford all States an opportunity of defending their rights and interests on an equal footing.

In conclusion, he said that his delegation shared the views expressed by the representative of Singapore at the previous meeting.

Mr. MIGLIUOLO (Italy) commended the Chairman on his strenuous endeavours to find a solution acceptable to the Sub-Committee as a whole. His delegation had intended to support the suggestion put forward by the Chairman at the 48th meeting, with the sole exception of the suggested limitation of membership of the working groups. There were, however, two reasons why the African proposal for a single working group of the whole merited support. Firstly, small delegations, including his own, found it difficult to designate representatives in an increasing number of subsidiary bodies. Secondly, a subsidiary organ composed of 33 members, as suggested by the Chairman, was not a working group; it was a committee or sub-committee. A body in which members would be able to talk to each other and do concentrated work on specific questions should consist of no more than 10 persons. Moreover, if a working group with a limited membership were to be established, not all Member States would be represented on it. It was inconceivable, however, that a delegation of a Member State with a vital interest in a given question should delegate the authority it received from its Government to another delegation. In any case, even in the case of the establishment of a working group of the whole, the advantage of the informality of its proceedings would be maintained. For those reasons, his delegation favoured a working group of the whole and would welcome a decision by the Chairman of the Sub-Committee to chair it.

Mr. CISSE (Senegal) said that his delegation fully supported the statement made by the Tunisian representative. The delegations of African States were not large enough to be represented on several bodies simultaneously. Furthermore, the Sub-Committee's terms of reference clearly affirmed the unity of the questions to be discussed. The items on the continental shelf, the exclusive economic zone,

(Mr. Cissé, Senegal)

coastal State preferential rights and the rights and interests of shelf-locked States and States with narrow shelves or short coastlines, for instance, were interrelated and must be discussed together. If two working groups were established, the African States would have to request that all those items be allocated to one working group; that would make for a lack of balance between the groups. He hoped therefore that members would agree to establish a single working group. He agreed with the Turkish representative that the Chairman of the Sub-Committee should be requested to chair the working group.

Mr. YANGO (Philippines), speaking on behalf of the Asian group, said that the Asian members of the Sub-Committee could endorse the proposal for a single working group of the whole. They hoped that the other members of the Sub-Committee would also be able to support the proposal and thus enable the Sub-Committee to make a start on the substantive work before it.

Mr. BELA (Hungary) commended the Chairman on the valuable contribution he had made to the Sub-Committee's work. His proposals had been carefully studied by the Hungarian delegation.

It seemed that the categorization of items and subitems by the Chairman of the main Committee (A/AC.138/L.13/Add.1) could serve as a basis for the distribution of items between working groups. Hence, the proposals made at the previous meeting by the representatives of Bulgaria and Singapore were acceptable to his delegation. Indeed, as a land-locked country, Hungary fully endorsed the proposal made by the representative of Singapore that the items grouped under category I in document A/AC.138/L.13/Add.1 should be allocated to Working Group A and the items grouped under categories II, III, IV and V to Working Group B. In the interests of efficiency, it seemed that the Sub-Committee should establish two working groups.

Mr. BEESLEY (Canada) observed that no delegation had categorically opposed the proposal put forward by the African group. His own delegation could have supported the proposals made, at previous meetings, by the Chairman and by the Chilean, Maltese and Peruvian delegations. Those proposals had not, however, won the support of the Sub-Committee as a whole. The African group, on the other hand, had given cogent reasons for their unwillingness to accept two working groups.

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(Mr. Beesley, Canada)

Therefore, given the flexibility of the African proposal and the fact that the Sub-Committee must get on with its work, Canada could accept the African proposal. The working group would have to deal with a very difficult question, namely, State jurisdiction and sovereignty. It was to be hoped, therefore, that agreement would soon be reached on its establishment.

Mr. FIGUEREDO (Venezuela), speaking on behalf of the Latin American members of the Sub-Committee, endorsed the African group's proposal that there should be one working group which should be chaired by the Chairman of the Sub-Committee.

Mr. KOPAL (Czechoslovakia) suggested that in the interests of efficiency a minimum of two working groups should be established. In the opinion of his delegation, therefore, the Chairman's proposal was still the most reasonable. As to the size of the working group, the Sub-Committee might follow the example of Sub-Committee I and establish a group of 33 members. The most important decision to be taken related to the items to be allocated to the working groups. In that connexion, his delegation endorsed the proposal made by the delegations of Singapore, Austria and Hungary. It was essential to maintain the relationship between the items and subitems which the Chairman of the main Committee had suggested should be placed in categories II, III, IV and V (A/AC.138/L.13/Add.1).

Mr. HARRY (Australia) suggested that the Sub-Committee should decide to establish one working group which would, as its first task, deal with the subjects the Chairman had allocated to working group A, with, perhaps, the addition of item 5 and the items proposed by the delegations of Austria and Singapore.

Mr. JEANNEL (France) noted that there appeared to be general agreement on the desirability of establishing a working group or groups. With regard to the composition of the groups, he agreed with the United States representative that there appeared to be no difference, for practical purposes, between a working group of the whole and an open-ended group. What was important was that all delegations should have an opportunity of participating on an equal footing in the group or groups, and his delegation felt that there was general agreement on that principle.

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(Mr. Jeannel, France)

His delegation had originally supported the idea of two groups, but was prepared to accept the proposal made by the Tunisian representative, on behalf of the African group. In his view, the Committee should accept the formula proposed by Chile at the previous meeting and should entrust the group with the items suggested by that delegation.

Mr. ENGO (Cameroon) noted that the course proposed by the African group had received broad support. The possibility of setting up other groups could be examined subsequently in the light of the tasks to be completed and the time at the Committee's disposal. He felt that the proceedings of the working group should be as informal as possible and that summary records would not be required. With regard to the proposal that the Chairman of Sub-Committee II should preside over the single working group, he felt that it would be better if he was not immediately involved in the activities of the working group.

The CHAIRMAN said that he agreed with the views expressed by the representative of Cameroon and felt that it would be better for another delegation to preside over the working group.

Mr. MBOTE (Kenya) said that he wished to associate his delegation with the views expressed by the representative of Cameroon and the Chairman.

Mr. ANDERSON (Iceland) said that the group of Western European and Other States, of which he was the spokesman, had no objection to the African group's proposal.

Mr. KHMELNITSKY (Byelorussian Soviet Socialist Republic) requested, on behalf of the group of Eastern European countries, further time in which to study the proposals put forward by the different groups.

Mr. HASSOUNA (Egypt) noted with satisfaction that the proposal made by Tunisia, which was identical to that already put forward by his own delegation, had received wide support from the various regional groups. He hoped that it would be possible to proceed with the substantive work as soon as possible.

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The CHAIRMAN noted that a consensus appeared to be emerging on the desirability of setting up a single group in the first instance. He felt that it should be established forthwith, and allowed to take a decision on its organization of work, its officers and the items it would take up. If summary records were dispensed with, delegations would be freer to express their views and procedural problems would be avoided.

The meeting rose at 1.05 p.m.

SUMMARY RECORD OF THE FIFTY-FIRST MEETING

Held on Friday, 9 March 1973, at 3.40 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

Mr. SMIRNOV (Byelorussian Soviet Socialist Republic), speaking on behalf of the delegations of the Eastern European States, recalled that the representatives of those countries who had already spoken had, in general, supported the idea that the Sub-Committee should establish three working groups, because they believed that that would help to make its work proceed smoothly. However, in order to meet the wishes of other delegations, the group of Eastern European States had agreed to accept the proposal for the establishment of a single working group, with the proviso that another one could be established subsequently, if necessary. The Eastern European States had serious doubts, however, as to whether the decision to establish only one working group was a wise one, since they believed that it would give rise to a debate on the order of priority to be followed in the consideration of items. In any event, to avoid delay they were prepared to support the proposals submitted for the determination of the order of priority.

They also felt that the working group should be open-ended, so that all the delegations which so desired could participate in its deliberations, and the right to participate of those delegations which were not in fact able to do so would be recognized. With regard to the chairmanship of the working group, the Eastern European States considered that it would be logical and fair for that office to be assigned to one of them, since they were the only regional group which had never assumed the chairmanship of the Committee or its various Sub-Committees and working groups. Lastly, he pointed out that the group of Eastern European countries had already selected from among its members the candidate whom it would support for the chairmanship of the working group.

The CHAIRMAN said that, with the statement that had just been made, the Sub-Committee had reached a consensus on the organization of its work. That consensus could be summarized in the following manner: the Sub-Committee would set up an open-ended working group, on the understanding that other working groups

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(The Chairman)

could be established if that proved to be necessary; other bodies such as drafting groups or working subgroups, could also be established. The working group would be empowered to decide on its internal organization, i.e. to elect its officers, to prepare its programme of work and to determine the order in which it would consider the various items. Moreover, it would report to the Sub-Committee from time to time. If there were no objections, he would take it that the Sub-Committee accepted the procedure he had outlined.

It was so decided.

GENERAL DEBATE

Mr. BAKULA (Peru) recalled that, on 15 March 1971, his delegation had stated in the Committee that the profound political, legal, scientific and technical changes that had resulted from the Geneva Conferences of 1958 and 1960 had demonstrated a clear trend towards the extension of the areas of national jurisdiction by an increasing number of States, and that other countries could be expected to join in that process. Related developments during the past two years had had the precise effect of confirming the fact that, in differing conditions, the 200-mile theory had transcended the confines of Latin America and was now shared by countries in all five continents, despite their ideological differences and their varying levels of development. Indeed, that limit had received support from a significant number of countries in Africa, Asia and Oceania, and from some developed countries, including European countries. It was also upheld by most of the legal experts who participated in the meetings of the Asian-African Legal Consultative Committee, by 10 Latin American countries represented at the Conference of Foreign Ministers held in Santo Domingo, by those African States which had taken part in a regional seminar held in Yaoundé, and by a unanimous decision handed down by the Inter-American Juridical Committee. Moreover, the delegations of Kenya and Malta had submitted drafts in which 200 miles was proposed as the limit of the economic zone and the national zone, respectively. The People's Republic of China, on entering the United Nations, had expressed support for those countries which had proclaimed a 200-mile limit for their territorial seas; the Government of Cuba, at meetings held with high-ranking officials from Chile and

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(Mr. Bakula, Peru)

Peru, had done the same; and, one month previously, 26 legislators from the Democratic and Republican Parties in the United States had urged that country to extend its fishery zone to the 200-mile limit.

From the foregoing various conclusions could be drawn with regard to the development of the law of the sea. In the first place, it had been clearly demonstrated that the 1958 Conventions were insufficient to respond satisfactorily to the problems and expectations arising out of new uses and abuses of the sea, although many of their provisions should be maintained in the future. That was confirmed by the fact that those Conventions were in force in only one third of the States of the world and that a new Conference on the Law of the Sea had been convened.

Secondly, the law of the sea could not continue to be an instrument of political, economic and military domination by the more powerful States, but should be based on the principles of justice which had brought an end to colonialism and neo-colonialism and on observance of the principle of non-intervention and the free use of natural resources. The new legal régime of the seas should be expressed in standards which safeguarded the right of coastal States to use the resources available to them in the area immediately adjacent to their territories and which, beyond a reasonable limit, according to the characteristics of the various regions, established a régime of international co-participation in the benefits obtained from the exploitation of the ocean space.

The third conclusion that could be drawn was that there was no question of concluding any international agreement which, in relation to the aforementioned reasonable limit, did not specify 200 miles as the frame for the exercise of the rights of coastal States.

Fourthly, it was obvious that the 200-mile limit was the maximum limit and not the only one, since there were regions in which it could not be applied; nor should it be applied to more or less uninhabited islands, since its main justification lay not in the existence of a territory but in the presence of the population which inhabited it, whose needs should be satisfied through the use of the resources available in its environs. In that connexion, his delegation felt that it was important that several limits should be envisaged, as that would be the only suitable solution to deal with the variety of situations. limits should be established on the basis of realities and needs and in accordance with regional, subregional and other specific criteria.

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(Mr. Bakula, Peru)

The fifth conclusion to be drawn was that the concept of the territorial sea was currently anachronistic and inadequate; for that reason, several developing countries had extended the areas over which they exercised sovereignty, on the basis of a renewed concept of the territorial sea that was more far-reaching with respect to the protection and exploitation of resources by coastal populations, but was also more liberal in other ways. Some writers had called that new concept the "national sea", to distinguish it from the "international sea".

Lastly, it should be noted that the positions of those countries which defended the new concept of the territorial sea and those which accepted the retention of the traditional concept of the territorial sea, with the addition of an economic zone or patrimonial sea, not only had in common the 200-mile limit as the maximum breadth of the area under the jurisdiction of coastal States, but also agreed on the powers which those States should be recognized to possess. Those powers related to the exploration and exploitation of the natural resources of the sea, its soil and subsoil, the prevention of pollution, the regulation of scientific research and the authorization of the establishment of installations other than submarine cables or pipelines. With regard to these latter two types of installation, as well as navigation and overflight, it had also been agreed to recognize a liberal régime, with no limitations other than those imposed by the exercise of the above-mentioned rights by coastal States and without prejudice to the establishment of additional standards, within an area relatively close to coastlines, to safeguard national order, peace and security.

His delegation wished to take the opportunity to reiterate its support for those coastal States which, in respect of international straits, defended their legitimate interests without prejudice to international communications; it also supported those States which upheld the concept of the archipelago and those countries which defended their sovereign rights to the farthest limit of the continental shelf, even when that was more than 200 miles distant. His country was also prepared to seek recognition, at the international level, of the rights and reasonable expectations of land-locked developing countries with regard to their

(Mr. Bakula, Peru)

access to the sea, the use of specific maritime zones of neighbouring coastal States, as agreed with those States, and their special treatment in the international régime of the sea-bed. It also supported the conclusion of agreements with certain States, through bilateral or multilateral instruments, which provided for special and reciprocal treatment in respect of access to and exploitation of the renewable resources of certain parts of the zone under the jurisdiction of other States.

Finally, with respect to the position of certain delegations which felt that it was essential that the work be speeded up so that the Conference on the Law of the Sea could open at the appointed time, although he agreed that the available time should be put to the best possible use, it was more important to try to reach an agreement likely to satisfy all States and to respect their legitimate interests. His delegation could not support any attempt, made in the name of urgency, to paralyze the development of the law of the sea by revising the Geneva Conventions only minimally, because to freeze the legal norms as some Powers seemed to wish to do in order to remain free to exploit the resources of the ocean space for their own benefit, would be to go diametrically against the struggle of the increasingly united developing countries to overcome underdevelopment and free themselves from dependence.

Mr. CISSE (Senegal) said that his country's position with respect to the régime for the patrimonial zone was similar to that outlined by Kenya in its draft articles on the concept of the economic zone (A/AC.138/SC.II/L.10), which could be regarded as an attempt to codify the practice of many developing States which had extended their territorial waters or established an exclusive fishery zone beyond their territorial sea. Under an Act of 19 April 1972, Senegal had instituted an exclusive fishery zone 110 miles wide, measured from the outer limit of its territorial sea, which was set at 12 nautical miles. To attempt to replace that exclusive fishery zone by a non-exclusive but preferential fishery zone in which the rights of the coastal State would be limited to its fishing capacity would be tantamount to expropriating the coastal States, particularly the developing coastal States, and would be absolutely unacceptable since it would benefit not mankind but the rich nations that possessed modern fishing fleets.

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(Mr. Cisse, Senegal)

To claim that, by having their exclusive fishery zone, 50 coastal States would prevent two thirds of mankind from benefiting from the living resources of the high seas, was to ignore the fact that, really, the waters adjacent to the territorial sea were not, as had previously been the case, an integral part of the high seas as far as the exploitation of the living resources was concerned, as well as the fact that those two thirds of mankind, in fact represented a few highly developed countries which were most active in the field of deep-sea fishing.

The drafts relating to the preferential fishery zone submitted by the United States (A/AC.138/SC.II/L.9) and Canada (A/AC.138/SC.II/L.8) might, provided they were considerably improved, serve as a basis for negotiations which might lead to the working out of international regulations acceptable to all States. According to the United States, the coastal State would provide "access by other states, under reasonable conditions, to that part of the resources not fully utilized by its vessels" (Part V, B). The meaning of "reasonable conditions" would have to be explained. If it meant that the coastal State could, by paying a fee determined in accordance with the disparity between standards of living and the deterioration in the terms of trade, authorize other States to fish in its exclusive fishery zones, that formula could be a basis of negotiation.

The proposal made by New Zealand and Australia (A/AC.138/SC.II/L.11) which accepted the principle of exclusive jurisdiction, was also an acceptable starting-point, although what was meant by "equitable conditions" for permitting the access of foreign vessels to the exclusive fishery zone would have to be determined. One comment was that the conditions imposed by the coastal State should not be unreasonable. Similarly, in order to be reasonable, the fees that foreign vessels would have to pay should depend on the fiscal charges imposed on national vessels and on the expenses incurred by the State for surveillance of the coast. That draft established that the coastal State would not be able to impose on foreign vessels taxes higher than those it needed to recover the costs of surveillance and ensure an equitable distribution of taxes. However, it did not mention the right of developing countries to charge foreign vessels more in order to obtain the

(Mr. Cisse, Senegal)

necessary resources to exploit their living resources, and his delegation consequently had some reservations with regard to the draft.

The Canadian draft (A/AC/138/SC.II/L.8) contained a positive element for, after recognizing the special status of the coastal State with respect to administration and preferential rights in the exploitation of resources, it recognized that such rights might be ceded to other States. In so far as the exercise of the preferential right was not limited by the fishing capacity, the Canadian document might constitute an acceptable basis for discussion.

On the other hand, the Soviet draft (A/AC.138/SC.II/L.6) and that of Japan (A/AC.138/SC.II/L.12) were frankly unacceptable, since their effect would be to dispossess the poor countries of their patrimonial rights in the exclusive fishery zone and would make them suffer the consequences of their underdevelopment even with regard to the sea. That was all the more unfair because the developing countries could not afford the increasingly modern and costly fishing vessels that would enable them to increase their fishing capacity and exercise their preferential right to a greater extent.

The delegation of the Soviet Union had just circulated a document which sought to take account of the interests of the developing countries and which proposed measures of financial compensation for coastal States, which would be reimubursed for the expenses they incurred in exploring the living resources and for the constant surveillance of the fishery zones in the high seas. That approach, though commendable, was inadequate, for it maintained the link between the rights of the coastal developing States over the living resources of the high seas and the fishing capacity of their national fishing fleets. The right of the coastal State to levy a fee on foreign vessels coming to fish in a fishery zone that constituted a part of the national heritage should here be clearly recognized. It was not a question of depriving mankind of food but of making the rich pay for the food they obtained in the waters of the poor. The fees would be determined, like any economic value, in accordance with the law of supply and demand, as in the case of petroleum-producing countries whose rights the rich countries had finally recognized.

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(Mr. Cisse, Senegal)

The second fundamental question related to the continental shelf. In his delegation's opinion, the international zone was that situated between the points constituted by the outer limits of the continental shelf of coastal States. Those limits were determined by the criterion of a 200-meter depth or that of exploitability. Once a part of the sea-bed became exploitable, whether it was situated on the continental slope or on the side of an island beyond the continental slope, it was covered by the Geneva Convention which established the way to delimit underwater boundaries. Senegal therefore supported the position adopted in the Declaration of Santo Domingo, and felt that the establishment of an intermediate or mandated zone would lead to complications and would constitute dispossession of the coastal States. The continental shelf adjacent to a State's coasts included the entire terrace. In the opinion of his delegation, geologically and physically speaking, the continental shelf did not end at the edge but at the foot of the continental terrace and the prolongation of a territory into the sea ended where the sea-bed levelled out. As the International Court of Justice had ruled on 29 July 1966 (para. 43) the continuation of a State's territory extended under the water to that point.

His delegation was not a priori opposed to the criterion proposed by some States for establishing the outer limits of the continental shelf by breadth instead of by the depth of the water and felt that such an approach might simplify matters. However, it would have to be uniformly applied and the proposed breadth would then have to be such as to include the continental shelf of all States.

Mr. HARRY (Australia) recalled the main features of the working paper (A/AC.138/SC.II/L.11) submitted by the New Zealand delegation and his own at the Committee's fourth session. Australia had been considering the question of the fisheries zone and, on 24 January last, the Prime Minister had stated publicly that Australia would seek to have included in the new Convention on the Law of the Sea provision for a 200-mile wide fisheries zone along the lines it had proposed.

Fisheries legislation had been in force in the various Australian states since the middle of the 19th century and, in the absence of federal legislation, the provisions of state legislation applied to Australian nationals operating in waters both within and beyond the territorial limits. The first comprehensive

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(Mr. Harry, Australia)

fisheries legislation had been introduced in Parliament in 1952, its main purpose being to provide for the conservation of the resources of the sea in waters adjacent to Australia as a whole. In introducing the legislation the Government had pointed out that the bill did not specify the particular waters to which it would apply but made provision for future declarations of "proclaimed waters" in which fishing would be regulated under the legislation. It was interesting to note that the waters subsequently proclaimed under the legislation extended to almost exactly 200 miles from the coast, although it had not been declared a 200-mile zone.

In reaching its decision to control fishing by Australian nationals within a distance of 200 miles, the Australian Government had been influenced by a number of factors: for example, that distance covered adequately the fishery resources then under exploitation, and the fishing fleet and equipment used by Australian fishermen were such that substantial operations beyond 200 miles from the coast were unlikely to be undertaken. His Government had, of course, been aware that action had been taken by a number of other countries to assert rights over natural resources in zones adjacent to their coasts: it had had in mind the proclamation by the President of the United States of America for the establishment of conservational zones for the protection of fisheries in certain areas of the high seas contiguous to the United States, and similar measures adopted by other countries, including Mexico, Peru and Argentina. However, the Australian Government had made no attempt to apply its regulatory measures to fishermen of other States beyond the three-mile limit until 1967, when it had proclaimed a 12-mile zone of fisheries jurisdiction. The legislation had then been amended to apply the regulatory measures to all fishermen operating within the 12-mile limit. At the same time, the Government had invited other States with fishing interests in that zone to enter into negotiations for phasing out their operations.

In the 20 years that had passed since his Government had begun to apply restructions on the fishing activities of its nationals in the waters within the 200-mile limit, there had been a further expansion of the country's capacity to carry out all aspects of scientific research in the living resources of the sea, to exploit fully the resources available, to provide legislative machinery for the proper management of those resources and to maintain adequate patrolling facilities to ensure that the management measures were observed. The production of Australian

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(Mr. Harry, Australia)

fisheries in 1951-1952 had been valued at approximately $7.5 million; that figure had risen by 1969-1970 to nearly $60 million. For the time being, his Government claimed exclusive fishery jurisdiction only to a distance of 12 miles from the coast; but it now sought, in those negotiations and at the Conference on the Law of the Sea, to ensure that the new Convention to be adopted would provide the coastal States with the right of exclusive jurisdiction over fishery resources within a zone of 200 miles, in accordance with the principles set forth by Australia and New Zealand.

Mr. IMAN (Kuwait) said that the starting point of the Sub-Committee's work should be to resolve the question of the maximum breadth of the territorial sea. Although successive attempts made in the past to reach agreement had failed, it was hoped that the Conference on the Law of the Sea would at last resolve that issue. His delegation associated itself with the large number of delegations which took the view that a 12-mile limit represented the best possible compromise.

Closely linked with the question of the territorial sea was that of straits. If the 12-mile limit were adopted, a number of straits would be subjected to the jurisdiction of the coastal State or States bordering the straits. There was an overriding need to formulate rules governing freedom of passage in straits, not only to safeguard the interests of coastal States but also to ensure unimpeded passage through straits used for international navigation. A clear distinction must, however, be drawn between maritime navigation and aerial navigation, since different criteria and considerations applied to each of them. While maritime navigation fell within the competence of the Committee on the Sea-Bed, aerial navigation was more the concern of bodies such as the International Civil Aviation Organization. Freedom of navigation did not include freedom of overflight.

The legal norms governing the continental shelf were firmly established in the Convention on the Continental Shelf signed at Geneva in 1958. His Government took the view that that instrument was satisfactory on the whole, the main drawback being the provision relating to the criterion of exploitability. Such a provision conflicted with the concept of the common heritage of mankind, since it gave the coastal State sovereign rights over the sea-bed and subsoil in the submarine areas adjacent to it so long as the depth of the superjacent waters admitted the

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(Mr. Iman, Kuwait)

exploitation of the resources of those areas. Since the advances in modern technology would enable coastal States increasingly to exercise sovereign rights over wider areas, there was an imperative need to define the outside limit of the continental shelf. His country was in favour of discarding the exploitability criterion and of retaining the depth criterion set forth in the Convention, since the depth criterion recognized the exclusive sovereign rights of the coastal State over the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 metres; when the application of that criterion alone caused hardship to coastal States, it could be supplemented by the distance criterion.

His Government particularly upheld the provisions of article 6 of the Convention, which had been an effective means of delimiting the continental shelf where the latter was adjacent to the territories of two or more States whose coasts were opposite each other and where the same continental shelf was adjacent to the territories of two adjacent States.

The practice of States relating to fisheries was at the present time in a chaotic condition, owing mainly to the fact that a large number of States had made unilateral declarations which were not uniform either in phraseology or in content. One of the most serious duties of the Committee was to grapple with that problem and reach a uniform system of law which would be fair to all countries and would allow them to obtain from the sea the animal protein which they needed.

At the same time, all States had an equal interest in conserving the living resources of the sea, in order to maintain physical yield at a high level. Yet existing conservation arrangements were not satisfactory, since they did not tend particularly to maximize production. The international community had an interest in devising a universal arrangement to prevent depletion of the living resources of the sea and to determine the total allowable catch.

The international community had undertaken to reformulate the law of the sea in accordance with the will of all States. Despite divergencies of views, States had attained a level of responsibility and consciousness that would make possible the resolution of all outstanding issues.

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Mr. MALLIN (Observer for Ireland), speaking on the management and exploitation of the living resources of the sea, said that the connexion between an anadromous species such as the Atlantic salmon and the coastal States of their origin was well established. If a coastal State whose rivers were the breeding grounds of a particular stock of salmon were to interrupt completely access of fish to its rivers, the whole of that stock would disappear within a very few years, unless special breeding and rearing techniques were adopted to replace the natural environment. The success of such measures was not always commensurate with their cost, which was generally very high.

Stocks of anadromous fish were in general quite limited, as compared with other species, and were therefore very sensitive to exploitation. Only through the strict enforcement of draconian regulations could a proper balance between catch and spawning escapement be maintained. A further consideration - one of socio-economic importance - applied in the case of such species. Generally, the exploitation of anadromous species was carried out by small vessels fishing close inshore or in restricted waters. The fishing was seasonal, and the fishermen involved in it were very dependent on the result of a few weeks' work to supplement their incomes. Further, it should be borne in mind that the abundance of such species could differ very greatly from one year to another, and the most immediate sufferers were the small-scale fishermen in the country of origin of the fish. Thus, while a poor spawning year and a small smolt run would be reflected in low catches a year or two later, a heavy spawning and a big run of smolts would not necessarily be followed by large catches.

His Government considered that only the State of origin of the anadromous species should manage the resource and exploit the stocks. Participation in the fishing by other States could result only in the eventual extinction of that species. It would be very difficult to persuade States to continue spending money for what must eventually benefit States that made no contribution to the conservation of the species, unless control and the right of exploitation were vested in the State of origin.

He agreed with the analysis of the subject presented in the working paper submitted by Canada (A/AC.138/SC.II/L.8), although he doubted whether the prohibition of fishing of anadromous species in the high seas was adequate.

The meeting rose at 5 p.m.

SUMMARY RECORD OF THE FIFTY-SECOND MEETING

Held on Tuesday, 13 March 1973, at 3.20 p.m.

Chairman: Mr. TUNCEL Turkey

GENERAL DEBATE (continued)

Mr. KOVALEV (Union of Soviet Socialist Republics) said that one of the most important and delicate questions of international law which had to be solved at the next Conference on the Law of the Sea was that of establishing a rule of international law establishing a maximum width for the territorial sea which would be uniform for all coastal States. In that connexion, the Soviet delegation had transmitted to the Secretariat for distribution as an official document a set of draft articles in which it proposed that the maximum width of the territorial sea should be 12 nautical miles. That was the limit which the Soviet Union had favoured at the first Conference on the Law of the Sea, in 1958, and which it later proposed at the second Conference, held in 1960, when it had received the support of most of the developing countries. Furthermore, that was the limit which the USSR had adopted for itself from the very earliest years of its existence - actually in 1921, under a decree signed by Lenin. At that time the USSR, although impoverished and devastated by the war and foreign military intervention and despite its primary need to defend itself against imperialist aggression, considered that 12 miles was sufficiently broad for the territorial sea.

The adoption of the 12-mile limit for the territorial sea was justified by many considerations and arguments. First, as early as 1956, the United Nations International Law Commission had stated in its report to the General Assembly (A/3159) that international law did not permit an extension of the territorial sea beyond 12 miles and expressed the view that the breadth of the territorial sea should be fixed by an internaional conference. Furthermore it had expressed the opinion that such an extension infringed the principle of the freedom of the seas. Then, at the second Conference on the Law of the Sea (1960), 87 States had expressed themselves in favour of establishing a 12-mile limit in the breadth of the territorial sea. At the present time, the breadth of the territorial sea of 99 out of the world's 117 maritime Powers varied between 3 and 12 nautical miles. Furthermore, the 17 African States which had attended the Regional Seminar on the Law of the Sea held at Yaoundé in June 1972 had also agreed that the territorial sea should not extend beyond a limit of 12 miles. Similarly, the Specialized Conference of the Caribbean Countries on Problems of the Sea had stated in the Declaration of Santo Domingo approved in June 1972 that the breadth of the

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(Mr. Kovalev, USSR)

territorial sea should be the subject of an international agreement and that in the meantime each State had the right to establish its own limit, up to a limit of 12 miles. There would seem, therefore, to be very wide agreement in favour of the 12-mile limit. In that respect, he wished to point out that in the debate in the Main Committee and in Sub-Committee II on that item, the 12-mile limit had had almost unanimous support.

Another fact that should be borne in mind was that seven land-locked countries had supported the 12-mile limit (document A/AC.138/55). The question was of the highest importance for them, since any extension of the jurisdiction of the coastal States would result in prejudice to the land-locked countries. It was obvious that, the wider the territorial sea of the coastal States was, the less possibility there was for the land-locked countries to take advantage of the seas and their resources.

He emphasized that the USSR argued from the basis that the coastal States were entitled to determine the breadth of their territorial sea, but only within the 12-mile limit. The adoption of any proposal to extend the territorial sea beyond that limit would be tantamount to attempting to extend a country's sovereignty over the open sea, to the detriment of the rights and interests of other countries, which could restrict the freedom of navigation and the scientific research and fisheries of States. He therefore hoped that the Soviet proposal would receive support from all members of the Sub-Committee. Lastly, recalling that in June 1972 the USSR had submitted a draft article on the straits utilized for international navigation (A/AC.138/SC.II/L.7), he said that the articles on that question and on the breadth of the territorial sea could be combined in a single document, which his delegation hoped to be able to submit in the near future.

Mr. BAKULA (Peru) explained that, for technical reasons, in the statement he had made in the Sub-Committee on 9 March (A/AC.138/SC.II/SR.51), he had failed to mention the fact that at the meeting of the Special Committee on Latin American Co-ordination, and the Ministerial Meeting of the Group of 77 held in Lima, Peru, and also at the third session of UNCTAD, held in Santiago, Chile, the principle that the limits of the maritime jurisdiction of the coastal States should be established bearing in mind the needs of the development and the well being of their peoples had been accepted. Furthermore, in 1972 Iceland had extended its fisheries zone to a 50-mile limit, and French Guyana to an 80-mile limit.

The meeting rose at 3.35 p.m.

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SUMMARY RECORD OF THE FIFTY-THIRD MEETING

Held on Thursday, 15 March 1973, at 3.25 p.m.

Chairman: Mr. TUNCEL Turkey

TRIBUTE TO THE MEMORY OF MR. ALCIVAR

Mr. ZEGERS (Chile) said he regretted to have to inform the Sub-Committee of the death of Mr. Gonzalo Alcívar of Ecuador. The deceased had been a member of the International Law Commission and Chairman of the Sixth Committee of the General Assembly, and in addition had represented his country in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor; his participation in the work of the latter body had been particularly marked by the ability, courage and honesty which he had displayed at all times.

He suggested that the Sub-Committee should ask the Chairman to express its sincere condolences to Mr. Alcívar's family and to the Government of Ecuador.

Mrs. de GUIBOURG (Argentina), Mr. HARRY (Australia), Mr. BEESLEY (Canada), Mr. MARTINEZ MORENO (El Salvador), speaking also on behalf of the other Central American delegations, Mr. RUIZ MORALES (Spain), Mr. MOORE (United States of America), Mr. TOLENTINO (Philippines), Mr. JEANNEL (France), Mr. ZOTIADES (Greece), Mr. JAGOTA (India), Mr. JALAL (Indonesia), Mr. FRANCIS (Jamaica), speaking also on behalf of the delegations of Barbados, Guyana, and Trinidad and Tobago, Mr. OGISO (Japan), Mr. VELLA (Malta), Mr. CASTAÑEDA (Mexico), Mr. SMALL (New Zealand), Mr. SHITTA-BEY (Nigeria), Mr. BAKULA (Peru), Mr. OLSZOWKA (Poland), Mr. KEDADI (Tunisia), speaking also on behalf of the African group, Mr. KOVALEV (Union of Soviet Socialist Republics) and Mr. AGUILAR (Venezuela) expressed their regret at the death of Mr. Alcívar and requested the delegation of Ecuador to transmit their condolences to the Ecuadorian Government and the family of the deceased.

The CHAIRMAN associated himself with the expressions of sympathy and said that he would request the Chairman of the Committee to transmit the Sub-Committee's condolences to Mr. Alcívar's family and to the Government of Ecuador.

Mr. LUNA (Ecuador) thanked members for the tribute paid to the memory of Mr. Alcívar and assured the Sub-Committee that he would transmit the expressions of sympathy which had been voiced to the Ecuadorian Government and to the family of the deceased.

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GENERAL DEBATE (A/AC.138/SC.II/L.15) (continued)

Mr. TOLENTINO (Philippines), speaking on behalf of the delegations of Fiji, Indonesia and Mauritius as well as his own delegation, introduced the set of principles relating to archipelagic States contained in document A/AC.138/SC.II/L.15. The concluding sentence of the explanatory note in that document should be amended to read: "They contain the definition of an archipelagic State, its rights over the archipelagic waters, and the right of innocent passage for international navigation through such waters."

After reading out the principles, he observed that, although much had been written about the concept of the archipelago, that concept had not yet been clearly defined. His delegation was of the opinion that the concept of the archipelago was based on the unity of the land, the water and the people inhabiting the islands of the archipelago and that, in order to achieve, maintain and preserve that unity, the archipelagic State should be regarded as a geographical, economic, political and, in some cases, historical entity. An archipelago should be considered as an integral geographical entity, strengthened by political and economic unity and, in some cases, sustained through the years by historical continuity. Obviously, an archipelago might have some or all of those factors, but the fundamental consideration was that archipelagos must be identifiable as distinct entities. That essential element of unity formed the basis of the desire of an archipelagic State to preserve its identity as one State and one nation, for otherwise an archipelago might be splintered into as many islands as composed it, with the consequent fragmentation of the nation and the State.

The international community should recognize the rights of archipelagic States regarding the delimitation of archipelagic waters and sovereignty and jurisdiction over such waters. For their part, archipelagic States, as members of the international community, should be mindful of the interests of the international community in matters affecting all nations - particularly navigation - and should therefore allow innocent passage through archipelagic waters in accordance with the provisions of their national legislation with due regard to the rules of international law.

It should be pointed out that there was no definite rule in international law regarding the maximum length of the baselines of an archipelago or the maximum

(Mr. Tolentino, Philippines)

distance between its islands, and that the length of the baselines and the distance between the islands could not be subjected to any arbitrary limitations or criteria - otherwise, the application of the archipelagic principles would be meaningless, since an archipelagic State could always be split apart, mutilated or dismembered. Sovereignty, jurisdiction and control over the waters within the baselines were vital not only to the economic life and political solidarity of the archipelagic State but also to its national security.

His delegation hoped that the Sub-Committee would give favourable consideration to the principles contained in the document which he had just introduced and would take them into account when it came to the relevant articles for ultimate inclusion in an appropriate convention on the law of the sea.

Mr. NANDAN (Fiji) said that the need to recognize the special position of archipelagos in international law had already been widely accepted by States; what now remained to be done was to determine the criteria to be applied in order to recognize groups of islands as archipelagic States. In his delegation's view, the difficulties which had been experienced in that regard resulted from a lack of clarity in expressing the principles applicable to archipelagic States. For many years, jurists and writers on international law had agreed that groups of islands, by their intrinsic association with each other, should be regarded as a unit in international law. There had also been general agreement regarding the nature of the association that needed to exist between those islands for them to constitute a unit in law. It had been agreed that such islands should be linked geographically, politically and economically or should have been regarded historically as a unit. However, differences of opinion had arisen over attempts to apply additional tests, such as the distance between the islands or the land-to-water ratio, which would have the effect of nullifying the very validity of the established criteria of geographical, political and economic unity. For instance, a test of 10 or even 24 miles of maximum distance between islands would exclude from the definition of an archipelago Fiji and Tonga, both of which had been generally accepted as archipelagos and had been cited as such by eminent authorities. Many other archipelagos would be similarly affected by the application of such a test, despite the fact that they were in every other sense

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(Mr. Nandan, Fiji)

true archipelagos. In some cases, such tests would exclude some portion of an archipelago from the boundaries already permitted by international law, an outcome which would be a legal absurdity.

His delegation maintained that, just as coastal archipelagos had been freed from such arbitrary tests by the judgement in the Anglo-Norwegian Fisheries Case of 1951, oceanic archipelagos should be so treated that the tests applied to them corresponded to a real and not an arbitrary unity. Physical relationships were important in determining whether a group of islands were intrinsically linked in a geographical sense, and, where such a relationship existed, the distance between the islands was immaterial. However, it would be wrong to suggest that geographical relationship should be the sole test: unless the islands were also linked economically and politically, it would be absurd to group them together as a legal entity. The archipelagic States wished to promote the acceptance of realistic criteria from which realistic definitions could be derived, and for that reason were suggesting tests that were based on facts and not on arbitrary criteria.

For the purpose of determining the territorial limits of archipelagic States, those States proposed that straight baselines should be drawn connecting the outermost points of the islands and the outermost drying reefs of the archipelago, and that the territorial sea of the archipelago should be measured from those baselines. With regard to the status of the waters enclosed within the polygon formed by the lines demarcating the outer limits of the archipelagic State, there had in the past been several schools of thought. In order to reconcile divergent opinions and make it possible to arrive at a practical solution, the sponsors of the principles suggested that the waters enclosed by the baselines should be given the designation of "archipelagic waters", while the waters situated outside those baselines should be regarded as territorial waters and be subject to the ordinary rules of international law applicable to territorial waters. "Archipelagic waters" would remain subject to the sovereignty of the archipelagic State to which they appertained, but at the same time would be subject to a special régime with respect to the right of passage by foreign vessels to the extent that the innocent passage of such vessels through those waters was permitted by the archipelagic State in accordance with its national legislation and having regard to the relevant rules of international law. Such right of passage would not be granted throughout those waters but would be restricted to sea lanes to be designated for that purpose by the archipelagic State.

(Mr. Nandan, Fiji)

The purpose of the proposal was to afford the archipelagic State adequate control over the waters surrounding its component islands while at the same time preserving for other States the right of innocent passage through recognized shipping lanes, subject only to the normal rules of the archipelagic State for the preservation of its own security, the control of pollution and the exercise of normal police, customs and quarantine functions for the protection and preservation of the interests of its own people.

All archipelagic States were dependent on the seas around them. The seas of the archipelagic States were not only an integral part of the daily life of their inhabitants but also the means of internal communication and access. Their seas were as important to them as lands were to continental States. Control of those seas was essential to those States, as was the right to fish and exploit them, but those rights would be of little benefit if the vessels of other States, including armed vessels, could pass through any part of the archipelagic waters without let or hindrance. The prospect of developing local fishing industries would be slight if it was to be done in competition with the activities of foreign fleets in the very heart of the archipelagos. It should be emphasized, however, that the intention was not to contest the right to pass through archipelagic waters but simply to assert the right of the archipelagic State to designate the paths that might be taken by the vessels of other States through those waters and the right to control such passage so that the archipelagic State could properly exercise its sovereign rights and responsibilities and so that the interests of both the archipelagic and maritime States could be protected.

Mr. HEIN (Mauritius) said that he endorsed the statements made by the representatives of the Philippines and Fiji and merely wished to add that, although the problems relating to archipelagos had been discussed even before the 1958 Law of the Sea Conference, no recognition had yet been given to their peculiar characteristics. In his opinion, no new convention on the law of the sea would be complete unless it made adequate provision to preserve the unity and integrity of archipelagos.

Many delegations had already spoken in favour of establishing a 12-mile limit for the breadth of the territorial sea. Fifty-three States had proclaimed

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(Mr. Hein, Mauritius)

that limit and about 15 States had proclaimed a limit in excess of 12 miles. A few days earlier, the representative of the Soviet Union had also spoken in favour of the 12-mile limit and had referred to the recommendations made at Yaoundé. The Mauritian delegation also accepted that limit, provided that the exclusive fishery jurisdiction of the coastal State beyond that limit was recognized and that the traditional fishing rights of coastal States were preserved, especially where those rights existed outside the exclusive fishing zone of other coastal States. The Yaoundé recommendation that the breadth of the territorial sea should be 12 miles thus presupposed the establishment of an exclusive fishery zone beyond that limit and a recognition of the traditional or historic rights of individual States. His delegation therefore suggested that where traditional fishing rights existed within the fishing zone of another State those rights should be phased out by bilateral or regional agreements; but where such traditional rights were exercisable outside the exclusive fishing zone of any other State they should be preserved.

In a recent FAO study on the fishery profile of Mauritius it was stated that the greatest potential for an increase in catch seemed to be the area between the Seychelles and Mauritius. That area lay beyond the 12-mile limit and unless the traditional concept of the freedom of the seas was readjusted, the legitimate needs of the developing country - Mauritius - would not be accommodated and the new convention would perpetuate, indeed accentuate, existing inequities. The fear had been expressed that if exclusive fishing rights were confirmed in States that lacked adequate means to fish within their exclusive zone that would lead to underfishing and a consequent loss of protein food for the world community. Such fears could easily be dispelled. On the one hand, the coastal State could institute a system of licensing; on the other hand, machinery could be established, on a regional or universal basis, to ensure the rational exploitation of the living resources of the sea.

The continental shelf was also of great significance to Mauritius. Although so far the broad shelf belonging to Mauritius appeared to be barren, the facts of geography could not be overlooked, and the law, as it now stood, had created expectations which could not be disregarded. It was essential that the new convention should recognize the acquired rights which had been

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(Mr. Hein, Mauritius)

exercised and, whenever those rights ran the risk of curtailment, provision should be made for their preservation in one form or another.

It was thus clear that his delegation fully supported the economic zone concept in that it provided a new jurisdictional basis for resolving conflicts on the law of the sea. Application of that concept would safeguard the economic interests of the coastal States without prejudicing the other legitimate uses of the sea by other States. However, his delegation hoped at the same time, that the economic zone concept would also accommodate acquired rights.

Mr. ZEGERS (Chile) said that the Sub-Committee had reached a very important stage in its work at which it must prepare a set of draft articles which would serve as a basis for the Conference on the Law of the Sea. Needless to say, the future of the seas - which covered over two thirds of the earth's surface - would depend largely on the results of the Conference.

Previously, custom had been formulated by a few States and had therefore conformed to their practice and to the balance of power as it had then existed. Now, consideration would have to be given to the practice of all States and, most important of all, to the practice of States which were natural users of the sea. It would therefore be necessary to harmonize the interests of all States while, at the same time, taking into account the problems raised by technological advances.

The hopes of the developing countries appeared to lie in the recognition of the right of their people to avail themselves of the resources of their adjacent sea, to ensure their preservation and to participate in and control any exploration of that sea. There would be no advantage in affecting the right of all to international communication and to freedom of navigation and overflight, which should be recognized beyond a narrow strip, only 12 miles in breadth, adjacent to the coast. That equation could be expressed in the following terms: territorial sea/economic zone or patrimonial sea, or in terms of "national sea" with differentiated zones and régimes. What mattered was the recognized rights of the coastal States, their recognized authority up to a distance of 200 miles - an authority based on economic considerations and which was essentially economic - and the rights of third States, that is, all States to certain uses

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(Mr. Zegers, Chile)

of the sea and especially freedom of navigation and overflight beyond a narrow strip over which coastal States had fully sovereignty.

It was obvious that an international solution should accommodate the valid elements of existing custom to which no objection had been raised. It was also obvious that the provisions concerning access of land-locked countries to the sea must be improved and that due account should be taken of their interests in the régime for the sea-bed and the living resources of the ocean. Similarly, account must be taken of the special situations, existing in certain regions or subregions with regard to fisheries. Finally, as had been apparent at the recent fisheries conference at Vancouver, it would be necessary to have some regulations relating to conservation of the resources in jurisdictional waters.

Mr. SMALL (New Zealand) recalled the importance of the first statement made by the representative of Fiji in plenary session of the main Committee in July 1971. It had already been clear then that the problem of archipelagos was a serious one, deserving of due consideration in the current efforts to develop the law of the sea.

His delegation recognized that the solution of that problem, which had not been fully dealt with at Geneva in 1958, would not be easy. For example, competing rights and interests in relation to such matters as the right of passage through archipelagos would have to be gradually conciliated. There was no doubt that any settlement reached at the 1974 Conference would have to include some agreed rules on archipelagos. On that realistic basis New Zealand - without, of course, commitment to details at the present stage - would be prepared to give sympathetic attention to the four-Power proposal and to any others that might be put forward.

Mr. HARRY (Australia) said that the question of archipelagos was not a new one. In 1930, the distinct character of oceanic archipelagos had been examined at The Hague; subsequently, in 1951, the concept of coastal archipelago had been clearly defined, but unfortunately the process had not been carried further in 1958.

The Sub-Committee now had before it the principles contained in document A/AC.138/SC.II/L.15, submitted by the delegations of Fiji, Indonesia, Mauritius

(Mr. Harry, Australia)

and the Philippines, all neighbouring countries with which Australia maintained cordial relations. Furthermore, Australia had a very particular interest in the archipelago of Papua New Guinea. However, the sympathetic interest which Australia had in the archipelagic principle did not derive merely from geographical proximity. On the contrary, the question of archipelagos was an example of one of the basic problems with which the Sub-Committee had to deal: a balance must be struck between the right of individual States, in relation to their patrimonial resources in archipelagic waters, and the legitimate interests of the international community in general, particularly with respect to navigation. His delegation would study the principles just introduced with the utmost care.

Mr. JALAL (Indonesia) supported the statement which the representative of the Philippines had made in introducing the archipelagic principles. Both in the plenary Committee and in Sub-Committee II, Indonesia had already explained why it was necessary to adopt principles on the subject; it hoped that the Sub-Committee would study those just introduced with sympathy and that it would support their inclusion in future instruments on the law of the sea.

Lastly, he appreciated the interest in the archipelagic principles shown by the delegations of Australia and New Zealand.

Mr. BEESLEY (Canada) said that the question of archipelagos was a difficult one and there were various possible approaches to its solution. Accordingly, he congratulated the delegations of Fiji, Indonesia, Mauritius and the Philippines on having proposed the principles contained in document A/AC.138/SC.II/L.15, as they represented a new approach which sought to balance the interests of archipelagic States with those of other States, and the interests of the international community as a whole.

Mr. JEANNEL (France) said that his delegation would study the principles proposed in document A/AC.138/SC.II/L.15 with all due attention, taking into account the interests of the countries concerned and of the international community in general.

Mr. ZOTIADES (Greece) congratulated the delegations of Fiji, Indonesia, Mauritius and the Philippines on their new approach to the question of archipelagos, a subject which would have to be given special consideration at the forthcoming

(Mr. Zotiades, Greece)

Law of the Sea Conference and which had not been adequately discussed in the past. After emphasizing the special importance which his delegation attached to principle 3, he said that Greece supported the principles just introduced and hoped that the Sub-Committee would give them favourable consideration and refer them to the Law of the Sea Conference.

Mr. BAKULA (Peru) said that his delegation would give careful study to the principles proposed in document A/AC.138/SC.II/L.15, as they represented a fundamental contribution to the Sub-Committee's work and emphasized the interrelationship between the earth, man and the sea, which was imparting a new character to the law of the sea.

Mr. VELLA (Malta) thanked the delegations of Fiji, Indonesia, Mauritius and the Philippines for the archipelagic principles they had introduced and said that those principles made a valuable contribution to the Sub-Committee's work.

Mr. OGISO (Japan) said that his delegation had taken note of the views expressed by the sponsors of the archipelagic principles (A/AC.138/SC.II/L.15). Although Japan felt that the basic problem connected with the question of archipelagos lay in determining the baselines for measuring the extent of the territorial sea, it believed that aspects relating to the legitimate uses of the sea should also be borne in mind. He assured the delegations of Fiji, Indonesia, Mauritius and the Philippines that Japan would study their proposed principles most carefully.

Mr. SHITTA-BEY (Nigeria) said that his delegation welcomed the archipelagic principles just introduced by the delegations of Fiji, Indonesia, Mauritius and the Philippines.

Mr. MARTINEZ MORENO (El Salvador) said that his delegation hoped that the new norms on the law of the sea would take account of the special situation of the archipelagic countries and that the principles which had been introduced on the subject by the delegations of Fiji, Indonesia, Mauritius and the Philippines, and which had his delegation's support, would be accepted.

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Mr. JAGOTA (India) expressed appreciation to the delegations which had submitted document A/AC.138/SC.II/L.15 for their contribution to the Sub-Committee's discussion of the question of archipelagos. He also assured those delegations that the principles contained in that document would be given serious consideration by the Government of India.

The meeting rose at 5.15 p.m.

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

Held on Friday, 16 March 1973, at 11 a.m.

Chairman: Mr. TUNCEL Turkey

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GENERAL DEBATE (continued)

Mr. VINJENES (Norway) said he wished to clarify his Government's position on the questions of the territorial delimitation of the continental shelf and the extent of the coastal State's jurisdiction over the shelf.

Under existing international law, the continental shelf comprised those areas adjacent to the coast and outside the territorial sea where the depth of the superjacent waters admitted of the exploitation of the natural resources. That principle had found expression in article 1 of the 1958 Convention on the Convention on the Continental Shelf and had moreover become a part of customary international law. Article 1 of the Convention also referred to a depth criterion of 200 metres, the application of which was expressly restricted to cases where it was not possible to exploit natural resources beyond that depth. In view of the advances in technology over the last decade, the 200-metre criterion was of little practical importance. It was necessary to find some criteria other than the limits of technology for delimitation between the continental shelf and the international sea-bed area. A clear majority of delegations seemed to favour the adoption of distance criterion of 200 miles. His delegation shared that view but also agreed with those delegations which had said that the solution to be adopted must reflect the fact that many countries had a geological shelf extending more than 200 miles from their coasts, over which they had sovereign rights on the basis of the test of exploitability. To disregard completely the distinction between those coastal States whose shelves were very extensive and other coastal States would be neither just nor realistic. His delegation therefore favoured combining the 200-mile limit with a depth criterion of, say, 600 metres, leaving it to the discretion of each coastal State either to choose between those two criteria or to combine them. Thus every coastal State would be free to exercise sovereign rights over its natural resources inside the 200-mile limit, while those States whose shelves extended beyond that point would be able to exercise sovereign rights up to the agreed-upon isobar.

The solution he had just advocated would not lead to an increase in that part of the sea-bed which was under national jurisdiction. Indeed, with present technology it was feasible to exploit natural resources at depths even greater than 600 metres. Consequently, the solution he had suggested would require a degree

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(Mr. Vindenes, Norway)

of sacrifice on the part of many coastal countries which, like his own, had extensive continental shelves. It was to be hoped, however, that agreement could be reached on a solution along the lines he had suggested, as it was in the interest of all to establish clearer criteria than those on which present international law was based.

As far as the functional limits to coastal State jurisdiction were concerned, his delegation favoured maintaining the provisions of the 1958 Convention which, although not ideal in every respect, reflected a reasonable accommodation of the conflicting interests involved and would be difficult to improve upon.

The solution he proposed for the continental shelf would entail only one substantial difference as compared to the existing Convention, namely the substitution of the more precise criteria he had suggested for the delimitation criterion in article 1 of the Convention. His delegation was prepared to submit a draft article to that effect for consideration by the Working Group.

Mr. LUNA (Ecuador) noted that the existing law of the sea was in many respects outmoded and not in keeping with the political, legal and economic realities of the present day. The old law of the sea incorporated a number of unfair principles and practices which had been established for the benefit of a small group of powerful maritime States, one of whose vested interests was to keep the area of the sea under national jurisdiction as small as possible. Times had changed, however, and the interests of a few powerful States could no longer prevail over those of the majority of mankind in the developing countries. It was therefore essential to reformulate the law of the sea, not merely to codify the existing principles and practices. The forthcoming Conference on the Law of the Sea would have to take account of the new political, legal and economic factors on the world scene, as well as the impact of recent advances in science and technology and, in particular, the needs and interests of the developing countries.

In reviewing the law of the sea and bringing it up to date, careful consideration must be given to the question of limits. It was clear that the doctrine of a 200-mile limit was gaining broad acceptance among countries representing a wide variety of levels of development. His Government remained firm

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(Mr. Luna, Ecuador)

in its support of that doctrine; however, it recognized that such a limit could not be rigidly applied and that the area subject to national jurisdiction might differ, for geographical or other reasons, as between various regions of the world.

The specific problem of the law of the sea could not be separated from the more general problems of development. In that regard, principle XI of UNCTAD resolution 46 (III) could be taken as evidence of the developing countries' concern that the resources of the sea should be used to improve their levels of living and enhance the well-being of their peoples.

The extension of the sovereignty of coastal States to a maximum limit of 200 miles from their coastlines would not have any adverse effect on the interests of the international community in freedom of navigation, trade and international co-operation. As the Minister for Foreign Affairs of Ecuador had indicated in his statement to the General Assembly at its twenty-seventh session, jus communicationis would be preserved and guaranteed despite the extension of the area subject to national sovereignty. On the other hand, no activities prejudicial to the essential interests of the coastal State would be tolerated in that area.

Referring briefly to the archipelagic principles proposed by the delegations of Fiji, Indonesia, Mauritius and the Philippines (A/AC.138/SC.II/L.15), he noted that the principles were of importance not only to archipelagic States but also to those States whose territories incorporated archipelagic areas.

Mr. OGISO (Japan), referring to the question of anadromous fish which had been raised by the Observer for Ireland at the 51st meeting, recalled his delegation's proposal (A/AC.138/SC.II/L.12) that the conservation and regulation of highly migratory stocks, including anadromous fish, should be carried out through international or regional fishery commissions in which all interested States would participate, in principle, on an equal footing. His delegation was firmly opposed to any proposal whose effect would be either entirely to prohibit the harvesting of anadromous stocks on the high seas or to reserve for the spawning-river States an exclusive right to manage and exploit such stocks, as advocated by the Irish delegation. As other delegations had put forward similar arguments at earlier sessions, he would like to comment in detail on certain points advanced in those arguments.

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(Mr. Ogiso, Japan)

First, it had been contended that because anadromous species bred and spent their early life in the rivers of the State of origin, that State alone should have the right to manage and exploit such species over their entire migratory range. His delegation was not convinced by that argument. While the freshwater part of the life cycle of anadromous species was important, it was obvious that the oceans provided a far more important habitat for those species over their entire life cycle. Salmon, for example, gained by far the greatest amount of their weight during their stay in the open seas.

Secondly, it had been argued that expenditures undertaken by the State of origin to maintain its rivers and ensure a sufficiently large hatch every year, justified exclusive allocation of fishing rights to the State of origin. Although his delegation could not accept that argument, it could share part of the underlying concern, inasmuch as his country spent well over $3 million annually for the spawning of salmon by artificial means and the rearing of the young fish in its home rivers. The fact that a State took measures to conserve and manage a particular fishery resource, however, did not justify exclusive allocation of that resource to the State in question, at the expense of the interests of all other States. His Government's position was that all interested countries should be asked to share the burden of such expenses as appropriate according to individual circumstances.

Finally, the problem of the conservation and regulation of commercially important anadromous species affected only a small number of countries, all of which were in the northern hemisphere. The problem was thus very limited in scope and was best dealt with, in his delegation's view, through regional fishery commissions.

In conclusion, his delegation considered that the question of anadromous species was not universal enough to justify inclusion in the general régime of the law of the sea with which the forthcoming Conference would be dealing.

The meeting rose at 11.40 a.m.

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

Held on Tuesday, 20 March 1973, at 3.25 p.m.

Chairman: Mr. GHELEV Bulgaria

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GENERAL DEBATE (continued)

Mr. AKHUND (Pakistan) said that the 1958 Conference on the Law of the Sea had left many questions, particularly those relating to the establishment of limits, unsettled. The political, economic, legal and technological transformations that had taken place since the Conference had affected the whole approach to the subjects and issues which had been considered at it and brought new issues and problems into the foreground. The time had come to find satisfactory solutions to those issues.

He would confine his statement to the question of territorial delimitation. In dealing with the question of limits, account should be taken of the economic, security and ecological interests of coastal States and of the need to harmonize those interests with those of the world community. The surface of the sea, its water column and the sea-bed adjacent to the land mass of a State all formed an organic unity. The biosystem and ecosystem of the land mass affected, and were affected by, changes in those systems in the adjoining ocean areas. No coastal State could be expected to relinquish its vital interests in the resources of the sea, its water column and the sea-bed adjacent to the land mass. It had become necessary for the peoples of the developing world, who were engaged in a difficult struggle against hunger, disease, unemployment and other ills, to conserve, exploit and make use of marine resources near the land mass. The developing coastal States regarded marine resources as supplements to the often inadequate resources available on land. Hence, they considered it unjust that, taking advantage of their technological capability and superior equipment, distant countries should exploit and deplete such living and non-living resources near the coasts of developing countries. That practice ran counter to the development concept of the United Nations.

Bearing those considerations in mind, his delegation considered that the breadth of the territorial sea must be greater than 12 nautical miles. The continental shelf should extend to a distance of 200 miles from the coast. The coastal States should have exclusive fishing and conservation rights in waters adjacent to the territorial sea. The fisheries and conservation zone should extend 200 miles out to sea. In other words, while advocating a territorial sea larger than 12 miles, his delegation fully supported the Kenyan delegation's concept of an exclusive economic zone. All States should have the right to establish an

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(Mr. Akhund, Pakistan)

economic zone beyond the territorial sea for the primary benefit of their peoples and their respective economies in which they would exercise sovereign rights over natural resources for the purpose of exploration and exploitation. Within the zone they should have exclusive jurisdiction for the purpose of control, regulation and exploitation of both living and non-living resources of the zone and their preservation, and for the purpose of prevention and control of pollution. The exercise of jurisdiction over the zone should encompass all the economic resources of the area, living and non-living, either on the water surface or within the water column, or on the soil or subsoil of the sea-bed and ocean floor.

Such an approach was simple and equitable and took account of the genuine interests of coastal States without ignoring those of the world community. His delegation hoped that agreement would be possible along those lines.

Mr. CHUANG (China) said that his delegation wished to express its views on the questions of the territorial sea and the exclusive economic zone.

A major question of principle was involved in the current international struggle over territorial sea rights. It was whether the limits of the territorial sea and the limits of a State's national jurisdiction were to be dictated by the one or two super-Powers or were to be determined reasonably by each State according to its specific conditions. In order to contend for maritime hegemony and to plunder the coastal resources of other countries, the super-Powers were striving to narrow the limits of territorial seas and the national jurisdiction of other countries, particularly those of Asia, Africa and Latin America. Disregarding the sovereignty and national economic interests of other countries, they imposed their one-sided opinions on others. Having fixed for itself a territorial sea of three nautical miles, one super-Power would not allow others to exceed three miles. The other super-Power, because it had set a territorial sea of 12 nautical miles, would not allow others to exceed that limit. Naturally, the small- and medium-sized countries strongly opposed such arbitrary bullying. At the 1958 and 1960 Geneva Conferences on the Law of the Sea, the super-Powers had tried, but failed, to dictate the breadth of the territorial seas. Now that a new international conference on the law of the sea was about to be convened, the super-Powers were attempting to confine the territorial seas and national jurisdiction of other countries to a limit of 12 nautical miles. His delegation considered that each

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(Mr. Chuang, China)

country had the sovereign right to determine the limits of its territorial sea and national jurisdiction; the one or two super-Powers should not have the decisive say. His delegation would never accept such dictation, which utterly disregarded the sovereignty of other countries. Nor would the many bullied and oppressed countries, or the justice-loving countries, ever accept the will of the super-Powers.

Natural conditions differed in various parts of the world and economic development and national security needs differed from country to country. It was therefore entirely proper that coastal countries should, in a reasonable manner, delimit their own territorial seas in accordance with their natural conditions and their development and national security needs. To require uniformity and deny particularity on that matter would lead to an impasse. That did not, of course, preclude the possibility of neighbouring countries agreeing, through consultations, on a unified breadth of territorial sea for the area.

The policy of aggression and expansion of the one or two super-Powers and their frantic competition in plundering the resources of other countries had seriously impaired and endangered the economic interests and sovereignty of many developing countries. For reasons of national security and in order to safeguard their resources, many Latin American countries had declared 200 nautical miles to be the extent of their territorial seas and national jurisdiction. Asian and African countries had also defined the breadth of their territorial seas. Those countries had exercised their legitimate rights which should be respected by other countries. As a developing country, China fully sympathized with the measures taken by Asian, African and Latin American countries to protect their resources and resolutely supported their struggle to safeguard their sovereignty and resist plundering by the super-Powers. Naturally, the super-Powers opposed the position of those countries. Recently a super-Power had openly attacked the Latin American countries for that act of sovereignty charging them with "a unilateral action", "expansion of their own frontiers", "infringement of the legitimate rights and interests of other countries" and even a "violation of international law". That super-Power should be asked whose permission it had sought when it had laid down the extent of its territorial sea, how far it had extended its frontiers when it had dispatched its warships and fishing vessels to the offshore areas of other countries to plunder their resources, and whether it had not itself infringed the rights and

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(Mr. Chuang, China)

interests of other countries and brutally trampled on the principle of sovereignty in international law.

At the 52nd meeting of the Sub-Committee (A/AC.138/SC.II/SR.52), the representative of the Soviet Union had done his utmost to make the breadth of the territorial sea of the Soviet Union the only standard for the limits of the territorial seas of countries throughout the world. That was ridiculous and untenable. At the time of Lenin, the Soviet Government had consistently stood for the respect and defence of the sovereignty of all States and had opposed the Tsarist hegemonic desire to impose its views on others. At that time, the Soviet Union, on the basis of its specific conditions, had delimited the breadth of its territorial sea at 12 nautical miles. That was its sovereign right. It did not mean, however, that the limits of the territorial seas of all other countries must not exceed 12 nautical miles. Lenin had stated explicitly "We must decree nothing from Moscow". The present leaders of the Soviet Government had fundamentally betrayed Lenin's teachings. Assuming the air of overlords of the world, they tried to subject all other countries to their orders. What they had inherited were not the great teachings of Lenin but the hegemonic desire of the Tsars.

Harbouring ulterior motives, and in order to imply that he was concerned about the interests of land-locked States the representative of the Soviet Union had further asserted in his statement that the wider the territorial sea of the coastal States was, the less possibility there was for the land-locked countries to take advantage of the seas and their resources. The actual state of affairs was that the super-Powers had been lording it over others in the seas and oceans while many developing countries, both coastal and land-locked, had no rights. The sole purpose of the super-Powers in their attempts to confine the territorial seas of other countries to 12 nautical miles was to enable their own warships to hover recklessly everywhere and do whatever they pleased in the seas and oceans and their fishing vessels to plunder the marine resources of other countries. Was that in the interests of land-locked States? The sole aim of the super-Powers was to dominate the seas and oceans. They had fermented disunity and dissension among the developing countries in an attempt to cover up their schemes for aggression, intimidation and plunder. The Committee must keep a careful watch on those evil tactics. Only when all developing countries, whether coastal or land-locked, strengthened their unity would they be able to safeguard their sovereignty and interests and frustrate the super-Powers' designs to dominate the seas and oceans.

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Another matter of principle in dispute was whether a coastal State had the right to delimit an exclusive economic zone beyond its territorial sea.

Geographically, the shallow sea area off the coast of a country was the natural extension of that country's land territory. The abundant mineral and fishery resources in that sea area and its bed were an integral part of the natural resources of the country concerned and had a definite bearing on the development of its national economy. The one or two super-Powers were dispatching so-called survey ships and fishing fleets all over the world to barge at will into the coastal seas of other countries and plunder their marine resources. That was out-and-out piracy. In the case of fishing, for example, most catches in the seas off the West African coast had been made by fishing Powers, mainly the super-Powers, distant from those coasts. While the fish production of the coastal States had remained unstable, that of the super-Powers had increased dramatically. The Soviet Union's 1968 catch in that area had more than doubled that of 1967 and had amounted to 45 per cent of the aggregate catch of 11 coastal States in the area. As a result of wanton plunder by the super-Powers, fishing resources in certain near-coast sea areas were dwindling or had even been exhausted. Many developing countries were therefore demanding the delimitation of exclusive fishing zones as a means of resisting plunder from outside. The super-Powers were doggedly opposing that just and reasonable demand, although they themselves had delimited "forbidden fishing zones" and "controlled zones" in order to preserve their fishery resources in near-coast sea areas. For example, in a decision of 21 March 1956 on the protection of salmon and trout resources in the Far East, the Government of the Soviet Union had unilaterally placed under its control an area extending as far as more than 400 nautical miles from its coast. While refusing other countries' fishing boats access to its coastal areas, the Government of the Soviet Union had been sending many of its fishing fleets to fish indiscriminately in the coastal areas of developing countries and had even sold the fish it had caught there to the local countries at high prices in order to extort foreign currency from them. Was not that out-and-out hegemony?

The "suggestion" on fishing recently distributed by the delegation of the Soviet Union contained a few lines on so-called forms of "compensation" for coastal

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States. Ostensibly that indicated concern for the interests of coastal States but in fact it was designed simply to cover up the Soviet Union's acts of unbridled plunder of the fishery resources of coastal States and to reject the latter's proposals concerning exclusive economic zones or fishing zones. Such tactics deceived nobody, nor would they shake the determination of the developing countries to preserve their coastal fishery resources and safeguard their sovereignty.

Since the breadth of the territorial sea varied from country to country, it was in the exercise of the sovereignty of a State reasonably to define, in accordance with its specific conditions and its development needs, the scope of its jurisdiction over economic resources beyond its territorial sea, using such terms as exclusive economic zone, continental shelf, patrimonial sea or fishing zone. Neighbouring countries situated in a common sea area should, through consultations, determine the limits of their jurisdiction on the basis of equality and mutual respect.

Although the territorial sea and the exclusive economic zone were both under the jurisdiction of a coastal State, the two were distinct in legal status. Territorial sea was a part of the territory of a coastal State over which it exercised complete sovereignty. In the case of an exclusive economic zone, the coastal State mainly enjoyed ownership of the economic resources therein, including living resources and sea-bed natural resources. His delegation considered that in order to protect, use, explore and exploit the resources of an exclusive economic zone the coastal State must exercise exclusive jurisdiction over the area and have the right to promulgate appropriate laws and regulations to protect such resources against plunder, appropriation, destruction or pollution. Other countries could undertake activities in a country's exclusive economic zone only if they had secured that country's consent and concluded the necessary agreements with it. Moreover, they should strictly observe the country's laws and regulations. They would enjoy the convenience of normal navigation through and flight over the exclusive economic zone provided they did not prejudice the country's security or affect its fishing activities or its exploration and exploitation of sea-bed resources in the zone.

Some developing countries had proposed that a coastal State should grant an adjacent developing land-locked country certain transit and exploitation rights and facilities within its exclusive economic zone. The proposal merited attention.

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Consideration should be given to the reasonable demands of land-locked countries. A coastal State should, in principle, grant its neighbouring land-locked State, in a certain proportion, common enjoyment of the rights of ownership and jurisdiction in its economic zone; in actual practice, a reasonable solution should be sought through consultations by the countries concerned. The conditions and needs of developing countries, both coastal and land-locked, differed, but all those countries had suffered from imperialist aggression, oppression and plunder. They should, therefore, strengthen their solidarity, show mutual understanding, uphold principle and conduct a joint struggle to safeguard their national economic interests and make their due contribution to the work of creating a new law of the sea.

In stating those views the Chinese delegation had proceeded from its basic stand of safeguarding the sovereignty of all States, defending their national economic interests and opposing super-Power hegemony. It was convinced that its position conformed to the interests of the developing countries and the fundamental interests of the peoples of the world and provided a basis for a fair and reasonable settlement of the questions of the territorial sea and the exclusive economic zone. On those questions, the super-Powers must not be allowed to continue to disregard the sovereignty and interests of the great majority of countries. The Chinese Government and people would stand together with peoples and countries suffering from aggression, bullying and plunder, and with those who upheld justice, and work with them to find a reasonable solution to the problem of maritime rights.

Mr. KOVALEV (Union of Soviet Socialist Republics) said that the tone of the previous speaker's statement and the expressions used in it would not make for progress in the Committee's work; indeed, they would make it more difficult for the Committee to reach its goals. Attempts were being made to lead members into ideological discussions when they should in fact be concentrating on preparing mutually acceptable solutions to problems relating to maritime law. The previous speaker had gone so far as to make a gross attack on a great State with which the People's Republic of China maintained normal diplomatic relations. The delegation of the Soviet Union did not intend to stoop to that level, but it could not remain silent in the face of such an attack. The present leadership of the People's Republic of China had long since broken with the principles of Leninism and taken

(Mr. Kovalev, USSR)

the road to social chauvinism. In its statement at the 52nd meeting, the delegation of the Soviet Union had said that the 12-mile limit had been adopted by the Government of the Soviet Union in 1921 under a decree signed by Lenin. Time had confirmed the correctness of that decision. Currently, 100 countries had established a width of territorial waters extending to 12 miles. In defending that long-established norm of international law his delegation was not attempting to impose anything on anybody.

The meeting rose at 4 p.m.

SUMMARY RECORD OF THE FIFTY-SIXTH MEETING

Held on Friday, 23 March 1973, at 3.30 p.m.

Chairman: Mr. TUNCEL Turkey

GENERAL DEBATE (continued)

Mr. AKYAMAC (Turkey), introducing his delegation's draft article under 2.3.2, breadth of the territorial sea; global or regional criteria; open seas and oceans, semi-enclosed seas and enclosed seas (A/AC.138/SC.II/L.16), said that, although Turkey had adopted a limit of six nautical miles for its own territorial sea, it was prepared to go along with the general rule of a maximum breadth of 12 miles should a consensus on that point materialize at the forthcoming Conference on the Law of the Sea. However, it did not feel that such a rule could or should be applied uniformly without regard to geographical features. Unlike the other proposals before the Committee, which were aimed primarily at setting a general rule for the breadth of the territorial sea, his delegation's proposal related to the manner in which the recognized right of States to determine the breadth of their territorial waters should be exercised in particular circumstances. The proposal, moreover, was based on the assumption that the objective of the current deliberations was the establishment of a new set of norms based on justice and equity.

In certain areas, the unilateral extension by one State of the breadth of its territorial sea to 12 nautical miles might - depending on the geographical configuration of the area - result in another State's being enclosed within its territorial waters or even having its national jurisdiction encroached upon. That would clearly be a misuse of the right of States to determine the breadth of their territorial waters and would be contrary to justice and equity, and his delegation therefore felt that provision should be made in the new convention to guard against the possibility of such misuse. It was clear from the statements made by a number of delegations, including that of China, as well as from the list of subjects and issues to be considered by the forthcoming Conference, that there was a general awareness of the need to provide safeguards against any misuse of rights. Indeed, as had been recognized in the Santo Domingo Declaration of 7 June 1972, regional agreements were necessary in addition to general legal norms, for a regional conflict arising from causes such as a unilateral extension of territorial seas without regard to the peculiarities of the area would inevitably weaken the applicability of the universal rule. The 1958 Geneva Conventions also referred -

(Mr. Akyamac, Turkey)

albeit obliquely - to agreement between States where the interests of two or more States were directly involved. Consequently, his delegation believed that its proposal should be incorporated in that article of the new convention which set forth the general principle regarding the determination of the width of the territorial sea, and was prepared to consider any suggestion in that connexion. Finally, he assured those delegations which had previously asked him whether the brackets in the second line of paragraph 1 of the draft article had any significance, that his delegation was not predisposed in favour of or against any of the proposals made so far concerning the breadth of the territorial sea.

Mr. NISKANEN (Finland), noting that the fishery arrangements to be worked out by the forthcoming Conference should, on the one hand, ensure maximum sustainable yield without depleting fish stocks, and, on the other, ensure that the yield was shared equitably, said that it seemed only natural that States fishing in international waters should have a responsibility for the management and conservation of fish stocks and should further existing co-operation in that respect both bilaterally and within the framework of international fishery organizations. His Government was deeply concerned about the threat to the preservation of fish stocks presented by the increasing pollution of the oceans and would actively support any measures for the preservation of the marine environment which might be proposed at the Conference on the Law of the Sea. In that connexion, it was essential that close co-operation be maintained with the new United Nations Environment Programme, which also had an important role to play in protecting the marine environment.

Since States engaged in fishing were not all in an equal position, his delegation felt that certain States - developing coastal States as well as developed States whose economies depended essentially on fisheries - should be given certain privileges, consisting of exclusive fishing rights in the sea adjacent to their territorial waters, assuming, of course, that agreement was reached at the forthcoming Conference on a maximum limit of 12 nautical miles for the territorial sea. Such exclusive fishing rights should include responsibility for fisheries management and preservation. Where a developing country was unable at the current stage to benefit wholly from its exclusive fishing rights, it could enter into

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(Mr. Niskanen, Finland)

agreements with other States allowing them to fish in its zone. Such agreements could include fees for fishing rights, assistance in developing the fisheries of the coastal State involved and participation in fisheries management, preservation and research.

Traditional and distant water fisheries could be continued to the extent that the productivity of the fish stocks permitted it. Where such fishing currently took place in an area which would come under the exclusive fisheries jurisdiction of a coastal State, the States concerned could solve the problem through bilateral negotiations. In enclosed, semi-enclosed and other coastal sea areas where several neighbouring States exploited the same resources, joint arrangements regulating such fisheries should be negotiated. In that connexion, his delegation emphasized the need to further develop and strengthen international fishery organizations which currently played an important role in monitoring fishery resources and fishery management.

Mr. HULINSKY (Czechoslovakia) said that the Committee had entered a new stage in the preparations for the forthcoming Conference on the Law of the Sea, the success of which would depend largely upon the Committee's ability to prepare documents that took account of the needs and interests of all potential participants. It was clear that any attempt to avoid preparing a draft agreement would certainly not contribute to the success of the Conference, and that progress in the further development of the law of the sea could be made only if all States attempted to harmonize their main needs and interests. Consequently, the Committee must continue to use the method of decisions by consensus. Moreover, any attempt to introduce questions related to the political and strategic relations among the main groups of States would not be conducive to success. His delegation wished to approach the preparatory work for the Conference in a constructive manner, since failure of the Conference would open up the possibility of there being different sets of legal principles applied by different groups of States and would create a source of continuous conflict which would benefit no State.

It was not unnatural that land-locked countries, being excluded by their land-locked position from participation in the exploitation of the sea's living resources in territorial waters, should be opposed to any attempt to extend

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(Mr. Hulinsky, Czechoslovakia)

territorial waters beyond acceptable limits and to the idea of exclusive zones. The interests of the land-locked and related countries could not be neglected, for they had the same needs as coastal States with respect to raw materials and food and, consequently should be given the same opportunities as coastal States to satisfy those needs.

Expressed in legal terms that meant that all land-locked States had the right of free access to and from the sea, that right being one of the basic principles of the current international law of the sea embodied in the 1958 Geneva Convention on the High Seas. Freedom of transit of the land-locked countries through the territories of other States which lay between them and the sea was a logical corollary to the principle of free access of the land-locked States to the sea. Naturally, that right could not be asserted without regard to the sovereignty of the transit States, and consequently, transit would have to be regulated by agreement between the land-locked States and the transit States. The right of free transit was not a privilege but a manner of compensating land-locked States for their disadvantageous position and stemmed from the broader right of the land-locked countries to use the open sea, as well as the sea-bed and the subsoil thereof, on a basis of equality with all other States.

It was essential to determine precisely and at an early stage of the breadth of the territorial sea in a general international agreement which would take all aspects of the question into consideration. In that connexion, his delegation had supported General Assembly resolution 3029 B (XXVII), which requested the Secretary-General to prepare a comparative study of the extent and the economic significance of the international area that would result from the various proposals on limits of national jurisdiction presented to the Sea-Bed Committee. Until that was done, it would be impossible to envisage elaborating a legal régime to govern the area of the sea-bed beyond the limits of national jurisdiction or to apply the generally recognized principle that the resources of the sea-bed and the ocean floor should be open to peaceful exploration and exploitation by all States on an equal basis in accordance with international law. His delegation emphasized that viewpoint because of the attempts made by certain States to apply their national regulations governing the exploitation of the resources on the continental

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shelf in areas beyond their national jurisdiction and because of the attempts of some coastal States to extend the limits of their jurisdiction far into the high seas.

Czechoslovakia, as a land-locked country, wished to ensure that the solution arrived at at the forthcoming Conference guaranteed respect for the freedom of the high seas while, naturally, fully respecting the legitimate interests of the coastal States. The 12-mile limit for the breadth of the territorial seas suggested by the representative of the Soviet Union (A/AC.138/SC.II/L.7/Add.1) represented a reasonable solution which would fully satisfy the interests of both coastal and land-locked States, and indeed, it seemed to have received very wide support. In that connexion he pointed out that although neither the Geneva Conference of 1958 nor that of 1960 had established any precise rule on the outer limits of territorial waters, a rule had been recognized indirectly by the provision of a 12-mile limit for the purpose of establishing the contiguous zones and thus applying sovereign rights of the coastal States in regard to specified interests. Secondly, 12 miles was also the limit chosen in the Treaty on the Prohibition of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof to divide the area of the recognized interest of the coastal States from the area where demilitarization measures were being implemented. Confirmation of the 12-mile limit for the territorial seas would undoubtedly be a significant contribution to the strengthening of international law and should therefore be one of the targets of the forthcoming Conference.

Exploitation of the living and mineral resources of the sea must be conducted in as rational a manner as possible, for such resources were not inexhaustible. Although his delegation understood the particular needs of the developing countries and had always supported the latter's efforts to raise their standard of living, it felt that those needs could not be met by reserving the most productive parts of the sea for one group of States, namely, the coastal States. The effect of instituting exclusive economic zones would be practically the same as that of extending the limit of the territorial waters beyond 12 miles in that both measures would restrict the right of other States to exploit the sea.

The foundations of the international law of the sea - embodied in the 1958 Geneva Conventions - had been laid over the centuries by both maritime and

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(Mr. Hulinsky, Czechoslovakia)

other States. Consequently the allegation that the existing law was the work of a few Powers which had somehow asserted it against the interests and will of all other States was incorrect. His delegation was well aware of the fact that the Geneva Conventions did not cover every single question and that, in regard to some problems - for instance, the position of the land-locked countries - they merely laid down certain principles. Moreover, new quetions and needs had arisen since 1958 as a result of the advances of science and technology. Consequently, his delegation did not feel that the forthcoming Conference should sweep aside the existing law but rather that it should extend the existing law and adjust it to the new requirements. Finally, he pointed out that progress in the preparatory work for the forthcoming Conference could be made only if all groups of States consented to approach the unresolved problems by trying to understand the needs of the other groups and seeking a solution satisfactory to all.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE FIFTY-SEVENTH MEETING

Held on Thursday, 29 March 1973, at 10.55 a.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

The CHAIRMAN announced that the officers of the Sub-Committee would be meeting at 10.15 a.m. on the following day to apportion the time available to the Sub-Committee, and in order to do so they would need to know exactly how many delegations wished to speak. He therefore suggested that, if there was no objection, the list of speakers should be closed at 10 a.m. on Friday, 30 March.

It was so decided.

REPORT BY THE CHAIRMAN OF THE WORKING GROUP OF THE WHOLE

The CHAIRMAN suggested that, in view of the importance of the statement to be made by the Chairman of the Working Group of the Whole, the full text of it should appear in the summary record of the meeting.

It was so decided.

Mr. KEDALI (Tunisia),* speaking as Chairman of the Working Group of the Whole, recalled that the Working Group had been established by Sub-Committee II at its 51st meeting, on 9 March 1973, when it had been stated that drafting groups, subgroups and special groups to deal with specific issues might subsequently be established but that the Working Group itself should decide on the organization of its work, its procedure and its order of priorities.

The Working Group of the Whole had held seven meetings, from 12 to 28 March 1973. At its first meeting, on 12 March, it had been decided that there should be consultations between the regional groups with a view to the election of the Chairman, who had been elected unanimously at the second meeting. In that connexion, he wished to repeat his sincere thanks to all the Chairmen of the regional groups and the members of the Working Group for having accepted his candidacy for the office. He also wished to repeat that the Working Group would have to deal with many problems which were closely linked to increasingly complex and delicate issues of national sovereignty, peace and security, progress and development, international co-operation and solidarity and even, in some cases, survival of a State or a population. Team-work, governed by a spirit

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* The full text of this statement was included in the summary record in accordance with the Sub-Committee's decision.

(Mr. Kedali, Tunisia)

of optimism, goodwill and compromise, could not fail to produce positive results, and he hoped to have the close collaboration of all members of the Group with a view to achieving such results.

The Group had also begun at the second meeting to consider the organization of its work, and he had stated that the Group would have to adopt a method of work that was acceptable to all. He had suggested that members of the Group should refrain from discussing procedural questions and should concern themselves with matters of substance. He had also stated that, in view of the complexity of the problem of the unity of the subjects and issues on the list, only very general suggestions should be submitted. He had suggested that the Group should begin its work by considering the subjects and issues which appeared first on the list, without, however, precluding the possibility of referring to the other matters included in it. He had expressed the hope that delegations would concentrate on the subjects and issues at the head of the list. In his view, that would be a pragmatic approach which would prevent waste of time and procedural discussions.

From 20 to 22 March, he had held a series of consultations with the Chairmen of the regional groups with a view to reaching agreement on the approach to be adopted in the Working Group.

At the third meeting, on 22 March, he had read out the text of a consensus that had been reached as a result of the consultations with the Chairmen of the regional groups. The consensus had stated, firstly, that the Chairmen of the regional groups had all expressed the view that a procedural discussion or general debate was to be avoided at all costs, in order to prevent waste of time or lengthy and vague discussions and to expedite the commencement and progress of the work. Secondly, the Chairmen of the regional groups had felt that, as the list of subjects and issues was not perfect, it would be best to adopt a flexible and pragmatic approach to the selection and discussion of matters appearing on the list. Accordingly, they had supported the approach which he had suggested at the second meeting of the Group, on 20 March. The Chairmen of the regional groups had also decided that the Group should begin its work by considering the subjects and issues appearing in the list as items 2,

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3, 4, 5, 6 and 7. Thirdly, the Chairmen of the regional groups had considered that, since those matters were interrelated, any statement referring to any of them would be acceptable. Fourthly, the Chairmen of the regional groups had expressed the view that not all subjects and issues linked in one way or another to those mentioned were covered by the six items. Some subjects and issues included elsewhere in the list were closely linked to those items; that was true, in particular, of items 16 and 19. It had been decided that views on those two items could be expressed during the discussion on the six items in question, especially items 6 and 7, which were directly linked to item 9. Fifthly, it had been decided that subjects and issues would not be considered one by one or in groups, but would be regarded as integral parts of a whole. Sixthly, the Chairmen of the regional groups had expressed the view that, in order to expedite and facilitate the task of the Working Group of the Whole, delegations should begin immediately to submit draft articles on specific items. In that connexion, he had made a special appeal to all delegations to co-operate fully with him and with the Chairmen of the regional groups by preparing and submitting draft articles as soon as possible.

At the third meeting of the Working Group of the Whole, the delegation of Singapore had requested him to clarify some aspects of the flexible approach adopted by the Group. It had asked whether delegations interested in items 10 and 11 on the list could deal with them when the items he had mentioned were being discussed, and he had replied in the affirmative. At the same meeting, the Polish delegation had expressed the view that when items 6 and 7 were being considered some questions relating to item 8 would also have to be dealt with, since they were closely linked to those items. No objection had been raised. The substantive debate on subjects and issues had begun at the fourth meeting, on 23 March. From the outset of the discussions, the question of the unity or plurality of régimes had been raised. Some representatives had suggested the possibility of allowing plurality of régimes. Emphasis had been placed in that connexion on the importance of resources to coastal States. It had been noted the existence of resources in all areas under national jurisdiction might imply the

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existence of a variety of régimes in those areas. A number of régimes might be applied, on the one hand, to living resources and, on the other hand, to mineral resources. It had also been noted that a plurality of régimes might be provided for different species of living resources.

It had been stated that plurality of régimes was a logical consequence of the variety of régimes and of the existence of diverse geographical conditions, and that areas such as the North Sea, the Mediterranean, Africa and Latin America allowed of a diversity of régimes. It was also noted that in the case of straits, for example, there would have to be a special régime.

Speakers in the Working Group had also dwelt on the meaning of the nature and characteristics of the territorial sea. Some had expressed the view that the idea of unity of the régime for the territorial sea had been definitively established and should therefore be preserved. In that connexion, it had been stated that the concept of plurality of régimes might apply not to the territorial sea but outside that area - for example, to the adjacent zone, as the economic zone or the patrimonial sea. It had been felt that that idea provided a basis for reconciling divergent interests. Freedom of navigation and overflight, the possibility of exploitation of resources by other States, and other residual rights would be recognized in those zones.

Other representatives stated that they would prefer a unitary approach which took into account specific conditions. Subdividing the subject would run counter to the objectives of the Conference on the Law of the Sea.

The question of unity or plurality of régimes had given rise to etymological discussions concerning the territorial sea and other adjacent zones, such as the economic zone or the patrimonial sea. For instance, it had been stated that plurality of régimes would imply plurality of limits for the territorial sea, due regard being had to geographical conditions in each case. It had also been argued that the concept of unity meant complete sovereignty, as provided for in the Geneva Convention on the Territorial Sea.

A number of speakers had stated that they would prefer a pragmatic approach, taking account of the specific interests involved in each case. It had been stated that a lengthy debate on terms and concepts, although helpful in specifying and clarifying the latter, would be unproductive. Many speakers had stressed the need to reconcile sometimes divergent interests. Those interests had been classified

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in various ways. For instance, mention had been made of the interests of coastal countries, the interests of navigation, regional interests, the interests of a group of countries, the interests of geographically disadvantaged countries and the interests of the international community. Reference had also been made to new interests, such as economic and social interests and the interests of peoples generally. It had been emphasized that an attempt should be made to reconcile all those interests. The interests of coastal countries with regard to resources, for example, should be reconciled with the interests of navigation and those of the international community. It had been stated that the solution lay in a general reconciliation of all interests; consequently, it was necessary to seek a compromise solution. Lastly, it had been emphasized that the important thing was to refine and specify even more the different categories of interests, with a view to arriving at a compromise solution acceptable to all States in the international community.

At the seventh meeting of the Working Group, it had been suggested that the Group should take up the question of the continental shelf. It had been particularly emphasized, however, that, although the Working Group already had before it certain specific proposals relating to the items selected, it was essential that all proposals on those points should be submitted to the Working Group as soon as possible, so that the Group could compare them with a view to reducing the difference and proceeding accordingly, to draw up draft articles on the subject. Efforts had also been made to decide on the best way of co-ordinating the work of the Group with that of the Sub-Committee, with a view to the more rapid achievement of more tangible results.

Finally, he wished to place on record his profound satisfaction at the frank and cordial atmosphere in which the debates of the Working Group had taken place up to the present, and he commended all its members for having kept the debates at a high level, which strengthened his optimism with regard to the Group's future deliberations.

GENERAL DEBATE (continued)

Mr. SHEN (China) said that the question whether the third Conference on the Law of the Sea should confine itself to making a few changes in the four 1958 Conventions on the Law of the Sea or whether it should reconsider all the

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(Mr. Shen, China)

relevant problems and work out a new convention, had already given rise to very different opinions.

First of all, it must be pointed out that in 1958, when the first Conference on the Law of the Sea had been held, many countries had not yet won independence. Of the 80 or so representatives attending that Conference, only half had been from Asia, Africa and Latin America, and owing to manipulation by the imperialist Powers their proposals had not been adopted; thus, it was obvious that the four Geneva Conventions had failed to reflect the needs of the developing countries. Accordingly, the opinion already expressed by many delegations that the Conventions should be rewritten was well founded. However, the supper Powers were opposed to that; one of them had even asked for the inclusion in the list of an item entitled "Measures which must be taken to ensure the universal participation of States in... the Geneva Conventions of 1958". Its attempt had failed only because of the strong opposition of many countries. What was the real purpose of the super Powers in defending those outmoded instruments so obstinately? The answer could be found in the Conventions themselves.

One should look first at the Convention on the Territorial Sea and the Contiguous Zone. It was common knowledge that the super Powers were attempting to reduce the breadth of the territorial sea of coastal States. At the 1958 Conference, one of them had attempted to impose a three-nautical-mile breadth of the territorial sea as a so-called principle of international law. After the Conference, however, it had publicly admitted that it had done so for military and commercial reasons. The other super Power had opposed the establishment of such a limit, ostensibly to safeguard the sovereignty of all States; however, since the breadth of its own territorial sea was 12 nautical miles, it had tried to persuade all other countries to accept that limit. Both Powers had been animated by the same purpose, to dominate the seas and oceans. Thanks to the unflinching struggle of some small countries, the 1958 Conference had not adopted specific provisions on the breadth of the territorial sea. Nevertheless, article 24, paragraph 2, of the Convention on the Territorial Sea and the Contiguous Zone stipulated that "the contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured".

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(Mr. Shen, China)

Another question of great importance was the right of passage. Article 14 of the same Convention provided that ships of all States should enjoy the right of innocent passage through the territorial sea. That might be interpreted to mean that foreign warships enjoyed the same right. Obviously, that was unacceptable to many countries. The point was one which affected the sovereignty of the coastal States, as even the International Law Commission had admitted. Moreover, article 16 of the Convention provided that there should be no suspension of the innocent passage of foreign ships through straits which were used for international navigation, thereby depriving coastal States with such straits of the right to exercise sovereignty over their own territorial waters.

Secondly, one should look at the Convention on the High Seas, which referred to the so-called "freedoms of the high seas". It might be asked who could enjoy those "freedoms", and the reply was obvious; it was only the big Powers, with their superior maritime capability and advanced technology. During the first Conference on the Law of the Sea, the representative of the United States had stated that the Soviet Union had dispatched to all parts of the world nearly 100 factory ships and that consequently many countries, such as Iceland, the new States of Africa and Asia and the countries on the west coast of South America, had become alarmed. In turn, the Soviet representative had accused the United States of carrying out naval and air manoeuvres near the coasts of other countries in the Pacific Ocean and the Caribbean Sea, thus posing a serious threat to those coastal States. That showed that the "four freedoms" in effect allowed the super-Powers to enjoy hegemony of the seas while bringing disasters to the small and weak countries. Since 1958, the activities of the super-Powers on the seas and oceans had greatly increased. Accordingly, the time had perhaps come to ask whether they could be allowed to continue enjoying those "freedoms".

Thirdly, one should look at the Convention on Fishing and Conservation of the Living Resources of the High Seas, which contained no safeguard for the interests of coastal developing countries. On the contrary, article 7 of that Convention required that the measures adopted by coastal States should not discriminate in form or in fact against foreign fishermen. That provided legal justification for

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the super-Powers to plunder the fishery resources of other countries. An example was the fact that in the past decade the annual catch of the Soviet Union in distant waters had constituted more than three quarters of its total fishery output.

Where the Convention on the Continental Shelf was concerned, article 1 used two criteria to define the continental shelf: "a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources". Obviously, the latter part of that provision could be interpreted in different ways. The head of the delegation of one super-Power had said in his report to Congress that his country supported "the clause which protects the right to utilize advances in technology at greater depths". Obviously, that clause was to the advantage of the technically advanced maritime Powers, whose activities laid bare their true intentions.

Moreover, three of the seven articles forming the operative part of the Convention were designed to uphold the "freedom of the high seas". For example, article 3 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, or that of the airspace above those waters; article 4 included a specific clause against impediment to the laying and maintenance of submarine cables and pipe lines on the continental shelf, and article 5 contained many more specific provisions designed to prevent anyone from prejudicing the so-called "four freedoms" of the super-Powers.

It was worth noting that the Soviet representative had stated at the Conference that, if no kind of scientific research into the continental shelf could be undertaken without the consent of the coastal State, much valuable scientific work would be stopped. However, the Soviet Government had later promulgated its own legislation on the subject, which prohibited any activities on its continental shelf without special permission. That attitude revealed its true character.

Finally, it must be pointed out that the four Geneva Conventions provided procedures for accession to the Conventions but no procedures for withdrawal from them. Not long ago, the representative of Senegal had referred to the fact that his country's request to withdraw from the Conventions had been rejected. For all the above reasons, if the four Geneva Conventions were to be taken as the basis for the new Conference on the Law of the Sea, all countries would be forced to

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accept the maritime overlordship of the super-Powers and submit to their orders. That was absolutely unacceptable to his delegation, which consequently firmly supported the opinion of many countries that at the third Conference on the Law of the Sea a new convention should be worked out to replace the four Geneva Conventions.

Mr. NEEDLER (Canada), speaking as Chairman of the FAO Technical Conference on Fishery Management and Development, recalled that the FAO Committee on Fisheries had recommended that that Conference should be held, having in mind the need for a world-wide review of the great technical advances in fisheries over the past two decades. The Technical Conference had now been held, without any of the disturbing effects on the discussions of the law of the sea which had been feared. On the contrary, he believed that those discussions would benefit from the world-wide exchange of technical information at the Conference and from the conclusions which had emerged.

It was very difficult to summarize nine days of technical discussions. Nevertheless, the many documents which had served as a background for the discussions would probably be published before the end of the Committee's present session. Furthermore, when the Committee met in Geneva in July, it would have the text of the recommendations adopted at the Conference. It had been generally recognized at the Conference that if existing methods continued to be used and organisms of the same kinds and sizes as today continued to be caught, the world's catch could not be expected to increase by more than about one half or two thirds. At the same time, fish and shellfish were protein foods of such high quality that demand would continue to rise as population increased; the pressure on that resource, which was already intense, would then increase. The Conference had therefore emphasized the urgent need for adequate management of fisheries to maintain yield. During the discussions it had been stressed that the management of fisheries must take socio-economic as well as biological factors into account. It was evident that the basic objectives of countries with regard to fisheries varied a great deal: some were interested primarily in food for their people, others in employment for their coastal population, while still others depended on exports of fish as a source of foreign exchange. In all cases, however, the productivity of the resource must be maintained.

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(Mr. Needler, Canada)

In the matter of management for the maintenance of the yield, the Conference had recognized that techniques for such management already existed and had indicated that the application of existing scientific techniques was much more urgent than basic research. Such application of science depended on availability of adequate data on catch and fishing, as well as on the size and age of the fish caught. It had been pointed out that those exploiting a fishery had an obligation to supply such essential data.

The fact that the world fisheries resource was not unlimited and that demand continued to increase underlined the need for research to improve techniques of aquaculture and to explore the possibility of using organisms of a lower trophic level while avoiding waste and making full use of the fish that were caught.

The fundamental importance of the human element had also been stressed, and in that connexion particular attention had been paid to the problems of developing countries. On the one hand, there was the almost universal problem of supporting the small-boat inshore fisherman; on the other hand, when the over-all use of the fisheries resource for the benefit of mankind was considered, it was clear that more sophisticated and capital-intensive fisheries must be developed. It had been pointed out that those aspects were not necessarily in conflict, since a modern fishery often gave better opportunity for marketing and distributing the catch brought in by small fishermen.

With respect to the aid to be provided to the developing countries, it had been established that such aid must be adapted to the special needs of each country and that the developing countries themselves must play the dominant part in determining its direction.

With respect to the transfer of technology, two sorts of bilateral arrangements had been noted: co-operation between technical agencies in advanced and developing countries, through which research workers in the developing countries could work with those from developed countries and learn as they worked; and the establishment of joint ventures, often between industry in one country and government in another.

After discussing various technical problems, the Conference had turned to case studies in a number of very different regions - the south-eastern Pacific, the east-central Atlantic, the Indian Ocean, the North Pacific and the North Atlantic - and

(Mr. Needler, Canada)

to the special problems associated with distant-water fisheries, the most controversial issue. Concern had been expressed over the continued expansion of the fishing industry, which was rapidly approaching full exploitation of a limited resource, and over the effects of distant fishing on the opportunities of countries near the fishing grounds to exploit the resource off their shores. On the other hand, it had been recognized that some resources could be exploited only by large mobile fleets.

The Conference had also adopted recommendations concerning integrated planning of fisheries development, the provision of adequate data for management, support for research, the participation of industry in aid to developing countries, the proposed FAO Technical Conference on Aquaculture and similar items.

In his opinion, the essential value of the Conference had rested in the communication achieved between administrators, economists and scientists, between all parts of the world and between developed and developing countries.

Mr. ZOTIADES (Greece) said that his country was greatly concerned at the fact that the First and Second United Nations Conferences on the Law of the Sea had failed to solve the crucial problems of the breadth of the territorial sea and State jurisdiction beyond the territorial sea. He expressed the hope that the Third Conference on the Law of the Sea would end the chaotic situation prevailing in the matter.

Despite the fact that coastal States claimed territorial sea from 3 to 200 nautical miles, there was increasing recognition of the need to accept 12 nautical miles as the maximum limit, although that view was not universally accepted.

Arguments in favour of extending the breadth of the territorial sea and State jurisdiction usually took into account the particular needs of specific coastal States. It had been argued that because there was a right of innocent passage through the territorial sea, freedom of navigation would not in fact be curtailed should the breadth of the territorial sea be extended beyond 12 miles. The argument was not very convincing, since ships of all countries had absolute and unqualified right of navigation on the high seas whereas the right of innocent passage in the territorial sea of a coastal State was limited. It followed that the breadth of the territorial sea could not be extended without restricting the freedom of the high seas. The right of innocent passage was, of course, a codified principle of

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(Mr. Zotiades, Greece)

customary international law, but the fact that it did not jeopardize international navigation was not an excuse for arbitrary extension of the territorial sea. It was for those reasons that Greece had sponsored the draft articles on navigation through the territorial sea including straits used for international navigation, contained in document A/AC.138/SC.II/L.18.

The particular needs of specific coastal States should be considered from the viewpoint of the interests of the international community as a whole. Those special interests of coastal States should be harmonized with freedom of navigation, since freedom of the high seas benefited all States whose economic life depended on sea-borne trade. The right of free navigation would be severely hampered if more and more areas of the high sea were turned into spheres of national jurisdiction. Although proposals to extend the territorial sea beyond 12 miles might seem insignificant in relation to the immensity of the part which would remain free, the full importance of the extension could be appreciated only when the situation was considered in the light of the shortest sea routes. For those reasons his delegation believed that the international community should not adopt rules which might jeopardize the freedom of the high seas and freedom of navigation.

The issue of the establishment of an economic or patrimonial zone was closely related to the question of the breadth of the territorial sea. There was a growing tendency to grant coastal States fuller rights in larger parts of the sea than international law had previously recognized. At the same time, it seemed to be widely held that enhanced rights should be granted to coastal States only within the general framework of the freedom of the high seas.

In the opinion of his delegation, important interests of coastal States, such as those relating to customs and public health regulations and to the conservation of the living resources of the sea, must be safeguarded by means of the recognized concept of the contiguous zone, while economic interests could be taken into account within the framework of a preferential and non-exclusive zone.

Turning to the question of the breadth of the territorial sea, he said that the proposals before the Sub-Committee and the various arguments advanced could be classified into two categories: those referring to a uniform limit for the territorial sea and those in favour of a more flexible formula. Adoption of a uniform limit would be tantamount to ignoring diversities in geography and special

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national interests. For that reason his delegation sympathized with the proposals of those States which supported the archipelagic principles. Furthermore, in international practice, coastal States fixed the breadth of their territorial sea with due regard to their interests and special circumstances. His delegation felt, therefore, that there should not be any attempt to establish a uniform breadth of the territorial sea applicable to all countries but that agreement should be reached on a maximum limit. It should be noted in that connexion that the International Law Commission had expressed the opinion that extension of the territorial sea up to an outer limit of 12 miles did not infringe the principle of the freedom of the seas. Accordingly, a coastal State could fix the limit of its territorial sea at any distance up to 12 miles. The view that the territorial sea could not extend beyond 12 miles was supported both in the Declaration of Santo Domingo and in the 1972 Regional Seminar held at Yaoundé. Such acceptance of a reasonable breadth of the territorial sea safeguarded the fundamental principle of freedom of the high seas. In that connexion, his delegation supported the draft article proposed by Cyprus in document A/AC.138/SC.II/L.19, which would apply where the coasts of two States were opposite or adjacent to each other. Greece had adopted a breadth of 6 nautical miles for its territorial sea and believed that the maximum limit should be 12 miles.

In the light of those general considerations, he appreciated the spirit that had prompted the Turkish delegation to submit the draft article proposed in document A/AC.138/SC.II/L.16 and believed that article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, which codified customary international law, was relevant in that connexion. Greece welcomed the idea that in the case of enclosed and semi-enclosed seas the breadth of the territorial sea should be determined by agreement between the States bordering on those seas, but only in so far as such an agreement respected customary and conventional international law, including the principle of the median line. Article 12 of the Geneva Convention established that median line of equidistant points as a rule of international law applicable to the problem of drawing lines of delimitation between territorial seas when difficulties arose.

(Mr. Zotiades, Greece)

For these reasons, and in order to cover all possible cases and avoid eventual difficulties, his delegation proposed that the following addition should be made to paragraph 2 of the draft article contained in document A/AC.138/SC.II/L.16:

> "Failing such agreement between them, no State is entitled to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points of the base lines, continental or insular, from which the breadth of the territorial seas of each of the two States is measured."

That formulation conformed to article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, relating to opposite or adjacent States.

The deliberations of the Sub-Committee demonstrated the existence of two basic philosophies among States with regard to the list of subjects for the forthcoming Third Conference on the Law of the Sea: on the one hand, there were proposals inspired by the interests of coastal States, and on the other, proposals aimed at safeguarding freedom of navigation. Being at the same time a coastal State and a seafaring nation, Greece wished to find a compromise solution between those two positions. It was ready to take a flexible and pragmatic attitude, inspired by the need to end the crisis with regard to the law of the sea and to create a new body of law that would be capable of meeting the social needs of the international community.

Mr. GROZEV (Bulgaria) said that the most effective action the Sub-Commission could take to facilitate the conduct of its business would be to speed up the process of submitting texts of draft articles. A number of delegations had already submitted such texts, a fact which was gratifying to note. However, there were other delegations which preferred to make general statements, and some delegations had even attempted to outline the entire evolution of the law of the sea since ancient times and to predict the results of the forthcoming conference on that subject; that approach was a matter of serious concern to his delegation.

It was also necessary to bear in mind that the Sub-Committee could not work in a legal vacuum. In the course of time, traditions had been formed and had

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(Mr. Grozev, Bulgaria)

found expression in instruments such as the 1958 Geneva Conventions, which his delegation regarded as a sound basis, needing only to be supplemented in order to ensure the development of international maritime law. Among those Conventions, the Convention on the Territorial Sea established a legal régime; yet a lengthy debate was unfolding in the Sub-Committee without any delegation having submitted draft articles which improved that régime. Some delegations had submitted proposals which related solely to the breadth of the territorial sea, giving the impression that all that was required to fill the gaps in the Geneva Convention was to define the maximum breadth of the territorial sea.

His delegation had maintained in the past, and continued to maintain today, that the adoption of the 12-mile limit would be the best solution in that respect and would involve no more than changing a customary rule into a rule embodied in treaty law. It should also be recalled, in support of that position, that the 12-mile limit had thus far been accepted by 100 States and that, moreover, such a limit was laid down in article II of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.

Regrettably, too, it was sometimes forgotten that the spirit of modern international relations required reconciliation of the interests of States with different economic and social systems, of land-locked and coastal States and the like. In that connexion, his delegation felt concern at the failure of some delegations to take into account the interests of others. For instance, it was difficult to accept the contention that the coastal State should have an exclusive right to establish the limits of its national jurisdiction; the principles of the law of the sea could not be based on the recognition of such an absolute right, which would be detrimental, inter alia, to the interests of land-locked countries.

Owing to the need for political compromise, it was necessary for all States to accept the fact that some of their interests could not be met. In that connexion, it might be asked what was the real aim of certain statements, such as one which had been heard at the current meeting. Did they contribute to the achievement of agreed solutions or were they merely a form of propaganda? His

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delegation would not attempt to analyse the content of such statements or of any other statement going beyond the competence of the Sub-Committee. On the other hand, it was ready to do its utmost to arrive at agreed solutions which would ensure the success of the forthcoming Conference on the Law of the Sea.

Mr. SARAIVA GUERREIRO (Brazil) welcomed the Sub-Committee's decision to continue the general debate, although that did not mean that his delegation was not prepared to follow the deliberations of the Working Group with close attention. Almost one year previously, the delegation of Malta had submitted a draft treaty on ocean space. Without prejudice to the position of the Brazilian delegation regarding the provisions of that text, he had on that occasion expressed his appreciation of the Maltese delegation's approach to the law of the sea, based on a distinction between a national area extending 200 miles from the coast and an international area. Two other texts circulated in July 1972 also warranted close attention: the Santo Domingo Declaration of June 1972, based on the concept of the patrimonial sea, and the draft articles on the exclusive economic zone submitted by the delegation of Kenya. While those three documents undoubtedly represented a step forward in the right direction, his delegation believed that a broader approach to the protection of the interests of coastal States was required. In its view, it was not sufficient to recognize the rights of coastal States over the natural resources of the area and, for that purpose, to establish an exhaustive enumeration of the powers of the coastal State beyond a narrow belt of sea. If the rights and interests of coastal States in the 200-mile area were to be adequately protected, it was the rights of other States rather than those of the coastal State that should be enumerated. In view of the diverse uses of the sea, it would seem more appropriate for the coastal State, while admitting and guaranteeing certain legitimate and precisely defined activities by other States, to reserve for itself exclusive powers in the area under its national jurisdiction.

His delegation remained convinced that the logical approach, in the case of coast lines facing the open ocean, would be to extend the sovereignty of the coastal State up to 200 miles, subject only to certain limitations to be agreed upon as necessary in order to meet the international community's legitimate interests, which were essentially those protected by the "jus communicationis".

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(Mr. Saraiva Guerreiro, Brazil)

His delegation started from the assumption that each State had the right to establish the extension and legal nature of its maritime jurisdiction within reasonable limits, taking into account geographical, social, economic, ecological and national security factors. Furthermore, his delegation reserved the right to submit draft articles reflecting its position.

In conclusion, he recalled that at the present meeting the representative of Bulgaria had tried to show that there was a customary rule fixing the width of the territorial sea at 12 miles. Among other things, that representative had mentioned the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof. It was known, however, that customary law was not based on facts alone; moreover, there were many who opposed fixing the width of the territorial sea at 12 miles. In his view, that catalogue of facts, and particularly the reference to the Treaty, were inadmissible. Furthermore, article IV of the Treaty contained a most complete disclaimer clause, since it stipulated that nothing in the Treaty should be interpreted as prejudicing the position of any State Party with respect to existing rules of international law, and that had been confirmed by the delegations of the USSR and the United States at the time the draft Treaty had been submitted. For all of those reasons, the Treaty seemed to be inadmissible as a precedent.

Mr. JAYAKUMAR (Singapore) said that in his view the major objective of the Sub-Committee should be to reconcile divergent interests on controversial questions. Some delegations had contended that the only conflict was the one between the interests of maritime nations and those of coastal States seeking control over wide areas for national jurisdiction. Others had expressed the view that the essential conflict was between the interests of coastal States to control natural resources adjacent to their coasts and the interests of distant-water fishing nations. A third view held that the conflict was between the developed and the developing countries.

All of those interpretations overlooked the existence of other interest groups. In order to find a solution, the different national interests must first be recognized, for they were the key factors in determining the positions of delegations not only in the Sub-Committee but at the 1974 Conference as well.

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A very long list of States with different interests could be cited; moreover, it was evident that the interest groups were not mutually exclusive and that a country could very well belong to several groups at the same time. In other words, there was a diversity of interests, rather than a uniformity of interest, among the countries that would be represented at the Conference. It was also clear that any presentation of the problems which suggested that all coastal States had the same interests in common was misleading, for not all coastal States were in the same situation and there were considerable variations in the extent to which those States had opportunities of access to ocean resources and opportunities for extension.

One of the most important tasks of the Sub-Committee was, therefore, to reconcile the demands of those countries which claimed rights over wide and valuable areas of the sea and those of States which could not do so. The word "valuable" should be emphasized, since there were some countries which, although in a position to claim wide expanses of sea, might not be inclined to agree to a general norm of wide national jurisdiction because their own zone had no valuable living or mineral resources. There was another group of States which, although not possessing a broad continental shelf, were so endowed with rich living resources in the waters off their coasts that they were prepared to agree to broad areas of national jurisdiction. It was thus understandable that States with abundant resources should argue for broad national jurisdiction, while it was equally understandable that geographically disadvantaged States, especially land-locked States or shelf-locked States such as Singapore, looked with grave concern on demands for the extension of national jurisdiction, since that might diminish the sea-bed area governed by the "common heritage" concept and also might deprive their fishermen of valuable fishing grounds. That was an important facet of the conflicts which must be resolved, and in his delegation's view the solution should be based on equity.

On questions relating to the oceans, the position of any delegation depended not only on its country's stage of economic development but also on that country's geographical situation. The conventional dichotomy dividing States into coastal and land-locked States alone was not adequate in the present discussion, since emphasis must be placed on the resources of the sea as the common heritage of mankind.

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The Convention to be drafted should meet the interests of each group and be acceptable to all, since only in that way would it have widespread observance and implementation.

The proposals made by coastal States had referred to an exclusive economic zone, a patrimonial sea and a zone within which a coastal State enjoyed preferential rights. The proposals for an exclusive economic zone had a positive and a negative aspect, and his delegation understood the interests of those coastal nations that would advocate such zones beyond the territorial sea. However, Singapore's approach to the proposals for an exclusive economic zone or a patrimonial sea would be governed by the extent to which and the manner in which those proposals would accommodate the interests of land-locked and shelf-locked countries. Unless the interests of such geographically disadvantaged countries were accommodated, his delegation would be unable to accept any such proposal.

The geographical position of Singapore was such that it currently had a three-mile territorial sea and, at best, it would perhaps be able to claim one more mile before the equidistant-line principle applied. Since fishing resources in that zone were scanty, Singapore fishermen had to fish in the waters of the neighbouring high seas. Acceptance of an "exclusive economic zone" concept would mean that large areas of what now constituted the high seas would become national zones, with results that would be catastrophic to Singapore. To accommodate the interests of land-locked, shelf-locked and other geographically disadvantaged countries, several alternatives could be considered: firstly, the nationals of the regional or neighbouring land-locked or shelf-locked countries could be recognized as having the right to exploit the living resources in the economic zone on an equal footing with nationals of the coastal State concerned. The nationals of those neighbouring countries would, of course, observe all management and conservation regulations of the coastal State. A second possibility was to have not an exclusive economic zone but a zone in which the coastal State would exercise preferential rights to exploit the resources, while having full rights of management and conservation. A third possibility would be that of a regional economic zone; in other words, the zone adjacent to the territorial seas of coastal States in one region would be deemed to be reserved for the exclusive use of all States in that region regardless of their geographical position.

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(Mr. Jayakumar, Singapore)

One or two delegations from coastal countries had suggested that if the land-locked and other geographically disadvantaged countries were to have certain compensatory rights in the extended jurisdictional zone, then there should be a reciprocal right of the coastal States to share in the land resources of those disadvantaged States. That argument was illogical, because there was no parallel situation with regard to land resources: no country, coastal or otherwise, could unilaterally extend its territory in order to acquire new wealth unless it violated international law and committed aggression.

On the other hand, his delegation had been encouraged to see that the conclusions of the Yaoundé Seminar and the draft articles submitted by the delegation of Kenya on the exclusive economic zone contained a clear recognition both of the interests of land-locked countries and of the fact that there might be coastal States whose disadvantaged position warranted similar consideration. Such recognition reflected a readiness for accommodation that was vital to the success of the Conference, since it was necessary to take into account the legitimate interests of all groups of countries, developed or developing, coastal or land-locked or shelf-locked, and the new Convention should reflect a balance of interests.

In conclusion, commenting on the Sub-Committee's procedure of work, he said that while he welcomed the establishment of the Working Group, he felt that direct negotiations and consultations should be held between the different interest groups, supplementing the consultative process between the different regional geographical groupings.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

Held on Monday, 2 April 1973, at 3.20 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION OF WORK

The CHAIRMAN said that he had a long list of speakers. In accordance with established rules, delegations should be given the floor in the order in which they were inscribed on the speakers' list. Nevertheless, the Sub-Committee could decide to alter the order of the list. The representative of Cyprus had requested to be given the floor after the first speaker at the current meeting, in order to introduce his delegation's proposal contained in document A/AC.138/SC.II/L.19. If there was no objection, he would take it that the Sub-Committee agreed that the representative of Cyprus should be the second speaker at the meeting.

It was so decided.

The CHAIRMAN said that the representative of Sri Lanka, who was the Chairman of the Working Group of Sub-Committee I, had requested to be allowed to speak at the current meeting as his duties with the Working Group would prevent him from speaking on any other day. He would not object to being the last speaker at the meeting. If there was no objection, he would take it that the Committee agreed that the representative of Sri Lanka should be the last speaker at the meeting.

It was so decided.

The CHAIRMAN said that the representatives of Canada, Chile, France and Norway had requested to be allowed to speak very briefly at an appropriate point in the meeting on a procedural question concerning the eight-Power proposal in document A/AC.138/SC.II/L.18. If there was no objection, he would take it that the Sub-Committee agreed to comply with the request of those delegations.

It was so decided.

GENERAL DEBATE (continued)

Mr. TOLENTINO (Philippines) said that one of the most important issues that would confront the forthcoming Conference on the Law of the Sea was the issue of navigation through straits used for international navigation which formed part of the territorial sea of a coastal State. Aware of the importance of the issue, his delegation together with those of Cyprus, Greece, Indonesia, Malaysia, Morocco, Spain and Yemen had prepared draft articles on navigation through the territorial sea including straits which formed part of the territorial sea used for international navigation (A/AC.138/SC.II/L.18). /...

(Mr. Tolentino, Philippines)

The purpose of the proposal was to harmonize two fundamental principles of international law, namely, the principle of the freedom of navigation on the high sea for the benefit of the international community, and the principle of territorial sovereignty of the coastal State. The principle of innocent passage through the territorial sea of coastal States had been firmly established for the benefit of the international community. The problem facing the Committee concerned navigation through straits which formed part of the territorial sea. Peaceful and expeditious navigation through such straits was important in order to promote trade, understanding and co-operation among nations. On the other hand, the international community could not deny coastal States the right to security.

The proposals were anchored to the principles of innocent passage and were based on the following considerations. Firstly, navigation through the territorial sea and through the straits used for international navigation should be dealt with as one entity, thus necessitating a unified approach, since the straits in question were part of the territorial sea. Secondly, the regulation of such navigation should establish a satisfactory balance between the particular interests of coastal States and the general interests of the international maritime community. Thirdly, the regulations should contribute both to the security of coastal States and to the safety of international maritime navigation. That could be achieved by the reasonable and adequate exercise by the coastal State of its right to regulate navigation through its territorial sea, since the purpose of the regulation was not to prevent or hamper passage but to facilitate it without adversely affecting the coastal State. Fourthly, the regulation should take due account of the economic realities and scientific and technological developments of recent years, thus requiring the adoption of appropriate rules to regulate navigation of certain ships with "special characteristics". Lastly, the regulation should remedy the deficiencies of the 1958 Geneva Convention, especially those concerning the passage of warships through the territorial sea and straits.

In anchoring those considerations to the basic principles of innocent passage, the sponsors had no desire to hamper legitimate international navigation, but they believed that innocent passage as regulated fully met the needs of the international maritime community. Furthermore, the proposals included two fundamental safeguards

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(Mr. Tolentino, Philippines)

for peaceful navigation: the rule according to which coastal States were not to discriminate among foreign ships, and the rule of non-suspension of innocent passage through straits forming part of the territorial sea used for international navigation. However, technological advances since 1958 necessitated requirements that the coastal State should ensure safety of navigation; it must therefore be given regulatory and management powers for that purpose and in order to protect its own interests. It was the understanding of the sponsors that the regulation of innocent passage in the territorial sea and straits forming part thereof in no way jeopardized the freedom of navigation, so long as the navigation was not prejudicial to the peace, good order and security of the coastal State. In international practice, there had been no incidents in times of peace when straits had been arbitrarily closed or the regulation of passage had endangered international navigation. It should be noted in that connexion that one of the considerations was to remedy the deficiencies of the 1958 Geneva Convention; also, in so far as the principle of innocent passage was concerned, it was necessary to elaborate further the rules governing innocent passage, including passage of warships. The eight-Power proposals had included provisions in specific articles to meet those deficiencies.

The purpose of the proposals was that safe and expeditious passage through the territorial sea and straits forming part of such territorial sea should not be hampered or obstructed but assured in a way that would satisfy the concern of the coastal State and of other States and of the international maritime community as a whole.

Mr. JACOVIDES (Cyprus), introducing the proposal put forward by his delegation in document A/AC.138/SC.II/L.19, said that the draft article had been submitted under item 2.3.2. of the list of subjects and issues relating to the law of the sea, since it had a direct relevance to the topics covered by that rubric of the list. His delegation realized, however, that the proposed text might also have relevance to item 2.3.1. There could be no doubt that the subjects under each rubric overlapped to a considerable extent. Therefore, while his delegation had submitted its draft article under item 2.3.2., it would have no objection to its being referred to under item 2.3.1. as well.

The draft article embodied the principle that, in the case of States with coasts opposite or adjacent to each other, the fundamental and residual rule, failing agreement to the contrary, was that of the median line. That was a

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principle well-founded in customary international law and one which had been codified in article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The principle was essential for the protection of the legitimate interests of smaller and militarily weaker States. At the same time, his delegation was not proposing an arbitrary and absolute rule. The necessary flexibility was allowed by providing explicitly that, in situations which warranted it, the rule could be modified by agreement of the States concerned. It was only when such agreement could not be reached freely and in conditions of equality that the median-line rule would come into operation. The very existence of the rule would, however, serve the essential purpose of mitigating any excessive demands of stronger States in negotiating with weaker ones.

It would be noted that the words "continental or insular" had been used in relation to the baselines from which the breadth of the territorial sea was measured. That had been done so as to remove any ambiguity regarding that point. It had always been the underlying assumption in interpreting the median-line rule of customary international law and had found expression in a number of conventional stipulations. It was of particular importance and relevance to current international law, bearing in mind the emergence to independence, since 1958, of a considerable number of island States which had a vital interest in removing any ambiguity in the matter.

The proposal was of general application in the sense that it was not restricted to enclosed or semi-enclosed seas. At the same time, it was not intended to enter upon the subject of the maximum breadth of the territorial sea, nor did it constitute an encouragement for the extension of territorial seas to the median line where the distance between opposite or adjacent States was such as not to warrant an extension of their respective territorial seas to that point. The maximum breadth of the territorial sea was a different subject and should not be confused with the subject of his delegation's proposal. There were situations in which it would only become relevant if future developments in the matter so required. For example, Cyprus claimed territorial waters of nor more than 12 miles and the coast of the opposite States at the nearest points were, approximately, 40 miles to the north and 60 miles to the east. Neither of those States made a

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(Mr. Jacovides, Cyprus)

claim to territorial waters which would create a problem. While Cyprus itself would prefer that the maximum breadth of the territorial sea should be no more than 12 miles as a universal rule, it could not exclude the possibility that future developments might prove otherwise. It was in that eventuality that the median-line rule would be relevant to Cyprus' situation.

The principle was firmly based on existing law as well as on considerations of equity and was in full keeping with the principle of the sovereign equality of all States. As such, he hoped that it would receive general support in the Committee.

Mr. MALIK (Union of Soviet Socialist Republics) said that the USSR, faithful to its revolutionary and democratic traditions, was opposed to all that was outmoded and reactionary in international relations. It had consistently defended progress in the name of peace, security and the well-being of the peoples of the world. It believed that due attention should be given in the drafting of articles on the law of the sea both to the consequences of the development of science and technology and to new socio-economic factors, such as the emergence of new sovereign States. The USSR actively supported the principle of the sovereignty of such States over their natural resources.

On the other hand, his country had no intention of doing away with established concepts in international relations which it considered to be of use. Certain speakers had stated in the Sub-Committee and its Working Group that the traditional concept of the territorial sea should be replaced by what they had termed the "national sea". His own delegation, however, believed that the concept of the territorial sea and the contiguous zone, as laid down in the 1958 Geneva Convention, met the current objective needs of States. The conclusion of the 1958 Convention had been accompanied by the simultaneous recognition of the right of innocent passage of foreign trading vessels through territorial waters, a right established in the interests of the safety of international navigation and of the development of peaceful relations among States. But for those safeguards, territorial waters would be no more than internal waters, with all the consequences that entailed.

The fundamental defect of the 1958 Geneva Convention was its failure to define the breadth of the territorial sea. None the less, the limit of 12 miles was established in international practice and had been recognized by the International

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(Mr. Malik, USSR)

Law Commission, which had stated that international law did not permit the extension of territorial waters beyond the 12-mile limit. Contrary to what one speaker had said, the USSR, at the 1958 and 1968 Geneva Conferences, had actively supported the establishment of the 12-mile limit in co-operation with eight socialist and 30 other States, including Latin American States. It was absurd to claim, as that speaker had done, that the USSR had attempted to impose its will with regard to territorial waters on other States. That was borne out by the fact that the country that speaker represented had itself, at the height of the consideration of the question on 4 September 1958, officially established a 12-mile limit for the breadth of the territorial sea.

The 12-mile limit was recognized by 100 States on the basis of a rational consideration of their own interests and the interests of other countries. A similar approach should be adopted with regard to the question of straits. The international régime should preserve the generally recognized freedom of navigation and overflight in straits which linked areas of the high seas and which had traditionally been used for that purpose on the same basis as the high seas themselves. At the same time, the régime should contain specific guarantees to protect the interests of the States bordering on such straits, and particularly guarantees against any damage which might result to the coastal State from navigation or overflight by foreign vessels or aircraft. His delegation had tried to reflect that view in its draft articles on straits used for international navigation (A/AC.138/SC.II/L.7).

The régime covering straits used for international navigation should not be extended to straits linking the high seas with the territorial sea of any State. Navigation in straits of that kind, such as the Straits of Tiran and Pemba, should be governed by the rules for innocent passage. His delegation was willing to revise its draft articles to express that idea more clearly and to extend the concept of a traffic separation scheme to all straits used for international navigation.

His delegation was studying carefully the draft articles on territorial waters and straits (A/AC.138/SC.II/L.18) submitted by the Philippines and others. Unfortunately, the draft sought to extend to straits used for international navigation the principle of innocent passage which applied in the territorial sea. His own delegation could not accept such an approach, since it disregarded the special position of straits which linked two areas of the high seas and were widely used for international navigation.

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Turning to the question of the exploitation of living marine resources beyond the limits of the territorial sea, he noted that some States were seeking to extend the exclusive rights of the coastal State to all living resources in the waters adjacent to the territorial sea and to establish an exclusive economic zone up to 200 miles wide. Indeed, some States were seeking to permit the coastal State to set its own limits for the economic zone. Such a proposal would create chaos in the delimitation of the seas and was clearly motivated by political and hegemonistic aims.

The USSR recognized that the developing countries had a particular interest in raising the living standards of their populations by the rational use of fish stocks in waters contiguous to coastal States. At the same time, it was necessary to bear in mind the interests of land-locked and other States. A reference had earlier been made, for example, to the special interests of States or areas of States which relied heavily for their food supply on coastal fishing. His own delegation found that reference justified and believed that the question of fishing should be resolved in a balanced manner, taking into account the interests of all States and not merely those in the most favourable geographical position.

The products of the sea played a highly important role in assuring a balanced diet for the 250 million people of the USSR. His delegation was thus deeply interested in the establishment of fishing regulations which would protect the interests of its people. The USSR also appreciated the desire of the developing countries to increase their capacity to make rational use of the fish stocks in the waters along their coasts and had concluded agreements with more than 30 States under which it provided them with assistance in that field. The agreements were implemented on the basis of equal co-operation and mutual benefit, and his country was willing to develop further such broad co-operation with developing nations.

If coastal-State jurisdiction were extended to the 200-mile limit, then as, the representative of Singapore had said, the consequences for the economies of States which were in a less favourable geographical position would be disastrous. While some developing nations might benefit from such a move, they should not overlook the needs of the peoples of other States. Those who sought to incite the developing nations to extend their territorial jurisdiction in that way were plainly motivated by selfish political aims.

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Finally, the claim made in the Working Group by one speaker that the USSR had refused access to within 400 miles of its eastern coast to foreign fishing fleets was a premeditated deception. The waters contiguous to the territorial sea of the USSR in the Far East were open for fishing by other States in accordance with international law. There had been one single instance in 1956 where the USSR had taken emergency measures to prevent irreversible harm to fish stocks to the development of which it had devoted considerable resources. The measures in question had applied equally to Soviet and foreign fishing vessels. A mere two months later, the problem had been settled by means of an international agreement, as a result of which the measures referred to had ceased to have effect.

He trusted that the proceedings in the Committee and its sub-committees would be marked by common sense and goodwill. His delegation was ready to seek solutions to the questions under discussion on the basis of a rational consideration of the interests of the developing coastal States and the interests of all other countries of the world. Only in that way could success be achieved.

Mr. FAYACHE (Tunisia) said that he would confine his statement to the question of islands. It had been argued that the problems of islands had no bearing on the law of the sea and that item 19 of the list of subjects and issues relating to the law of the sea should be deleted.

The purpose of his delegation in raising the question of islands was merely to ensure that at the forthcoming Conference on the Law of the Sea certain particularly ambiguous clauses in the Geneva Conventions would be clarified. Careful study of those Conventions showed that they contained only three references to islands: one in article 10 of the Convention on the Territorial Sea and the Contiguous Zone, one in article 1 of the Convention on the Continental Shelf and one in article 5 of the Convention on the Continental Shelf. Those clauses were ambiguous, and the conflicting interpretations placed on them by delegations interested in the problem justified the establishment of a new international regulation based on logical and equitable norms.

The Geneva Convention on the Territorial Sea and the Contiguous Zone contained a definition of an island. The definition was, however, inadequate, since it in no way clarified the multiple categories and characteristics of islands throughout the world which gave rise to many disputes because of their political or legal

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status, their geographical location, their geological configuration and their population or lack of population. It was indeed unthinkable that identical treatment should be applied to an island like Great Britain or Madagascar and to a large but deserted island, a small but overpopulated island, an island very remote from the country to which it belonged and situated within the area of national sovereignty or jurisdiction of another State, or a thinly populated island in mid-ocean. Thus, while taking the definition in the Geneva Convention as a basis, it was essential to draw up a logical classification of the various categories of islands with a view to being able to determine, in a reasonable and equitable manner, the marine spaces to be allocated to islands. To that end, it was necessary to ensure that the resources of the sea were distributed fairly. The current situation definitely favoured countries possessing islands, since they were allocated vast marine spaces, with all the resources therein, in addition to those off their own territory. It followed that the sometimes exaggerated claims of additional marine areas conflicted either with the interests of the international community, when the islands were in the high sea, or with the major interests, and sometimes even the sovereignty, of certain coastal States, when the foreign islands were in areas coming under the national jurisdiction of the coastal States.

In the circumstances, how could the régime for islands be best defined? Firstly, it seemed that, in dealing with item 19 of the list of subjects and issues, the Committee should confine itself to islands which were neither island States nor parts of archipelagic States. There could hardly be any objection to treating island States and archipelagic States like any other coastal State. The distinction must be made and must be included in an appropriate place in the draft article on the régime for islands. Similarly, it should be mentioned in the article that, upon acceding to independence, dependent island units would retain their natural right to claim, on an equal footing, all the rights enjoyed by independent coastal States.

With regard to all other types of islands, detailed classification work must be undertaken in order to give them economic zones on the basis of logical and equitable criteria generally agreed on in the Committee. Such criteria could be political, legal, economic or social in nature while taking account of considerations relating to the size of the islands, their location in marine space and their geological configuration.

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In that connexion, it might be appropriate to request the International Hydrographic Organization to prepare a study on islands. His delegation was at the disposal of other delegations interested in that problem for the purpose of co-operating with them in drawing up draft articles on islands.

In conclusion, he said that his Government would give most sympathetic consideration to the proposals contained in document A/AC.138/SC.II/L.18, introduced by the Philippines on behalf of eight Powers.

Mr. MOORE (United States of America) stated that, as several other speakers had said, one of the most important tasks of the Conference on the Law of the Sea would be to protect the interests which all nations had in the freedoms of navigation and overflight. The preservation of those freedoms was essential in order to maintain the flow of trade and communications and stable and peaceful international relations. There were three main aspects of those freedoms. The first concerned the preservation of freedom of navigation on the high seas beyond the territorial sea. The second related to a truly meaningful right of innocent passage within a 12-mile territorial sea in areas other than straits used for international navigation. The third related to the right of vessels and aircraft of all nations to unimpeded transit through and over the straits used for international navigation. The community interest with regard to international straits was far more vital than simply the right of innocent passage in the territorial sea. The issue was no less than whether the freedoms of the high seas enjoyed by all nations were to remain meaningful.

A principal goal of the Conference must be to agree on a régime which would minimize the possibility of conflicts among nations arising from uncertainty as to legal rights and responsibilities. Such uncertainty might occur if a régime for straits used for international navigation could be subjectively interpreted by straits States. In order to protect the interests of all concerned, both straits users and straits States, the United States had submitted draft articles which called for an agreed maximum breadth of the territorial sea of 12 miles, coupled with transit provisions which would retain essential transit rights for straits users. It had further proposed the establishment of new safety and liability standards for the protection of straits States; in addition to calling for the observance of the relevant IMCO and ICAO regulations and procedures by all vessels and aircraft in transit through straits, it had proposed that all such vessels and

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aircraft should be strictly liable for accidents caused by their failure to observe those regulations. His country has offered to forego, as part of a new agreement, many of the full freedoms of the high seas presently exercised in those straits which would be affected by an extension of the territorial sea. The United States sought to maintain for itself and for the international community only the limited and essential right of an unimpeded transit described in the draft articles it had placed before the Sub-Committee. He repeated his invitation to other delegations to comment on those draft articles.

His delegation was deeply disappointed at the proposal contained in document A/AC.138/SC.II/L.18, which represented an even more restrictive and subjective concept of innocent passage than that found in existing international law. The proposal would create a vague new right for the strait State to "be compensated for work undertaken to facilitate passage". It would also permit strait States to impose restrictions on the passage of vessels which in fact posed no threat. Most importantly, it confused the issue of passage in the territorial sea in areas other than international straits with the very different issue of transit through and over international straits.

Despite the efforts made at the 1958 Geneva Conference, uncertainties and diffulties concerning the nature of innocent passage had continued. Their effect would be greatly amplified if they were not resolved prior to an extension of the territorial sea into areas of international straits traditionally regarded as high seas. Like other countries, the United States had made it clear that its vital interests required that agreement on a 12-mile territorial sea should be coupled with agreement on free transit through straits used for international navigation; that position continued to represent one of the basic elements of its national policy, which it would not sacrifice. The proposals contained in document A/AC.138/SC.II/L.18 were unbalanced and denied the essential navigational freedoms of the international community.

The CHAIRMAN, referring to the comments he had made at the beginning of the meeting concerning organization of work, asked whether members were prepared now to hear brief statements by the four delegations which wished to speak on a procedural question concerning document A/AC.138/SC.II/L.18.

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Mr. WARIOBA (United Republic of Tanzania) said that he would have no objection, provided the Chairman could assure him that the Tanzanian delegation would be able to make its statement at the current meeting.

Mr. TUDOR (Romania) said that his delegation was willing to cede its place on the list of speakers to the Tanzanian delegation.

Mr. PINTO (Sri Lanka) reminded the Chairman that he, too, wished to speak at the current meeting.

Mr. ABDEL-HAMID (Egypt) asked whether there was any compelling reason why the four delegations should raise their procedural question before all speakers had been heard in the general debate.

Sir Roger JACKLING (United Kingdom) said that it would be more in keeping with general practice if the four delegations were to raise their procedural question when the general debate had been completed.

Mr. ZEGERS (Chile) pointed out that the Sub-Committee had already agreed to hear the four delegations. It had also agreed that the representative of Sri Lanka should be the last speaker at the current meeting. In order to avoid difficulties, the four representatives concerned would be prepared to speak after the representative of Sri Lanka.

The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Committee agreed that the four representatives should speak at the end of the meeting, after the representative of Sri Lanka.

It was so decided.

Mr. AGUILAR (Venezuela) said that on a number of occasions his delegation had expressed the view that the progress of work and the success of the forthcoming Conference itself depended largely on a comprehensive political agreement which would satisfy both the international community and individual States. The time had come to speed up the negotiating process, and his delegation agreed that the formulation of draft articles clarifying the different positions would facilitate that process considerably. For that reason, the delegations of Colombia, Mexico and Venezuela had decided to submit draft treaty articles, based on the Declaration of

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Santo Domingo, which would shortly be circulated by the Secretariat to the members of the Sub-Committee. The draft was necessarily incomplete, since the sponsors had decided to confine themselves to the issues and questions to which the Declaration had addressed itself. The signatory countries of the Declaration of Santo Domingo intended to continue consultations in order to harmonize their positions on issues and questions not dealt with in the Declaration, such as straits, land-locked countries and archipelagos and the question of concluding regional or subregional agreements to grant the countries of a region or subregion preferential rights with respect to the exploitation of the resources of the patrimonial sea or exclusive economic zone of other countries in the same region or subregion, and the sponsors hoped to be able to submit their views on all those questions at the summer session of the Committee.

The draft articles were divided into five parts, dealing with the territorial sea, the patrimonial sea, the continental shelf, the high seas and regional agreements. The titles of the three sections of the first part were self-explanatory and followed the 1958 Geneva Convention on the Territorial Sea; only the title of section II had been changed and had been given an explanatory subtitle. The sponsors had confined themselves to developing the section relating to general provisions, because they considered that at the current stage of work they should concentrate on the main outlines of the general political agreement and leave the formulation of other rules until a later stage. The draft articles reflected one of the basic concepts of the Declaration of Santo Domingo, namely, the maintenance of the traditional idea of the territorial sea, closely linked to the creation of an exclusive economic zone, called the patrimonial sea, of not 12 but 200 miles. In accordance with that principle, the first article affirmed the sovereignty of the coastal State over that zone, the second determined its breadth and the third addressed itself to the right of innocent passage, the most important restriction on the sovereignty of the coastal State over its territorial sea. The provisions needed no further explanations, with the possible exception of that relating to the breadth of the territorial sea. Although the Declaration of Santo Domingo contained no specific provision on the matter, it implicitly recommended a breadth not exceeding 12 nautical miles for the zone. In any case, for reasons which had been stated on a number of occasions, the sponsors considered that there were two zones, over which

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coastal States would have different rights. One was a relatively narrow zone over which the coastal State would exercise sovereignty, and the other was a relatively broad zone over which it would exercise certain rights mainly with regard to its resources. In proposing a maximum breadth of 12 nautical miles for the first zone, the sponsors had borne in mind the fact that many States had accepted it in their legislation or had indicated their intention of doing so. They were well aware that there was no reason to insist on the 12-mile figure, but it had the advantage of enjoying very broad support.

The draft clearly indicated that the sponsors favoured a single régime for the territorial sea, in the sense that it would be subject to the same legal régime for the whole of its breadth, which might be less than 12 miles, since that distance was the maximum limit and not all coastal States could extend their territorial sea for as much as 12 miles.

The next part related to the patrimonial sea and generally incorporated the text of the Declaration of Santo Domingo. Articles 4, 5, 6 and 7 laid down the areas of competence of coastal States and article 7 stated that responsibility devolved upon the coastal State for authorizing and regulating the location and use of artificial islands and all installations on the surface of the sea, the water column, the sea-bed and the subsoil of the patrimonial sea. Article 8 established that the outer limit of that zone should not exceed 200 nautical miles. The sponsors advocated the establishment of a broad exclusive economic zone, for which a limit of 200 miles seemed adequate and by no means excessive in view of the competence devolving in that zone upon the coastal State. The 200-mile limit appeared to be the one which enjoyed the greatest favour, but it should be stressed that geographical circumstances would determine how far each State could extend its patrimonial sea. Articles 9, 10, 11 and 12 laid down the rights and freedom which States would enjoy in that zone. More specifically, it referred to navigation, overflight and the laying of submarine cables. Articles 11 and 12 established the general principles that the coastal State must take appropriate measures to ensure that its activities in that zone were carried out with due regard for other legitimate uses of the sea and that, when other States exercised the rights and freedoms to which they were entitled under the Convention, their activities would not intefere with the activities of the coastal State.

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The next three articles set out and developed the principles embodied in the Declaration of Santo Domingo with regard to the continental shelf. The first article gave a definition of the continental shelf and proposed that its limit should be the outer limit of the continental rise, in accordance with the terms of the Declaration. The other two articles reproduced the provisions of the Declaration of Santo Domingo.

The part relating to the high seas also followed the guidelines of the Declaration, but an additional article had been inserted establishing the special interest of the coastal State in maintaining the productivity of living marine resources in an area adjacent to the patrimonial sea.

The last part, concerning regional agreements, contained an article which stated that no provisions in any treaty or convention which might be signed at any future date might impede or restrict the right of any State to enter into regional or subregional agreements to regulate the exploitation or distribution of living marine resources, the preservation of the marine environment and scientific research, and should not affect the validity of existing agreements.

In conclusion, the sponsors considered that proposals put forward by other delegations, particularly those of Kenya, contained provisions which might be incorporated into their draft at a later stage.

Mr. WARIOBA (United Republic of Tanzania) said that the special relationship of the coastal State with the adjacent sea and its special interest in and responsibility for the conservation of the marine environment now commanded general acceptance. The special interest lay, inter alia, in the political integrity, security and economic well-being of the coastal State, and the special responsibility lay in the maintenance of resource productivity.

It was also widely recognized that existing rules neither covered adequately the interests of the coastal State nor facilitated the discharge of its responsibilities. The rules in the Geneva Conventions had only served as a vehicle for a small group of States to enrich themselves without due regard either to the interests of other States or to the performance of the vital responsibilities necessary for the conservation of the marine environment. The FAO study submitted to the Committee showed that an overwhelming proportion of the living resources of

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the sea was shared among a very few States. The study also indicated the presence of a very small group of States in every region of the world. Most of the States were developed countries, and the few developing countries mentioned in the study were limited in their operations to the sea adjacent to them. Thus, the present freedom amounted to freedom to perpetuate inequality. It could also be said that discussions so far had indicated a desire to change present arrangements in order to recognize the vital interests of all States. There was still, however, no agreement on the basic approach to the problem. A number of proposals submitted in the Sub-Committee sought to cure the existing imbalance by recognizing the interests of the coastal State by way of preferential rights according to ability. Many delegations believed that such an approach would not achieve equity, but would only perpetuate the monopoly enjoyed by the developed countries. Neither did they believe that the promise of technical assistance in the form of advisers or compensation would bring about justice. They maintained that the only effective way of achieving justice was to recognize the exclusive rights of the coastal States in a broad zone adjacent to the coast. For its part, his delegation would have preferred to designate that area as the exclusive economic zone. It had already stated that the zone should be determined by a fixed distance; that approach had been criticized on the grounds that the method did not adequately take into account the interests of other States, especially the land-locked States, and that a zonal approach was not conducive to proper management. It had been forcefully argued that fish did not respect boundaries and that it was useless to try to manage them within fixed boundaries. It was not the contention of his delegation that attempts should be made to set boundaries for fish; the boundaries would be for men, and thus there was no conflict with management and conservation principles.

State jurisdiction did not necessarily conflict with international principles of management and conservation, and a casual examination of State jurisdiction in the area of the territorial sea indicated that coastal States by and large applied international standards. In fact, they were better applied and observed in the territorial sea than in the so-called free area.

His delegation appreciated the work of international commissions but felt that their proper role was to give advice, rather than to try to enforce their

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recommendations. The FAO report failed to state that depletion occurred in many areas because certain States might not have applied the standards recommended by the commissions. In the case of the depletion of the Antarctic whale, the International Whaling Commission had made recommendations which would have saved the species, but the countries concerned, which in fact were the champions of supervision by international commissions, had refused to apply the recommendations and greedy exploitation had depleted the species. Those countries might claim that, in respect of the areas and stocks concerned, they had abided by the Commission's ban, but the truth was that they had stopped whaling because there were no longer enough whales to meet their needs, and not because a ban had been imposed. International regulations, especially in the area of enforcement, had failed completely, and his delegation had not detected any sincere move on the part of those responsible to improve the situation.

The criticism that the economic zone would deprive the land-locked and almost land-locked States of their rights was not supported by the facts. It was fair to say that the rights of land-locked States had been recognized only as a result of continued and arduous negotiations, and the present rules did not recognize their rights with regard to the living resources of the sea. It was not by accident that no single land-locked country appeared in the FAO study. The present rules were deliberately framed to benefit only a few coastal States, some of which were now falsely posing as the champions of the land-locked States. In 1958 and 1960 the land-locked countries had never been considered, but promises of compensation were now being heard from those who ferociously resisted any suggestion of international ownership of the resources and stubbornly defended freedoms of the high seas in order to continue their plunder of the oceans.

There had also been suggestions of technical assistance in the form of advisers, but it was difficult to see how the land-locked countries could benefit from their advice if they did not have a marine fishing industry. Earlier in the meeting, a speaker had listed those States which had received assistance from his country in the field of the fishing industry, and not a single land-locked country had been mentioned. If their interests had been considered long before the negotiations, why had they not received assistance?

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In the view of his delegation, a broad exclusive economic zone would be of little benefit to the land-locked country without the incorporation of some other arrangements. The African seminar at Yaoundé in June 1972 had decided to propose that the land-locked countries should be given special treatment in the economic zone. First, they should have priority in that area over those who now exploited the entire ocean. Second, land-locked States should benefit under regional arrangements. In East Africa, for example, Kenya, Uganda and the United Republic of Tanzania operated certain services, such as railways, airlines, harbours, marine research institutions and the like in common. As a result, Uganda did not worry about access to the sea because railways and harbours were owned jointly and Uganda's maritime rights began at the coast with harbour facilities. Kenya, Uganda, Zambia and the United Republic of Tanzania owned a shipping line and the ships of all those countries were accorded the same treatment in Kenyan and Tanzanian territorial waters. That sort of arrangement could give meaningful benefit to land-locked States. It was also important to note that they not only had rights but an equal share of the responsibilities, and such arrangements could be attained only at the regional level. The East African Community was an example of the kind of arrangement which could benefit land-locked States without doing harm to the interests of the coastal States. Regional arrangements could assure the land-locked States of the right to marine resources and give them a share in the responsibility of defending those rights and the conservation of the marine environment.

With regard to straits used for international navigation, his delegation had stated at the preceding session that a strait was part and parcel of the territorial sea. As far as it was concerned, the extent of the territorial sea had not been determined, but the sovereignty of the coastal State over the territorial sea should not be questioned. All were aware that straits were vital for international navigation, and the interests of the international community should be taken into account. His delegation believed, however, that it was the coastal State which should determine the harmonization of its interests and the interests of the international community. International navigation was as important to the coastal State as it was to other States, and his delegation did not believe that any coastal State would disregard the interests of the international community. On the other hand, his delegation did not accept that it was fair to deprive the

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(Mr. Warioba, Tanzania)

coastal State of its sovereignty and place its vital security interests at the mercy of every State that used the strait. For that reason, it had categorically rejected notions of free transit and supported innocent passage. It supported, of course, efforts to clarify the concept, taking into account the balance of interests of the coastal State and the international community. Earlier in the meeting, the Soviet representative had made reference to Pemba, an island off the Tanzanian coast, and at the preceding session the Soviet delegation had stated that by international strait his country did not mean such straits as the Strait of Pemba and the Zanzibar Channel, which it appeared to consider insignificant. His delegation had replied that its position with regard to straits was not determined on the basis of the case of Pemba. It was not appropriate to determine the importance of straits using the criterion of the volume of traffic, because that volume might increase substantially in the future, and it was therefore quite untrue to say that the Strait of Pemba was not a strait because it had a low level of traffic.

The frequently repeated argument that the interests of a coastal State could be protected by making compulsory the application of traffic separation schemes prepared by IMCO had no basis. The traffic separation schemes prepared by IMCO were intended for any area with heavy traffic; why should their application be compulsory only in straits and not in other areas of heavy traffic? Second, the application of those schemes was not compulsory under the constitutional instrument of the body which prepared them; why should it be compulsory under another instrument? If the schemes were so vital for the regulation of traffic, why could IMCO members not accept their application as compulsory under their own constitution? Moreover, why should aircraft have free transit under an instrument on the law of the sea if they did not have that right under instruments dealing with air traffic? His delegation was still convinced that free passage was sought not in the interests of international navigation, but in the military interests of two or three States. For that reason, it welcomed the document introduced by the Philippine delegation, which treated straits as part and parcel of the territorial sea and recognized the sovereignty of the coastal State. It also sought to clarify the concept of innocent passage and, though his delegation had slightly different views on some of the provisions of the draft, it supported the fundamental principles on which it was based. It would work closely with the

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(Mr. Warioba, Tanzania)

sponsors and others in order to arrive at a solution that maintained the fundamental principles.

Mr. NANDAN (Fiji) said that as a result of discussions in the Sub-Committee his delegation had gained an awareness of the particular interests of all countries represented in the Committee. The task of the Sub-Committee's Working Group was to reconcile all those interests with a view to reaching compromise solutions satisfactory to all countries. In that connexion, it seemed to his delegation that the stands of various interest groups should be declaratory rather than intractable, since success could only be achieved by give and take on the part of all interested groups. There could be no question of any interest group's forcing its wishes on others.

As the representative of Cameroon had said at a previous meeting, the Sub-Committee was not attempting to codify existing rules of international law; it was attempting to write a completely new set of rules. It was to be hoped that those rules would take account of existing circumstances and also be sufficiently flexible to accommodate changes likely to occur in the reasonably foreseeable future. It must be borne in mind, for example, that many developing countries might soon be developed countries, with the result that there might be substantial changes in their interests within a few decades. Accordingly, an attempt must be made to take account not only of apparent conflicting interests but also of fluctuations in the fortunes, and consequently in the interests and policies, of nations. The task was difficult but would not be impossible if members bore in mind one guiding principle, namely, that whatever the fluctuations of fortune, no one interest group should be permitted to prevail to the detriment of others. Fair compromises must be worked out so as to accommodate the legitimate interests of all nations. For instance, the interests of land-locked States would have to be accommodated and the interests of straits countries would have to be reconciled with the interests of States concerned with the maintenance of international commerce and communication.

Speaking on behalf of the delegations of Fiji and Mauritius, he said that both delegations had studied the draft articles contained in document A/AC.138/SC.II/L.18. As archipelagic States, Fiji and Mauritius could only say at the present juncture that they would like to study the articles in greater detail

(Mr. Nandan, Fiji)

before adopting a firm position on them. They felt that all archipelagic States, including those which were not members of the Committee but which might be represented at the forthcoming Conference on the Law of the Sea, would wish to study the draft articles carefully in an endeavour to formulate appropriate articles for the solution of their particular problem. Due consideration would have to be given to principle 3 of the archipelagic principles contained in document A/AC.138/SC.II/L.15.

In conclusion, he said that his delegation was interested in the concept of the patrimonial sea embodied in the Declaration of Santo Domingo and in the draft articles on the exclusive economic zone concept submitted by the Kenyan delegation (A/AC.138/SC.II/L.10). Those documents could serve as a basis for finding solutions to the problems of all interest groups.

Mr. RAKOTOFIRINGA (Madagascar) said that, in accordance with the generally accepted definition of the territorial sea as a natural extension of the territory of a State, no restriction whatsoever should be placed on the full and complete sovereignty of a State over its territorial sea. However, it was imperative to find a solution to the problem of navigation through the territorial sea. The first point to be borne in mind was that one must be realistic and not try to find one single solution for different situations. His delegation's position with regard to the problem of passage through territorial seas was flexible, except for its insistence on the rights of the State involved, and accordingly it supported what had been called a "plural régime". He could not accept any solution whereby a single criterion was imposed to determine the extent of territorial waters or zones under national jurisdiction. He suggested that States could use different criteria to delimitate the zone under national jurisdiction and apply different régimes in different parts of that zone; that seemed to him the basis for an effective solution.

He welcomed the statement of principles on the question of archipelagos, by the representatives of Fiji, Indonesia, Mauritius and the Philippines, and his delegation would study those principles most carefully.

He drew attention to the problem of isolated and uninhabited islets. That problem was not mentioned explicitly in the list of items to be considered by the

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(Mr. Rakotofiringa, Madagascar)

Conference on the Law of the Sea, but he felt that it could be dealt with under item 19. Although the discussion of islets might give rise to additional problems, he felt an attempt should be made to resolve those problems, since the consequences of neglecting them might be felt later. If the machinery which the Committee was trying to establish was to be effective, the problems relating to the definition of islets must be solved; he was thinking in particular of the question of whether such uninhabited islets could claim a territorial sea and a continental shelf.

Turning to the question of international commercial navigation, he said that the main concern of his delegation was to preserve the interests of the international community. He would therefore welcome any attempt to guarantee international commercial navigation on the high seas and passage through territorial seas, including straits. The question of freedom of navigation on the high seas was being considered elsewhere, but he observed that it did involve responsibility for safeguarding human life and property at sea, preventing marine pollution and preserving the marine environment. He drew attention to the fact that, in view of the economic dependence of States on maritime transport, and in view of the relevant provisions of the resolutions adopted at the third session of UNCTAD, efforts should be made to expand the merchant fleets of developing countries in order to enable them to increase their participation in world maritime traffic.

Passage through the territorial sea could be permitted only if it was in accordance with the national laws of the State concerned. In that connexion he reiterated that coastal States could apply different régimes to different areas under their jurisdiction so as to defend their interests and resolve the problems of innocent passage. It was essential to take a flexible position with regard to the problem of innocent passage so that the complex and often divergent interests of various countries could be taken into account.

The draft articles introduced by the representative of the Philippines (A/AC.138/SC.II/L.18) were useful, and his delegation would study them carefully.

He recalled that, since the twenty-fourth session of the General Assembly, his delegation had been drawing attention to the need to preserve the sea-bed and

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(Mr. Rakotofiringa, Madagascar)

the ocean floor for peaceful purposes; they should not be used for military purposes, as was feasible because of modern technological progress and because the oceans provided ideal camouflage, since satellites could not monitor underwater installations. The installation military bases and the construction of silos for medium-range nuclear warheads should never be allowed to transform the common heritage of mankind into a sword of Damocles.

Mr. MIGLIUOLO (Italy) said he had understood that he was on the list of speakers for the current meeting, and accordingly, requested the floor. He had understood that the representative of Sri Lanka would have an opportunity to speak at the current meeting, but not at the expense of other speakers on the list.

The CHAIRMAN recalled that he had asked the Sub-Committee if it had any objection to granting a request from the representative of Sri Lanka to speak at the end of the meeting, and no objection had been raised. In calling on other speakers, he had followed the order of the list of speakers, and he regretted that there was no time left for the representative of Italy to make a statement at the current meeting.

Mr. PINTO (Sri Lanka) recalled that his delegation had consistently urged that one of the practical methods that could be used to promote the emergence of the political compromise necessary for the ultimate success of the third Conference on the Law of the Sea was the preparation of draft texts by delegations on matters of importance to them; for such texts could often focus attention on essential questions and clarify points of view, so that areas of agreement and disagreement could be identified prior to negotiation. Accordingly, he welcomed the draft articles that had been introduced by the representative of the Philippines. He supported the basic principle underlying the draft articles that foreign ships had no more and no less than the right of innocent passage through the territorial sea, and that a similar régime ought to apply to navigation through straits that were within the territorial seas of one or more States. He welcomed the attempt made to spell out in some detail in the draft the content of the principle of innocent passage as conceived by some States.

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(Mr. Pinto, Sri Lanka)

His Government favoured a solution to the problem that would be acceptable to all States, or at least to the overwhelming majority. If, for example, the principle of innocent passage were to be made subject to objectively ascertainable criteria with guarantees of objective application, some of the doubts and apprehensions regarding the principle might disappear, and it might be possible to reach a negotiated solution. The draft articles provided a starting-point for work in that direction. They sought to deal more or less exhaustively with the question of innocent passage through territorial seas, and then to apply that régime to straits in the territorial sea used for international navigation. He noted that much of the draft was derived from section III of the 1958 Convention on the Territorial Sea and the Contiguous Zone; some of the provisions of the Convention had been modified and some new provisions had been added. On the whole, he believed that the document was a valuable and well-thought-out draft.

Commenting in detail on certain articles of the draft, he welcomed the provision, in article 3, paragraph 2, that passage should be continuous and expeditious. He also welcomed the added reference to "other underwater vehicles" in article 3, paragraph 5, which was, apart from that addition, identical to article 14, paragraph 6, of the 1958 Convention. The second sentence of article 4, however, might need further elaboration, since the reference to carriage of goods "owned by" a particular State was not entirely clear; the ownership of goods placed on board a ship might not always be relevant to the rights to be protected under the draft articles, and there was no mention of passenger traffic.

Article 5, paragraph 4, was also a completely new article, and it should be read in conjunction with article 5, paragraph 3, in order to appreciate how the "no suspension" principle applied to straits used for international navigation. He observed that the words of article 16, paragraph 4, of the 1958 Convention interpreting the expression "strait used for international navigation" had been omitted, perhaps in an attempt to avoid the problem of definition.

Articles 6 to 10, concerning the regulation of passage, were new provisions and were helpful in that they indicated the kind of controls that coastal States would favour. Articles 14 to 18, also new provisions, were similar in intent

(Mr. Pinto, Sri Lanka)

but dealt specifically with vessels that might cause special types of hazards. It was indeed desirable to indicate in some detail the particular preoccupations of coastal States in those matters, but on the other hand there could be some overlap among the provisions that might tend at times to weaken them. He felt strongly that the articles should not be interpreted in such a way as to detract from the broad provisions of article 3, paragraph 3, (derived from article 17 of the 1958 Convention). Article 15, paragraph 2, seemed to contemplate the possibility of one or more agreements for the relaxation of measures in respect of nuclear-powered or nuclear-armed ships, and perhaps others, on the basis of most-favoured-nation treatment. Similarly, article 21 left open the possibility that special arrangements for passage would often be made on a bilateral basis. That provision might be worded differently; for example, warships might be required in all cases to notify the competent authority and seek permission for passage through the country's territorial sea, although waiver of that rule by agreement would not of course be excluded. Article 22 listed prohibited activities by warships and was acceptable. Article 11, paragraph 3, which made provision for compensation of the coastal State for works undertaken to facilitate passage, was also acceptable to his delegation.

Article 10 appeared to be a development of article 23 of the 1958 Convention, which had a similar provision in relation to warships; however, in the present context it was not, he believed, intended to detract from any of the other remedies open to the coastal State in respect of ships other than warships such as were provided for in article 12 and article 13, paragraph 3. Article 23, like article 23 of the 1958 Convention, made similar provision for warships. Articles 10 and 23, which authorized the coastal State to require a ship to leave the territorial sea, could, however, be regarded as incomplete to some extent when they were applied to straits within territorial seas. He felt that a ship whose primary intention was to traverse the strait, as in most instances would be the case, would be only too glad to comply with the requirement, provided it was allowed to go in the right direction. He wondered whether it might not be feasible to speak in that context of prohibiting onward transit through the strait, in addition to the power to require that the ship leave the territorial sea.

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(Mr. Pinto, Sri Lanka)

Consideration might also be given to requiring co-operation between the coastal States bordering a strait used for international navigation in facilitating traffic and securing the standardization, publication, application and enforcement of rules enacted in accordance with laws and regulations such as those contemplated in article 3, paragraph 3, of the draft.

He believed that it should be possible to develop a concept of innocent passage providing for regulation of transit which safeguarded the interests of the coastal States and at the same time offered certain guarantees to users, based on published rules of an objective character enacted within an internationally agreed framework.

Mr. CASTAÑEDA (Mexico) requested permission to speak first at the following meeting on the draft articles contained in document A/AC.138/SC.II/L.21, in accordance with the established procedure that sponsors of a draft were given priority to introduce it before other representatives commented on it.

The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Committee agreed to give priority to the representative of Mexico at the following meeting.

It was so decided.

Mr. ZEGERS (Chile) noted that item 4 of the list of subjects and issues referred specifically to straits used for international navigation. In that connexion, he recalled that straits used for international navigation had been defined by custom and by the International Court of Justice in its judgement on the question of the Corfu Straits, and also in article 16, paragraph 4 of the 1958 Convention. However, the draft articles contained in document A/AC.138/SC.II/L.18, and in particular draft article 5, paragraph 4, did not give any definition of straits used for international navigation; he requested clarification from the sponsors on whether that omission had been an oversight.

Mr. BEESLEY (Canada) recalled that, in drawing up the list of subjects and issues, the Sub-Committee had taken care to restrict the question of navigation through straits to straits used for international navigation. Article 5, paragraph 4, of the draft articles contained in document

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(Mr. Beesley, Canada)

A/AC.138/SC.II/L.18 did not give any definition of straits used for international navigation; it had been suggested that that had been intentional in order to avoid the problem of definition, or that it had been an inadvertent omission. He suggested that a definition should be given in the draft articles, as had been done in article 16, paragraph 4, of the 1958 Convention. He requested clarification of the matter from the sponsors.

Mr. VINDENES (Norway) associated himself with the comments made by the representatives of Chile and Canada and stressed that the specific question of straits used for international navigation should be dealt with separately from the question of innocent passage through the territorial sea, even though the two questions were interrelated. He had serious reservations on the draft articles contained in document A/AC.138/SC.II/L.18 because they gave no definition of straits used for international navigation, and he also had substantive reservations on those draft articles.

Mr. JEANNEL (France) associated himself with the comments made by the representatives of Chile, Canada and Norway on the question of the definition of straits used for international navigation.

Mr. REBAGLIATI (Argentina) said he did not grasp the procedural implications of the point raised by the four preceding speakers, but, without entering into the substance of what they had said, he wished to point out that the list of subjects and issues did include an introductory note defining the scope and contents of the document. With regard to the procedure of the Committee and its subsidiary bodies, he said that the agreements to be taken into account were those of March and August 1971.

Mr. ABDEL-HAMID (Egypt) fully agreed with the representative of Argentina that the comments made had not been of a procedural nature. He hoped that they would not create a precedent for the future.

The meeting rose at 6.40 p.m.

SUMMARY RECORD OF THE FIFTY-NINTH MEETING

Held on Tuesday, 3 April 1973, at 3.25 p.m.

Chairman: Mr. GALINDO POHL El Salvador

GENERAL DEBATE (continued)

The CHAIRMAN noted that the Sub-Committee had a very long list of speakers before it and suggested that, to facilitate its work, delegations which, for one reason or another, were not able to speak in their turn on the list should be given another opportunity at the end of the meeting following the one at which they had been scheduled to speak. If there was no objection, he would take it that that procedure was agreeable to the Sub-Committee.

It was so decided.

Mr. MIRCEA (Romania) said that since the outset of the preparatory work for the forthcoming Conference on the Law of the Sea his delegation had stressed the need to elaborate, with the participation of all States, a generally acceptable régime for the sea which would correspond to the realities of international life and serve the interests of peace, co-operation and the progress of peoples. In formulating any new rules concerning the law of the sea, priority consideration should be given to the economic needs and interests of the developing countries and an effort should be made to reach agreement on solutions which could be broadly supported by States. His country was prepared to do its part in the further development of the law of the sea.

His delegation noted with satisfaction the progress made by the Sub-Committee in reaching agreement on the list of subjects and issues relating to the law of the sea, in successfully concluding its procedural debate at the current session and in finding common ground between the positions of States on certain essential aspects of the law of the sea. The progress made in the Sub-Committee augured well for the success of the forthcoming Conference.

From the statements made in the Sub-Committee and in its Working Group of the Whole, it was clear that a measure of agreement was emerging as to the rights of coastal States in the waters adjacent to their territorial sea. It was increasingly recognized that coastal States had the right to exploit the living resources within a zone of reasonable extent beyond their territorial sea, taking into account the geographical and economic conditions of each region. In his delegation's view, such a solution was in accord with the interests of the developing countries; further work on defining the legal régime to govern such

(Mr. Mircea, Romania)

zones should aim not only at elaborating principles and rules but also at working out modalities of long-term co-operation between States exercising jurisdiction in such zones and other States interested in exploiting the living resources therein. Thus, it would be possible to dispel the misgivings of certain land-locked countries and of those which had no living resources in the zone adjacent to their territorial waters but which were, nevertheless, interested in having reasonable access to such resources.

With regard to the question of straits not regulated by international agreement, his delegation hoped that the régime would have due regard for both freedom of navigation, particularly in respect of merchant vessels, and the security interests of the coastal States concerned.

On the question of the limits of the continental shelf, his delegation, like many others, was of the view that the criterion of exploitability was no longer appropriate in view of the rapid advance in science and technology and the general acceptance of an international zone comprising the area referred to as the common heritage of mankind. The 200-metre depth criterion might be combined, in certain special circumstances, with a distance criterion. The Sub-Committee should endeavour to elaborate detailed rules, acting in a spirit of fairness and justice, both with regard to the limits of the continental shelf and with regard to delimitation of the continental shelf between States.

Another important problem related to the status of islands, on which the representatives of Tunisia and Madagascar had commented in detail. His delegation's substantive position on that issue would be stated in the Working Group of the Whole, but in the present forum he wished to stress that the problem should be approached in the same spirit of justice and fairness as the Sub-Committee had exhibited in dealing with other special problems.

In conclusion, he stressed the need for the elaboration of unequivocal rules which would be as complete as possible and would cover all aspects of the various situations that might arise in practice. Only such rules would be acceptable to States and would prove durable.

Mr. CASTAÑEDA (Mexico) said that his delegation, as a sponsor of the draft articles contained in document A/AC.138/SC.II/L.21, wished to make a few comments to supplement the representative of Venezuela's very thorough statement introducing them at the preceding meeting. Except where otherwise indicated, his remarks could be taken as expressing the views of all three sponsors.

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(Mr. Castañeda, Mexico)

The draft articles, as was readily apparent, were incomplete and were not intended to cover every aspect of the law of the sea. Accordingly, if they were accepted as the basis for a future convention, they would not affect the continued validity of existing customary international law and treaty commitments, where such law or such commitments were not incompatible with the draft articles. That point was explicitly made in article 1, paragraph 3, which presupposed the continued validity of "other rules of international law". The draft articles should be regarded as a first attempt to set out in treaty form the principles enunciated in the Declaration of Santo Domingo. The text was by no means final and immutable; the sponsors would welcome comments by other delegations and proposals aimed at improving it.

The draft articles made a fundamental distinction between the territorial sea - an area over which the coastal State exercised full sovereignty, subject to the right of innocent passage - and a zone of special jurisdiction lying beyond the territorial sea, referred to as the "patrimonial sea", which was not part of the territory of the coastal State but was subject to its jurisdiction for certain specified purposes. The need for such special jurisdiction over an economic zone extending beyond the territorial sea was felt by a large number of States, which nevertheless did not deem it necessary to make any radical change in the traditional concept of the territorial sea.

Draft article 2 provided that the breadth of the territorial sea should not exceed 12 nautical miles. It did not, however, exclude the possibility that some States might maintain a narrower limit, nor did it necessarily imply that a breadth exceeding 12 miles would be a violation of international law. Indeed, under certain circumstances, a greater breadth might be valid. Apart from exceptional cases, however (e.g., where States agreed to recognize a territorial sea exceeding 12 miles), the legal duties of States would be limited to recognizing and respecting the coastal State's jurisdiction over an area up to 12 miles in breadth.

The right of innocent passage through the territorial sea, referred to in article 3, was not the only exception to the sovereignty of the coastal State over the territorial sea. Other exceptions had been recognized by the International Court of Justice, for example in the Corfu Channel Case, and in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

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(Mr. Castañeda, Mexico)

The corner-stone of the entire régime proposed in the draft articles was the concept of the "patrimonial sea", as defined in articles 4 to 12. In essence, there was no difference between the concept of a "patrimonial sea" and the concept of an "Economic zone", to which reference had been made in the past. Both referred to a zone beyond the territorial sea over which the coastal State was entitled to exercise jurisdiction and supervision, but not sovereignty, for certain specified purposes, such as the conservation of fisheries, the preservation of the marine environment and the conduct of scientific research. There were, of course, differences of detail between the concept of the patrimonial sea, as defined in the above-mentioned articles, and the concept of the economic zone, as defined in the proposals of other delegations. Article 4, for example, provided that the coastal State had sovereign rights over the natural resources of the patrimonial sea; that meant that the coastal State had the right to exploit such resources and, in principle, to exclude foreigners from exploiting them. The coastal State also had the right, under article 5, to protect itself from marine pollution and, under article 6, to regulate scientific research within the patrimonial sea.

Article 8 provided that the outer limit of the patrimonial sea should not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea, thus leaving it to the discretion of States to adopt narrower limits, if they saw fit, or to apply different limits for various purposes. It should be emphasized, however, that the patrimonial sea was not part of the territory of the coastal State; the latter, therefore, was not free to impose arbitrary restrictions on the activities of other States in that zone. The traditional freedoms of the high seas, in particular, could not be abridged in the area of the patrimonial sea: articles 9 and 10 laid down explicit rules in that regard.

The draft articles made no specific provision for the settlement of conflicts of interest between coastal and other States in respect of the patrimonial sea. For that purpose the traditional procedures available under international law could be applied.

Speaking on behalf of his delegation alone, he expressed the view that, while it was exclusively within the competence of the coastal State to determine the breadth of its patrimonial sea and the nature and scope of the jurisdiction it

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(Mr. Casteñeda, Mexico)

would exercise therein, that State did not have the right to establish arbitrary limits in respect of an exclusive fisheries zone, pollution zone or scientific research zone. Such limits should be established in accordance with the geographical and biological characteristics of each State, taking into account the interests of the international community.

In exceptional cases it might be desirable to extend the jurisdiction of the coastal State beyond the outer limit of 200 nautical miles specified in article 8. That might be necessary, for example, in connexion with the conservation of endangered species or the prevention of marine pollution. In such cases, however, the necessary limits and measures should be agreed upon by the coastal State and other interested States. Conversely, it was true that in many areas of the world a patrimonial sea extending 200 miles beyond the territorial sea would not be desirable.

The right of the coastal State to regulate scientific research, referred to in article 6, should also not be interpreted in an arbitrary way so as to deny freedom of scientific research to other States.

Article 7, it should be noted, gave the coastal State the exclusive right to authorize and regulate the emplacement and use of artificial islands and other facilities in the patrimonial sea.

Article 11 set forth a general principle designed to ensure recognition of the right of the coastal State to exercise jurisdiction over the exploration and exploitation of the resources of its patrimonial sea, while harmonizing that right with the interest of other States in other legitimate uses of the area. Article 12 further provided that other States should not interfere in exploration and exploitation activities conducted by the coastal State.

In drafting articles 4 to 12, the sponsors had endeavoured to strike an equitable balance between the rights of the international community and the rights of the coastal State in the area of the patrimonial sea.

With regard to the section on the continental shelf, he endorsed the comments made by the representative of Venezuela. The content of articles 13 to 15 was based closely on that of the relevant portion of the Declaration of Santo Domingo.

Articles 16 and 17 established the general principle that freedom to fish in the high seas should not be absolute. The question of fishing in the high seas was

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(Mr. Casteñeda, Mexico)

one of vast dimensions, and the sponsors of the draft had not wished to lay down firm restrictions on such activities at the present stage, for they realized that there were many possible solutions.

In drafting article 18, the sponsors had borne in mind that there were already many treaties covering the fish resources of large areas of the world oceans. Some of those treaties were compatible with the concept of a 200-mile patrimonial sea, while others were not. As the 200-mile limit for the patrimonial sea was intended merely as a maximum rather than a mandatory limit, article 18 stressed that no provision of the proposed treaty could affect the validity of regional agreements which established other limits or otherwise regulated fishing. It was, however, obvious that, if the concept of the patrimonial sea was approved, States which were not parties to a regional agreement covering such a zone would have to observe its provisions when engaging in activities within the limits of the patrimonial sea.

He had been gratified to see that a joint communiqué issued on the occasion of the recent visit of the President of Mexico to Canada had referred to the many views which the two countries shared with regard to the law of the sea. It had been particularly pleasing to see that Canada, like Australia and other countries, agreed with many points in the Declaration of Santo Domingo, of which the proposals in document A/AC.138/SC.II/L.21 were a reflection. He would welcome the comments of other delegations concerning those proposals.

Mr. ABDEL-HAMID (Egypt) referred to the draft articles contained in document A/AC.138/SC.II/L.18, which his delegation would study in detail. Meanwhile, he took particular note of the sponsorship of Greece, a country whose merchant fleet, the largest in the world, promoted trade, prosperity and, above all, friendship. Another sponsor of the draft articles was Spain. His delegation was fully aware of the record of that country in the exploration of the seas and its consequent contribution to the rise of many civilizations. His delegation also recognized the role of the other sponsors in the development of the law of the sea and was privileged to share with them common goals.

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(Mr. Abdel-Hamid, Egypt)

In introducing the draft articles, the representative of the Philippines had referred to the right of the coastal States to security. That approach was based on the fundamentals of the United Nations Charter, namely, peace and security. The peace referred to was one in which every country, large or small, enjoyed the safeguards provided by the Charter against encroachment on its sovereignty, while the right to security entailed respect for the territorial integrity and sovereignty of each State. In that context, he would like to recall the statement made by the United States representative at the 43rd meeting, when he had said that it was true that the United States Government was seeking the right of free transit partly for reasons of national security and that that was quite understandable, since the security of the United States and its allies depended to a very large extent on freedom of navigation on and overflight of the high seas. The United States ought to clarify whether the concept of security embodied in the United Nations Charter and the relevant United Nations resolutions took precedence over its own concept of security. With regard to the security of the allies of the United States, it was most significant that its partners in certain security arrangements were advocating the régime of innocent passage in straits used for international navigation. Certainly, those States had carefully evaluated all issues related to their national security and their commitments under whatever security arrangements they had entered into before putting forward their proposals. It was clear that, in their judgement, the régime of innocent passage was the one through which both the objectives of the Charter could best be attained and their national security could be preserved without putting in jeopardy any of their national interests.

At the preceding meeting, the United States representative had stated that the question of passage through straits used for international navigation gave rise to conflicts between the legitimate interests of straits States and straits users. In fact, no such conflict existed, since all straits States had an equal interest in seeing peaceful and unimpeded passage through their straits. There was no disagreement about the need to facilitate the passage of merchant shipping through straits used for international navigation; the United States representative, under the guise of concern for merchant shipping, had evaded the real issue, which was

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(Mr. Abdel-Hamid, Egypt)

whether a coastal State should allow the free and uncontrolled passage through its straits of the warships and submarines of a foreign Power without exercising its legitimate right to safeguard its national security. Under the United States proposal, all vessels and aircraft, both civilian and military, passing through straits would be free of any action by the coastal State to prevent transit which it considered was not innocent. In essence, military vessels and aircraft passing through international straits would be enjoying freedom from law or legal regulation, a status not enjoyed by any navigator since time immemorial.

Mr. MIGLIUOLO (Italy) said that his delegation had been encouraged by the report given by the Chairman of the Working Group of the Whole concerning progress made in the discussion of the question of the territorial sea. He had in mind in particular the growing support for two concepts, namely, the idea of a relatively narrow territorial sea in which coastal States would continue to exercise the rights traditionally associated with that concept and the idea of a wider sea area, known either as the "patrimonial sea" or as the "economic zone", in which coastal States would exercise more limited jurisdiction.

His delegation's attitude to the codification of the law of the sea was based on an awareness of the need to meet new situations with new solutions and of the value of established rules which had proved effective in harmonizing differing rights and interests. That being so, his delegation would favour the general acceptance of a maximum limit of 12 miles for the territorial sea, a limit which had already been either officially adopted or endorsed in principle by a large majority of the States Members of the United Nations. In that connexion, his delegation welcomed the statement made in the Working Group earlier in the day by the representative of Peru, which would assist in the study of the proposal contained in document A/AC.138/SC.II/L.21. The concept of the territorial sea entailed the traditional exercise by the coastal State of sovereignty over the air space, the waters, the sea-bed and the subsoil within the limits of the area, and there was thus no need to consider a plurality of régimes in that respect.

The need for some limitations on the exercise of traditional sovereignty might arise in particular situations, such as those referred to in documents A/AC.138/SC.II/L.17 and A/AC.138/SC.II/L.19. It would also be necessary to safeguard long-standing rights of free communications following the extension of

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territorial waters in certain areas to 12 miles from the baselines and in the event of the acceptance of the theory of archipelagos. His delegation had repeatedly stressed the need to guarantee full freedom of navigation through straits of international significance, a freedom which could become a right of innocent passage only in straits which were of very limited width or of predominantly national interest to a State having jurisdiction over both the coastal territories.

His delegation maintained an open-minded attitude in connexion with the question of the patrimonial sea or economic zone. It had noted the various views expressed on the subject, and particularly the conclusions of the regional seminar held in Yaoundé and of the Declaration of Santo Domingo. It was in connexion with the patrimonial sea that the question of plurality of régimes could probably be discussed. Indeed, such plurality already existed in so far as different rules applied to the exploitation of the resources of the continental shelf and of the resources of the seas and oceans beyond the limits of national jurisdiction. His delegation further believed that questions relating to the sea-bed and the subsoil thereof should be kept separate from those relating to the superjacent waters. In addition, traditional rights connected with the freedom of navigation and overflight should be respected, as should rights such as those to lay cables and pipelines. Bearing in mind the concept of the common heritage of mankind, his delegation favoured a limit for the patrimonial sea of 100 miles from the baselines.

With regard to the control of fishing, his delegation favoured the retention of principles embodied in the 1958 Geneva Convention on Fishing, which stated that all States had the right to engage in fishing in the high seas, subject to internationally agreed limitations, that coastal States had a special interest in the conservation of the biological resources in areas of the high seas adjacent to their coasts and that international co-operation with regard to fishing should be fostered to the maximum extent possible. Account should also be taken of the increasing acceptance of the principle that coastal States, particularly developing States, had the right to special privileges in the exploitation of the biological resources in waters adjacent to their coasts, of the awareness that States had both a right and a duty to establish and enforce strict rules to preserve the biological resources of the high seas and prevent their uncontrolled exploitation, and of the

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need, in the face of the growing importance of marine resources as a food source, for rules to govern their rational management and exploitation.

The best way to achieve those aims would be to establish regional international organizations in which all States interested in fishing in a particular area of the high seas adjacent to the 12-mile limit of the territorial sea would participate on an equal footing. Those organizations should co-ordinate the efforts of all States concerned, and particularly of the coastal States, to gather reliable data on the resources in each area, on the basis of which regulations would be drawn up to preserve those resources. The maximum annual permissible catch should be established for each species of fish, and shares in that catch should be allocated to the coastal States and States which had traditionally fished in the area. The share allocated to developing countries in the area should be increased as their fishing capacity increased. Where migratory species were concerned, the States within each international regional organization should receive shares proportional to their actual fishing capacity within the area. It should be the responsibility of the international community, and not of the coastal States, to ensure the observance of rules and regulations and to establish procedures for dealing with violations. Disputes should be settled within the international regional organizations in accordance with rules accepted by the parties involved. Finally, the international community, with the assistance of the technologically advanced States, should contribute to the improvement of the fishing operations of the developing coastal States.

Mr. BAKULA (Peru) recalled that he had recently invited comments in the Working Group of the Whole on the concept of the economic zone and on that of the patrimonial sea as proposed in document A/AC.138/SC.II/L.21. His delegation understood those proposals to refer to a zone which would extend from the traditional 12-mile limit of the territorial sea and to be an alternative to the concept of the 200-mile territorial sea favoured by some delegations. He had suggested that, if the States which favoured the delimitation of an economic zone or patrimonial sea encountered strong opposition to their proposals or realized that they would be insufficient to cover their legitimate interests, they should have the possibility of opting for a 200-mile territorial sea, within the concept of functional sovereignty and with a liberal régime for navigation and overflight

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starting from an internal limit. In the absence of comments on those matters in the Working Group, he welcomed the current debate in the Sub-Committee.

With regard to the draft articles contained in document A/AC.138/SC.II/L.18, he regretted the omission of a specific provision defining the expression "straits used for international navigation". In addition, no mention had been made of the right of the coastal State to participate in and receive the results of research activities. On the other hand, the draft articles did include provisions governing passage through the territorial sea, prohibiting foreign ships from engaging in certain activities and obliging coastal States to install and provide information on navigational aids, as well as provisions concerning ships with special characteristics and warships. None of those four points had been adequately dealt with in the 1958 Geneva Convention. The provision prohibiting discrimination against vessels because of their country of registration or the origin or destination of their cargo and those concerning ships carrying nuclear or other dangerous substances could serve as a basis for a reasonable and satisfactory agreement on those very sensitive aspects of the question of passage through the territorial sea.

He stressed that the new provisions contained in the draft articles confirmed that the unforeseen scientific and technological development of recent years was the determining factor in the evolution of the law of the sea. It was essential that any new regulations should be adaptable to a situation which was constantly changing, in order to avoid increasing the technological gap, which was one of the greatest sources of the imbalance that constituted a grave threat to peace. In that connexion, he welcomed the statement by the representative of Egypt, many of whose views he shared. Actions undertaken in the name of peace and security were all too often in the interests of certain Powers, but it was not they alone that had a right to peace and security.

Mr. RIPHAGEN (Netherlands) observed that much had been said about the need for radical revision of the traditional international law of the sea. There was no doubt a need for progressive development of that part of international law, but in order to be progressive such development should go in the direction of stressing the international rather than the national element and respond to the needs of the international community rather than merely affirm the extension of national

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sovereignties. There were two basic reasons for that. The first was that the extension of national sovereignties was likely to increase, not diminish, the inequality of States, and the second was that modern conditions urgently required international management, not an extension of the system of mutually exclusive and unco-ordinated national entities. It would appear from some of the proposals before the Committee that the development being sought by some delegations was far from progressive. The traditional law of the sea had not in all cases resulted in situations of fact which were acceptable. Indeed, the unfettered freedoms of the sea had created situations which were wholly unacceptable. The remedy should, however, be to limit those freedoms by international regulation and management, not to destroy them by simple extension of national territorial sovereignties into the sea. It was assumed that the system of extending national sovereignty over the seas would favour the developing countries while the system of internationalization of the seas would favour the developed nations. That was not true. The allocation of a 200-mile patrimonial sea or economic zone would, in terms of area, give the greatest benefits to such States as the United States, the USSR, Canada, Australia, Japan and other developed countries, while many of the land-locked and shelf-locked countries and countries with other geographical disadvantages, which could not benefit from any extension of national jurisdiction over the seas, were developing countries. Only a system of internationalization of the seas could guarantee equitable distribution of their resources and thus contribute to bridging the gap between rich and poor countries. Internationalization did not imply that each use of the resources of the sea should be allocated and regulated by a central world authority. That would be tantamount to the territorial sovereignty of a super-State and, as such, would be contrary to the functional approach underlying the concept of internationalization. There was room for regional and national allocation and control within the framework of international rules and decisions. His delegation therefore invited the Sub-Committee to explore the possibility of some form of mixed national and international jurisdiction, and had accordingly submitted the proposals in document A/AC.138/86.

The future law of the sea should fulfil two requirements: firstly, it should limit the traditional freedom of the seas in respect to fishing, exploitation of resources and pollution, and, secondly, it should ensure a better allocation of

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the resources derived from exploration. That twofold task could not be fulfilled simply by dividing the ocean space into some 100 resource areas for the exclusive use, and under the jurisdiction, of coastal States and one resource area for the exclusive use, and under the jurisdiction, of an international body. Such a system of territorial division of the seas would fail to bring about protection of the marine environment and correction of geographical inequalities. It would seem that a reasonable accommodation of the interests of primarily coastal States, primarily non-coastal States, flag States and the international community could only be achieved through a blending of international and national jurisdiction. A defect of the traditional law of the sea was that it recognized only two of those four interest groups, coastal States and flag States. But merely to tip the balance in favour of the coastal State to the detriment of the flag State would not remedy that defect. What was required was a limitation of the interests of both coastal and flag States in favour of the interests of primarily non-coastal States and the interests of the international community. The interests of the international community lay in avoidance of over-fishing, promotion of orderly exploitation of the resources of the sea and preservation of the quality of the marine environment. The mere replacement of flag-State jurisdiction by coastal-State jurisdiction would not solve problems in those areas. International rules and duties were required in those fields. The first duty was to co-operate in formulating rules within the framework of the competent international organizations. Co-operation in the formulation of rules did not necessarily guarantee, of course, that appropriate regulations would be established. It could be admitted that a group of States, particularly States situated in a region near a sea area, would have a special interest in establishing regulations for that sea area, and it could be envisaged that that interest would be recognized in the same way as the interests of coastal States in the matter of conservation measures were recognized in article 7 of the 1958 Geneva Convention on Fishing. That would mean that a group of States would have a sort of residual power to establish the necessary reg ulations, subject to the right of appeal of third States whose interests were affected by the regulations. There again, a combination of national and regional jurisdictions was worth exploring. Similar arrangements could be made in the matter

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of the enforcement of regulations, a field in which much should be done to improve the present situation.

Regulation was one thing and the allocation of resources to a particular interest group was another. It would seem that there were three aspects to resource allocation: admission to exploit a resource; determination of what was to be done with the product of the exploitation; and disposal of profits derived from the exploitation. Jurisdiction over a given resource normally meant that the authority concerned exercised jurisdiction over all three aspects. There again, there seemed to be room for a combination of jurisdictions and there was, indeed, provision for such a combination in some of the proposals before the Sub-Committee, inasmuch as they envisaged the transfer of benefits from mineral resource exploitation to the international authority and the transfer of a part of fish catches from flag States to coastal States. So far as the international sea-bed area was concerned, several proposals provided for limitation of the discretion of the authority in favour of a particular group of States. Hence, solutions were not necessarily to be found in choosing between the absolute discretion of the international authority, the flag State and the coastal State. A combination of jurisdictions was possible.

A combination of jurisdictions seemed to be called for in cases where a large extension of the rights of coastal States was envisaged, for there were many States that would not benefit from such an extension. Should it be decided at the forthcoming Conference on the Law of the Sea to extend the limits of national jurisdiction, geographically disadvantaged States must, as a matter of right, share the benefits of such extension with coastal States, and the sharing should apply to the three aspects of resource allocation he had mentioned. There were two ways in which that could be done: firstly, part of the areas allocated to coastal States could be reserved for geographically disadvantaged States in the same region, and, secondly, there could be regional arrangements under which the total area allocated to States in a region would be administered by a regional authority. His delegation was aware of the complications inherent in both procedures, but the difficulties were not insurmountable. Should the future law of the sea provide for an extension of the rights of coastal States, it should also provide international guarantees for the sharing of those rights by geographically disadvantaged States.

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Mr. JEANNEL (France) said that his delegation had not yet had time to study document A/AC.138/SC.II/L.21 with the attention it deserved. Nevertheless, the proposals it contained seemed calculated to promote the advancement of the Sub-Committee's work.

He thanked the sponsors of document A/AC.138/SC.II/L.18 for their analytical work, which might help members to clarify their ideas on the subject. However, the document could hardly serve as a basis for the drafting of articles, since it was too detailed and included provisions which were too vague and apt to give rise to disputes rather than resolve them.

The document attempted to deal with two problems which were distinct: the problem of the territorial sea and the problem of straits. In the opinion of his delegation, the question of passage through straits used for international navigation was a quite specific question which could not be dealt with within the framework of the territorial sea. It could not, of course, be dealt with without any reference to rules relating to the territorial sea or to the law of the coastal State, but it was a subject that had its own features and should be considered separately. There were two reasons why an attempt to deal with it purely within the framework of the territorial sea could not succeed: either rules would be adopted to safeguard the interests of the international community, in which case rules would be applied to the territorial sea which would have the effect of reducing the rights of the coastal State in its territorial sea, or the prerogatives of the coastal State would be maintained, in which case the interests of the international community would be sacrificed. In order to resolve the dilemma, the question of straits used for international navigation must be dealt with separately, bearing in mind the rights of the coastal State, particularly its sovereignty over the sea-bed and the resources thereof and its legitimate interests in the matter of security and pollution control.

Sir Roger JACKLING (United Kingdom) said that document A/AC.138/SC.II/L.18 had been prepared with much care in an attempt to contribute to the solution of two of the most crucial problems with which the Conference on the Law of the Sea would be faced - that of the territorial sea and that of straits used for international navigation. It would be of assistance to the work of the Committee that the sponsors of the document had set out their position in greater detail than hitherto

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and had formulated it in draft articles; for identification of the views of interest groups was a necessary preliminary to finding compromise solutions. Nevertheless, his delegation did not share the approach of the sponsors in treating the two problems as virtually identical. The problem of navigation through international straits had some special features, and solutions would only be found to satisfy the international community as a whole if that was borne in mind.

On the question of the territorial sea, he said that in the context of generally agreed provisions in the eventual law of the sea treaty acceptable to the United Kingdom, his Government would be prepared to support a maximum breadth of the territorial sea of 12 miles for those States which saw fit to extend to that limit. Within that territorial sea the right of innocent passage, possibly rather more precisely defined than in the 1958 Convention on the Territorial Sea and the Contiguous Zone, would continue to apply. That was a right which was essential to the international community as a whole and not only to those States which had a particularly developed merchant marine. All States had an interest in preventing unnecessary restrictions on shipping in order to keep down the costs of the movement of goods in ships.

As to straits used for international navigation, if the Conference on the Law of the Sea sanctioned a 12-mile maximum width of the territorial sea, and if there was to be general extension out to that limit, and if a substantial number of important straits used for international navigation were thereby entirely covered by the territorial sea, then some special provision must be made for those straits. His delegation could not accept that the coastal State should have the right unilaterally to regulate the passage of vessels of whatsoever kind through such straits without reference to internationally agreed standards. Despite the assertions of the representative of Egypt, such rights were certainly not to be found in the Charter. Again, the interest of all in unimpeded commerce among nations would not be well served if shipping were subjected to arbitrary controls imposed upon it in the sole judgement of the coastal State or States immediately bordering on those straits. If that were the situation, vessels going about their legitimate business of trade could be compelled to make long detours simply because one or two States had decided that in their judgement the cargo they were carrying or the nature of the ships themselves or the manner of their

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manning made them potential hazards. In that respect, his delegation entirely shared the views expressed by the representative of Australia at a previous meeting on the importance of the freedom of communication and navigation to the international community. His delegation, which represented a country bordering on the busiest straits in the entire world, also wished to restate the importance it attached to internationally agreed standards to secure the protection of coastal States' interests. Such international standards might be written into the law of the sea convention, or, in order to provide a degree of flexibility, might be defined by reference to the standards internationally approved in the specialized agencies technically qualified to decide upon them.

Referring to the proposal made by the United States delegation at the 1972 summer session of the Committee, he said that his delegation was not convinced that there should be strict liability upon ships and aircraft which caused accidents by departure from international standards. Admiralty courts all over the world were accustomed to determining responsibility, and it must be remembered that the 1969 Convention on Civil Liability for Oil Pollution Damage provided for strict liability for oil pollution damage, backed by compulsory insurance. He therefore reserved his delegation's position on that point.

At the preceding meeting, the representative of the United Republic of Tanzania had asked three questions about the United States delegation's proposals regarding straits. The United Kingdom delegation had not advanced the proposals relating to the application of IMCO and ICAO standards in straits used for international navigation but, as it was in sympathy with them, he would indicate how it saw the answers to the questions put by the Tanzanian representative. So far as the first question was concerned, the Tanzanian representative seemed to be under a misapprehension. In making the proposal at the 1972 summer session, the United States representative had said that the law of the sea treaty should provide that all surface ships proceeding through areas for which international traffic separation schemes had been developed should be obliged to respect such schemes in accordance with the rules and procedures established by IMCO and in the International Regulations for Preventing Collisions at Sea. He had added that the proposal would apply to all areas of heavy traffic where traffic separation schemes were or would be in effect. Clearly, therefore, the United States proposal was intended to apply to all areas of heavy traffic.

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As to the Tanzanian representative's second question, in document A/AC.138/SC.III/L.30 there was a clear statement to the effect that the revised International Regulations for Preventing Collisions at Sea specified principles to be followed by ships navigating in, or through, traffic separation schemes and that the use of such schemes by ships would be regulated on a mandatory basis when the new Regulations came into force. The same document also stated that a number of major maritime countries had introduced, or were in the process of introducing, national legislation making it mandatory for ships under their flag to follow the general direction of traffic whenver they navigated within traffic separation schemes adopted by IMCO.

As to the third question, it should be noted that if, by an act of the Conference on the Law of the Sea, what might be called territorial air space was extended in straits used for international navigation as a consequence of an agreed extension of the territorial sea, then the Conference should alleviate the restrictive consequences of its own act for aircraft, just as it was proposed that it should do for shipping.

Referring to document A/AC.138/SC.II/L.15, he said that his delegation had been most interested in the comments on the subject of archipelagos made at previous meetings by the representatives of the Philippines and Fiji. Any new law of the sea convention must take proper account of, and make provision for, the legitimate concerns of archipelagic States. The document and the comments to which he had referred merited careful study, and he could not anticipate the results of such a study by his Government. His delegation believed, however, that principles stated in general terms were not enough to resolve a problem of that sort, that in the course of time they might come to be used to justify claims of a sort never envisaged by their original advocates, and that, as a result, disputes and risk of conflict might arise. If there was to be innovation, specific principles must be enunciated in the form of objective criteria, and such criteria must first be identified.

Mr. KUMI (Ghana) said that the Sub-Committee had reached a crucial stage in its deliberations, particularly since the task before it involved a spectrum of common and conflicting interests cutting across traditional boundaries and peculiar national concerns. It was therefore important to take into account the interests of

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all States. However, that should not provide an excuse for the interests of the developed countries to be used as a façade to deny many developing countries permanent sovereignty and the exercise of jurisdiction over their territorial seas.

Ghana had participated in the 1958 Geneva Conference on the Law of the Sea and was a party to the resulting Conventions. The principles and elements of law underlying the basic components of the Conventions could not, however, be regarded as sacrosanct. If the Geneva Conferences of 1958 and 1960 were often regarded as failures, that was not only because they had not succeeded in reaching an agreement on the definition of a uniform limit on the breadth of the territorial sea, but also because many developing countries had not participated for reasons well known to the members of the Committee. Those who had not been heard had an inherent right to be heard.

However, that did not mean that the Committee should completely ignore the existing Conventions on the law of the sea. In the view of his delegation, the Committee must move from the known to discover the unknown. Existing rules, norms and principles must undergo critical and judicious examination in order to bring them into line with the changes in the international community. That process should not, however, lead the Committee to disregard other equally important issues unresolved by previous conferences. Two questions were of particular importance, namely, the limit of the territorial sea and the concept of the economic zone or the patrimonial sea, as enunciated in the Declaration of Santo Domingo, notwithstanding the minor differences between the latter concepts. Ghana's position on issues relating to the law of the sea was well known; like many other coastal States, its interests in marine resources were its fishing industry, its merchant marine and its off-shore oil exploration.

The Geneva Convention of 1958 left unsettled the precise limit of the territorial sea. The idea that coastal States had inherent rights to exercise jurisdiction over the part of the sea adjacent to their coast had been accepted, and since then the concept had generally been accepted by the international community. What was in dispute was the extent to which coastal States could exercise that sovereignty, and his delegation was willing to assist in finding

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an equitable and enduring solution to the problem. At present, his Government considered it reasonable to fix the limit of its national jurisdiction up to a distance of 30 nautical miles. The intention of his Government had already been communicated to Member States, and the appropriate legislation bringing that into force had already been enacted.

It appeared to his delegation that members of the Sub-Committee and of the Working Group must agree to disagree tentatively on the question of the precise limit of the territorial sea, and seriously address themselves to the concept of the economic zone. It felt that, if agreement could be reached on the nature, characteristics and extent of the economic zone, that would lead to the solution of related problems, including the limit of the territorial sea.

The concept of an exclusive economic zone advocated by Kenya and supported by many delegations, including his own, aimed at a balance between two competing claims. The concept endorsed the rights of coastal States to establish an exclusive economic zone beyond their territorial seas whose limits should not exceed 200 nautical miles. It proposed that in such zones the coastal States should exercise permanent sovereignty over all the living and mineral resources without prejudice to other legitimate uses of the seas, freedom of navigation, overflight and the like, and that the interests of land-locked and other disadvantaged countries should be safeguarded in the economic zone under appropriate multilateral, regional or bilateral agreements.

An understandable but unjustified query had been raised concerning possible under-utilization by developing countries which lacked the know-how, capital and equipment to engage in exploration and exploitation of the economic zone. In the words of the principal proponent of the theory, such developing countries should be "obligated" to enter in agreements, presumably with developed countries, to ensure full utilization of the area. While his delegation understood the concern of the proponents of the theory, it felt that the premises of the argument were highly questionable and that its underlying philosophy had long been outmoded. First, there was the implied concept that some developing countries were inherently incapable of developing. His delegation rejected such an idea outright, and believed that those countries which were in a position to help must, rather,

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be obligated to aid in the elimination of the technological dependence of developing countries on the more advanced countries, as well as to eliminate the obstacles which that dependence raised to the indigenous development of the scientific and technological capacity and development effort of the developing countries. Furthermore, the theory was contrary to a basic principle of law relating to treaties, namely, that treaties would be freely entered into. His delegation held the view that any agreements entered into for the utilization of the economic zone should not be tainted by any questionable provisions and should be completely free from duress. The history of colonial agreements should warn developing countries to be extremely careful if they were to avoid sell-outs.

Mr. TUNCEL (Turkey) said that his delegation wished to offer an analysis of the question of the delimitation of the sea between States whose coasts were opposite or adjacent to each other. As was well known, delimitation was the operation whereby opposite States decided to draw the maritime demarcation line to determine their respective areas of competence. The question of the delimitation of maritime zones relating to States which were opposite or adjacent appeared in the list of subjects and issues under the titles "Question of the delimitation of the territorial sea: various aspects involved" (item 2.3.1), "Question of the delimitation between States: various aspects involved" (item 5.3) and "Delineation between adjacent and opposite States" (item 6.7.2). The Committee and its subsidiary bodies would accordingly have to consider the question of opposite or adjacent States and prepare draft articles on those three aspects.

There were many cases of coasts that were opposite, and they appeared in differing geographical configurations. If the concept of an economic zone, the limits of which were still to be determined, was adopted, the question of the delimitation of zones within the competence of each State would be of interest to a still larger number of States, since the demarcation of limits would take place over distances exceeding 12 miles and a larger number of States would be involved in the question of delimitation.

The Sub-Committee was aware that the Convention of the Territorial Sea and the Contiguous Zone contained two articles (articles 12 and 13) relating to delimitation of the territorial sea and mouths of rivers and that article 6 of the Convention on the Continental Shelf contained provisions relating to the delimitation of the continental shelf.

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It seemed that the question of the delimitation of the economic zone would be examined in the context of the lex ferenda to which the Charter of the United Nations alluded, since so far as his delegation was aware no general provisions had thus far been adopted.

However, two texts submitted to the Committee, in documents A/AC.138/80 and A/AC.138/SC.II/L.10, contained proposals relating to the delimitation of the economic zone between opposite or adjacent States.

The articles in both the Geneva Conventions proposed, in the first place, agreement between the States involved. Whereas in article 12 of the Convention on the Territorial Sea the rule was defined as "failing agreement between them", article 6 of the Convention on the Continental Shelf was more declaratory and stipulated that "the boundary of the continental shelf appertaining to such States shall be determined by agreement between them".

The word "accord" in French and "agreement" in English in those articles appeared to have given rise to controversy within the Working Group; his delegation felt that the rule of agreement between the States involved was peremptory and binding on States whose coasts were opposite or adjacent.

His delegation believed that it would be useful for the subsequent work of the Committee to consider the value of the arguments advanced, and it wished to draw the attention of the Committee to the Judgement of the International Court of Justice of 20 February 1969 in the North Sea Continental Shelf Cases. In paragraph 48 of the Judgement, reviewing the genesis and development of the method of delimitation, the Court indicated that it was in the International Law Commission of the United Nations that the question of delimitation as between adjacent States had first been taken up seriously as part of a general juridical project. The Court then analysed the juridical development of the continental shelf and indicated, in paragraph 85, that delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles. Furthermore, the Court stated that "the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain

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method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which would not be the case when either of them insists upon its own position without contemplating any modification of it".

Articles 12 and 6 of the respective Geneva Conventions contained a further provision which constituted the corollary of the rule of negotiation and agreement, namely, what in article 6 was called "special circumstances" and in article 12 "historic title" or "special circumstances".

On the basis of a report submitted in 1953 by the Committee of Experts, the Special Rapporteur of the International Law Commission had amended his draft articles and indicated that there might be special reasons, such as navigation or fishing interests, to set aside the frontier of the median line. In the final report submitted by the Commission to the General Assembly, the commentary on draft article 12 had indicated that the provisions of the article should be applied with flexibility.

With regard to the importance given to the median-line method in the case of the delimitation of the territorial sea and to equidistance in the case of the continental shelf, articles 6 and 12 mentioned those two methods, in the absence of an agreement. His delegation felt that the median-line delimitation method was one of the cartographic means by which States drew the maritime demarcation line. They could choose other methods in the light of the characteristics of the geographical and geological configuration in each individual case. Therefore, there was no need to dwell on one single method of delimitation, namely, that of the median line or equidistance. No attempt should be made to impose either method in case of absence of agreement or mutual agreement on another method.

Moreover, the equidistance method and, by analogy, that of the median line was also analysed by the International Court of Justice in the Judgement to which he had already referred. The Court pointed out that lines of equidistance drawn from coasts delimitated varying maritime spaces, according to the geographical configuration of the coastline, which might be concave, convex or straight. When the spaces to be delimitated covered greater distances, the variations became

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more considerable, to the benefit of one State and to the detriment of the other. The Court recognized the practical advantage of the equidistance method; however, it considered that its use might, in some circumstances, lead to extraordinary abnormal and unreasonable results.

After examining the question of the legal status of the equidistance method, the Court stated that the notion of equidistance as being logically necessary, in the sense of being an inescapable a priori accompaniment of basic continental shelf doctrine, was incorrect. The Court considered that the principle of equidistance, as it now figured in article 6 of the Convention, had been proposed by the Commission with considerable hesitation, somewhat on an experimental basis, at most de lege ferenda, and not at all de lege lata or as an emerging rule of customary international law. The Court concluded that, if the Geneva Convention had not in its origin or inception been declaratory of a mandatory rule of customary international law enjoining the use of the equidistance principle for the delimitation of continental shelf areas between adjacent States, neither had its subsequent effect been constitutive of such a rule; and that State practice up to date had equally been insufficient for the purpose.

In view of the geographical circumstances inherent to coasts, the Court declared that delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles. The Court continued: "The parties are under an obligation to act in such a way that, in the particular case, and taking all the circumstances into account, equitable principles are used".

In conclusion, the Court found that: the use of the equidistance method of delimitation not being obligatory as between the Parties; there being no other single method of delimitation the use of which was in all circumstances obligatory; delimitation was to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constituted a natural prolongation of its land territory into and under the sea, without an encroachment on the natural prolongation of the land territory of the other; in the course of the negotiations, the factors to

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be taken into consideration were to include: the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features; so far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved.

With regard to the question of delimitation of the economic zone, the considerations his delegation had advanced were equally valid mutatis mutandis for States which were opposite or adjacent to each other. Any negotiations with a view to reaching mutual agreement appeared more appropriate in that case, in view of the larger spaces.

Article 8 of the draft submitted by Kenya in document A/AC.138/SC.II/L.10 proposed the following text: "The delimitation of the economic zone between adjacent and opposite States shall be carried out in accordance with international law". That article contained no guiding principle for action and mentioned no method for the delimitation of the economic zone, but merely referred the solution to international law. It was obvious that international law could not contain any provisions in that field, in view of the particularity of the question, and it would be most desirable if the Kenyan delegation could explain its point of view, clarifying the content of its proposal.

The Declaration of Santo Domingo seemed more explicit in that regard. Paragraph 4 of the principle relating to the patrimonial sea stipulated that "The delimitation of this zone between two or more States, should be carried out in accordance with the peaceful procedures stipulated in the Charter of the United Nations". The peaceful procedures were those which formed the subject of Article 33 and subsequent Articles in Chapter VI of the Charter. It was difficult to believe that the Declaration envisaged the use of all the procedures laid down in Chapter VI, and it would have been preferable to restrict the reference to Article 33 of the Charter and concentrate on negotiation as the most appropriate method in regard to the delimitation of the respective economic zones of opposite or adjacent States.

In the view of his delegation, the provisions of article 12 of the Convention of the Territorial Sea and article 6 of the Convention on the Continental Shelf should be supplemented. The formula relating to the delimitation of the economic

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zone would have to be worked out, as an element of lex ferenda, and his delegation intended to submit draft articles on those different issues.

In conclusion, with regard to the statement made on 2 April 1973 by the delegation of Cyprus to the effect that its territorial waters had been extended to 12 miles in 1964, his delegation wished to state that the views of the Turkish Government with regard to that extension had been duly and officially registered with the Secretary-General of the United Nations.

Mr. MOORE (United States of America) said that his delegation was gratified that its statements had evoked such interest, but regretted the tone and the extraneous political issues interjected into the discussion of the merits of issues relating to the law of the sea by the representative of Egypt. His delegation reserved its right to reply at a later stage.

Mr. ABDEL-HAMID (Egypt) observed that the purpose of his presence in the Committee was not to please the United States representative but to defend the interests of his country.

Mr. NJENGA (Kenya) said he wished to assure the representative of Turkey that he would endeavour to reply to some of the issues he had raised in due course.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE SIXTIETH MEETING

Held on Wednesday, 4 April 1973, at 3.40 p.m.

Chairman: Mr. GALINDO POHL El Salvador

GENERAL DEBATE (continued)

Mr. POLLOCK (United States of America) said that since his delegation had introduced its revised draft fisheries article in August 1972, the comments and questions of other delegations had convinced it that a more detailed explanation of its proposal was in order.

Paragraph I enunciated the basic premise of what had been called the "species approach", implying that the legal régime for the management of marine fisheries must, to be most effective in achieving the conservation and rational utilization of the resources, take into account the essential differences and characteristics of individual fishery resources which determined the type of management systems best suited to them. Like several other delegations which had submitted fishery proposals, his delegation was satisfied that when the characteristics of any fishery resource permitted, the management authority to prescribe and, to a large extent, to enforce should be vested in the coastal State.

The Canadian working paper on the subject pointed out that the coastal waters of the world were the richest in nutrients and supported the most abundant fish population. FAO catch statistics showed that over 80 per cent of the world's marine fishery production was made up of species which for all practical purposes permanently resided in the waters above the continental margin. Within that band, many species were limited in their distribution along the coastlines of the world, being generally confined to the waters immediately adjacent to the coastal States. That being so, they were peculiarly susceptible to management by the coastal State or, when their distribution or coast-wise migration made it appropriate, by neighbouring coastal States working together. Furthermore, local, coastal fishermen were dependent exclusively on those species because of the small size, short range and limited carrying capacity of their vessels. Apart from the food source they provided, such fisheries also had important social and economic considerations often more important to the coastal State than the efficient production of raw protein.

Paragraph I of the draft article also recognized a second category of fishes, the anadromous species, which because of even more specialized characteristics were uniquely susceptible to management by the State in whose inland waters they were

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spawned. Indeed, those characteristics demanded costly measures for their conservation in the rivers and lakes of those States. Furthermore, their unique characteristics demanded the imposition of strict limitations on the times and places of harvest of those species in the ocean. Costly measures for the protection of anadromous stocks in the inland waters were unlikely to be undertaken unless host States were in a position to ensure that appropriate limitations were imposed upon catching those fishes in the open ocean, and that could best be achieved by giving that regulatory authority to the host State.

It had been argued that anadromous fishes were limited to a few species of Pacific salmon and that their consideration was a proper subject for only a few States bordering the North Pacific Ocean. In fact, the catch of other anadromous fishes, such as the genus Hilsa of Southern and South-East Asia, contributed to the fish catch of many countries around the world. During 1970, according to FAO statistics, the world salmon catch had been about 400,000 metric tons, and in the same year the catch of other anadromous species had been over 600,000 metric tons distributed among some 25 nations. Thus, the anadromous fishes were no more localized than most of the other species and, in the view of his delegation, merited the attention of the international community just as much as coastal or the highly migratory species. However, it seemed that that unique species group, and its special requirements for survival, were not widely understood, and his delegation had accordingly submitted a working paper in document A/AC.138/SC.II/L.20 which discussed thoroughly the problems of dealing with such resources.

Paragraph I of the United States draft fisheries proposal also recognized the fact that there was a third category of fishes, the wide-ranging oceanic species, which did not lend itself to coastal State management at all. Perhaps the classic example of that type of fishery resource was the tuna. The principal species of tuna occurred around the entire world over a wide range of latitudes. Individual populations of the species were characterized by very extensive ranges of their distribution, long migrations and a high degree of mobility. Their reproduction was not concentrated in space or time but occurred over long seasons and great expanses of the seas. All those factors indicated that both the conservation of, and the allocation of catch from, such resources could be accomplished only by

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international organizations established for that purpose, and the second part of the United States working paper addressed itself to the problems of that resource group.

Paragraph II of the draft article elaborated upon the implementation of the "species approach" with respect to coastal and anadromous species and introduced a second aspect of the "species approach", namely, the proposition that the management authority must relate to the characteristics of the species whose conservation was the objective of that authority, rather than to any arbitrarily selected area of water. Thus, paragraph II contained a proposal that the management authority over coastal species, which would be vested in the coastal State, should extend beyond its territorial sea into adjacent waters to the limits of the distribution of the species found in those waters. With regard to anadromous species, it proposed that the management authority of the host State should apply throughout the range of those species during their entire life cycle even though that range might reach to ocean waters not adjacent to the territorial sea of the host State. Coastal State management authority over coastal species had not been limited to a fixed zone because such a zone had no scientific or technological basis and did not offer sufficient advantages from the administrative point of view. In short, a fixed zone would be either too narrow to embrace all coastal States or unnecessarily wide and, moreover, would not provide for an adequate management system for either highly migratory or anadromous species. The natural range and migration of coastal species could not be altered or prescribed to conform to the arbitrary limits of a political zone.

Paragraph II set out in principle the idea of coastal State preferential rights to coastal and anadromous species. His delegation did not think it necessary to review the general arguments in support of a preferential right for the coastal State; a number of delegations had discussed those reasons very eloquently and comprehensively. On the other hand, it might be useful to say something about the justification of that right as it applied to the anadromous species in particular. His delegation's working paper described the actions which host States were frequently obliged to take in their inland waters to ensure the survival and optimum abundance of anadromous stocks emanating from those waters. It mentioned the fact that in many cases those measures involved very considerable direct expense in the form of outlays of money and manpower. It also mentioned the

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indirect expense involved in foregoing certain uses of freshwater in order to maintain the physical and chemical characteristics of a river necessary for salmon reproduction. It pointed out that such indirect expenses were often more significant than the direct expenses. It suggested that Governments could hardly be expected to undertake those expenses if they were not in a position to ensure that the necessary limitations on ocean harvesting would be undertaken. It would be perfectly obvious to all delegations that something more would be required. The host State must be assured not only that ocean management measures would be undertaken but also that it would receive a large enough share of the yield resulting from combined freshwater and ocean measures to make its investment economically sound. For that reason, his delegation joined the Canadian and other delegations in proposing that the coastal State preferential right to coastal species should be extended to anadromous species.

At an earlier stage in the debate, the Japanese delegation had said that it did not feel that the State of origin alone should have the necessary management authority and the sole right to exploit anadromous species over their extensive migratory range. Of course, the mere fact that salmon was spawned in freshwater was not the reason for host State management and preferential rights. What justified giving the host State preference, in addition to the general argument which supported the coastal State preference, was the fact that if salmon were to survive, grow and go to the ocean, the host State must take very costly action to protect the freshwater environment. What justified giving the host States so much authority was the fact that if it was to take the appropriate measures in its inland waters, it must be assured that the salmon would be harvested close to the coast and not in the open ocean where the salmon races intermingled and could not be rationally managed.

His delegation wished to draw the attention of the Sub-Committee to the fact that the rights established in paragraph II of the draft article and the following paragraph were governed by international standards laid down in subsequent paragraphs.

Paragraph III vested management authority over the highly migratory oceanic species in international organizations in which States adjacent to the body of water in which the species were found and other States whose vessels harvested or

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intended to harvest the species might participate on an equal footing. It established no preferential rights, for reasons which were obvious from the characteristics of the resources and the fisheries for them and which had been discussed in detail in his delegation's working paper. The authority was in principle similar to that reposed in the coastal State and the host State in paragraph II of the draft article. Subject to the rules and procedures set out in subsequent paragraphs, the authority was absolute in that all States which became parties to the Law of the Sea Treaty, whether or not they became members of the international organization exercising the authority, would be bound by that organization's conclusions.

Paragraph IV attempted to set out what his delegation believed to be well understood and generally accepted principles relating to the conservation of fishery resources. Those principles, which might be called international standards, would guide coastal States and international organizations in the exercise of the management authority vested in them by paragraphs II and III respectively. Subparagraph IV-A established as the objective of management the maintenance or restoration of maximum sustainable yield, subject to qualifications. The first related to the quality of the evidence on which management decisions would be based and was intended to make it clear that the absence of a perfect scientific case was not a ground for challenging the validity of a conversation measure. The second qualitification, which related to relevant environmental and economic factors, was designed to ensure that decisions on management measures were made in the context of the real world. For example, the fact that the effectiveness of a regulatory régime involving catch limitations would be reduced by temporary changes in the environment resulting in a temporary reduction in the productivity of a fish was not necessarily grounds for the rejection of that type of regulatory régime. The maximum sustainable yield was to a large extent an average concept. Since environmental changes whose nature could not be foreseen would presumably occur, it was probable that any quota would occasionally result in catches above or below that average. A further example relating to the economic factors was that of a resource which for one reason or another was at a level below that which produced the maximum sustainable yield. While the general rule was that measures should be instituted to restore the resource to the optimum

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level as quickly as possible, that need not be done immediately if such action would produce economic catastrophe for one or another of the parties involved. The recovery process might be extended over a long period if there were compelling economic reasons. Further, the reference to relevant economic factors in paragraph IV emphasized the fact that decisions on management measures should be economically sound, serving to promote the health and efficiency of the world fisheries industry and to meet the ever-growing demand for low-cost food.

Subparagraph IV-B reflected the obvious need for scientific data upon which to base decisions and was intended to cover the obligation of States fishing in waters adjacent to the territorial sea of a coastal State to supply that State with the information necessary for management decisions as well as the obligation upon members of an international organization established pursuant to paragraph III to exchange information among themselves in order that they might jointly decide upon appropriate measures.

Paragraph IV-C made it clear that both the conservation measures and the manner in which they were implemented should be non-discriminatory. It was important to note that the paragraph related only to conservation and not to utilization or allocation. The matter of preferential rights arose in connexion with questions of utilization and allocation.

Paragraph V of the draft article contained another fundamental principle, namely, the principle of maximum utilization, which sought to ensure that coastal States would have the opportunity to obtain that portion of the allowable catch which they could harvest, but, at the same time, that the actions of the coastal State did not result in under-harvesting the resources the exploitation of which it was authorized to manage. Thus, the coastal State was obligated to permit others to fish for that part of the resources under its control which it had not reserved for its own vessels. It was further proposed that access should be provided under "reasonable conditions", which merely meant that the coastal State must provide access. It could establish rules to prevent abuse, but those rules must not so burden the right of access as to make it meaningless.

Paragraph V also involved a change in his delegation's earlier proposals relating to the utilization of coastal resources. Subparagraph V-B allocated the

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unutilized part of coastal resources first to the traditional fishing States, thereafter to the other States in the region, particularly States with limited access to the resources, and finally to all other States.

Subparagraph V-C was designed further to accommodate coastal States and traditional distant water fisheries' interests by establishing a formula, which remained to be negotiated, to regulate the manner in which and the extent to which traditional fisheries might be reduced, if necessary, to enable coastal States to obtain their preferential share of a resource. The formula to be included in the subparagraph was intended to harmonize the preferential right of the coastal State established in paragraphs II and V with that of the traditional distant water fisheries. It would state the extent to which the coastal State's preferential right might be permitted to diminish traditional fishing as well as the manner. The question of whether a traditional fishing right could be extinguished should be answered in the formula which remained to be negotiated in the Law of the Sea Conference. His delegation believed that the success of the Conference would largely depend upon the way in which that problem was handled. It very much doubted that either extreme, the abrupt termination of traditional fishing or the perpetuation of traditional fishing, would be acceptable and believed that some middle ground accommodating the interests of all would have to be found.

The remainder of the subparagraph called for little comment. The coastal States would incur substantial costs in the management of the coastal fisheries. It seemed therefore only reasonable that the cost should be shared by all who used the resource, and his delegation proposed management fees which it felt should be closely related to the management costs of the coastal States.

Paragraph VI stated a general obligation on the part of the coastal State to give timely notice of its proposed action to affected States. In the view of his delegation, those States should have notice and ample time to study the proposed measure, understand its basis, discuss or debate it with the coastal State and, if they chose, challenge its validity and initiate the dispute settlement procedures set out in paragraph IX. In its final form, such an obligation might best be set out in more specific terms.

The remaining paragraphs dealt with technical assistance, enforcement, dispute settlement and other uses and were, in the view of his delegation, straightforward

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and well enough understood by other delegations not to require further explanation at the present stage. In that connexion, his delegation wished to emphasie that an adequate system of international standards and compulsory dispute settlement was basic to its approach in achieving an accommodation of the interests of coastal States with the interests of other States and the international community as a whole.

Mr. KIKIC (Yugoslavia) said that since the Sub-Committee was entering the most important phase of its work in connexion with the preparations for the forthcoming Conference on the Law of the Sea, his delegation wished to explain its position on some of the major issues before the Sub-Committee. His country was a party to the Geneva Conventions and had accepted the breadth of 10 miles for the territorial sea and two miles for the contiguous zone. However, it was obvious that many aspects of the Geneva Convention were inadequate and had been rendered obsolete by new economic and political relationships in the world. It was also a fact that any law which claimed to be generally accepted must be dynamic and must reflect changes and newly created relationships.

His delegation fully understood and supported the justification from the political, economic and security standpoint for the demand made by a number of countries for a broader territorial sea. What was involved, in the opinion of his delegation, was the vital interests of a large group of predominantly developing countries in Asia, Africa and Latin America which rightly demanded that new legal norms, based on equality and sovereignty, should be adopted. His delegation believed that it was the sovereign right of every State to take a decision on the breadth and limits of its territorial sea in the light of its developmental and security needs. It also deemed it indispensable that account should be taken, when determining those limits, of the specific characteristics of individual regions and areas of the world. Bearing in mind all those elements, his delegation shared the view that a single and unique determination of the breadth of the territorial sea was not feasible and that a plurity of régimes seemed indispensable. His delegation considered the regulation of the status of straits used for international navigation particularly important with regard to the sovereignty and security of coastal States and international traffic. The principle of innocent passage

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was the approach which would lead to a regulation of the question, enabling all countries concerned to satisfy their needs and enjoy their rights. In the view of his delegation, the draft articles on navigation through the territorial sea including straits used for international navigation (A/AC.138/SC.II/L.18) was a constructive contribution to the work of the Sub-Committee and could be used as a basis to settle the question and overcome existing differences of opinion. The draft on archipelagoes was also a useful contribution to its work.

His delegation noted with satisfaction that the concept of the patrimonial sea, established in the Declaration of Santo Domingo (A/AC.138/80) and the concept of the exclusive economic zone were enjoying increasing support in the Committee. His delegation particularly supported the Kenyan proposal (A/AC.138/SC.II/L.10) and the right of every State to determine the limits of its jurisdiction over natural resources beyond 12 miles, up to a maximum of 200 miles, while respecting geopolitical considerations. It was significant that the Kenyan proposal provided for the possibility of plurality with regard to the breadth of zone, depending on regional criteria and taking particularly into account the rights and interests of land-locked countries, without being prejudicial to the limits already adopted by some countries. His delegation also felt that the Kenyan proposal regulated in an adequate fashion the question of scientific research. In its opinion, the problem of fishing should be regulated within the context of the solution of the question of the zone of special economic interests and the sovereignty of the coastal State over the resources of the zone.

In conclusion, his delegation wished to express its satisfaction at the establishment of the working group and its decision to start with items 2, 3, 4, 5, 6 and 7 of the list of questions and issues. In view of their interdependence, their simultaneous consideration provided the best way of making positive progress in the work before the Sub-Committee.

With regard to future work, his delegation believed that the Committee might consider the possibility of setting up, after appropriate exchanges of views on individual questions, a number of smaller informal ad hoc drafting groups which would prepare specific formulations for submission to the working group. However, the established practice of having open-ended groups should be continued so as to enable all those who wished to participate in the work to do so.

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His delegation hoped that conditions had been created which would lead to further progress at the forthcoming session in Geneva. However, it was aware that the course of future work and the ultimate outcome of the preparations for the Conference on the Law of the Sea would depend primarily on the political will of all countries to find adequate solutions and to codify the law of the sea on new bases. The new law of the sea must reflect the progressive changes in political, economic, scientific and technological relationships throughout the world.

Mr. SIEV (Observer for Ireland) said that his delegation wished to make clear at the outset that it was far from adopting a doctrinaire approach to the questions which the Sub-Committee was called upon to resolve. Its attitude was pragmatic, and it tended to look for feasible solutions.

Some delegations quite understandably seemed to feel that old concepts, such as that of a territorial sea and its various attributes, were outmoded and should be replaced by new concepts altogether. His delegation believed that the concepts and terms which were hallowed by time and usage could form a basis on which to found the work of the Committee. The Geneva Conventions of 1958 had not been failures. They enshrined former concepts, gave greater precision to many of them, and if they were in some respects outdated the wisest approach would be to make good the deficiencies and compile a code based on those older ideas.

In the past his delegation had always expressed its preference for as narrow a width of territorial sea as possible. It considered that, provided the coastal State had full jurisdiction in fishery matters over an area extending sufficiently far beyond the limits of the territorial sea, a breadth for that sea of three nautical miles measured from the baseline or baselines would be adequate. In holding that view it was in part motivated by the belief that coastal States bore responsibilities as well as rights in the territorial seas. It was difficult to envisage such a concept as an unbounded sovereign right unassociated with any responsibilities whatever. All States had to live together, all subject to law.

However, since 1958 circumstances had changed and the progress of technological development had been so rapid that it seemed no longer possible or even desirable to think in terms of a territorial sea which was so narrow as to be almost irrelevant. It was necessary to think in terms of a 12-mile territorial sea limit.

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Any limit chosen was, of course, arbitrary. The three-mile concept owed its apparent immutability to its relative antiquity. It would be hazardous to say that a breadth of 12 miles settled in the course of the forthcoming conference had as much chance of survival as any of the existing narrow limits, because obviously technological progress would not cease on the day on which general agreement was reached as to the width of the territorial sea. His delegation agreed with the view of the Icelandic delegation that if the economic questions concerning fisheries, resources of the sea and the subsoil of the continental shelf could be settled satisfactorily, there seemed no good reason why a relatively narrow band of territorial sea could not be accepted and could not endure.

Ireland was very much concerned with the anadromous species and with coastal species. The view had already been expressed, and not only by his delegation, that the control and exploitation of anadromous species was the responsibility of the coastal State alone if only because that was the only sure way of guaranteeing the survival of the species. There was also a widely shared view that coastal fisheries should be controlled by a single State or a small group or two or three States, presumably contiguous States or States opposite each other and so close together that they were necessarily exploiting the same stock.

Several working papers had been submitted containing proposals to the effect that a coastal State could reserve to its flag vessels that portion of the allowable annual catch which they could harvest. Although that idea was an attractive one, his delegation doubted that it would be practicable in the foreseeable future. For example, the proposal made in document A/AC.138/SC.II/L.11 that "Where the coastal State is unable to take 100 per cent of the allowable catch of a species..., it shall allow the entry of foreign fishing vessels with a view to maintaining the maximum possible food supply" would logically entail the setting up of some sort of regulatory machinery which would have the formidable task of determining the maximum sustainable yield and allotting quotas to foreign fishermen. The difficulties would be even greater if the regulatory machinery was some form of international authority.

The coastal State should have jurisdiction over an exclusive fishery zone beyond its territorial limits and should have the authority to ensure compliance by foreign vessels with any measures determined by the coastal State as being

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necessary to conserve stocks. As far as was practicable, such measures should avoid uneconomic restrictions, such as limitation of the size of vessels. Conditions under which foreign vessels would be permitted to fish in the zone should be negotiated and embodied in fishing treaties. As to the breadth of the exclusive fishery zone, it was his delegation's view that such a zone might extend out to the upper edge of the continental shelf, i.e. to the 200-metre isobath.

The 1958 Geneva Convention on the Continental Shelf provided that the sovereignty of the coastal State over the natural resources of the sea-bed and subsoil of the shelf extended to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admitted of the exploitation of natural resources. At present, exploratory drilling was being carried out at depths significantly greater than 200 metres. It was hardly realistic, therefore, to expect coastal States to retreat from the position established in the Convention. From the point of view of the coastal State, the edge of the continental shelf was the line along which the shelf met the ocean floor, which was usually at a depth of 3,000-5,000 metres. Any criterion for the delimitation of the shelf was to some extent an arbitrary one. From a practical point of view, the distance seaward from the baseline from which the breadth of the territorial sea was measured was the most appropriate and least susceptible to conflicting interpretations. His delegation would therefore accept such a method of delimitation, the outer limit to be 200 miles measured from the baseline. However, it would have no objection to giving the coastal State the options of fixing the limit at a distance of 200 miles from the baseline from which the territorial sea was measured, or at a depth of 3,000 metres, or at the bottom of the continental slope.

Finally, his delegation was opposed to any interference by the coastal State with freedom of navigation in the exclusive fishery zone or over the continental shelf.

Mr. RUIZ MORALES (Spain) said that his delegation, as a sponsor of the draft articles on navigation through the territorial sea including straits used for international navigation contained in document A/AC.138/SC.II/L.18, wished to reply to certain points raised by various delegations that had commented on the draft articles.

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(Mr. Ruiz Morales, Spain)

Some delegations had approached the question of straits from the mistaken point of view of an "accommodation of interests" between the coastal States with regard to the resources in the area and the maritime Powers with regard to freedom of navigation. His delegation was of the view that a just solution would require discussion of each situation individually, taking into account the legitimate interests of all parties.

There had also been attempts to justify an arbitrary solution whereby a special régime was proposed for straits distinct from that for navigation through the territorial sea. For both procedural and substantive reasons, his delegation could not support such a special régime. From the procedural point of view, a special régime would be contrary to the terms of reference of the Committee as established in General Assembly resolution 2750 C (XXV), the procedural agreement reached in the summer of 1971 and the established usage of the various Sub-Committees, where the question of straits had been closely linked with that of the territorial sea in using the formula "the territorial sea (including the question of its breadth and the question of international straits)". Accordingly, it was correct to treat as a single topic, as was done in document A/AC.138/SC.II/L.18, the question of navigation through the territorial sea including straits used for international navigation. On substantive grounds as well, there was no reason to separate the question of straits from that of the territorial sea, since straits used for international navigation were an integral part of the territorial sea in so far as they lay within territorial waters. Any attempt to set up separate régimes for the territorial sea and for straits would clearly violate the fundamental principle of the sovereignty of the coastal State over its territorial sea; accordingly, any such attempt was quite unacceptable to his delegation.

It was regrettable that one delegation had opposed what it termed its "vital interests" to the principle of the sovereignty of the coastal State over its territorial sea. While the legitimate interests of all States must be respected, inalienable rights and fundamental principles could not be sacrificed in order to satisfy what others considered their "vital interests".

His delegation shared the concern for safeguarding the legitimate interests of peaceful navigation expressed, inter alia, by the delegations of Fiji, Madagascar and Romania. There should be no problem at the forthcoming Conference in

(Mr. Ruiz Morales, Spain)

agreeing on a formula that would adequately protect those interests; however, straits States could not be expected to sacrifice any part of their national sovereignty for the exclusive benefit of the military and strategic interests of a few other States.

Certain delegations which upheld the three-mile limit were willing to recognize a 12-mile limit, subject to a presumptive right of free transit through straits. His delegation saw no legal basis for such a position; indeed, neither the Codification Conference of 1930 nor the Geneva Conferences on the Law of the Sea of 1958 and 1960 had recognized the three-mile limit as generally binding on the international community as a whole. At present, as was well known, a substantial number of States had fixed the limits of their territorial seas at more than three miles. In 1956, the International Law Commission had confirmed that the extension by a State of its territorial sea from 3 to 12 miles was not contrary to international law. Furthermore since many States had established a territorial sea broader than three miles, it was clear that straits within that area formed part of the territorial sea of the coastal State concerned. Accordingly, there could be to right of free transit or overflight based on the freedom of navigation on the high seas in such straits. The existing régime could not be changed on the grounds of "safeguarding" something which, in reality, did not exist.

In conclusion, he thanked the various delegations that had commented on document A/AC.138/SC.II/L.18 and, in particular, the representative of Sri Lanka, who had made a number of valuable and constructive suggestions. The comments that had been made had confirmed his conviction that it would be possible to safeguard the interests of peaceful navigation by reaching general agreement on the definition and scope of the concept of "innocent passage".

Mr. DJALAL (Indonesia) thanked all the delegations which had expressed sympathy with the special problems facing archipelagic States like his own. He sincerely hoped that the archipelagic principles submitted to the Sub-Committee in document A/AC.138/SC.II/L.15 would find their rightful place in the next convention on the law of the sea. His delegation was also grateful for the numerous statements made in support of the draft articles on navigation through the territorial sea including straits used for international navigation (A/AC.138/SC.II/L.18), of which his delegation was a sponsor.

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(Mr. Djalal, Indonesia)

The problem of passage was one of the key issues in present-day international law. His delegation agreed that there must be a balance between the rights of coastal States and the interests of international navigation; in its view, that balance could best be achieved by accepting the principle of innocent passage. The sponsors of the draft articles had endeavoured to give a clear meaning to the term "innocent passage" by defining what a coastal State could do to regulate passage and what a passing ship could not do.

His delegation was, generally speaking, encouraged by the reactions of other delegations to the draft articles. It was regrettable, however, that one delegation had been "deeply disappointed" with the draft. It had not been his delegation's intention to disappoint anyone but merely to submit a draft for the Sub-Committee's consideration, as had indeed been done by the one delegation in question.

He was grateful to those who had expressed support for the basic principle of innocent passage through the territorial sea including straits used for international navigation. Some delegations - for example, that of Sri Lanka - had raised certain questions and put forward constructive suggestions. The questions would be answered in due course, and the suggestions would be carefully taken into account.

His delegation could not agree with those who had expressed misgivings as to the desirability of treating as a single topic the problem of passage through the territorial sea and that of passage through straits used for international navigation. In its view, the régime of the territorial sea should apply also to straits used for international navigation. The principle of innocent passage was quite capable of ensuring the smooth operation of international navigation. There was no merit to the idea of separating the régime of passage through the territorial sea from that of passage through straits used for international navigation, for such straits were part of the territorial sea.

His delegation could not accept the application of the so-called principle of "free transit" to straits used for international navigation, since that would entail a loss of national sovereignty over the straits, which could then ultimately be assimilated to the status of the high seas.

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(Mr. Djalal, Indonesia)

Those delegations which had reservations about the concept of innocent passage had expressed fears that coastal States might use subjective criteria for determining whether a passage was innocent. It should be pointed out, however, that passing ships might also use subjective criteria in deciding that their passage was not prejudicial to the coastal State. Why should coastal States allow passing ships to determine what would endanger their interests and security? The principle of "free transit" would force coastal States to allow ships to pass through their waters whether or not the passage was innocent.

In his statement at the 58th meeting, the United States representative had declared that he was mindful of the legitimate interests of straits States with regard to the safety of navigation and the prevention of pollution. Very significantly, he had not mentioned the security problem of straits States as one of their legitimate interests, although the Soviet Union in its proposal had referred to the need to protect the security of coastal States. The problem of the security of straits was very important to the coastal States concerned, as they would be the first victims should anything happen in those straits.

It was only logical and reasonable for coastal States to be concerned about the innocence of warships in their territorial seas including those straits used for international navigation. If warships and submarines were allowed to pass through the territorial sea or straits used for international navigation under the régime of "free transit", there could be a variety of unfortunate results. For example, coastal State patrols might misinterpret the presence of warships and submarines and, misreading their intention, become involved in a confrontation. Moreover, while passing through straits under a coastal State's jurisdiction, foreign warships might meet other warships unfriendly to them, with results detrimental to the coastal State. Lastly, sometimes the mere presence of foreign warships and submarines in the territorial waters of a coastal State was sufficient to cause domestic consternation and political upheaval or to create misunderstanding between the coastal State and its neighbours. If warships and submarines were engaged in innocent passage, there should be no reason for them not to let the coastal State know of their presence.

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(Mr. Djalal, Indonesia)

The United States representative had, in effect, accused the Indonesian and other delegations of denying the essential navigational freedoms of the international community. There was no basis for such an accusation. What was being denied was the right of free transit, not the right of innocent passage. The right of free transit was important only for certain categories of ships, primarily warships and submarines of the major maritime Powers. Merchant vessels had operated quite successfully for centuries on the basis of the principle of innocent passage.

His country was interested solely in defending its rights and security in its own waters; it was not asking for the right to go at will and without restriction into the territorial waters of distant countries. Distant countries wishing to pass through his country's waters should endeavour, in turn, to understand his country's problems better. Understanding was a two-way street, not a one-sided concession.

Mr. OLSZOWKA (Poland), referring to the problem of limits, said that his delegation could not agree with the assertion that there was currently no general international law of the sea binding upon all States. In fact, there were clearly defined rules of a customary nature which were largely embodied in the Geneva Conventions of 1958, and those rules could be modified only by agreement among all States. The claim that those Conventions had been adopted without the participation of the developing States was not entirely correct since developing States had constituted roughly half the total number of participants at both the 1958 and the 1960 Geneva Conferences. While it was true that no specific outer limit for territorial waters or exclusive fisheries zones had been agreed upon at either conference, the majority view had been that the territorial sea should not extend beyond six miles. That view had been confirmed indirectly in the Convention on the Territorial Sea and the Contiguous Zone, article 24 of which clearly stated that the contiguous zone might not extend beyond 12 miles from the baseline from which the breadth of the territorial sea was measured. Obviously, therefore, the territorial sea could not be more than 12 miles wide; indeed, the International Law Commission had so stated in article 3, paragraph 2, of its draft articles concerning the law of the sea.

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(Mr. Olszowka, Poland)

While his delegation believed that the sovereign rights of all countries should be preserved and protected, the question of the extension of the territorial sea and exclusive fisheries zones did not fall exclusively within the domestic competence of the coastal States, for such actions might result in encroachment upon the rights of other States. The International Court of Justice had stated as much in its judgement of 1951 in the fishery case between the United Kingdom and Norway. In delimiting the territorial sea and exclusive fisheries zones, due regard should be paid not only to the interests of the coastal States but also to those of other States, both coastal and land-locked, and, in the opinion of his delegation, the 12-mile limit secured a proper balance.

With respect to the freedom of the high seas, his delegation had been surprised by certain remarks intended to undermine that most generally recognized rule of international law. That did not imply, however, that it rejected a priori the idea of regulating certain uses of the high seas which might be harmful to other users.

Turning to the question of navigation through straits, he said that, being connected to the world oceans only by relatively narrow straits, Poland supported the concept of free passage through straits. Moreover, it did not agree that the rules on passage through straits used for international navigation should be the same as those on passage through territorial seas. Passage through such straits deserved special treatment in order to secure freedom of navigation through them.

His delegation could not accept the proposals aimed at the establishment of economic zones, for a solution to the problem of fisheries must take account of the legitimate interests of all States and should be based on co-operation - on the basis of the principle of mutual benefit - between the countries possessing developed fisheries and those which had not yet developed them. Poland had already started such co-operation and was prepared to broaden it. It was prepared to modify the existing law of the sea and to accept a reasonable compromise solution which gave due account to the special needs of developing coastal States and other States particularly dependent on coastal fisheries, possibly by granting them preferential fishing rights in the high seas adjacent to their territorial seas or exclusive fisheries zones. Such preferential rights should also secure the needs of other States interested in fishing in those areas.

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(Mr. Olszowka, Poland)

With regard to the conservation measures needed to maintain the fishing stock, their application should be ensured through the regional fisheries organizations, which should be developed and strengthened for that purpose. Developing coastal States and other coastal States particularly dependent on coastal fisheries might be given special rights in the decision-making process in such organizations.

Finally, his delegation hoped that a rational approach in which due account was taken of the legitimate interests of all States - those with long coastlines as well as land-locked, shelf-locked and other geographically disadvantaged countries - would be adopted, since only thus could maximum benefits be obtained for the entire world community.

Mr. OGISO (Japan) noted that it seemed as though the next phase of the Sub-Committee's work, namely, that of accommodating the differing positions and formulating generally acceptable draft treaty articles, would soon be within sight. It was essential to all that generally acceptable formulas should be worked out - preferably by consensus - which would accommodate the essential interests of all groups of States. Although his delegation could support the 12-mile limit as the maximum breadth of the territorial sea, it had become apparent that, for the time being, agreement on such a limit was less urgent than finding an acceptable solution for various problems in the areas adjacent to the territorial sea and for the question of straits used for international navigation. Referring briefly to the emphasis placed by a number of speakers on the importance of safeguarding freedom of navigation and overflight in the adjacent areas, he pointed out that even those proposals which advocated the extension of sovereignty or of functional jurisdiction for specific purposes explicitly recognized those freedoms. Turning to the question of the right of innocent passage in the territorial sea, he said that that concept might need to be redefined in accordance with modern requirements; for example, it could be clarified in relation to the question of pollution prevention in the territorial sea. The Committee should agree on a set of draft articles providing measures to be applied by the coastal State to ships in passage. In order to ensure smooth international maritime traffic, such measures should be adopted not unilaterally but on the basis of generally recognized international standards relating to the prevention of accidents, prevention of discharges of substances harmful to the marine environment - whether intentional or not - and civil liability in case of pollution

(Mr. Ogiso, Japan)

damage, etc. In that connexion, the relevant IMCO conventions might be very helpful. With respect to the question of passage through straits used for international navigation, his delegation wished to reserve its right to speak on the subject at a later stage.

His delegation had carefully studied the proposals designed to establish exclusive rights of coastal States over living resources on the basis of the concept of patrimonial sea or exclusive economic zones, and, like others, it had difficulty in accepting such proposals, mainly because to extend national sovereignty into the high seas would increase rather than diminish existing inequities and would prevent effective international control and management. Freedom of the high seas should be limited and rectified where necessary rather than entirely replaced by a poor substitute. Although Japan's fishing industry was vital to the country and it consequently sympathized with the desire of the developing countries to develop their fishing industries - and was indeed prepared to co-operate with them in achieving that objective - it had difficulty with the exclusive zone proposal. First of all, recognition of the exclusive rights of coastal States in an area of up to 200 miles would deprive other States of the right to fish in that area and therefore failed to take into account the legitimate interests of those States. The licensing arrangements which had been proposed in that connexion were quite inadequate since their effect would merely be to place other interested States at the mercy of the coastal State. Secondly, exclusive zones would benefit only a rather limited number of countries - those which had very long coastlines or which adjoined rich fishing grounds. If extensive exclusive zones were to be established, the interests of other less favoured States - particularly those with a very short coastline or none at all and those which had traditionally fished in the areas concerned - would suffer. Many such geographically disadvantaged countries, most of them developing countries, were seeking to promote their fishing industry, and they should not be deprived of the opportunity to do so. In order to give fair and equitable treatment to the interests of all States, the rights to be conferred on coastal States would have to be precisely qualified.

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(Mr. Ogiso, Japan)

Finally, recognition of exclusive rights over fishery in an extensive area would militate against sound conservation and management of the living resources of the sea. His delegation agreed with the representative of the United Kingdom that, given adequate powers, regional commissions could act adequately and effectively and that the rights of coastal States and the interests of other States could best be reconciled through regulatory commissions. The Sub-Committee's aim should be to bring about a measured accommodation of the interests of all countries in the expanding exploitation and use of the living resources of the seas.

In conclusion, although his delegation had not had time to study the working paper (A/AC.138/SC.II/L.20) circulated by the United States delegation at the previous meeting, it felt that only salmon migrated extensively and salmon were therefore the only species that could be considered truly anadromous. His delegation had serious doubts as to the advisability of including in a general régime of the law of the sea the question of management of salmon stock, for the question was not general enough to justify inclusion. Concerning the high cost of measures to conserve anadromous species, his delegation had already said that it felt that all interested countries should be asked to share the burden of such expenses as appropriate according to individual circumstances. His delegation reserved its right to comment in greater detail on the question at a later date.

Mr. MWENE NGABWE (Zaire) said that his delegation was torn between the need to promote the solidarity which linked it to many other countries of the African continent and the need to defend its vital interests. He reaffirmed his delegation's position as described at the 1913th meeting of the First Committee during the twenty-seventh session of the General Assembly (A/C.1/PV.1913). It was clear from that description that Zaire was to a large extent on an equal footing with land-locked countries. It was also afflicted by other handicaps. Its coast was bordered by two territories under Portuguese occupation, namely, Angola and the enclave of Cabinda, which, given the current circumstances, constituted two pistols aimed at the heart of the hinterland. The intertidal zone, which was sensitive to tide movements of the mouth and estuary of the river Zaire, was, because of the particularly heavy flow, unsuitable for fishing. The country's capital, which was situated some 400 km from the river mouth, was developing very

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(Mr. Mwene Ngabwe, Zaire)

rapidly and would soon have a population of 2 million. Almost 100 per cent of its supplies of fish came from Angolan waters.

According to statistics of the Agricultural Department, fish shoals were exploited from the mouth of the river Zaire up to Walvis Bay and outside territorial waters, in other words, from 12 to 20 miles off the Angolan coasts. The fish catch averaged 1,200 tons a month. In 1970 it had amounted to 14,700 tons and had been composed of various species of fish. The Banana-Vista coast was exploited by small trawlers. Fishing was difficult and even dangerous there and catches were poor. Furthermore, intensive exploitation of the zone would have the effect of reducing the already small stocks. The continental shelf was neither rich nor wide enough to keep the country supplied with fresh fish with the result that fishing trawlers had to fish in zones often very far removed from Zaire's territorial waters.

Moreover, bearing in mind that Zaire was one of the headquarters of Africa's liberation movements, the dangers faced by its fishing trawlers in Angolan territorial waters could easily be imagined. Those difficulties and dangers were aggravated by the fact that in May 1968 Portugal had unilaterally extended Angolan territorial waters to 12 nautical miles and recognized only the rights of the Belgian flag to fish in the zone despite the fact that those rights were now Zaire's by right of succession. The danger to Zaire's merchant fleet was even greater. Portugal could deny it the right of innocent passage and thus paralyse Zaire's access to the high seas and block its maritime trade. That was why Zaire had maintained the traditional breadth of three miles for the territorial sea, nine miles for the contiguous zone and 200 metres for the isobath. It intended to exercise exclusive jurisdiction over that whole zone, including its subsoil, water column and air space, and the pelagic, fish, biologic, energy and mineral resources thereof.

That was also why, in the absence of regional agreement, Zaire had not yet joined in the wave of unilateral declarations of extension of the limits of territorial waters but would provisionally be satisfied with a base line limiting its territorial sea to an area between Punta de Moita Saca (Angola) and Punta Vermelha (Cabinda). The northern and southern limits would be perpendiculars to that base line passing through the frontier boundary in the north and the

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intersection of the base line and the thalweg of the river Zaire to the south. If it applied the traditional tangential curb method, Zaire would have practically no waters of its own beyond 12 miles. In order to reach a compromise, negotiations with neighbours would be necessary, but since Zaire's neighbour was currently a hostile occupying Power, negotiations were impossible. Another short-term solution would be to have a continental shelf delimited by two parallel curves from the extreme points of the coastal frontiers. Zaire was assured by its friends that the situation was temporary. That might be true, but the temporary had a habit of becoming permanent. Zaire could not sacrifice the interests of its people and economy on the alters of an ideal.

The Committee was currently engaged in a pre-legislative task. In other words, it was preparing for the Conference on the Law of the Sea. It must therefore try to foresee all types of cases that might arise. His delegation was a firm believer in the virtues of empiricism and pragmatism, but felt bound to point out that the Sub-Committee seemed to be indulging in simplistic considerations and allowing itself to be overwhelmed by the selfish claims of individual countries. An inventory should be made of all situations which could be subsumed in an equation with several unknowns or with multiple parameters. It was not sufficient to oppose the interests of the great maritime Powers to the interests of the developing countries. Under such a procedure no account would be taken of the diverse nature of the situation. An attempt must be made to find a solution of synthesis.

Consideration should be given to the following sets of interests: the interests of the great maritime Powers as opposed to the general interests of the developing countries; the interests of coastal States as opposed to the interests of countries with a particular geographical situation, especially land-locked countries; the interests of developing countries among themselves, particularly those countries with a broad continental shelf and those with practically no continental shelf; and the interests of coastal States as opposed to the position of islands, archipelagos or straits belonging to another Power.

Drawing attention to the differences between the eastern and western coasts of the African continent, he said that the Kenyan delegation had submitted a text

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(Mr. Mwene Ngabwe, Zaire)

setting forth arguments which were very similar to the arguments of the majority of Latin American countries. The document was an important one and his Government would comment on it in detail at the forthcoming meeting of African States at Addis Ababa. In the meantime, his delegation wished to raise the question of the legal value of unilateral declarations which many delegations had described as State practice. A unilateral practice did not constitute a precedent. But, in the absence of common agreement, repetition of a practice did not confer any legal value on it. However often repeated, such practices were isolated social or political acts devoid of any legal character in the international sense of the word. So far none of the declarations of extension of jurisdiction fulfilled the requirements necessary if they were to become binding in international law.

Accordingly, his delegation regarded such declarations as mere declarations of intent, pending the formulation of rules acceptable to all. It did seem, however, that many of the declarations violated existing international law to the extent that they confused lex lata and lex ferenda and ignored the rights of neighbouring countries. Thus, until the entry into force of the future law of the sea, the provisions of traditional law, both customary and conventional, should be strictly applied. There was no customary or conventional norm which abrogated the traditional rules of the median line and the three-mile limit. The Geneva Conventions of 1958 and 1960 had merely conferred a permissive character on the 12-mile limit rule by merging the concepts of the territorial sea and the contiguous zone into a single concept. The rule was therefore not binding.

His delegation hoped that compromise solutions would be found for all the problems facing the Committee and that, by means of dialogue, it would be possible to prepare a new law of the sea. Currently, opinions on the subject differed so greatly that the discussions in the Committee assumed an air of paradox.

Turning to the question of the terminology of the law of the sea, he said that three of the words used in the French texts were a source of concern to his delegation. Those words were "humanité", "mécanisme international", and "patrimoine". From a strictly legal point of view, mankind (l'humanité) lacked moral or civil personality and could not therefore have rights or obligations. Perhaps the word should be replaced by the words "international community"

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(communaute internationale) used in the sense of all States, the principal subjects of international law, to the exclusion of secondary subjects (international organizations) and physical persons (indirect subjects). Similarly, the words "international machinery" (mécanisme international) corresponded to no legal concept in French. He supposed that the words mean an institution, or in any case a moral person to be established. The texts would be more easily understood if the word "machinery" (mécanisme) were replaced by a word like "organization", "body" or "institution". The word "heritage" (patrimoine) did not, in French, seem to have the meaning intended for it in the texts under discussion in the Committee. A heritage normally consisted of family property handed down from generation to generation. States, however, inherited nothing from anybody. They owed their title to no one but themselves, in other words, to their joint will. The most satisfactory formula might thus be: "The sea-bed and ocean floor... constitute the joint property of the international community, taken in the sense of all States without discrimination of any sort. Only exploited property may be put up for sale, the sea-bed always remaining indivisible."

Mr. SEFIANI (Morocco) said that his delegation would like to know the spirit in which the Sub-Committee was working. Very interesting statements had been made about existing international law of the sea. The 1958 Geneva Conventions had, however, been prepared before the majority of African and Asian countries had achieved their independence. Some developing countries, including Morocco and certain Latin American countries had indeed attended the 1958 Geneva Conference but as their opinions had not been taken into account, many of them had neither signed nor ratified the Conventions. At the time they were drafted, the 1958 Conventions had been revolutionary in the sense that they embodied concepts hitherto unrecognized in international law. But the Geneva Conventions themselves were now outdated and existing law was no longer relevant to the current situation. Thus, it was not a question of amending the Geneva Conventions but of creating a completely new law, particularly since the existing law had been prepared in the absence of the developing countries and despite them.

In the discussions in the Working Group certain delegations had suggested that some coastal States were unable to exploit the fishing resources off their

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(Mr. Sefiani, Morocco)

coasts and that distant States were therefore justified in coming to "help" them to exploit those resources as quickly as possible. That theory was untenable. In fact, what was happening was that distant States whose populations did not suffer from protein deficiency sent powerful fishing fleets to exploit the resources of other States. It should be noted in that connexion that according to FAO, three quarters of the human race suffered from protein deficiency which was one of the main problems of the developing countries. Yet, it was not the developing countries which benefited from the fish caught off their coasts. It should also be noted that as a result of the "help" it had been given in exploiting its fish resources, Morocco was now faced with the extinction of certain fish species in its waters. Fish exports constituted an important source of Morocco's foreign exchange earnings. Yet, the country's canning plants operated at only 50-60 per cent of capacity and on world markets Morocco had to compete with countries selling fish caught in Moroccan territorial waters.

Desiring to preserve the fish species in its waters, the Moroccan Government had recently adopted legislation relating to the law of the sea. It had extended its territorial waters to a limit of 12 nautical miles and its exclusive fishing zone to a limit of 70 miles from the low water-mark. It had included the notion of an exclusive fishing zone in its existing law. Those acts of a sovereign State did not mean that Morocco would not subscribe to the principles of international co-operation. Its fundamental rights, its sovereignty and its national interests must, however, be respected.

The representative of the Philippines had already explained the position of the sponsors of document A/AC.138/SC.II/L.18. It appeared from delegations' comments, however, that further explanation was necessary. In the first place, it should be noted that the document contained draft articles which could serve as a basis for discussion on the subject. Secondly, an attempt was made in the document to take account of the views of the coastal State as well as of the views of users of straits. Thirdly, the document recognized the possibility of peaceful passage and took the interests of user Powers into consideration. The sponsors were indeed of the opinion that international trade must continue to be

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(Mr. Sefiani, Morocco)

conducted as expeditiously as possible. Such guarantees to international trade constituted obligations placed on the coastal State. The coastal State must, however, also enjoy rights and, in the opinion of the sponsors, those rights found their best expression in the notion of "innocent passage". The document was balanced in the sense that it protected the interests of both users and coastal States.

ORGANIZATION OF WORK

The CHAIRMAN said that the delegations of Colombia, Norway, Greece, Malaysia, Zambia and Argentina, which had been prevented from placing their names on the list of speakers within the agreed time-limit, had requested that their names should be added at the end of the list. Unless he heard any objection, he would assume that the Sub-Committee acceded to that request.

It was so decided.

The meeting rose at 6.45 p.m.

SUMMARY RECORD OF THE SIXTY-FIRST MEETING

Held on Thursday, 5 April 1973, at 11 a.m.

Chairman: Mr. TUNCEL Turkey

GENERAL DEBATE (continued)

Mr. FLANGINI (Uruguay) said that his delegation attached fundamental importance to the question of the breadth of the territorial sea and the unity or plurality of régimes for it. In the study of that question it should be borne in mind that the various regions had different characteristics, not only geographical and geological, but also as biological and ecological. Thus, there were States that could only have a narrow territorial sea, while, in other cases, broader extensions of State competence were justified. That fact had a very important legal consequence, namely, that the extent of the sovereignty of coastal States might vary as the characteristics of the sea varied, without prejudice to the attempt to establish equal-breadth formulas for a given region or for regions with the same or similar characteristics, and, at any event, to set a universal maximum limit. In his delegation's view, that maximum limit should be 200 nautical miles from the appropriate base lines. Account should also be taken of the political, economic, social and cultural reality of the present-day world, which had given rise to new requirements and, at the same time, to new rights and legitimate interestes, which the international juridical order should protect and promote.

All the relevant interests - State security, international communications, exploitation of marine resources, scientific research and protection of the marine environment - should be protected in conformity with criteria which took due account of the objectives of the international legal order, namely, international justice and international peace and security. The criterion of justice meant that to recognize the right of the coastal State to extend its sovereignty over the zone of the adjacent sea, up to reasonable limits, must be recognized. That same criterion naturally required that the equal rights of neighbouring States should be respected, and interference in each other's territorial waters avoided. That extension of State sovereignty was, in turn, directly related - in so far as the exploitation of natural resources was concerned - to another State right, whose recognition and promotion likewise presupposed an application of the criterion of justice: the right to full development.

All those factors, and particularly the requirements of development and the staggering technological advances of the past decade, were bringing about a revision of the classic formulas of international maritime law, which were now

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(Mr. Flangini, Uruguay)

inadequate. The 1958 and 1960 Geneva Conferences had failed in their attempt to give the law of the sea a structure capable of assimilating those new requirements, and it had not even been possible to reach agreement on the breadth of the territorial sea or on exclusive fishing zones. Many States, therefore, particularly in Latin America, had been obliged to adopt unilateral measures, in exercise of rights inherent in their sovereignty. Thus, 10 Latin American States had to date proclaimed that their maritime jurisdiction extended to a distance of 200 nautical miles from the baselines. The legal formulas adopted varied between applying the classical territorial sea concept to the whole 200-mile area and establishing a narrow strip of territorial sea with, further out, a supplementary zone, up to the 200-mile line, over which jurisdiction was exercised for purposes which were essentially economic. Some States of Africa and Asia, as well as Iceland, had adopted a similar attitude and had extended their jurisdiction to distances of over 12 miles, up to a maximum of 200. Then there were also those States which had claimed specialized jurisdiction up to distances much greater than 12 miles.

Uruguayan legislation provided for the so-called formula of plurality of régimes in the territorial sea. Under that concept, the basic rules of international maritime law were adapted to the realities he had mentioned, so that a harmonization of the interests of all States and of the international community was achieved. The concept was based on four premises: that geographical and ecological realities imposed varying breadths for the territorial sea; that those same realities, together with those of a political, economic and social nature, justified or necessitated extensions of State competence beyond 12 miles; that in the areas thus covered new interests came into play which it was necessary to co-ordinate; and, lastly, that the co-ordination of those interests should be achieved within the framework of the basic rules of the international law of the sea.

In his delegation's view, it was not correct to speak of a conflict between the interests of the coastal State and those of other States. For example, it was evident that the coastal State was also concerned with international communications and that, although the interest of promoting scientific research was universal, it was of concern primarily to the coastal State that the results of such research

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(Mr. Flangini, Uruguay)

should be used for the common good and that the research itself should not serve as a pretext for carrying out operations in which other objectives were sought. Consequently, it was a question of harmonizing and co-ordinating those interests, which, to the extent that they were legitimate, coincided, and, in that regard, the esential features of basic rules of international maritime law remained valid. Nevertheless, a more flexible reformulation of those basic rules was required in order to adjust them to the new realities. In that connexion, it should be recalled that there were two basic legal statutes governing the seas and oceans, one based on the principle of State sovereignty and the other on the principle of freedom. Thence arose the two classic legal concepts of the territorial sea and the open sea or high seas. Nevertheless, from the very start, neither had been fully applied.

The principle of sovereignty governing the territorial sea had a very important limitation in the right of passage of vessels flying other flags. The principle of freedom of the high seas also had serious limitations, deriving particularly from the application of the law of war. The growing development of international relations had made those rules increasingly flexible and established new limitations with regard both to the principle of sovereignty and to the principle of freedom, without changing the picture fundamentally. Thus the content of the rules was in fact being reformulated as a result of the change in the balance of interests which the rules had reflected historically. The result was a new order of priorities in the protection of legitimate interests and a new distribution of the ensuing responsibilities. The concept of the plurality of régimes for the territorial sea derived, therefore, from the existence of two fundamental concepts based on the primacy of the rules of sovereignty or of freedom. Accordingly, because the essential point was the primacy of the principle of sovereignty, the concept of the territorial sea was being given a new legal structure so that it would possess the necessary capacity to adapt to the realities which must be regulated, and to reconcile the rights of the coastal State dynamically with the rights of other States. To that end, a distinction was drawn between narrow and broad territorial waters. In the first case, the legal régime of the territorial sea had to be unitary, and include innocent passage. In the second, there were technical and political reasons for broader protection of

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certain interests of other States in the zones lying beyond the 12-mile limit, particularly with regard to navigation, overflight and other forms of international communication. Accordingly, in broad territorial waters there was a dual system: in the zone between the coast and an inner, 12-mile, limit, the régime applied was equivalent to that of classic international law, i.e., it included innocent passage, while between that inner limit and the outer limit of the territorial sea freedom of navigation and overflight was recognized. In the second zone, therefore, the principle of sovereignty still prevailed, but important limitations were established in order to ensure full effectiveness of the "jus communicationis".

Two different régimes could likewise be established with regard to the exploitation of resources, taking into account ecological and biological factors and the social and economic needs of the population. Under Uruguayan law, for example, fishing and sea hunting activities were reserved exclusively to Uruguayan nationals within the same 12-mile innocent passage zone, without prejudice to international agreements concluded by the State on a basis of reciprocity, and beyond that zone vessels flying other flags might exploit live resources up to the 200-mile line, subject to temporary and renewable authorization by the Executive Power. Other States reserved fishing up to 100 miles for nationals and allowed aliens to fish beyond that inner limit, subject to the relevant regulations. Another criterion of distinction which could be applied was one based on species. All those aspects should be the subject of appropriate provisions in any future international convention.

In his delegation's view, the possibility should not be overlooked of establishing special treatment among States in a given region or subregion, under specific conditions and within the framework of regional or subregional agreements, in which the situation of land-locked countries was also taken into account.

With regard to the continental shelf, his delegation supported the position of those States with a very broad continental shelf that, beyond the outer limit of the territorial sea and within the 200-mile maximum from which the shelf legally began, the coastal State might extend its sovereignty to the sea-bed and the subsoil thereof up to the limit to be established by the new convention, which should extend at least to the outer edge of the continental rise.

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Finally, his delegation also attached special importance to the recognition of certain duties which the coastal States had towards other States and the international community with respect to the co-ordination of standards for the elimination or reduction of the risks of pollution. His delegation was willing to consider specific points which would enable progress to be made towards a formula acceptable to all Member States. He welcomed the draft articles submitted by various delegations, which had made a very valuable contribution to the search for solutions applicable at the future stage of the revision of the law of the sea, and reserved his right to submit draft articles on the same topic.

Mr. MANGAL (Afghanistan) said that, as the representative of a land-locked country which, largely because of its geographical situation and the fact that it did not enjoy free access to the sea or free and unimpeded transit, had enormous problems of economic development, he attached great importance to the work of the Committee and had followed very carefully its discussion of the subjects and issues relating to the law of the sea.

In order to correct the shortcomings of the present law of the sea, a task in which Afghanistan was determined to co-operate, it would be possible either to adapt the present rules, taking into account common interests, or to establish a new set of rules which would contain legal principles for and practical ways and means of meeting the legitimate interests and rights of all States on the basis of the principle of their equality as enshrined in the United Nations Charter.

If it was not intended voluntarily to invite the failure of the Conference on the Law of the Sea, the Committee should not overlook the rights and interests of those States which did not have free access to and from the sea and which, therefore, had found themselves unable to share the benefits derived from marine resources with those other States whose geographical location was more advantageous.

His delegation wished to make it quite clear that any future legal régime covering the sea and the exploitation of its resources would be incomplete and unjust if it did not recognize the right of land-locked countries to free access to and from the sea, coupled with the right of non-reciprocal free transit. The second right was inseparable from the first and was based on the principle of

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(Mr. Mangal, Afghanistan)

freedom of communications for all nations, which was already embodied in various international agreements.

Furthermore, the right of free access to and from the sea should not, in any way, be regarded as incompatible with the rights and interests of coastal States; on the contrary, it was a question which should be studied in the general context of the responsibility of all States to contribute to the establishment of a legal order which would eliminate inequalities and would prevent the adoption by States of unilateral measures designed to extend their national jurisdiction to an area and to resources which must be reserved for the common benefit of the whole international community. On the other hand, the continuation of the status quo, in which recognition of the right of the land-locked countries to free access to the sea was unjustifiably withheld, was incompatible with the spirit of the commitment to reduce the barriers to international trade and ensure freedom of transit which was reflected in the General Agreement on Tariffs and Trade.

In conclusion, it should not be forgotten that current practice did not favour the land-locked States, especially in cases where transit States had taken advantage of their opportunity to interfere with the enjoyment of the right of free access to the sea and of free transit of goods across their territory as part of their national policy.

Mr. ANDERSEN (Iceland) said his delegation was convinced that the Committee could not reach any agreement on the extent of the territorial sea until the interests of the States in the area adjacent to the territorial sea had been adequately dealt with and protected. On the other hand, he was sure that once those matters had been correlated, a solution would be found within that general context to most of the other questions, such as those of freedom of navigation and overflight, straits used for international navigation, the rights of land-locked countries, archipelagos and the international sea-bed area, in accordance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

He introduced and read out a proposal (A/AC.138/SC.II/L.23) concerning the concept of functional jurisdiction over coastal resources, a matter to which

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(Mr. Andersen, Iceland)

his delegation had already referred on several occasions. The main points in the new proposal were the recognition, on the one hand, that specialized and functional jurisdiction was required over natural resources in the coastal area and, on the other hand, that the extent of such jurisdiction should be based on relevant local considerations and might not, therefore, be uniform. Indeed, the discussion within the Committee had shown there was growing support for specialized jurisdiction and control over coastal resources and his delegation, for its part, had supported similar proposals submitted by Kenya. His delegation also supported the basic approach advocated in the proposals in document A/AC.138/SC.II/L.21 submitted by the delegations of Colombia, Mexico and Venezuela.

He reserved his right to refer to his own and other proposals in greater detail at the summer session in Geneva.

Mr. MESLOUB (Algeria) said that the Sub-Committee appeared to be close to a generally acceptable solution to the question of the nature of the rights which coastal States should exercise over the ocean space adjacent to their territory and over the resources it contained. In that connexion, his delegation understood that, in addition to the territorial sea over which it already exercised quasi-territorial sovereignty, the coastal State should be assigned a broader maritime zone beyond the territorial sea, together with authority over its resources.

The first of those zones corresponded to the classical concept of the territorial sea. In that respect, there was a need to clarify the concept of innocent passage and there should be no doubt about the right of the coastal State to establish rules for the passage of certain types of ship, especially warships and others which could represent a danger to its peace and security. Algeria had adopted legislation under which the passage of such ships was subject to prior authorization. Subject to that reservation, the size of the first zone could be determined on the basis of reasonable limits.

The second zone, which could not be considered apart from the first, was basically intended to meet the vital needs of the majority of the developing countries. Within that zone, which had been called the economic zone or patrimonial sea, the coastal State should be able to exercise sovereign rights over all resources, together with other rights connected with activities such as

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(Mr. Mesloub, Algeria)

scientific research and the preservation of the marine environment. However, it would also be necessary to respect the traditional freedoms, such as that of navigation and overflight, and the freedom to lay submarine cables and pipelines, provided that did not inhibit the exercise by the coastal States of its duly recognized sovereign rights; at the same time, account should be taken of the legitimate interests of the geographically disadvantaged developing countries. His delegation understood those legitimate interests and considered, for example, that such countries should be granted the rights of access to the zone and to the benefits derived from certain of its resources.

On the other hand, account should be taken of the interests of the developing countries which had not been favoured by nature, such, for example, as countries which, like Algeria, bordered on a narrow, almost enclosed sea which had no continental shelf and was practically devoid of resources. In most such cases, equitable solutions could be found within the context of regional agreements.

His delegation also understood that the Sub-Committee must consider the question of islands. The need to draw up a legal instrument concerning islands, based on just and equitable principles, was all the more urgent as there was a chance of settling the question of the nature and scope of the rights of States over ocean space and its resources and hence of fixing the limits of the international area. That task was especially important in the case of certain narrow seas where the rights of some States could be seriously infringed.

He stressed that the search for general formulae which would reconcile the interests of all should not preclude the adoption, whenever circumstances permitted, of a regional approach, which could facilitate the solution of some of the complex questions before the Sub-Committee. Furthermore, he wished to place on record his gratitude to those delegations which had submitted draft articles on certain subjects and issues; he would study those drafts with care and refer to them at a later stage in the Sub-Committee's work.

Mr. ZOTIADES (Greece), referring to item 2 of the list of subjects, and in particular to items 2.3.1, 2.3.2, 5.3 and 6.7.2, which were all concerned with the territorial sea, stressed the problem of narrow territorial seas, which created the need to delimit the maritime frontiers between opposite and adjacent States.

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(Mr. Zotiades, Greece)

Clearly, international law was not static but had, on the contrary, a dynamic nature. Its progress was becoming more and more bound up with that of the law of multilateral treaties, especially in view of the existence of the social need to find new approaches to new situations and problems. Nevertheless, the codification of the law of the sea should be pursued without abandoning the fundamental principles of international law that had served humanity for centuries and had stood the test of time. The foundations of the law of the sea had not been laid in recent years but were the product of centuries of gradual development; it would be rather unwise to disregard fundamental principles that had their roots in centuries of State experience and practice.

His delegation was convinced of the need to draft a treaty in harmony with the purposes and principles of the United Nations Charter. A further basic consideration was the need to reconcile divergent rights and interests in a spirit of goodwill without disrupting the legal structure and principles on which the international community was based. It was beyond dispute that the principle of the sovereign equality of States was the corner-stone of international law and the basis of inter-State relations. State sovereignty was exercised over the entire territory, continental or insular, and extended to the territorial sea, the air space over the territory and to the bed and subsoil of the territorial sea. The various régimes proposed for the territorial sea had not always taken into account the unity imposed by the principles of the sovereignty and equality of all States and by the primary aim of every system of law to command uniform and general regulation. A plurality of régimes could be considered for the breadth of the territorial sea, as was the case in the proposals under which no uniform breadth of the territorial sea was to be applicable to all countries but instead there was to be a maximum limit. He recalled in that connexion the International Law Commission's commentary on article 3 of its draft articles on the law of the sea to the effect that the extension of the territorial sea up to an outward limit of 12 nautical miles did not infringe the principle of the freedom of the sea.

His delegation was favourably disposed to the position of a number of delegations that had referred specifically to the question of archipelagos. The delimitation of the territorial sea did not seem to present particular problems

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(Mr. Zotiades, Greece)

where the oceans and the high sea were concerned, but in semi-enclosed and enclosed narrow seas the delimitation of the territorial sea among opposite and adjacent States had given rise to the principle of equidistance, which was embodied in the Geneva Conventions on the territorial sea and the continental shelf and well established in international practice as a rule of general international law. That principle offered a geometrical solution which introduced a mathematical certainty in the delimitation of maritime boundaries and also respected the fundamental principle of equality of treatment. Its application was not limited to enclosed or semi-enclosed seas but extended as well to any narrow sea where the distance between opposite or adjacent States did not allow the full extension of their respective territorial seas. The principle was essential for the protection of the legitimate interests of opposite and adjacent States and had been expressed in many bilateral and multilateral treaties. It had been widely used in international practice to delimit territorial waters and seas, straits, lakes, contiguous zones and fishing zones; it was embodied in many bilateral agreements. It had also been adopted in the 1958 multilateral Geneva Conventions and the European Fisheries Convention signed in London in 1964. In addition, it was used in drafts and studies by all scholarly bodies concerned with international law, including the United Nations International Law Commission.

Consequently, his delegation had submitted the amendment appearing in document A/AC.138/SC.II/L.17 in the belief that it did not contain anything arbitrary or absolute but possessed the necessary flexibility by virtue of its acceptance of the interrelationship between the elements of agreement and equidistance. The problem was obviated if an agreement was reached freely and under conditions of equality. Failing such agreement, the equidistance principle would come into operation as the applicable rule of international law so that the maritime boundary would not remain uncertain with all the resulting inconveniences and risks. The text of article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone and the relevant commentary of the International Law Commission should dispel any doubt as to the importance of the concept of equidistance; the approval of that article by 76 votes to none, with 1 abstention, demonstrated the determination of all States at that time to adopt a clear and unambiguous rule.

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(Mr. Zotiades, Greece)

The opinion had been expressed that, in accordance with the judgement of the International Court of Justice of 20 February 1969 on the question of the continental shelf of the North Sea, the use of the equidistance method was not a compulsory rule of international law. He wished to point out, however, that the Court's judgement had not referred to the delimitation of territorial waters but to the principles and rules of international law applicable to the delimitation of the continental shelf between the parties. Consequently, the Court had not rendered a judgement on the equidistance method of delimiting territorial waters. Moreover, since one of the parties to the case, the Federal Republic of Germany, had not ratified the 1958 Geneva Conventions, the ICJ had pointed out that the parties were not obliged to apply those Conventions. It must also be remembered that in the same judgement the Court, referring to the principle of equidistance as applied to the continental shelf, had observed that probably no other method of delimitation had the same combination of practical convenience and certainty of application.

At the 58th meeting, the representative of Tunisia had expressed the opinion that the delimitation of the maritime space to be attributed to each island should be measured in accordance with equitable principles and that such specific characteristics of the island as its size, population, location and geological configuration and all relevant political, legal, economic, social and other criteria should be taken into account. His own delegation considered that such a proposal entailed a violation of the sovereign territorial rights of States and a denial of the principle of the indivisibility of territorial sovereignty. The concept of territory as an element of the State included not only continental but also insular territory, as had been stated repeatedly by the International Court of Justice and other international tribunals. The jurisdiction of a nation within its territory was necessarily exclusive and absolute. Islands formed an integral part of the territory and had the same right as any other coast to a territorial sea. Article 10 of the Geneva Convention on the Territorial Sea and the Contiguous Zone codified a well-known customary rule of international law to the effect that every island was entitled to its own territorial sea, and it was hard to visualize a situation in which the breadth of the territorial sea depended on extra-legal criteria such as size, position or other considerations. The consequences of the

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(Mr. Zotiades, Greece)

application of such criteria would certainly be extremely dangerous, and there was even reason to fear that, in the future, similar criteria would also be proposed for the delimitation of the territorial sea of States.

Greece had traditionally been in favour of a limited territorial sea and had adopted a six-mile limit. It believed that territorial waters should not arbitrarily be extended and was convinced that the fundamental principles of the law of the sea were equitable and justified, although they apparently needed to be developed to meet the new requirements of technological progress and new social needs.

With regard to the draft articles on the territorial sea and straits contained in document A/AC.138/SC.II/L.18, of which his delegation was a sponsor, he appreciated the statements made in support of the draft and the constructive ideas put forward by several delegations. A few delegations had indicated that they had difficulty in accepting the main idea underlying the draft articles, namely, the principle of innocent passage. The notion of innocent passage combined two peremptory norms of international law - the principle of freedom of navigation and the principle of the sovereignty of the State in its territorial waters. Greece, which was a major maritime nation, considered, in the light of experience spanning many centuries, that innocent and peaceful passage could on no account constitute a threat to freedom of navigation. Greece was also a coastal State, and as such, was fully convinced that the three criteria for innocent passage laid down in the Geneva Convention on the Territorial Sea and the Contiguous Zone afforded ample protection.

With regard to the draft article submitted by the Turkish delegation and appearing in document A/AC.138/SC.II/L.22, his country had no objection whatsoever to the negotiation of bilateral agreement. In practice, Greece's territorial waters were governed by various agreements of that kind. However, the third United Nations Conference on the Law of the Sea would be superfluous if every solution was to be left to bilateral agreements independent of the guiding spirit of international law principles. The words "equitable principles" introduced an element of subjectivity and ambiguity and his delegation thought that it would be unwise to discard the positive law rule of equidistance and replace it with the ambiguous notion of "equitable principles, taking into account all the relevant circumstances".

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(Mr. Zotiades, Greece)

His delegation was also unable to accept paragraph 2 of the draft article, as it considered it highly dangerous to deviate from the rule of law and be guided by such subjective and vague ideas as "special circumstances". The study of geography showed that all coasts had special and differing characteristics, and it was therefore clear that the rule of law should govern all cases and that it would be wrong to leave such a wide margin to the contractual will of the parties. The Greek delegation took strong exception to the idea that geography and geographical configuration should prevail over the rule of law and, in particular, over the median line principle, which was the only positive rule of international law applicable in the case of narrow seas and opposite and adjacent States.

Mr. BAKULA (Peru) said that the first conclusion arrived at during the current session was that the task confronting the Sub-Committee was largely political in nature, although, of course, various other factors were involved. An attempt therefore needed to be made to reconcile differing interests with two essential aims in view: to ensure peace and the development of peoples. Both requirements must be met, otherwise, there would be no universal agreement, nor could the outcome be described as "law". Another conclusion was that the unexpected scientific and technological advances and the profound changes of all kinds which had taken place in recent years had made it imperative to review and bring up to date rules which had been decided upon without the concurrence of many countries, in the light of the different realities and necessities of the present-day world.

However, there were some who still refused to accept the full consequences of that inescapable truth and insisted on reproducing whole articles from the 1958 Geneva Conventions even when it was obvious that there was no justification for retaining a disputed juridical super-structure which was only valid for one third of the States and which had largely been rendered obsolete by the very phenomena it was supposed to regulate. That attitude was at variance with the premise that the new law of the sea should serve the aims of development and should rule out the application of regulations that fostered any kind of dependency, thus accentuating the existing imbalance between nations and constituting a continual threat to peace.

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(Mr. Bakula, Peru)

Peru, like other South American countries, had constantly had to suffer from the application of coercive measures whenever it attempted to protect its natural resources. In that struggle, which it would resolutely pursue, Peru was encouraged by the support and solidarity shown by other countries. However, it was sad to find that, when certain economic interests were involved, there were Powers that had no scruples about violating provisions of the United Nations Charter and disregarding their international commitments.

At the present stage, it was already clear that two schools of thought on the law of the sea had emerged: a conservative school, whose adherents consisted of certain maritime Powers which were competing for supremacy throughout the world, and a school that was in favour of change, originally promoted by developing coastal States and now joined by a growing number of developed coastal nations which had no ambition to dominate.

Nevertheless, during the current session some progress had been made which should not pass unnoticed. In considering the concept of a plurality of régimes for the territorial sea, it had become apparent that those who favoured reform were ready to reconcile the rights of the coastal State with the rights of other States in respect of navigation and overflight. It had also become clear that the main difficulty in achieving that object derived from the use of certain terms that were incompatible with the new concepts and, consequently, with the development of the law of the sea. In that connexion it would be noted that those taking part in the debate had all mentioned that the new law of the sea, in order to be equitable, must be the outcome of a constructive effort to reach an agreement which all countries could accept.

After that premise had been accepted without objection and the discussion on the territorial sea had begun, it had been found that there was an insuperable difference of opinion between those States which found it impossible to agree to any arrangement providing for the extension of the territorial sea to a distance of 200 miles and those which could not accept any arrangement which would confine the territorial sea to a 12-mile limit. When that stumbling-block had been encountered, various delegations had suggested seeking a new terminology, and accordingly reference had been made to the concept of "national sea", to distinguish the zone adjacent to coastal States, where their interests would prevail, from the

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(Mr. Bakula, Peru)

rest of the ocean space, namely, the "international sea". In his delegation's opinion that suggestion deserved careful study and further elaboration of the scope and attributes of the new concept proposed. In the meantime, constructive work had been done in identifying the rights and prerogatives of coastal States in the seas adjoining their coasts, and the limitations and obligations proposed in order to accommodate the interests of other States.

Lastly, he recalled that, in proclaiming its sovereignty over an extent of 200 miles in 1947, Peru had established a maritime zone within which it exercised its rights in terms of the essential interests which the State must protect in order to serve the needs of its people, while taking due account of the obligations deriving from international co-operation. That was the basic belief that Peru professed and would never depart from. Peru was ready to consider any proposals that would enable the interests of other States to be reconciled in a reasonable manner but it could not accept any solution that would preclude the 200-mile limit as the maximum distance for the exercise, by the coastal State, of sovereign rights over the sea, the sea-bed and its subsoil, taking into account, where relevant, the co-operation of other States.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

Held on Thursday, 5 April 1973, at 3.25 p.m.

Chairman:	Mr. TUNCEL	Turkey
later:	Mr. GHELEV	Bulgaria

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REPORT BY THE CHAIRMAN OF THE WORKING GROUP OF THE WHOLE (concluded)

Mr. KEDADI (Tunisia) recalled that as Chairman of the Working Group of the Whole, he had made a preliminary progress report to the Sub-Committee at its 57th meeting. He proposed, at the current meeting, to present the second part of the report, and he hoped that members would forgive him if he failed to bring out every nuance of their points of view. His principal concern was to give a general and correct account of the Group's work, to reflect the ideas expressed in the latest meetings and to indicate progress made since the first report.

Between 30 March and 4 April, the Working Group of the Whole had held four meetings. During that time, discussions had again been concentrated on clarifying terms and concepts, on the questions of the territorial sea, the economic zone, the interests of all States and groups of States, the interests of geographically disadvantaged countries and countries with a special geographical situation, and the interests of the international community.

Thus, the Group had continued to clarify such terms as the territorial sea and national sovereignty in that and other zones, the economic zone, the patrimonial sea, the unity or plurality of régimes for the territorial sea, islands, straits, innocent passage, countries adjacent or opposite to each other, the principle of compulsory agreement, the principle of equidistance, the expressions "continental", "island", "special interests", "interests of the international community", "spécial geographical situation", "extension of territorial waters", "delimitation", "enclosed sea, semi-enclosed sea".

A series of interests had been reviewed, such as the particular interests of coastal States in living resources, but it had been stated that other interests must not be sacrificed. For example, international regulation of living resources by regional commissions had been suggested. It had been suggested that mineral resources should be governed by a different régime. Reference had also been made to other interests, such as the interests of islands, archipelagos, land-locked States, States opposite each other, adjacent States, States bordering on straits. It had been emphasized, for example, that the 12-mile territorial limit would be acceptable if account was taken of the situation of archipelagos. Emphasis had also been laid on the interests of navigation and the interests of the international community. The situation of the geographically disadvantaged countries had been referred to and it had been stated that account must be taken of their special

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(Mr. Kedadi, Tunisia)

situation, of the criterion of equity. It had been suggested that solutions based on regional criteria could be accepted. In particular, mention had been made of such guarantees as freedom of access to the ocean or to the economic zone, the right of transit through the territorial seas of other countries, bearing in mind precautions to be taken to prevent pollution. Reference had been made to preferential rights in the economic zone. It had been observed that all States must respect each other's rights. In that connexion, it had been stated that geographical circumstances differed and must therefore be taken into account, so far as possible, without prejudice to any State's interests. Mention had been made of the indivisibility of territorial sovereignty and islands; it had been stated that the characteristics of islands varied and that therefore an equitable agreement could be reached only if the bases for a general principle were established. Particular interest had been expressed in the régime to be applied to international straits and in negotiations on that question. Reference had been made to the important problem of transit through such straits. It had been said that an equitable régime should be established for international straits, taking account of the legitimate interests and the needs of States which, by reason of their special geographical situation, had to use such straits. Emphasis had been placed on the need to guarantee such States the right of transit through the straits of coastal States and the interests of international maritime navigation.

Several methods for reconciling all interests had been suggested. It had been stated, for example, that a formula must be found which would allow the coastal State extensive jurisdiction over resources but not over navigation. Some speakers had also suggested that the Declaration of Santo Domingo might constitute a valid basis for the reconciliation of all interests. Emphasis had been laid on the need to take into consideration the interests of developing countries and geographically disadvantaged countries. It had been stated that the Conference on the Law of the Sea should pay particular attention to the question of islands.

It had also been stated that legal and doctrinal disputes did not lend themselves to compromise and that an effort should, rather, be made to reach a precise definition of the goals to be achieved so as to be able to draft adequate provisions which would make it possible to reconcile all interests; to that end,

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(Mr. Kedadi, Tunisia)

it had been thought that it would be preferable to find practical, rather than theoretical or systematic, solutions to problems. Emphasis had been placed on the need to find a method which would make it possible to specify the prerogatives to be granted to coastal States and the prerogatives to be reserved for other States.

The discussions had also been concerned with the question of the revision or maintenance of certain rules of international law. It had been said, in that connexion, that international law should be developed, that any proposal which would reconcile the fundamental interests of all States would be acceptable and that, if that was possible within the context of existing laws, those laws should be retained. Another point of view that had been expressed was that international law should be amended in the light of changes which had occurred in the world. It had also been said that certain rules of international law should be amended and that no State should be placed at a disadvantage. Certain articles of international conventions had been invoked, such as articles 12 and 6 of the Geneva Conventions on the Territorial Sea and on the Continental Shelf respectively and judgements of the International Court of Justice. That had occurred in the course of discussions on specific proposals relating to item 2 of the list of subjects and issues.

Some procedural questions had also been raised, such as how statements made by delegations in the Working Group were to be recorded, the best method of co-ordinating the work of the Group with that of Sub-Committee II, and the possibility of initiating a debate on the item entitled "Continental shelf". It had emerged from the discussions that many speakers were opposed to the idea of having summary records. Emphasis had been laid, in that connexion, on the need to continue to adopt a pragmatic and flexible working method of a non-official character. He himself had said that the Working Group had already decided not to have summary records of its meetings but that the Group was of course free to decide on its procedure. With respect to the suggestion to begin debate on the continental shelf, he had said that every delegation was free to express its opinion on the items on the list which the Working Group had decided to examine. Another of the procedural questions raised had related to the possibility of establishing a deadline for the submission of specific proposals. The date of 15 July 1973 had been suggested. Yet another such question had concerned informal

(Mr. Kedadi, Tunisia)

consultations under the chairmanship of the Chairman of the Working Group, in which all members who had submitted specific propositions would participate with a view to reaching a satisfactory formula. It had also been suggested that, unless basic proposals were drafted, agreement would never be reached. However, the need to avoid fragmentation of interrelated subjects had also been stressed and it had been pointed out that, at the present juncture, substantive positions had not yet been presented in the form of drafts; the proposals under study in the Working Group did not represent all the positions of substance presented to the Group. It had also been noted that it was therefore premature to set up small groups to examine specific proposals.

Towards the end of the discussion, he had tried to summarize the discussions of the Working Group of the Whole. It seemed that, although in principle the Group accepted the idea of establishing small working groups to deal with specific questions, it felt that the suggestion was premature, particularly since certain delegations which had made proposals were not prepared for the time being to participate in such small groups. On the question of documents, he had said that the Secretariat could consider the matter but that the date of their distribution would be decided by the Working Group during the first week of the Geneva session.

In conclusion, he wished once more to thank all delegations which had contributed constructively to the work of the Working Group. There had been serious discussions which had been characterized by the willingness of all to accommodate each other's interests, by the desire to avoid ideological discussions and to adopt a pragmatic and flexible working method and, above all, by the desire that the Working Group's work should lead to concrete results.

During the relatively short period of five weeks, the work had progressed through several stages. First there had been the establishment of the Working Group. Next there had been an organization of work stage, and then a debate on specific items of the list. The Group had now entered a new phase of its work, that of the concrete presentation of other fundamental positions, of the preparation of drafts and of difficult negotiations and mutual concessions. Towards the end of the discussion it had been pointed out that the bases for negotiation existed. Reference had been made, for example, to the proposals

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(Mr. Kedadi, Tunisia)

in the Kenyan document and the Declaration of Santo Domingo. He was convinced that other drafts would shortly be added to those already in existence. The Working Group was on the verge of a breakthrough. The Group was no longer in an impasse as it had appeared to be a few weeks previously. All delegations were inspired by a spirit of good will. They were all aware of the need for concrete decisions in such an important and engrossing field. He expressed the hope that such decisions would soon be taken, so that members could at last apply themselves to their immense task of ensuring the success of the third United Nations Conference on the Law of the Sea.

The CHAIRMAN said he hoped that the full text of the statement of the Chairman of the Working Group of the Whole would be reproduced in the summary record of the meeting.

GENERAL DEBATE (concluded)

Mr. BAZAN (Chile) said that the draft articles submitted by Colombia, Mexico and Venezuela in document A/AC.138/SC.II/L.21 constituted a legal version of the Declaration of Santo Domingo. It was not surprising, therefore, that they reflected the views of a large group of Latin American countries and interpreted some fundamental Chilean proposals. The articles on the territorial sea and the patrimonial sea contained points of view and advocated solutions which in general coincided with those that Chile had proposed. It was satisfactory to note that those articles affirmed the existence of certain State Powers in a maritime zone beyond the territorial sea, that they allocated a maximum limit of 200 miles to that zone, and that in the zone the freedoms of communication would be maintained for all States. With slight conceptual differences, similar formulations were found in the Chilean Official Declaration of 23 June 1947. It was above all satisfactory to find in the articles an harmonious conjunction of the interests of the coastal State and third States. The draft undoubtedly constituted a solid basis for a compromise solution to differences between delegations. In that respect, its merits were very similar to those of the Kenyan draft articles, which also opened the way to an harmonization of positions.

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(Mr. Bazan, Chile)

The draft of the three Latin American countries dealt with the territorial sea and the patrimonial sea in successive and concordant articles, and thus formally anticipated the indissoluble link between the two seas. The draft presented the territorial sea as an area of the sea not exceeding 12 miles in breadth immediately contiguous to the territory of a State, over which the State exercised sovereignty and through which it permitted innocent passage. That was also the approach adopted in the Chilean Civil Code. Consequently, his delegation could not refuse to accept it in a convention, provided that the integration of the territorial sea with the adjacent maritime zone was respected. The articles relating to such integration were the most novel part of the draft and would therefore be the subject of his delegation's principal comments. In addition to indicating that the coastal State had sovereign rights over the natural resources found in the waters, the sea-bed and the subsoil of an area adjacent to the territorial sea, called the patrimonial sea, the draft determined the maximum limit of the patrimonial sea, which was not to exceed 200 miles measured from the coast, and defined other rights of the coastal State and the rights of the international community. The rights of the coastal State were those necessary to enable it to exploit the renewable and non-renewable resources found in the patrimonial sea, including the right to ensure the protection and conservation of such resources, to prevent pollution and to regulate scientific research. The international community, for its part, enjoyed the right to freedom of navigation and overflight in the patrimonial sea and freedom to lay submarine cables and pipelines, subject only to the limitations stemming from their obligation to respect the rights of the coastal State in the zone. It was clear from the articles defining them that the rights were not mutually exclusive and that it was perfectly possible to reconcile them.

Colombia, Mexico and Venezuela had submitted a compromise formula consistent with Chile's approach to the question. Chile considered that beyond the territorial sea, in an area not exceeding 200 miles, it had sovereign rights over the sea and the bed and subsoil thereof for such purposes as exploitation of resources, preservation of the environment and scientific research, without prejudice to the fact that all the residual rights inherent in the high seas would be maintained in the area. In that way, Chile's special interest in the resources was reconciled with the general interest in free communication.

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(Mr. Bazan, Chile)

The project adopted other methods to reach the same end. It attributed a more definite individuality to the maritime area in question, named it the patrimonial sea and stipulated that in that area the coastal State would exercise sovereign rights over resources and the international community would enjoy freedom of communication. Thus, the draft achieved the same happy balance between interests in the area as did the Chilean formulation.

In the draft under consideration, there was an indissoluble link between the articles relating to the territorial sea and those relating to the patrimonial sea. The union between the two seas was so intimate that one and the same measurement - 200 miles - covered both. His delegation supported that approach. The formula proposed was a compromise between national interests and general interests and should be accepted as a whole.

In their articles on the continental shelf, the sponsors abided by the geomorphological definition of the shelf and thus departed from the Declaration of Santo Domingo. The Chilean delegation therefore viewed those articles with a certain amount of caution. The articles would, however, be carefully studied by the Chilean Government.

On the whole, the draft articles constituted a valuable contribution to the work of the Sub-Committee and enhanced confidence in the success of the forthcoming Conference on the Law of the Sea.

Mr. ESPINOSA (Colombia) said that the Sub-Committee's task of determining the breadth of the territorial sea and defining the fishing rights of States in the zone adjacent to the territorial sea was not an easy one, the more so since the recent accession of many nations to independence with a keen awareness of their rights and the need to protect them. The Sub-Committee had to reconcile international law with the radical changes of recent years in a way that would be fair to all States without discriminating among them and without perpetuating the special advantages the maritime Powers had long arrogated to themselves. Coastal States should have full jurisdiction over the renewable and non-renewable natural resources of the sea off their coasts, so that they could promote the development and well-being of their peoples.

(Mr. Espinosa, Colombia)

In developing the new law of the sea, such traditional concepts as were worthy of preservation should be preserved, but at the same time new concepts required by recent developments should be given legal embodiment. In the Working Group of the Whole, he had stated his delegation's view that the Declaration of Santo Domingo, which put forward the concept of the patrimonial sea and reconciled it with that of freedom of navigation, should be the basis for the new law of the sea. The maritime Powers would have to make some concessions in regard to marine resources, which were claimed by various coastal States, and the coastal States in turn would have to ensure freedom of navigation, which was vital to world trade. In that regard, it was important to note the similarity between the conclusions of the regional seminar held at Yaoundé and the Declaration of Santo Domingo; it should be possible to arrive at a common text incorporating the best elements of both documents.

His delegation, together with those of Mexico and Venezuela, had prepared a set of draft treaty articles (A/AC.138/SC.II/L.21) giving legal form to the principles contained in the Declaration of Santo Domingo. It was to be hoped that that document would be found useful by the Sub-Committee and by the forthcoming Conference on the Law of the Sea. His delegation had been pleased to note the favourable response in many quarters to the draft articles of which his delegation was a sponsor and also to those submitted by Kenya (A/AC.138/SC.II/L.10), which embodied the conclusions of the Yaoundé seminar. The two texts were in no way incompatible but rather complemented each other, and it was to be hoped that they might be combined in the near future. Both texts stressed the usefulness of maintaining the classical concept of the territorial sea as a security zone over which the coastal State exercised full sovereignty. The texts further agreed that the territorial sea should not exceed 12 miles. Moreover, there were obvious similarities between the concept of a "patrimonial sea" and that of an "exclusive economic zone", in that both would allow the coastal State to extend its jurisdiction to a maximum of 200 miles seaward.

The Peruvian delegation had expressed the view that, if the draft articles did not gain sufficient support, the sponsors might feel compelled to endorse the argument that the territorial sea should be extended 200 miles, in order to defend the rights of their countries. Similarly, in that case, those who advocated the

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(Mr. Espinosa, Colombia)

idea of a territorial sea of up to 200 miles might accept one of only 12 miles plus an economic zone of up to 200 miles, which would defend fully the rights of their countries.

For the sponsors, the territorial sea they proposed could not be dissociated in the future from the patrimonial sea or economic zone. The rights and jurisdiction of the coastal State extended 200 miles from the applicable baseline. That State exercised the same sovereignty as on land over an area 12 miles in breadth immediately contiguous to its territory and thence, up to a limit of 200 miles, exercised sovereign rights over the renewable and non-renewable natural resources. It also had the right to adopt the necessary measures to ensure its sovereignty over the resources and prevent marine pollution of its patrimonial sea, and to regulate the conduct of scientific research.

The Uruguayan delegation advocated a dual system for the territorial sea. The rights of the coastal State were sovereign over an immediately contiguous 12-mile area, with the sole exception of innocent passage, but freedom of navigation and overflight was permitted from the inner limit to the outer limit. The Uruguayan delegation had stated in the Working Group that freedom of navigation should not be subject to the whim of the coastal State but should be embodied in a convention. In the view of his delegation, that approach seemed to be in the right direction.

His delegation was confident that its conception of the patrimonial sea would gain increasing support. The rights over resources, waters, sea-bed and subsoil, as well as other activities and the jurisdiction and supervision over exploration and exploitation, constituted an entirely new concept in international law. Beyond the 200-mile limit would lie the high seas, the common heritage of mankind, and the draft articles contained a restriction on one of the four traditional freedoms, in that fishing was to be neither unrestricted nor indiscriminate.

With regard to the continental shelf, the draft articles would implement the recommendation in the Declaration of Santo Domingo concerning "the advisability and timing for the establishment of precise outer limits of the continental shelf taking into account the outer limits of the continental rise". It was added, for the sake of greater clarity, that the outer limit of the continental shelf was that bordering on the ocean basin or abyssal floor. One delegation had suggested that, when a limit was less than 200 miles from the coast, the limit of the shelf should still be

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(Mr. Espinosa, Colombia)

200 miles. The sponsors had considered that possibility but had rejected it, and rightly so, in the view of his delegation, since article 15 laid down that, in that part of the continental shelf covered by the patrimonial sea, the legal régime provided for the latter should apply.

His delegation had always believed that, as far as the patrimonial sea was concerned, the sovereign rights of the State over the sea-bed, the subsoil and certain natural resources in the area of the shelf should be extended to all natural resources, whether renewable or non-renewable, as well as to the water column, up to a 200-mile limit. Beyond that limit, sovereign rights would be restricted, to the rules concerning the continental shelf laid down in the 1958 Convention.

The draft articles submitted by Colombia, Mexico and Venezuela and the Kenyan proposal had been generally welcomed. However, one important maritime and fishing Power and one socialist country had expressed dissenting views. The sponsors were by no means surprised to see such agreement between nations with worthy opposed ideologies, since it was in the interest of both to defend old and anachronistic advantages which had been acquired at a time when the voices of the developing countries were unheeded. Today the situation was very different and the obsolete status quo could not be maintained. The emerging world was aware of its needs and its rights and believed that the time had come for its legitimate aspirations to be heeded, through conciliation and mutual concessions.

His delegation was particularly gratified by the statement of the representative of Chile. It noted his comments with regard to the continental shelf and would study the article in question.

Mr. VINDENES (Norway) said that he wished to state his delegation's view on the right of transit in the territorial sea. In so doing, he would not deal with the problem of straits, since his delegation firmly believed that straits used for international navigation should be treated as a separate question requiring a separate and specific solution. The draft articles contained in document A/AC.138/SC.II/L.18 clearly stated the views of a number of delegations on that issue, and his delegation wished to express its appreciation to them for their work.

There seemed to be a consensus that the general issue of navigation in the territorial sea should be solved on the basis of the concept of innocent passage.

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(Mr. Vindenes, Norway)

Differences between delegations therefore related not to the basis of the solution, but to the definition and scope of the term "innocent passage", and a number of questions arose in that connexion. First, should the term be defined with a high degree of precision or should a general formulation be sought? While his delegation agreed with the desirability of a formulation which was as precise as possible, it had some doubts about the feasibility, from the practical diplomatic point of view, of arriving at an agreed formulation which contained a high degree of precision. It might well be that the choice would ultimately be between no agreement or a broadly formulated agreement, perhaps along the lines of the Geneva Convention of 1958. His delegation had no wish to discourage efforts to arrive at a precise and comprehensive formulation; it only wanted to emphasize that, if those efforts should fail, then an agreement on broad formulations would be far better than no agreement at all. Furthermore, with regard to the Geneva Conventions of 1958, while his delegation agreed with those who emphasized that the formulations in them might prove to be of limited use for the Sub-Committee's present purposes, in view of the economic, political and technological changes which had taken place since 1958, it would at the same time regret any tendency to regard them in their entirety as completely antiquated and irrelevant. Many of their provisions represented a mutual accommodation of interests similar to those which the Sub-Committee was striving to reconcile at the present time and, both for that reason and because they were in many cases mere expressions of existing customary international law, they deserved the attention of all delegations. While his delegation agreed that the forthcoming Conference would not in any way be bound by the formulations of 1958, it hoped that those formulations would not be scrapped merely for the sake of scrapping them. It would like the Committee to take a pragmatic approach and avail itself of formulations from the Geneva Convention whenever they seemed to offer the best answers to problems. They might, for example, prove to be useful with regard to the question of the definition and scope of the term "innocent passage".

There was also the problem of how the interests of navigation and the interests of the coastal States could best be reconciled in the elaboration of the concept of innocent passage.

At the outset, his delegation wished to emphasize that it fully shared the concern expressed by other delegations with respect to the problem of pollution

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(Mr. Vindenes, Norway)

caused by the ever-increasing use of the sea for transport purposes. It agreed with those who called for new and stringent regulations to minimize releases of pollutants and to reduce the chances of accidents resulting in pollution damage. However, it was convinced that, because of the very nature of those problems, what was needed was not a multitude of differing coastal-State rules, but regulations established at the international level on such matters as ship operating procedures and ship construction standards, since weaknesses in those areas were primarily responsible for pollution and pollution dangers associated with navigation. His delegation was convinced that a combination of national efforts by shipping and shipbuilding countries on the one hand and international regulations with the participation of non-shipping countries on the other could improve the situation. It was obviously impossible for a ship carrying goods from one part of the world to another to change its construction or its internal operating procedures each time it passed through the territorial sea of a coastal State.

A further problem was the enforcement of improved national standards by the shipping and shipbuilding countries and more stringent and comprehensive international regulations established by such organizations as IMCO. The main responsibility for enforcement must necessarily lie with the flag States, although his delegation did not exclude the possibility of giving coastal States certain specific functions of inspection, for the purpose of ensuring that internationally agreed regulations were being observed by foreign ships during their transit through the territorial sea of the coastal State. In the view of his delegation, there was a possible area for compromise and mutual accommodation which could be explored further, and efforts to that end by the Committee or Sub-Committee III should be related to the progress made in IMCO on the negotiation of the two important draft conventions relating to pollution from ships.

In conclusion, his delegation did not feel that the arguments based on the pollution problem and in favour of a limitation of the scope of the concept of innocent passage as compared to existing international law were convincing. It was therefore unable to support the draft articles in A/AC.138/SC.II/L.18 in their present form.

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Mr. VOHRAH (Malaysia) said that the draft articles on navigation through the territorial sea including straits used for international navigation (A/AC.138/SC.II/L.18), which had evoked some very interesting and provocative comments, represented a balance between the particular interests of coastal States and the general interests of the international maritime community. Its sponsors had taken considerable time over, and given careful consideration to, the needs and interests of the international community, which included coastal States such as his own. He might add that those coastal States were no less responsible members of the international community than other States. Some statements in the Sub-Committee had indicated a failure to understand and appreciate the concerns and fears of coastal States about their own well-being and security. That failure seemed to arise from a preoccupation with purely strategic considerations which had overridden the just concerns and claims of coastal States.

For his delegation, the question of navigation through straits which formed part of the territorial sea was purely and simply a question of navigation through territorial waters. That was the basic premise of his delegation, which could not, therefore, accept any proposition advocating the application of a totally separate régime to such straits. It asked no more than what international law accorded other States, namely, the right to claim sovereignty over their land and territory, air space and territorial sea, subject to the right of user States to innocent passage. His delegation wished to assure certain delegations that there was no confusion in its mind on that score.

A few delegations, which had taken upon themselves the role of guardians of the international community, had said that community interests must be borne in mind in any settlement with regard to passage through straits used for international navigation. They appeared to have adopted a very altruistic role and to have set themselves up as the arbiters of the needs of the international community. In fact, what they were really concerned about was their global strategic interests and not the facilitating of international navigation as such. Were coastal States bordering on straits to sacrifice their national security interests to the global interests of merely a few States? The answer to that question, for his delegation, and surely for many others, was obvious. It had also been contended that

(Mr. Vohrah, Malaysia)

international commercial interests would not be well served if shipping was subjected to the disretionary control of coastal States. In the opinion of his delegation, that fear was quite unfounded in view of the provisions of draft article 4 in document A/AC.138/SC.II/L.18, which guaranteed the right of innocent passage and prevented any form of discrimination on the part of coastal States with regard to freedom of peaceful navigation.

The 12-mile territorial sea limit, to which Malaysia subscribed, had emerged as a general rule in State practice. Were States to be deprived of the right to subscribe to that rule merely because a few States found its application unacceptable in territorial waters in which their military vessels would like to have complete mobility?

Malaysia adhered very firmly to the concept of innocent passage, and there had never been a case of the innocent passage of a vessel having been stopped in its territorial waters in the Straits of Malacca. The closest and warmest relations existed between Malaysia and Indonesia, and both countries intended to facilitate international navigation in their respective territorial waters in the Straits. It was obvious, therefore, that fears about the hampering of international navigation were misconceived.

The safety of navigation, the prevention of pollution and considerations of security compelled his country to assume sovereignty over its territorial waters and territorial straits, subject only to the right of innocent passage in accordance with the proposal contained in document A/AC.138/SC.II/L.18. His delegation had welcomed the constructive analysis and criticism of the document made by the representative of Sri Lanka and would welcome more statements of that kind.

Reference had also been made to the application of internationally agreed standards, such as those recommended by IMCO, for the regulation of passage through straits used for international navigation. As a member of IMCO, Malaysia would certainly take advantage of that organization's expertise in matters relating to safety of navigation. However, no coastal State was prepared to sacrifice its sovereignty by allowing organizations to impose schemes which did not accord with its security interests. In the view of his delegation, IMCO could only make recommendations which, in any case, did not apply to warships and submarines. Quite apart from the attempt to impose such schemes upon coastal

(Mr. Vohrah, Malaysia)

States bordering on straits, an attempt was being made to impose the concept of free transit with the incident of overflight, which his delegation found unacceptable.

Mr. MHLANGA (Zambia) said that his delegation was satisfied with the manner in which the Sub-Committee was performing its task and with its progress in making a meaningful contribution towards the forthcoming Conference on the Law of the Sea. That Conference should, unlike previous conferences, provide lasting solutions for the conduct of nations in relation to the sea and its resources.

In the view of his delegation, the Sub-Committee would have to recognize differences in national interests and do its best to harmonize those interests towards the common goal. The statement by the representative of Singapore had pointed to 11 categories of national interest within the Sub-Committee, but that the list had by no means been exhaustive. It would be useful if the Sub-Committee gave thought to the varieties of national interests throughout the world.

Zambia was a land-locked country and, as such, it faced hardships traditionally suffered by other land-locked countries. Its problems had been accentuated beyond all proportions by man-made difficulties, the most recent of which had been the action or series of actions perpetrated against Zambia by the illegal régime in Southern Rhodesia. Furthermore, that illegal régime had engaged in acts of aggression against Zambia and thus created a very serious threat to international peace and security. In the view of his delegation, situations of that kind could be reduced or avoided if international law provided definitive rights of free access to the sea, without leaving room for deliberate misinterpretation.

Zambia's economy was largely dependent on its mineral production. Consequently, its predominant interests included, inter alia, the right of free access to the sea, market price stabilization for mineral resources and the avoidance of adverse effects on its economy, and a rightful share of the living and non-living resources of the seas.

His delegation noted with satisfaction that the right of access to the sea was recognized in international law and reflected in international custom, international agreements and general principles of law recognized by most nations. It would like to see provisions giving effect to that right embodied in the single final document to be adopted by the forthcoming Conference. Such provisions should relate to transit rights on land, on internal waters and on the territorial sea.

(Mr. Mhlanga, Zambia)

His delegation wished to express his Government's appreciation for the transit facilities it was given by some progressive African countries, in some cases even beyond the existing provisions of international law. Zambia had faced and was still facing severe hardships due to the action of the illegal régime in Southern Rhodesia, and his delegation believed that international law should provide for reparations to be paid by those responsible.

His delegation was fully mindful of the legitimate concern of coastal States with regard to their national security, public health and the need to levy certain charges for services. However, the element of "reciprocity" which had probably been included inadvertently in the Convention on Transit Trade of Land-Locked States should be avoided. In the first place it had nothing to do with the law of the sea, and in the second place it led to bilateral disputes which could be avoided.

With regard to the problems of countries whose economies were largely dependent on liquid or hard minerals which might be found in the sea-bed and ocean floor, the Sub-Committee working on provisions for the international régime and machinery had not yet agreed on whether the authority would be an operational one or simply a licensing body. In the view of his delegation, serious consideration should be given throughout the work of the Committee and its subsidiary bodies to the possible adverse effects on countries whose economies were largely dependent on mineral resources. One way of alleviating the problem would be to ensure that an equitable sharing of benefit would take into account reasonably calculated anticipated losses to those countries.

With regard to the rightful share of land-locked countries in the common heritage of mankind, his delegation was concerned that certain proposed concepts had sought to subtract from the area significant portions close to coasts without trying to justify that subtraction. It had been stated that land-locked countries did not even have the right to fish in those areas. His delegation felt that there must have been a misinterpretation of the FAO statistics, which simply reflected the activities of States and neither expressed nor implied that land-locked countries had no right to fish on the high seas. Article 2 of the Convention on the High Seas stated that the high seas were open to all nations and that no State might validly purport to subject any part of them to its sovereignty.

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Mrs. DE GUIBOURG (Argentina) said that, in her view, the Sub-Committee's principal task was to prepare draft articles on the basis of which the forthcoming Conference could elaborate a new convention on the law of the sea. To accomplish that task, it would be necessary to harmonize a number of conflicting interests. As many other delegations had pointed out, the interests at stake needed to be identified and understood before it would be possible to harmonize them and embody them in a legal text. To that end, flexibility and open-mindedness would be required of all delegations; her delegation, for its part, was prepared to adopt such an attitude.

Her Government favoured consolidating the law of the sea by means of a universally accepted treaty which would provide legal protection for the interests of the developing States in particular. The major maritime Powers would have to understand that those interests must be recognized in the new convention; if they were not, the current confused situation, which was detrimental to the interests of the international community as a whole, would continue. A handful of States, no matter how powerful they were, could not halt the progress made in recent years with regard to the law of the sea.

Her delegation had prepared a set of preliminary draft articles which would be circulated informally among the delegations taking part in the work of the Committee. They represented an effort at reconciling the various conflicting interests in regard to the law of the sea and were intended to facilitate dialogue and negotiation. They complemented, rather than conflicted with, those proposed by the delegations of Colombia, Mexico and Venezuela in document A/AC.138/SC.II/L.21, while not being identical with them in every respect.

In preparing the draft articles, her delegation had endeavoured to reconcile the points of view expressed in the Declaration of Montevideo, of which her country was a signatory, with those of the Declaration of Santo Domingo. One of the elements incorporated in her delegation's draft articles was the recognition of a 12-mile territorial limit. It should be noted, however, that such a limit was not in accordance with the domestic legislation in force in the Argentine Republic. Accordingly, that proposal should be regarded as an effort on the part of her delegation to facilitate international negotiation and should not prejudice her

(Mrs. De Guibourg, Argentina)

country's position in respect of limits for other purposes. Moreover, that proposal was directly related to and conditional upon international recognition of a maritime zone of 200 miles which would be subject to the national jurisdiction of the coastal State and over which that State would have sovereign rights with regard to exploration and exploitation of natural resources, prevention of marine pollution and control of scientific research. Establishment of such a zone related exclusively to the water column, the rights of the coastal States in regard to the sea-bed and subsoil beyond national jurisdiction being covered by specific articles concerning the continental shelf. It should also be pointed out that within the 200-mile zone the freedoms of navigation and overflight and the right to lay submarine cables and pipelines were recognized, subject only to such restrictions as might result from the exercise of the coastal State's rights in regard to resources, pollution and scientific research.

Under the existing legal concept of the continental shelf, coastal States had the possibility of extending their sovereignty over the sea-bed and subsoil thereof to the limits of exploitability. That legal concept was at variance with the scientific and geological concept advocated by the major industrialized Powers, which restricted the meaning of the term "continental shelf" to sea-bed and subsoil areas within the 200-metre isobath.

In order to establish the dimension of the international sea-bed area, it was necessary to define the limits of the continental shelf. In her delegation's view, a single criterion for delimitation would not ensure the equality of all States in the matter. Accordingly, her delegation deemed it necessary to establish two criteria, which might, where necessary, be combined: firstly, the geomorphological criterion, according to which the coastal State would be entitled to extend its sovereignty over the sea-bed and subsoil to the lower edge of the continental rise adjoining the abyssal plain; secondly, the distance criterion, according to which the coastal State would be entitled to extend its sovereignty over the sea-bed and subsoil to a maximum limit of 200 miles, in cases where the application of the geomorphological criterion would result in a narrower limit.

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(Mr. De Guibourg, Argentina)

The preliminary draft articles also provided for the situation of those countries which, because of their special geographical or economic characteristics, might not find it desirable to extend their jurisdiction to a 200-mile limit. In such cases the draft articles provided for a preferential fishery régime in the marine zones of other States of the region, the nature and scope of the said régime to be established through bilateral agreements.

The preliminary draft articles, which dealt with some of the subjects to which her delegation attached priority importance, did not attempt to deal comprehensively with all questions that should be included in the convention. Only by taking a step-by-step approach towards identifying the interests of all concerned would it be possible to construct the basis for the new law of the sea.

Mr. CHUANG (China) said that his delegation's preliminary impression of the draft articles on navigation through the territorial sea including straits used for international navigation (A/AC.138/SC.II/L.18) was that they basically reflected the legitimate aspirations of coastal States with straits to safeguard the sovereignty of their territorial seas, having due regard for the needs of international navigation. In his delegation's opinion, the draft articles were reasonable and might be taken as a basis for discussion by the Sub-Committee.

Replying to a statement made by the Soviet representative at the 58th meeting, in which an attempt had been made to justify the obstinate stand of the Soviet Union on the law of the sea, he said that there was little substance to the statement and that some of the Soviet representative's arguments had already been convincingly refuted by representatives of the developing countries.

The Soviet representative had stated that, inasmuch as the breadth of the territorial seas of 100 countries, including China, did not exceed 12 miles, the Soviet Union was not imposing its will on others by proposing that 12 miles should be the maximum limit for the territorial seas of all countries. The essence of the matter, however, was not how many countries had established a 12-mile limit but, rather, who was to determine the limits of a country's territorial sea. His delegation had always held that all coastal States were entitled to determine reasonably the limits of their territorial sea according to their specific natural conditions, taking into account the needs of their security and national

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(Mr. Chuang, China)

economic development. Although China had declared a 12-mile limit for her territorial sea, it had never been opposed to the territorial sea of other countries exceeding 12 miles. The Soviet Union's position, however, was that, since it had established a 12-mile limit, the territorial seas of other countries should not be allowed to exceed 12 miles.

The Soviet representative had done his utmost to oppose the reasonable demand of the developing countries for the delimitation of exclusive economic zones, asserting that the delimitation of such zones would not necessarily be favourable to the developing countries and that in Africa that would only be in the interests of South Africa. Those absurd assertions had been effectively refuted by many representatives. It was entirely legitimate for the developing countries to demand a reasonable delimitation of exclusive economic zones in order to resist the super-Powers' plunder of their coastal fishery resources and to protect their national economic interests. The real reason for the opposition of the Soviet Union to that just and reasonable demand was that it was an avaricious plunderer of the fishery resources of the world. While protecting its own coastal fishing by delimiting a controlled fishing zone extending as far as 400 miles seaward, the Soviet Union had arbitrarily opposed the demand of the developing countries for a reasonable delimitation of exclusive economic zones off their coasts. It was clear that the real purpose of the Soviet Union was simply to maintain its fishing hegemony on the seas. Its proclaimed "concern for the developing countries" was a sheer hoax.

In his statement, the Soviet representative had maliciously attacked the People's Republic of China as being "over-ambitious", "super-presumptuous" and "misleading the third-world countries". That was utterly ridiculous. It was clear for all to see which were the super-Powers, which were lording it over others, which had established huge military bases and stationed troops in the territories of other countries, and which were carrying out intervention, subversion, aggression, intimidation and plunder everywhere.

The Soviet representative had also referred to the proposal on the so-called non-use of force in international relations and the permanent prohibition of the use of nuclear weapons. The Chinese delegation had firmly opposed that proposal at the twenty-seventh session of the General Assembly, pointing out that it was

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(Mr. Chuang, China)

a sheer hoax designed to cover up the aggressive and expansionist policies of the Soviet Union and to strengthen further its position of nuclear monopoly.

The statement of the Soviet representative had shown once again that the current international struggle over the law of the sea was in essence a struggle between aggression and anti-aggression, plunder and anti-plunder, hegemony and anti-hegemony. The developing countries of Asia, Africa and Latin America were increasingly uniting, in defence of their national economic interests and State sovereignty, to combat the maritime hegemony of the super-Powers. The Chinese Government and people stood firmly with the developing countries and all countries that upheld justice. Adhering to its principled stand, his delegation was prepared to work with others for the establishment of a new law of the sea which would meet the needs of the present era.

Mr. SCHMIDT (Denmark) recalled that, in its statement in the Sub-Committee on 2 August 1971, his delegation had expressed some preliminary views on the problem of the right of passage through international straits. Having such international straits and being a seafaring nation, his country was concerned with the rules applicable to straits used for international navigation and had therefore studied with interest the draft articles on navigation through the territorial sea including straits used for international navigation contained in document A/AC.138/SC.II/L.18. That document represented a constructive effort to elucidate one of the important jissues pertaining to the law of the sea. However, his delegation disagreed with the viewpoint, embodied in those draft articles, that navigation through the territorial sea and through straits used for international navigation should be dealt with as a single entity. Such an approach was not necessarily in accordance with the best interests both of coastal States and of international maritime navigation. While the rules governing passage of ships through territorial waters as well as through international straits might well be in need of clarification and modernization, that could best be accomplished by treating the two sets of rules separately.

The present situation with regard to the question of navigation through international straits was that in narrow fairways, which both geographically and juridically were international straits, there had never existed a right of passage

(Mr. Schmidt, Denmark)

comparable to the freedom of navigation existing on the high seas. The "new" straits which might result from a general recognition of a 12-mile territorial limit should, on account of their breadth, generally present less reason for conflict between the coastal States and ships in passage than had obtained in the case of the old narrow straits, where the interest of the coastal State in exercising control over the straits was greater. One possible solution to the problem might be to have separate rules governing passage through narrow international straits and through the new wider straits. Another approach would be to create a separate régime for each particular strait. In his delegation's view, the appropriate forum for considering proposals for such rules was the Inter-Governmental Maritime Consultative Organization.

As far as specific rules for "new" straits were concerned, his delegation agreed with the sponsors of the draft articles that in formulating such rules due account should be taken of recent developments in science and technology, that the interests both of coastal States and of international navigation should be ensured and that the new rules should contribute to the security of coastal States and to the safety of international navigation.

The balancing of the interests of coastal States with those of international navigation had, in the draft articles, resulted in rules which were unduly prejudicial to international navigation. To cite one example, according to draft article 10 a ship might be required to leave a strait if it did not comply with any of the provisions concerning regulation of passage mentioned in articles 6 to 9. In practice, that would mean that the right of passage might be denied if a ship merely failed to comply with a minor formal rule. Such a restrictive application of the concept of innocent passage had thus far never occurred in practice, even in the existing narrow straits used for international navigation. In his delegation's view, it was not clear that the interests of the coastal State required such a rule.

It could not be denied that there were certain new risks and hazards for coastal States, and in particular straits States, for which adequate provision must be made. It should, however, be possible to accomplish that without severely interfering with traffic through international straits.

Mr. Ghelev (Bulgaria) took the Chair.

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Mr. TUNCEL (Turkey), introducing his delegation's draft article (A/AC.138/SC.II/L.22), said that it was intended to assist in the delimitation of the territorial sea, the continental shelf and the economic zone between States whose coasts were opposite or adjacent to each other. The provisions of article 12 of the Convention on the Territorial Sea and the Contiguous Zone and article 6 of the Convention on the Continental Shelf needed supplementing by a formula to provide a régime for the economic zone, and neither the Kenyan proposal nor the Declaration of Santo Domingo had been sufficiently specific in that respect. With regard to the rule of negotiation and agreement which was contained in both Conventions, the draft article was merely designed to clarify that concept. As for the special circumstances referred to in paragraph 3, although his delegation had been criticized for classifying islands under that heading, in so doing it had not introduced any new concept but had employed the argument used in the commentary of the International Law Commission on article 72 of its draft articles, which had resulted in article 6 of the Convention on the Continental Shelf.

Mr. MALIK (Union of Soviet Socialist Republics) said that the Chinese representative's attack on the Soviet Union was a slanderous distortion of the truth and that such attacks were becoming repetitive. Moreover, the Chinese representative had singled out the Soviet Union from among the many countries that engaged in fishing on the high seas and had said nothing about the others. The terms "plunder" and "piracy" which he had used had no place in the policy of the Soviet Union, which co-operated with all other countries on a basis of equality. What the Chinese representative described as "plundering" was, in fact, a giving of technical assistance. As to the claim that the Soviet Union imposed its will on others, that was ridiculous. Although the Soviet Union had defended the 12-mile limit, China had accepted that limit of its own free will and therefore could not claim that anything had been imposed on it.

China had admitted that at the twenty-seventh session of the General Assembly it had voted against the Soviet-sponsored draft resolution concerning the non-use of force in international relations and permanent prohibition of the use of nuclear weapons, which had been adopted by a majority of 73 votes in favour (General Assembly resolution 2936 (XXVII)). Voting with China against that

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(Mr. Malik, USSR)

resolution had been racist South Africa and colonialist Portugal. In view of the position that his country had taken on that important question, the Chinese representative's claim that China opposed aggression would deceive no one. Moreover, in claiming that the resolution had been a Soviet hoax, the Chinese representative was insulting the 72 other Member States which had voted in favour of it.

The attempts to discredit the peaceful policies of the Soviet Union, the first socialist State, would not bring glory to the authors of such attacks. Moreover, monotonous slandering of the Soviet Union would not help to solve any international problem, and those who resorted to such manoeuvres would merely appear ridiculous in the eyes of others, as indeed had happened both in the Sub-Committee and at the recent Security Council meeting in Panama. The Soviet delegation had already refuted previous Chinese attacks in its statement of 2 April, and out of respect for the Sub-Committee it would not deign to continue that bilateral confrontation. Such polemics would only delay consideration of the important international problems facing the Sub-Committee and were not in the interest of the world community; consequently, his delegation would leave the slanderers to continue their attacks, while it concentrated on the Committee's more serious work.

Mr. Tuncel (Turkey) resumed the Chair.

Mr. WARIOBA (United Republic of Tanzania), commenting on the replies given to his questions by the United Kingdom representative on 3 April, said that unlike the United Kingdom representative, he interpreted the relevant rule of the Convention revising the International Regulations for Preventing Collisions at Sea to mean that traffic separation schemes should apply to ships and not to States. Naturally, ships should be required to follow such schemes on the high seas, but no rules of IMCO could be imposed upon a State within its territorial waters unless that State had first accepted them.

With regard to the United Kingdom representative's statement that, if territorial air space was extended to straits used for international shipping as a consequence of an agreed extension of the territorial sea, then the Conference should alleviate the restrictive consequences of its own act for aircraft

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(Mr. Warioba, Tanzania)

just as it was proposed that it should do for shipping, his delegation was not at all sure that there was any need to preserve the right of free transit. In any case, so far only the interests of navigation had been taken into account. He wished to know how the political integrity of a State could be guaranteed if the right to free transit were agreed upon.

Mr. FAYACHE (Tunisia), commenting on the points raised by the representative of Greece at the preceding meeting, said that his statement of 2 April had been made in connexion with item 19 of the list of subjects and issues - islands - and not on the question of the territorial sea. Moreover, except when quoting the definition of the territorial sea given in the Geneva Convention of 1958, he had not mentioned that term at all but instead had used the phrase "maritime space". It had not been his intention, as the representative of Greece claimed, to deprive islands of their territorial sea, although O'Connell did state, in his work entitled International Law, that it had not always been assumed that all islands, whether inhabited or not, should have a territorial sea and that efforts had in fact been made to classify islands according to the appreciability of their surface, their visibility and their economic potential.

As a large majority of Member States contested the provisions of the Geneva Conventions, there was no point in citing those Conventions or the preparatory work for the 1958 Conference or earlier conferences. Secondly, since the purpose of the forthcoming Conference on the Law of the Sea was not to produce an exact replica of the Geneva Conventions of 1958 - for, had those Conventions been entirely satisfactory, there would be no need for another conference - his delegation had suggested that the forthcoming Conference should pay particular attention to the problem of islands. There was no reason why a tiny deserted island should be given the same advantages as a large and populated island. That seemed a very logical proposition, and his delegation was astonished at the opposition put up by the representative of Greece. With regard to the statement that the criteria of population, surface area and geographic location were extrajuridical, he pointed out that laws could not be made in a vacuum and that historical, geographical, economic and social considerations must always be taken into account. Moreover,

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(Mr. Fayache, Tunisia)

the purpose of the Committee was to improve international law and to update it in accordance with the new circumstances. Finally, he pointed out that a number of delegations had agreed with his own that the existing law of the sea was very vague and incomplete as far as the provisions relating to islands were concerned.

COMPLETION OF THE SUB-COMMITTEE'S WORK

The CHAIRMAN said that the Sub-Committee had completed its work at the current session.

The meeting rose at 6.45 p.m.

UNITED NATIONS

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ENGLISH

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 FORTY-EIGHTH TO SIXTY-SECOND MEETINGS

Held at Headquarters, New York,
from 6 March to 5 April 1973

CORRIGENDUM

The present corrigendum to the record of the 59th meeting is issued at the request of the Italian delegation.

Page 156

Lines 19 and 20 should read

> Bearing in mind the concept of the common heritage of mankind, his delegation was prepared to consider proposals regarding a limit of 100 miles from the baselines for the jurisdiction on the sea-bed and the sub-soil thereof.
