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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

PROVISIONAL SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING*

held at the Palais des Nations, Geneva,
on Thursday, 19 July 1973, at 3.35 p.m.

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

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CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE FORTY-FIFTH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (A/AC.138/SC.II/L.21-41) (continued)

Mr. JAGOTA (India) introduced the proposal entitled "Draft Articles on Fisheries" (A/AC.138/SC.II/L.38 and Corr.1), which was sponsored jointly by his delegation and those of Canada, Kenya, Madagascar, Senegal and Sri Lanka. As had been explained at previous sessions of the Sub-Committee, his delegation took the view that a proper balance should be established between the interests of the developing countries in fishery resources and the need to establish a fair and effective legal order as a whole.

India had a coastline over 4,000 miles long and a million fishermen traditionally fished in inshore waters from small boats. They caught over a million tons of fish a year, but India's annual per capita supply of fish was barely 2.8 kilograms, which was one of the lowest in the world. There was, however, a great abundance and variety of fish breeding and feeding near the Indian coast, so that fish was an important part of the nation's resources. With some assistance from friendly nations and international organizations, India was now developing its fishery resources and increasing the catch by introducing larger and better-equipped boats capable of fishing in deeper waters. Harbour and shore facilities were also being developed. Fish was thus increasingly a source of animal protein to the Indian people as a whole, and at the same time it was improving the economic prospects of the fishermen, providing employment and generating a new source of foreign exchange earnings. Accordingly greater emphasis would be laid on the development of fishing activities in India's forthcoming Fifth Five-Year Plan.

It was estimated that the present annual catch of fish from the Indian Ocean, of some 2.5 million tons, could be increased to at least 10 million tons. The countries bordering the Indian Ocean were, therefore, naturally very interested in exploring and managing its fishery resources and justifiably anxious lest they be taken away by other fishing nations under cover of the principle of freedom of fishing. What was more, even highly migratory species were now being over-fished and might become depleted, giving rise to new problems, unless global regulations were made and an adequate regulatory body empowered to enforce them.

The developing countries therefore had a special interest in establishing a fair international legal order for the proper distribution and utilization of fishery resources. For the same reasons they believed that the concept of the exclusive fishery zone should be separated from the concept of the territorial sea, and that all fishing activities should be regulated, by the coastal State within the exclusive fishery zone and by regional and global regulations in other areas and with regard to particular species.

As could be seen from the introductory Note to document A/AC.138/SC.II/L.38, first, the proposal elaborated an important element of the concept of the exclusive economic zone, and secondly, it was presented to promote discussion and did not reflect the final views of the sponsoring delegations.

The proposal contained 14 articles: article 11, on anadromous species, had yet to be elaborated, and article 14 would contain the final clauses. He summarized the main features of the remaining twelve articles.

Mr. RAJAPAKSE (Sri Lanka) stressed that the proposal contained in document A/AC.138/SC.II/L.38 dealt with one particular aspect of the exclusive economic zone, namely the conservation, management and exploitation of its living resources, a subject to which his Government attached the highest importance. From time immemorial large sections of Sri Lanka's population had depended for their livelihood on the sea, and the Government was making increasingly substantial investments in the development of the fishing industry.

He wished to comment on only a few specific points of the proposal, beginning with the nature of the coastal State's rights in the zone. Article 1 was similar to article 2, paragraph 1 of the Convention on the Continental Shelf, but gave the coastal State a more complex role in relation to the living resources of the zone than it had under the Convention.

It was anticipated that the actual extent of the exclusive fishery zone would be a matter for negotiation within the maximum limit to which the draft referred. Some States would be prevented by their geographical location, for example, from extending their exclusive fishery zone to the full extent permitted by the articles. As all States should be informed of the limits of any coastal State's exclusive fishery zone, article 3 of the draft called for notification of those limits to a permanent body with international public functions.

Articles 4 and 13 emphasized the difference between the concept of the exclusive fishery zone and all proposals, however liberal, for giving preferential fishing rights to developing coastal States. The non-exhaustive list (in article 4) of terms and conditions under which a State might permit another State's nationals to fish in its exclusive fishery zone underlined not only the exclusive nature of the zone but also the proprietary nature of the coastal State's rights to its living resources.

The exclusiveness of the fishery zone was not incompatible with the idea that a coastal State might allow foreign nationals to exploit the zone in order to ensure optimum utilization of its resources. On the contrary, once their sovereign rights over the fishery zone were recognized, most coastal States of limited fishing capacity might be expected to pursue liberal policies in that regard. Such policies would be dictated essentially by two factors, namely conservation criteria and the competitive nature of the offer made by the foreign national seeking to exploit the zone. That offer might include not only the payment of fees but also the training of coastal State personnel, grants of equipment and other opportunities for the rapid transfer of marine science and technology.

Article 5 was designed to preserve the historic rights enjoyed by nationals of one State in the exclusive zone of another State, provided that the former State was a developing country and in geographical proximity to the latter. The rights must also be founded on long usage and economic dependence, which must be understood to mean usage over past centuries, not merely in a recent era of technological progress, and dependence for the very livelihood of a substantial part of the population, not merely for the maintenance of a high standard of living.

Article 6 concerned the granting of fishing rights to land-locked States. There, as in article 5, the facilities offered were restricted to nationals of the State concerned, which was a logical consequence of conferring such facilities upon developing States only. It would defeat the purposes of the articles to allow those enjoying the facilities in question to introduce their technologically advanced partners into the economic zone of another State on the grounds of collaboration in a joint venture.

Articles 8, 9 and 10 emphasized the need for systematic management of the living resources outside the exclusive fishery zone. Coastal States, regional arrangements and international organizations all had a part to play. Article 8 gave the coastal State preferential rights in an area of unspecified size adjoining its exclusive fishery zone. The extent of that area would have to be determined taking into account the extent of the exclusive fishery zone.

Article 9 gave expression to a concept which his delegation had been consistently advocating for years, namely the regulation of fisheries on a broad regional basis. The provisions of the draft relating to national and regional management rights and responsibilities did not preclude the possibility of joint efforts by the developing countries to co-ordinate their respective management systems. There could also be co-operation between States and international organizations in the management of certain highly migratory species. Within the limits set by the concept of the exclusive fishery zone, the coastal States and organizations such as FAO would be expected to co-operate as closely as possible in the adoption and application of international regulatory norms relating to the management and conservation of such species.

There were several references in the text to "the authority designated for the purpose by the Conference on the Law of the Sea". That neutral phrase had been used in order to allow for the possible emergence of new institutions, but it should be borne in mind that existing institutions such as FAO, with its regional fishery commissions, might well be called upon to undertake the responsibilities in question.

Mr. NEEDLER (Canada) said that since the draft articles co-sponsored by his delegation (A/AC.138/SC.II/L.38) did not reflect the final views of the sponsoring delegations, it seemed appropriate to describe his country's position with regard to fisheries, especially in so far as those articles were concerned.

He wished to point out first of all that Canada, though rightly considered to be in some respects a developed country, did have communities highly dependent on fisheries. On the Atlantic coast especially there were many long-established communities in which fishing or fish processing were the only means of earning a livelihood, and a meagre livelihood at that. The establishment of a regime which would be as effective as possible in maintaining the yield of the fisheries at a high level was therefore no less important to Canada than to the many other nations which fished off the Canadian coasts. In his delegation's view the coastal States,

Article 9 drew attention to the importance of the regional approach to the solution of fishery development and management problems. Although it referred only to activities outside the limits of the exclusive fishery zone, neither fish nor fishery problems respected such boundaries, as he had just demonstrated. Canada had benefited from the activities of more than one regional fishery body. It appreciated, for example, the progress made by the International Commission for the Northwest Atlantic Fisheries (ICNAF) in the regulation of fishing. A general Convention on the Law of the Sea would not of itself establish the exclusive fishery zones of the coastal States, the modalities of which would be decided by the coastal States themselves, nor would it of itself put an end to bodies such as ICNAF, for the future of the conventions on which regional bodies were based rested with the member States. His delegation envisaged a serious attempt to retain the best elements of existing arrangements through consultation among the States concerned.

Article 13 dealt with the settlement of disputes, which was a sensitive area deserving the close attention of all delegations. The sponsors of the draft would welcome comments as to how far they should go towards laying down compulsory dispute-settlement procedures. His delegation would be prepared to go further than the present article required. Some delegations, however, could accept the basic proposals reflected in the draft articles only on condition that effective compulsory third-party dispute-settlement procedures were established, while others would have difficulty in accepting any compulsory dispute-settlement procedures. The issue might, he thought, prove central to the resolution of the many new problems to which new concepts were being applied. Canada for its part could not agree to litigation over the validity of the basic rights which were being proposed for the coastal States, but would readily agree to litigation concerning the exercise of those rights.

Mr. ZOTIADES (Greece), introducing the draft article on the régime of islands proposed by his delegation in document A/AC.138/SC.II/L.29, said it was based on existing international law and embodied the principle that an island, whatever its size, population or location, was an integral part of the territory of the State, irrespective of whether the State consisted solely of islands or of both continental and insular territory.

Paragraph 1 repeated verbatim the definition of an island in article 10 of the Geneva Convention on the Territorial Sea and the Contiguous Zone. That definition, which excluded man-made islands and structures, had been accepted by the International Law Commission and several other international legal bodies. Paragraph 2 embodied the rule of international law on the integrity and indivisibility of a State's sovereignty over its entire territory, and was based on the wording used in articles 1 and 2 of the Convention on the Territorial Sea and the Contiguous Zone, and article 2, paragraph 1, of the Convention on the Continental Shelf.

Paragraph 3 embodied the principle of the equality of territorial sovereignty over territorial waters, reaffirming the existing fundamental rule of law and of international practice that an island was entitled to have its own territorial waters. That principle was also embodied in article 10, paragraph 2, of the Convention on the Territorial Sea and the Contiguous Zone, under which the same legal provisions applied to the measurement of the territorial sea of an island as to the measurement of the territory of the State as a whole. Every island outside continental territorial waters, whether it was a State by itself or part of a State, possessed its own territorial waters. The provision in paragraph 3 of the Greek proposal was designed to ensure equality of treatment for islands, notwithstanding the fact that their geographical relationship to other islands and to adjacent or opposite States might affect the breadth of the territorial sea. Islands did not constitute an exception to the rule of territorial integrity. In international practice and international customary and conventional law, delimitation between opposite and adjacent States was based on the median line, every point on which was equidistant from the nearest point on the baselines from which the breadth of the territorial sea of each of the two States was measured. The principle of equidistance was generally accepted. The draft articles proposed in documents A/AC.138/L.16 and L.19 were relevant to that question.

Paragraph 4 of the Greek draft was based on article 1 (b) of the Convention on the Continental Shelf, which applied the same definition of the continental shelf to islands as to other parts of a State's territory. That was in harmony with customary international law, under which the delimitation of the continental shelf generally followed the same principles, irrespective of the continental or insular character of the territory. Under international law, as established by international

practice and agreements on the delimitation of the continental shelf, islands, like any other part of the coast, were entitled to a full sea-bed area. In the case of islands close to another State, delimitation of the continental shelf was based on the principle of equidistance, as provided for in article 6, paragraph 1, of the Geneva Convention on the Continental Shelf.

However, that article provided for the consideration of special circumstances in the case of continental shelf delimitation, which did not follow the same strict principles as delimitation of territorial waters. Under international law, the notion of special circumstances could not generally be applied to islands. Acceptance of the rule that only some small islets or rocks were covered by that vague notion was implicit in the decision of the International Court of Justice in continental shelf cases. It had stated that, for purposes of continental-shelf delimitation, the presence of islets, rocks and minor coastal projections, whose disproportionally distorting effect could be eliminated by other means, "could be ignored". However, in international practice, as borne out by agreements on delimitation of maritime space, contiguous zones and fishing zones, even small islands or minor coastal projections were taken into account in the determination of the median line between States whose coasts were adjacent or opposite each other.

Whereas in the case of the territorial sea provision was made for equal treatment of all coasts whether continental or insular, a different régime might prove necessary for other zones of national jurisdiction, since jurisdiction in them would not be legally equated with sovereignty. The term "zones of national jurisdiction" in paragraph 4 of the Greek draft covered the new concept of an economic zone. The paragraph laid down a general rule, but permitted exceptions, leaving open the possibility of negotiated solutions in individual cases. However, bilateral agreement could not be concluded in a legal vacuum but should be in harmony with internationally accepted principles.

The last paragraph in the draft recognized the special character of the determination of the baselines of archipelagic islands in stating that the provisions of the article did not prejudice the régime of such islands.

The régime of islands could not be legally based on criteria of size, population, geographical location or geological configuration without jeopardizing the principles of sovereign equality and the integrity of territorial sovereignty. The differentiation of islands according to their international status would also violate the principle of the indivisibility of territorial sovereignty. The fact that an island had acceded to independence and statehood should not lead to discrimination against islands which were an integral part of the territory of a State with continental territory as well. As the representative of Denmark had rightly pointed out, the economic disadvantages imposed on some islands by their geographical location justified the granting of at least the same shelf rights to such islands as to continental territory. The Greek proposal applied, of course, only to islands which were an integral part of the national territory of a State.

Mr. M'BAYA (Cameroon), introducing the draft articles on the exclusive economic zone proposed by African States in document A/AC.138/SC.II/L.40, said that article I proclaimed the principle of the coastal State's right to establish an exclusive economic zone beyond its territorial sea. The breadth of the territorial sea was not specified, as the question was still being studied in OAU. Article II defined the basis of that right and the extent and nature of the coastal State's jurisdiction in the zone. Those provisions were complemented by others in article VII. The provision proclaiming the exclusive character of the coastal State's rights in the zone was based on the 1958 Geneva Convention. The third paragraph of article II would constitute a separate article.

After reviewing the provisions of articles III to VII, he pointed out that article VIII defined the rights and privileges to be enjoyed in the zone by countries in a geographically disadvantageous position. Such rights and privileges would not apply to mineral resources. That was in accordance with international law, since the proposed exclusive economic zone would include the continental shelf, over which the coastal State had exclusive sovereign rights under the Geneva Convention. Those exclusive rights did not apply, however, to living resources in the continental shelf area. The words "and the area to which they relate" might lead to confusion and should be deleted. Article IX dealt with the delineation of the economic zone between adjacent and opposite States; it seemed to be generally accepted that, in the absence of agreement between the States concerned, the principle of equidistance should apply. Article X provided for co-operation between developing countries in the exploitation of the living resources of their respective economic zones. Article XI would ensure that only States with legally-constituted régimes based on democratic principles would enjoy the rights conferred by those articles. Article XII dealt with the régime of islands. The title of that article had been inserted inadvertently and should be deleted.

The concept of an exclusive economic zone had been criticized by the representative of Uruguay, although he himself had made a distinction between a relatively narrow territorial sea and a broader zone beyond, in which the proposed régime seemed to correspond closely to what was envisaged by others for an economic zone or patrimonial sea. The concept of an exclusive economic zone seemed simpler, but the two different legal approaches would lead to almost identical results. Consultations between the two groups of delegations concerned could perhaps close the gap between the two positions. The draft articles proposed by the African countries could still be improved in form and substance. There were some omissions, for example provision for countries with a continental shelf wider than 200 nautical miles, which would be remedied later.

Mr. WARIOBA (United Republic of Tanzania) endorsed the Cameroonian representative's introductory comments on the African countries' proposal and its possible improvement. The second paragraph of article VIII would also have to be reworded; the exact text would be submitted to the Secretariat. Replying to points raised by the United States representative on the previous day, he expressed surprise at the latter's apprehensions concerning the coastal State's efforts to protect the interests of the international community in its exclusive economic zone. He failed to see why it was considered so important to ensure the application of international standards in that zone instead of relying on the coastal State to take appropriate action to prevent pollution, conserve living resources, etc. Such measures would be a primary concern of the coastal State, since they would be in its own interests, which surely coincided with those of the international community. There was no reason why it should disregard those interests, or fail to co-operate fully with the international and regional organizations concerned, or with the international community as a whole. If the coastal State was not to be allowed to formulate and apply regulations for the protection of its own interests in its own economic zone, but was to be subject to imposed international standards, the concept of an exclusive economic zone would be meaningless.

Insistence on provision for the compulsory settlement of disputes as a condition of agreement on a convention along the lines envisaged was inappropriate and would jeopardize any further progress. In practice, compulsory settlement provisions had

proved ineffective. The findings of dispute settlement institutions such as the International Court of Justice were generally hedged with reservations and often disregarded by the States concerned.

The integrity of investment was an extraneous element from the point of view of drafting general international legislation. It was an issue which arose, not between States, but between a State and other entities, and its introduction into the present discussion could only lead to serious disagreement. States had an interest in encouraging foreign investment and adopted suitable legislation. It would be inappropriate for the Committee to try to lay down rules for the internal legislation of States. Moreover, the question of the integrity of investment did not apply specifically to the law of the sea.

Like the representative of Malta, he found the present trend of the debate disappointing. Speakers were stoutly defending existing international law and existing conventions on the law of the sea. The USSR, for example, had defended the Convention on the Continental Shelf and had submitted a proposal based on it. The fact that only 41 States were parties to that Convention, out of a total of over 130, suggested that it was not entirely satisfactory. The Committee had been established in 1967 precisely because the existing law was inadequate. The time had come to revise it, retaining what was good but trying to strike a balance between the various interests involved: those of the coastal States, the international community and the land-locked countries. The matter was essentially a political one and had been approached from political positions. It was now time to reach agreement on principles and draft a more appropriate law. Much had been said about scientific facts and criteria, but the discussion had shown that so-called scientific facts could be adduced to support widely different positions and were of little use where the interests of States were concerned. Experience had shown that it was impractical to base international laws on the existing state of scientific knowledge since they could be invalidated by scientific or technological progress.

Mr. CHAO-HICK TIN (Singapore), speaking on behalf of his own delegation and those of Afghanistan, Austria, Belgium, Bolivia and Nepal, introduced the draft articles contained in document A/AC.138/SC.II/L.39, which were an attempt to reconcile and accommodate the vital needs and major interests of all States, coastal, land-locked, disadvantaged coastal and distant-water fishing States. The sponsors had taken into consideration existing international law, including the four Geneva Conventions of 1958, the fact that the principle of the common heritage of mankind had emerged as a fundamental norm in the law of the sea, and the need to ensure that the major interests of all States should be recognized and accommodated in the new law of the sea, bearing in mind the principle of equitable sharing. The sponsors did not believe, however, that the 1958 Conventions should be regarded as sacrosanct and felt that there was wide-spread dissatisfaction with a number of their provisions. Of course, all States had their own particular views as to which aspects of the Conventions were satisfactory or unsatisfactory, and the task before the Committee and the Conference was to attempt to introduce such modifications and adjustments as would be generally considered just.

In the light of the new principle of equitable sharing of the resources of the sea, for instance, the existing principle of freedom of fishing would require amendment. Account had to be taken of the interests of coastal States in securing a fair share of the living resources off their coasts, which might be seriously depleted by the activities of distant-water fishing States. Generally, account had to be taken of the interests and needs of land-locked and other disadvantaged States. Land-locked States did not ask for special, preferential treatment, but they did want equal treatment with coastal States with regard to living resources. The draft articles aimed at achieving an equilibrium in the exploitation of the living resources of the sea, depriving no State of the right to fish and feed its people with much needed protein, while disallowing over-fishing by some States at the expense of others.

It was also obvious that changes would have to be made in the 1958 Convention on the Continental Shelf, which discriminated in favour of developed countries generally and countries with broad continental shelves in particular.

The draft articles recognized in principle the right of coastal States to establish a resource-zone beyond the territorial sea, but its title, being unimportant, and its breadth, which was subject to negotiation, had been left open. While his own delegation was flexible on the breadth of such a zone, it felt that the concept of the common heritage of mankind and the need to create effective and viable international machinery should be constantly borne in mind. Although the coastal State concerned should have jurisdiction over the zone, neighbouring land-locked and disadvantaged States should have the right to fish on an equal basis in the zone. Such groups of States should agree on what arrangements should govern the exploitation of the living resources of the zone. It was important to ensure that the right thus accorded to land-locked and disadvantaged States should not be transferred or assigned to third parties, but at the same time no provision should be allowed to stifle the development of a viable fishing industry for such States, which might need technical and financial assistance.

With regard to bilateral and regional co-operation, which was encouraged by article II (1) of the proposal he stressed that such arrangements, if they were to be effective, would have to be worked out within the framework of general laws laying down the rights and duties of States. In that connexion, he agreed with the Greek delegation's statement that bilateral relations could not be worked out in a vacuum. If bilateral or regional arrangements were to be the only way in which land-locked and disadvantaged States could benefit from the living resources of the sea, it would put the coastal States in a position of dispensing grace and favour and the land-locked States in a very weak negotiating position. Another drawback was that domestic political squabbles within a coastal State might make it much more difficult to make equitable arrangements for neighbouring land-locked and disadvantaged States. He suggested that article II provided an equitable balance on that point.

The draft articles also sought to accommodate the interests of distant-water fishing States, which should be allowed to exploit that part of the maximum allowable yield of the living resources of the zone that the States primarily interested therein could not harvest. They would observe the regulations laid down by the coastal State concerned and make an appropriate payment for the right to fish.

Since the sponsors believe that the new law of the sea should be development-oriented and aimed at improving the economies of the developing countries, the draft articles provided that a developed coastal State which established a zone should contribute a percentage of the revenues derived from the exploitation of the living resources of that zone to the international authority.

The draft articles also provided that coastal States should make a contribution to the international authority in respect of revenue derived from the exploitation of the non-living resources of the zone. Differential rates of contribution were recommended, based on the 200 metre isobath or 40 nautical mile criteria and according to whether the coastal State concerned was a developed or a developing country.

The draft articles did away with the concept of the continental shelf, since that appeared to be the main trend of opinion in the Sub-Committee. In that connexion, he mentioned that the Judgments in the North Sea Continental Shelf cases did not support the argument that the continental shelf also covered the continental slope and rise.

The sponsors of the draft articles felt that there should be an impartial settlement procedure embodied in the new law of the sea to cope with possible disputes that could not be settled by negotiation, consultation and conciliation.

In conclusion, he informed the Sub-Committee that the sponsors were open-minded on their draft articles and were ready to make amendments thereto, provided that account was taken of the need to give meaning to the fundamental norm of the common heritage of mankind, of the principle of equitable sharing and of the interests and needs of the developing countries.

Mr. SHAH (Nepal), speaking as a co-sponsor of the draft articles contained in document A/AC.138/SC.II/L.39, endorsed what had been said by the representative of Singapore and explained why his delegation had wished to sponsor the draft articles, which while not necessarily reflecting the final position of his Government, would, he hoped, represent a useful contribution to the work of the Sub-Committee on the question of the limits of national jurisdiction.

He expressed satisfaction with the fact that the Sub-Committee had now begun to discuss the precise limits of the so-called exclusive economic zone and that coastal States had at last recognized that the question of limits was a central issue. Moreover, some of them had now stated their views on the question of precise limits. Apart from that, his delegation saw little ground for satisfaction, and felt that coastal States had not only staked excessive claims for ocean space, but had also unreasonably asked for compensation for the alleged loss of national assets as a consequence of the establishment of the international sea-bed régime. Those claims had no basis in existing international law but rested on individual State practice and the so-called acquired rights under the 1958 Convention on the Continental Shelf. Yet, it was generally agreed that that Convention was inequitable, and the Committee was now endeavouring to replace it with one that would be fairer and would recognize the concept of the common heritage of mankind. Furthermore, it was illogical to seek compensation on the basis of acquired rights under a particular convention, while at the same time seeking to replace that convention by a new one. In that connexion, it should be borne in mind that the Conference on the Law of the Sea had as its object the creation of a new international order, which might affect interests of many other countries.

His delegation's concern about the doctrine of acquired rights, which throughout the course of history had been used as an instrument for the encroachment by some nations upon the legitimate, undeniable and alienable rights of others, lay in the fact that it diminished the concept of the common heritage of mankind. If any particular group of States did deserve compensation, it was the land-locked countries, which were destined by geography to be in a disadvantageous position in respect of their economic development and the promotion of international trade. In his view, the main purpose of the Committee's work was to ensure that the interests of the land-locked countries would be protected and promoted, and it was futile for the Sea-bed Declaration to designate the international area and its resources as the common heritage of mankind if it were not meant for the primary benefit of the disadvantaged States. It was a fundamental assumption of the Declaration that there was a limit to national jurisdiction, and that was not compatible with any right of coastal States under existing international law to extend their jurisdiction over unlimited areas of ocean space.

Although no delegation had disavowed the concept of the common heritage, the trend of discussions generally had given great cause for concern, because if all the excessive claims that had been made were recognized, there would be no profitable area left for the international régime to explore and exploit. Consequently, the gap between the advantaged and disadvantaged States would widen. Moreover, the international sea-bed authority, for which plans were being made in Sub-Committee I, would find itself completely stymied. While recognizing that the claims of developing coastal States were being made on the basis of the present and future requirements of their own peoples, his delegation sincerely hoped that they would be reasonable and compatible with the concept of the common heritage. The relatively lower economic development of Nepal and other land-locked countries was directly attributable to its distance from the sea, and their position was much worse than their developing coastal neighbours. Their need for the resources of the sea was no less urgent or basic than those of the peoples of the coastal countries. It was with those facts in mind and in an endeavour to reconcile the vital needs and interests of all countries, whether advantaged or disadvantaged, that the six sponsors had submitted the draft articles contained in document A/AC.138/SCII/L.39.

Mr. DJALAL (Indonesia) said that the delegations that had submitted draft articles and proposals had done much to help the Sub-Committee achieve its objectives. In particular, the OAU Declaration had been particularly valuable, and he wished to express his delegation's appreciation to its members for their recognition of the position of the archipelagic States and for their endorsement of the principle of archipelago, specifically relating to the principle of straight baselines from the outermost parts of the outermost islands in measuring the territorial sea. His delegation was also grateful to the delegations that had submitted draft articles on the Continental Shelf, on its various aspects such as delimitation, fisheries, the problems of passage, etc. He also wished to thank those delegations that had endorsed the principle of innocent passage through territorial seas and straits used for international navigation.

His delegation was not altogether clear about the proposals on straits submitted by the representative of Italy in document A/AC.138/SC.II/L.30, which appeared to have adopted a different approach from that taken in the Eight-Power proposal contained in document A/AC.138/SC.II/L.18, of which his own delegation was a sponsor. The Indonesian view was that the régime of the territorial sea, as part of the sovereign territory of a coastal State, was indivisible and that consequently the applicable régime of passage could not be differentiated. He could not agree with the Italian proposal that the régime of innocent passage should be applicable in straits of less than 6 miles, because it regarded 12 miles rather than 3 miles as being the extent of the territorial sea, in accordance with existing customary international law. He had noted, however, that the Italian proposal did accept that the régime of innocent passage should be applied in straits which formed part of territorial seas.

With regard to paragraph (B) of the Italian proposal, he was not sure whether the intention was to take the three exceptions singly or together and he found (B) (3) incomprehensible.

The Italian draft article provided that "the freedom of transit should be so exercised as to avoid all (unnecessary) obstruction of traffic", but it did not refer to the security of coastal States, nor did it state who should determine whether obstruction existed. In the view of Indonesia, coastal States should have the authority to make such a determination.

His delegation was also unsure about paragraph (A), since Indonesia's own archipelagic waters, lying as they did between the Indian and Pacific Oceans might be considered as connecting two parts of the high seas. Such a concept was unacceptable to Indonesia, because of security considerations and the political implications for its national unity. Consequently, he would like to have the assurance of the Italian delegation that the article was not intended to cover archipelagic waters. Archipelagic States were prepared to admit the existence of the right of innocent passage through their waters but not the new concept of free transit. Lastly, he expressed the view that the Italian approach of dividing the régime of straits according to width and position and the provision that narrower straits should be governed by a different régime from wider ones ran counter to the whole concept of territorial sovereignty and unity. His delegation would study the Italian proposal most carefully.

Mr. POCH (Spain) presented his delegation's views on the Italian draft article on straits contained in document A/AC.138/SC.II/L.30.

With regard to the three criteria set out in paragraph (B) of the draft article, he expressed surprise that the Italian delegation had chosen six miles as the maximum width of the straits to be considered, because traditionally, Italy had, like Spain, supported a six-mile limit for its territorial sea. Moreover, in view of the 1956 decision of the International Law Commission, it would have been more logical for the Italian delegation to have chosen twenty-four rather than six miles for its criterion in (B)(1). The figure of six miles was arbitrary, not only in respect of Italian law but also in respect of international law and could not therefore provide a legal basis for a general régime.

The second criterion in paragraph (B) concerned straits that lay between coasts of the same State, and the Italian representative had said that that criterion referred to straits that were of predominantly national interest. In the view of the Spanish delegation, such a criterion was imprecise and juridically unsatisfactory. On the contrary the established doctrine in international law was that straits in which the freedom of transit could be exercised should be those that were used for international navigation and which connected two parts of the high seas, and he was surprised that the first criterion of that doctrine had not been included either in paragraph (A) or in paragraph (B) of the Italian draft. The reason for that was to be found in the third criterion, which was that straits should be near other routes of communication between the parts of the sea connected by the straits. That criterion was not new, since it had been submitted to the International Court of Justice by one of the parties in the Corfu Channel case. It was the old idea that some straits were of secondary importance for international navigation. His delegation could not, however, accept that view and agreed with the statement of the great British jurist, Sir Eric Beckett, that the thesis that "there are highways and highways" was unacceptable. That view was supported by the International Court's Judgment in the Corfu Channel case, part of which he read out to the Sub-Committee. In short, the third criterion in the Italian draft was juridically irrelevant, not to say contrary to international law and there was no significance in proximity to other routes of communication between the parts of the sea.

Turning to paragraph (A) of the Italian draft, he expressed the view that the Italian delegation had contradicted itself, and in support of that view quoted the statement made by the Italian representative at the 15th meeting of the Committee. The Spanish delegation considered it unnecessary to add anything to the arguments put forward on that occasion by the representative of Italy, which were juridically sound.

With regard to the first part of paragraph (B), he said that the régime of innocent passage had never been applicable to aircraft, as was made clear in one of the preparatory documents of the First United Nations Conference on the Law of the Sea (Doc.A/CONF.13/4, para.18) from which he quoted.

In conclusion, he said that the proposal (A/AC.138/SC.II/L.30) could not serve as a basis for establishing a satisfactory régime for navigation in straits, because either the régime of innocent passage through territorial seas, including straits, was not satisfactory from the point of view of the international community, in which case it should be replaced by another more appropriate régime applicable to all straits used for international navigation without exception - or, on the contrary, the régime of innocent passage was satisfactory, as could perhaps be deduced from the fact that Italy accepted it in the case of certain straits, in which case, it was only logical to apply it without exception to all straits. What could not be accepted, in any event, was an attempt to justify different régimes on the basis of artificial categories of straits.

Mr. IUPINACCI (Uruguay) said he agreed with the representative of Cameroon that there was a considerable measure of agreement between the Uruguayan proposal (A/AC.138/SC.II/L.24) and the text of which Cameroon was a sponsor (A/AC.138/SC.II/L.40). In the Uruguayan proposal and the text sponsored by Cameroon different legal techniques had been applied with similar results. He also thought that both texts had points in common with other proposals, particularly those submitted by Colombia, Mexico and Venezuela (A/AC.138/SC.II/L.21), Ecuador, Panama and Peru (A/AC.138/SC.II/L.27), Brazil (A/AC.138/SC.II/L.25), China (A/AC.138/SC.II/L.34), Australia and Norway (A/AC.138/SC.II/L.36) and Argentina (A/AC.138/SC.II/L.37).

The time had come to co-ordinate the views of the various delegations, and his delegation was ready to begin the necessary negotiations immediately. The comprehensive table currently being prepared by the Secretariat should prove most useful in that connexion. He stressed his delegation's desire to reach agreed solutions. He also shared the view of the Tanzanian representative that the Committee's task was not to defend the established order - though it had certain valid elements which should be retained - but to adapt the Law of the Sea to present-day needs. The revolution that was taking place was a peaceful one.

The meeting rose at 6.30 p.m.