UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL*/

Distr.
GENERAL

A/AC.138/SC.II/SR.68
26 July 1973

ENGLISH
Original: FRENCH

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-EIGHTH MEETING*/

held at the Palais des Nations, Geneva,
on Tuesday, 24 July 1973, at 11.10 a.m.

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

CONTENTS



N.B. Participants wishing to submit corrections to this provisional summary record are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4121, Palais des Nations, Geneva, within three working days of receiving the provisional record in their working language.

*/ This provisional summary record, together with the corrections to be issued in consolidated form after the session, will constitute the final record of the meeting.

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

The CHAIRMAN informed the Sub-Committee that the comparative table of different proposed versions of the draft articles, which had been drawn up by the secretariat, would be circulated in the afternoon. It was an excellent piece of work, with a system of cross-references which made it easy to consult. He expressed the Sub-Committee's gratitude to the secretariat, and especially to the Under-Secretary-General, Mr. Stavropoulos, and the Secretary of Sub-Committee II, Mr. Barsegov.

Mr. NANDAN (Fiji) said that in the course of the debates in the Sub-Committee concepts had become clearer and the relative importance of the particular interests involved had come to be appreciated. That phase of the work, which could be called the conceptual phase, should now end; the Sub-Committee was entering the definitive phase, which was concerned with the formulation of draft articles for the future convention on the law of the sea.

It was a difficult kind of work. He took as an example the question of innocent passage through the territorial sea: agreement had been reached at the conceptual level, but practice varied from one State to another, and there was no clear and universally-accepted definition of the term.

Agreement had likewise already been reached on a number of other concepts, but their practical application had yet to be considered. Other concepts had not been generally accepted: there again it would be helpful to envisage in advance how they might be applied in practice, for when the effects of such application had been identified the concepts themselves might perhaps be found more acceptable.

In the document entitled "Draft Articles Relating to Passage through the Territorial Sea" (A/AC.138/SC.II/L.42), Fiji considered how the concept of innocent passage was to be applied in practice. That was one of the fundamental questions upon which the success of the Santiago Conference might depend. As an archipelagic State, Fiji wanted coastal States to retain the right to regulate and control the passage of ships through their waters for the purposes of safeguarding their security, combating pollution, carrying out normal customs and sanitary controls and regulating immigration. In the 1958 Convention passage was said to be innocent so long as it was not prejudicial to the peace, good order or security of the coastal State. In order to give effect to that definition Fiji had specified, in paragraph 2

of draft article 3, ten types of activity which could be prejudicial to the peace good order or security of the coastal State. Those ten activities could not of course be considered prejudicial if they were carried out with the consent of the coastal State, or were rendered necessary by force majeure. In paragraph 4 of the same article an attempt was made to remedy another omission in the existing Convention by providing that the coastal State "should not discriminate against the ships of any particular State or against ships carrying cargoes to, from or on behalf of any particular State". Article 5 also sought to remedy a deficiency in the Convention by spelling out in detail the matters which might be the subject of regulation by the coastal State.

The Fijian text also recognized the need to make specific provision for ships having special characteristics. Three types of ships were involved: submarines; tankers and other ships carrying nuclear or other dangerous substances; and marine research and hydrographic survey ships. In the case of submarines the Fijian text was aimed at relaxing the existing rules slightly, in particular by anticipating the possible introduction of commercial submarines. The conditions governing the passage of submarines were laid down in paragraph 1, sub-paragraphs (a) and (b) of article 6: they might be required to navigate on the surface, except in cases where they had given prior notification of their passage to the coastal State and confined their passage to such sealanes as might be designated by the coastal State. Tankers and other ships carrying dangerous substances would have to meet similar conditions (paragraph 2); the aim was to confine their passage to areas in which they would present the least danger to the coastal State and in which the coastal State had means of dealing with any incident that might occur. Nuclear-powered ships were not included in that category, as the Fijian Government considered that a particular form of propulsion could not be deemed to be dangerous per se. Similar conditions were also to apply to marine research and hydrographic survey ships, in order to prevent the use of information gathered by such ships against the interests of the coastal State. In the designation of the sealanes referred to in article 6, the coastal State was to take into account the factors listed in paragraph 8 of the same article.

The draft articles were also intended to provide a more explicit definition of the innocent passage of warships. Paragraph 2 of article 12 stated that the rules contained in Section I of the draft, to which he had just referred, should also apply to warships. Additional restrictions were envisaged in paragraph 3 of the same article. Warships should not carry out any manoeuvres other than those having a direct bearing on passage, since such manoeuvres might have the effect of intimidation. Furthermore, as warships were usually equipped to carry out hydrographic surveys, it was natural that provisions comparable to those contained in paragraphs 4 and 5 of article 6 should be applied to them. Paragraph 4 of article 12 sought to give effect to an existing practice of States which was not reflected in the 1958 Convention: the coastal State might, if any warship failed to comply with its laws and regulations, suspend the right of passage of such warship and require it to leave the territorial sea by such route as might be directed by the coastal State. In the same paragraph it was also provided that the coastal State might prohibit the passage of that warship through the territorial sea for such period as might be determined by the coastal State; that provision was designed to prevent a warship from returning and resuming its activities.

Finally, article 14 introduced another modification of the existing rules by providing that the flag-State should bear the liability for damage caused to the coastal State, its environment, its installations and so forth as a result of any non-compliance by any warship or other government ship with any of the laws or regulations of the coastal State, or with any of the provisions of the proposed articles or other rules of international law.

Mr. LEIFER (Austria) said that his delegation was a co-sponsor of document A/AC.138/SC.II/L.39, on which the delegations of Singapore and Nepal had already made excellent introductory statements. He now wished to explain the motives and ideas which had led his delegation to become a co-sponsor. He also wished to emphasize the preliminary nature of the draft articles; they were open to improvement both in wording and in substance.

The views of a country such as Austria concerning the jurisdiction of coastal States over the resources lying beyond their territorial seas had been explained by his delegation in a plenary meeting of the Committee (A/AC.138/SR.52). The

Austrian delegation's position had also been summarized in document A/AC.138/55, which had come to be known as the "seven-Power draft". Subsequently, during the debate in the Working Group of the Whole of Sub-committee II, held in New York on 4 April 1973, Austria had given its views on the new concepts which had been formulated.

At the present session the Working Group of the Whole of Sub-committee II had begun its deliberations under encouraging conditions. In that connexion he paid tribute to the Tanzanian delegation for reminding members of the need to balance the interests of all groups of States in accordance with the concept of the common heritage, to the Canadian delegation for insisting on the notion of equity in regard to receipts and contributions under the régime that was to be established, and to the Indian delegation for saying that India was ready to make sacrifices in the interests of the international community. In the course of the past three weeks, however, delegations had been establishing negotiating positions rather than seeking common ground. It was for that reason that several delegations, Austria among them, had elaborated a document which ought to help the Sub-committee to find a formula accommodating, in an equitable manner, the vital needs and major interests of all members of the international community. Austria for its part had started from three premises: first, that the Sub-Committee's endeavours should contribute to the narrowing of the gap between rich and poor countries; secondly, that the principle of the common heritage of mankind should be effectively implemented so as to accommodate legitimate interests of all States; thirdly, that a system should be established capable of ensuring the rational development and maximum utilization of the resources of the oceans.

The first of those premises involved two elements: first, it must be recognized that developing coastal States must be the first beneficiaries of the resources lying in areas adjacent to their territorial waters; secondly, it must be borne in mind that geographical characteristics were arbitrary and that special treatment should therefore be granted to States which had no possibility of extending their jurisdiction (land-locked States, coastal States bordering on or situated opposite to other coastal States, States with short coastlines, or those for which an extended jurisdiction would be of no interest in terms of resources).

In connexion with the second premise, too little attention had been paid to the question of what should be comprised within the area to which the international régime would apply, and too little thought had been given to the source of financial means which would enable the machinery to perform its functions properly - especially if the Authority were to be entrusted with carrying out all exploration and exploitation activities. With regard to the claims made concerning the rights of coastal States to explore and exploit the resources in the zones adjacent to their territorial waters, the Austrian delegation wished to make two remarks.

First, as to the geographical extent of coastal States' rights, what was necessary was not so much to find a framework for an equitable distribution of resources, but rather to ensure an equitable sharing by all States in the benefits derived from those resources, as stipulated in the Declaration of Principles. The draft articles in document A/AC.138/SC.II/L.39 was based on the idea of revenue-sharing which had already been put forward by Mr. Pardo of Malta and which was reiterated in the Canadian and United States proposals concerning custodianship. That idea had found its most detailed expression in a recent number of the Ocean Development and International Law Journal, 1973.

Secondly, as to the legal character of coastal States' rights over resources, an important distinction between the notion of sovereignty and that of jurisdiction had recently been drawn in the Working Group of the Whole. The rights set forth in article 1, paragraph 2, of the draft articles in document A/AC.138/SC.II/L.39 were in line with the notion of sovereignty as defined in document A/AC.138/SC.II/L.40 submitted by 15 African States. Sovereignty thus defined must not exclude the principle of sharing to the extent necessary to harmonize the legitimate interests of all members of the international community

In connexion with the third of the Austrian premises, he said that if a country did not have the technical or financial means to develop the resources under its jurisdiction, provision should be made for enabling those resources to be exploited in such a way that all the legitimate interests of the State in question were safeguarded and that it received the principal economic benefits, while providing an incentive to those who were in a position to assist in the development of the resources.

Turning next to further articles in document A/AC.138/SC.II/L.39, he said that the document was only concerned with the question of resources and should not be taken to reflect the views of the sponsoring delegations on other questions. Moreover, the

articles were not meant to prejudge the question whether a uniform régime should apply both to the sea-bed of the zone and to its superjacent waters. Article II, concerning living resources and Article III on non-living resources were not necessarily complimentary; if a zone of coastal-State jurisdiction over living resources was established, Article III would not be applicable, and the dots before the word "zone" in Article II could be replaced by the word "fisheries". On the other hand, if the rights of coastal States over non-living resources in the area beyond their territorial waters were recognized, Article II would not apply and the dots should be replaced by a word denoting the object of such rights. Lastly, if agreement were reached on a zone where the jurisdiction of coastal States would extend to both living and non-living resources, the dots could be replaced by a term expressing such concepts as "economic zone" or "patrimonial sea".

Article II, which dealt with living resources, expressed views very similar to those set out in article 9 of the OAU Declaration (A/AC.138/89), which recognized that land-locked and other disadvantaged States were entitled to share in the exploitation of the living resources of the economic zone of a neighbouring State on an equal basis with nationals of that State. It also gave recognition to the principle laid down in article 3, section 2 of document A/AC.138/SC.II/L.34 submitted by China, and to article 82 of the draft articles submitted by the delegation of Malta in document A/AC.138/SC.II/L.28. Lastly it incorporated the principle of reciprocity expressed in Article 6 of the draft articles on fisheries submitted by six States (A/AC.138/SC.II/L.38) and in article X of the draft by 15 African States (A/AC.138/SC.II/L.40). Article II provided for the possibility of regional or sub-regional arrangements which would only be obligatory in cases where nationals of a disadvantaged State were not granted treatment equal to that of nationals of the coastal State. In that connexion he referred to the draft articles submitted by certain Latin-American countries (documents A/AC.138/SC.II/L.27, L.24 and L.37), according to which disadvantaged States were given preferential treatment only over third parties. Austria considered that all land-locked States, in whatever continent they were situated, should receive the same treatment. It was also necessary that the exercise of special rights by a disadvantaged State should not be at the discretion of the coastal State, or conditional on the political relations existing between the States concerned.

Which States were entitled to the special rights provided for in article II, paragraph 1? In his delegation's view, those provisions applied only to developing countries, although the latter were not specifically mentioned since it was highly improbable that the coastal States of continents in which developed land-locked States were situated would establish a zone in which such States would enjoy special rights. The sponsors had also wished to avoid a formulation whereby a country now qualified as "developing" would lose its special rights as it became "developed".

The authors had also rejected the theory according to which land-locked States possessing ample mineral resources should not be given preferential treatment, because the purpose was to provide for the sharing between all States of resources which had not yet been placed under the jurisdiction of a particular State, but which had been declared to be the common heritage of mankind; they were not, therefore, being taken away from any State. Moreover, mineral resources might be the most important single source of income of a land-locked State, just as fishing might be for a coastal State; why, then, should the latter's right to all the proceeds from fisheries be recognized and those of the former to the total proceeds from the resources under its jurisdiction be contested? To sum up, it was the overall level of development which would determine the extent to which a land-locked State could gain from the redistribution of revenue.

According to Article II, paragraph 2, a coastal State was free to determine each year whatever quantity and species of fish it wished to reserve for itself, having regard to the needs of disadvantaged States authorized to share in the resources of the zone. The reference to a "maximum allowable yield" reflected a concern for the maintenance of the productivity of living resources which had become scarce. The reference to "relevant international fisheries organizations" expressed a desire to regulate management, to safeguard productivity and to prevent overfishing through co-operation between neighbouring coastal States within an institutional framework. The formula used was certainly over-simplified, but the authors of the Article had not intended to take a position on the question whether fisheries should be regulated by zones or by species.

Paragraph 3 was designed to ensure the full exploitation of living resources. Other States were given the right to harvest, against payment, that part of the remaining allowable yield which the coastal State had not reserved to itself or did not exploit.

Paragraph 4 contained two principles to which Austria attached particular importance: to prevent the abuse of the special rights (cf. Article 13, paragraph 2, of document A/AC.138/SC.II/L.27, section VII of document A/AC.138/SC.II/L.24 and Article 6 of document A/AC.138/SC.II/L.38); and to avoid hampering the development of the fishing industry of a disadvantaged State through the application of the first principle.

Paragraph 5 was based on considerations of over-all equity and on the necessity to raise funds for the development of fishing industries in developing and other disadvantaged countries. Exceptions would certainly have to be made for countries where an important sector of the population, or the whole economy, depended primarily on fishing in terms of employment and national income. That aim would certainly be difficult to achieve. Nor did the sponsors wish to set a precedent for applying the principle of benefit sharing to fishing outside the zone. Lastly, the benefit-distributing agency would not necessarily be the International Authority, but might be a fisheries institution which would thus be enabled to provide developing countries with financial and technical assistance in developing their industries.

Paragraph 6 subjected States fishing in the zone to the regulations and measures pertaining to the management and conservation of living resources in that zone; it did not deal with the question of how and by whom those regulations were to be established and enforced.

Article III, which dealt with non-living resources, was much shorter than Article II. In Article II, it had been necessary to spell out the rights of different groups of States to participate directly in the exploitation of living resources beyond the territorial sea of a neighbouring State. Article III implied that the coastal State had exclusive rights for undertaking, authorizing and controlling the exploration and exploitation of minerals lying in the sea-bed within the zone. It would further be noted that there were two important omissions in Article III: one concerning the limits of the zone and the other the percentage of the income derived from exploitation which should be paid in the form of contributions.

With regard to the limits of the zone, the authors had not indicated any particular figure because, in the Declaration of Principles, the precise extent of the area subject to the "common heritage" principle had yet to be determined. In drafting those provisions, the authors had been concerned to respect the legitimate interests and rights of all States, while attempting to satisfy the four following criteria: first, the hope of reconciling interests and claims by an equitable distribution, not of resources, but of the benefits which they yielded; second, to take into account the rights acquired by States under existing, generally recognized, agreements and practices; hence, third, to establish an international area that was economically meaningful, so as to ensure that the international machinery served a genuinely useful purpose; and fourth, to share the benefits so as to bring about equity in terms of both the receipts obtained and the contributions made.

The criterion of 40 miles or 200 metres in no way prejudged the choice of the distance or depth to be used as a criterion for determining the continental shelf; the 40 miles/200 metres criterion applied exclusively to the determination of the rate of contribution and represented an approximation. In the authors' view, a coastal State possessing a shelf with rich deposits could pay a larger contribution, and the 68 per cent of the estimated ultimate hydrocarbon potential should not be totally exempt from the benefit-sharing principle.

The second omission concerned the sharing percentage; it was linked to the first, since the wider the zone was extended seawards, the more the international area was reduced and the lower the revenue potential of the international régime would be. On the contrary, the wider the economic zone of the coastal State, the greater its gains. That State's contribution to the international authority should therefore offset the loss sustained by the régime applicable to the common heritage. That was why the percentage referred to in Article III paragraph 2, was conditional upon the distance chosen by the coastal State under Article I, paragraph 1. The rate was a variable one: it would depend on the width of the zone established by the coastal State and would diminish with the depth, because off-shore exploitation costs increased with depth.

Drawing the Sub-Committee's attention to foot notes (a) and (b), he said that the rate of contribution would be linked to the national income level and to any tax exemptions granted by a country wishing to encourage investment in the exploitation of resources. Thus the rate of contribution would depend on the distance, the depth of water, the standard of living and the level of tax exemption.

Austria attached great importance to the establishment of an area that would be economically meaningful, and the various proposals submitted to the Committee concerning that zone prompted it to make the following observations and remarks. In connexion with the proposal that the limit of the economic zone should be fixed at 200 nautical miles, he pointed out that 87 per cent of total hydrocarbon resources were found within 200 miles and 68 per cent within 40 miles. If the limit were to be fixed at 200 miles, without some formula for contributions to be paid by the coastal State out of the benefits derived from the resources exploited within those limits, it would be impossible to claim that the principle of the equitable sharing of resources by all States had been respected. On the other hand, if it was decided that all exploration and exploitation activities were to be carried out by an organ of the Authority, where would the necessary funds to finance such activities come from? Austria considered that contributions should be levied out of the benefits derived from the exploitation of resources situated near the coast and on the continental shelf.

If the limit of the continental shelf was fixed at the outer edge of the continental margin, the common heritage area would include barely half of the entire sea-bed and ocean floor; that would throw doubt on the very purpose of the Committee's undertaking and jeopardize the effectiveness of the international régime. Hardly 20 States out of 140 had a continental shelf extending beyond 200 miles. His delegation, however, did not intend to put forward arguments for or against the 200-miles limit and it recognized the need to take account of acquired rights, to an extent compatible with the aims of the Committee. But the question would still remain to be satisfactorily settled, how far a given State had acquired indisputable rights over a particular zone; and it was also questionable whether the "adjacent zone" principle could be invoked beyond 100 nautical miles.

Once again, if agreement could not be reached on limits measured in terms of distance, the notion of benefit-sharing might provide a partial solution. Instead of considering the revocation of concessions already granted, why not introduce a system of contributions paid to the international community out of the revenues derived from such concessions? The Austrian delegation wished to revive an idea put forward by the United Kingdom delegation in March, namely that the sovereign rights of coastal States might to some extent be modified. Delegations which had so cogently argued for the need to modify existing international law to adapt it to the new realities would be failing in logic if they did not themselves submit to the law of evolution.

In any event, an unequivocal and practical delimitation of the continental shelf would inevitably involve the abandonment of the exploitability criterion, which was lacking in both certainty and justice since it favoured the countries rich enough to undertake the exploitation of the shelf. It should be noted that Article III of the draft in document A/AC.138/SC.II/L.39 did not imply the abandonment of the concept of the continental shelf as such, any more than it expressed a preference either for the distance or for the depth criterion.

Article IV dealt with the settlement of disputes arising from the interpretation and application of the provisions of the draft articles. It did not prejudge the question as to which organ or organs should perform that task, nor the question of their membership or competence. In settling disputes between States in a given region, the best solution would be a settlement made in accordance with regional arrangements, as envisaged, for example, in the OAU Declaration on the Law of the Sea. But provision should be made for the case in which all the procedures had been tried without success; the country which considered itself injured should then be able to have recourse to an institution having the competence to review such cases and the power to render a decision which was binding on both parties. Disadvantaged States needed the safeguard provided by such a decision, because they had no other means of ensuring that their special rights under the draft articles would be respected. To deny the principle of decisions binding on both parties might mean that many of the provisions remained a dead letter. There was no danger of States losing their sovereignty, because the question at issue was one of obtaining recognition for rights which had not yet been acknowledged and sanctioned by the international community.

Mr. TUBMAN (Liberia) said that the delimitation of marine spaces had been taken up in many declarations and draft articles; it was clear that some delegations saw it in terms of acquired rights, others in terms of the delimitation of the continental shelf and yet others in terms of the epicontinental sea. But there remained the whole problem of how to delimit that zone which, by virtue of a political decision, had been recognized as the common heritage of mankind. Some delegations considered the zone - situated beyond national jurisdiction - as an area totally alien to the purposes and interests of their countries. That was an error. The heritage of mankind belonged to all countries and all must agree to certain sacrifices if its creation were to have any point.

The doctrine of acquired rights, as certain countries currently wished to apply it, would act as a brake on any possible progress. Indeed, if States which renounced their epicontinental sea rights were to be compensated, why should not States fishing in the high seas also be compensated, on the same basis of acquired rights? His delegation thought that compensation should be paid to countries that had already made investments in the continental shelf and ran the risk of losing them upon the entry into force of the new law of the sea, but that no special compensation should be paid beyond that, since all States would have access to the common heritage.

Some delegations thought that another possible solution would be to compensate the coastal States or to establish a system that would recognize their rights in the matter of management of resources and take due account of the interests of other States by means of provisions such as the sharing of revenues. His delegation thought that the idea of revenue-sharing was even less attractive than that of compensation, since it would involve the setting up of a complex and tangled system. There would be an ill-defined zone that would be an inexhaustible source of disputes. It would then be necessary to create procedures for the compulsory settlement of disputes. Liberians did not think that the settlement of the problem of protecting foreign investments was a part of the law of the sea. It should not be forgotten that the Committee was meeting to prepare, in common agreement, a new law of the sea, not to ensure protection for foreign investments. With regard to the question of compensation, there was no rule as far as Liberia was aware that stipulated that compensation was due before or at the moment of expropriation. International practice required that the expropriation of foreign assets was compensated adequately, rapidly and effectively. The situation must be avoided in which States compelled to expropriate foreign assets could be declared to have violated the international law of the sea.

The developing countries, for their part, sought a law of the sea that would be fairer. They must not be asked to put their interests in jeopardy. They were also beginning to weary of hearing it said that, by requesting the establishment of vast zones subject to national jurisdiction, they were asking for something to which they were not entitled. Their delegations were attending the Committee as the representatives of sovereign States which had a total right to take whatever decisions

suited them, even if those decisions displeased other States. All they asked was an economic zone extending to 200 nautical miles at the most, and States that were not compelled to submit such claims did not have to do so.

He went on to trace the history of the OAU Declaration (A/AC.138/89), which had been adopted by 41 African Heads of State in June 1973. The Declaration was far-reaching in scope. In the summer of 1972, the African members of the Committee had prepared texts on the major questions before the Committee, taking account of the position of all States and all regions, so as to submit recommendations to OAU and to harmonize the views of African countries. In the following spring the African delegations had succeeded in drawing up a Declaration which had been submitted to a Conference of African Experts on the Law of the Sea. After lengthy negotiations, the experts had succeeded in completing the drafting of the Declaration, which had then been submitted to the Ministers for Foreign Affairs of OAU's member States at a meeting at Addis Ababa and subsequently adopted by the Heads of State with only one amendment, the effect of which was to leave the limit of the territorial sea unspecified. Several African Heads of State had preferred to await the acceptance by the Conference on the Law of the Sea of the new concept of the exclusive economic zone before taking a position with regard to the limit of the territorial sea, although in the opinion of several of them, a limit of 12 miles was already established in customary international law.

The Declaration was of great importance not only because it had been adopted by the Heads of State of almost one third of the States Members of the United Nations but also because the African States had succeeded in that Declaration in reconciling the most diverse interests and needs. Everyone knew that the African continent was made up of a variety of countries with very different characteristics, and the fact that it had been possible to produce such a text and to secure its acceptance by 41 States was clear evidence that the Sub-Committee was not confronted by an impossible task.

Under the system proposed in the Declaration, questions relating to the territorial sea and the exclusive economic zone were closely linked. Since about half the land-locked and disadvantaged countries in the world were in Africa, those countries considered that they should have the acknowledged right not only to access to the sea, but also to participation in the exploitation of the living resources of neighbouring economic zones under conditions of equality with the nationals of the coastal States, on the basis of African solidarity and which would be reflected in any future bilateral or regional agreements.

With regard to international navigation in straits, the Declaration approved in principle the régime of innocent passage but recognized that the régime needed clarification. Some delegations had wished it to be stated that the African States were against the notion of free transit in straits, but the final decision had been to present the position of the African States in a positive rather than a negative form. Such a position should make it possible to achieve a solution that would reconcile the need not to impede international navigation with the need to safeguard the security and interests of States adjacent to international straits.

The Declaration upheld the principle that the baselines of all archipelagic States should, for the purpose of delimiting the territorial sea of such States, be a line linking the outermost points of the archipelago. Although the principle was stated, it still had to be defined in detail. In doing so, the objective should be to strike a fair balance between the need for archipelagic States to assure their security and to protect their vital interests, and the need for the international community to ensure freedom of navigation.

With regard to the régime of islands, a highly flexible system was proposed, because it was only possible in that sphere to establish general rules that would have to be supplemented by arrangements entered into between the States concerned, taking account of particular circumstances.

The Declaration recognized that a coastal State had the right of permanent sovereignty over the living and mineral resources of the exclusive economic zone, without prejudice, however, to other legitimate users of the sea in that zone. Scientific research and marine pollution control would be subject to the jurisdiction of the coastal State. In the view of his delegation, however, that did not mean that the control exercised by the coastal State should be of an exclusive nature. In view of the interest of the international community in scientific research and marine pollution control, that jurisdiction might perhaps be exercised jointly by the coastal State and an international authority, but should in any event conform to internationally accepted rules.

The OAU declaration, provided a basis for negotiation and, because of the wide variety of interests that it reflected, the majority of the draft articles before the Sub-Committee could be considered within its framework. Consequently, there was no reason for pessimism. Lengthy negotiations would still be necessary, but the essential elements for success could already be said to be in existence.

Mr. VOHRAH (Malaysia) wished to state his delegation's position on the question of straits used for international navigation, with particular reference to the draft article on straits submitted by Italy (A/AC.138/SC.II/L.30). For Malaysia the question of navigation through straits forming part of the territorial sea of a coastal State was neither more nor less than the question of navigation through the territorial waters of that State; for in the view of the Malaysian Government, such straits formed an integral part of the territorial waters of the coastal State and were inseparable from it.

His delegation was fully conscious of the importance to the international community of international maritime communication, but it desired protection for the vital interests of States near whose shores such passage took place. In fact the interests of the international community and of the coastal State were not at odds; they could even be harmonized by virtue of the right of innocent passage, which had long been recognized as an integral part of the Law of the Sea. That right had, indeed, gradually evolved into a rule of law, and no State could deny its exercise to any member of the international community.

His delegation had been somewhat surprised to see that in the Italian draft, the principle of innocent passage was applied to transit through and flight over straits which were not more than six miles wide. Did that mean that the principle of innocent passage, which might be regarded as a form of international servitude imposed on a coastal State with respect to its territorial sea, was to be applied to the airspace of that State as well? Malaysia took the view that the breadth of the territorial sea should be fixed at twelve miles. It appeared that Italy likewise accepted that limit. His delegation was therefore tempted to believe that the provision in the Italian draft was intended to accommodate a particular situation, in which case it could not be used as a basis for an international navigation régime. His delegation therefore wished to express a reservation on the Italian draft article on straits.

At the end of the previous week several delegations had advocated free transit through and over straits. His delegation could not share such a view, for it ran counter to the principle of national sovereignty. At present coastal States were "geographically-disadvantaged states", for they were exposed to very grave risks, including that of nuclear pollution. Consequently it would not be fair to seek to impose a further form of servitude on a few States which were already disadvantaged by their geographical situation. There was no point in mentioning overflight, as that question was not within the competence of the Sub-Committee.

He drew the Sub-Committee's attention to the working paper submitted by the Chinese delegation (A/AC.138/SC.II/L.34), paragraph 7 of Part 1 of which read as follows: "A strait lying within the territorial sea, whether or not it is frequently used for international navigation, forms an inseparable part of the territorial sea of the coastal State". That provision tallied exactly with the position of his own delegation, which believed that only by starting from such a principle would it be possible to negotiate an international navigation régime.

His delegation supported the position set out in the OAU Declaration (A/AC.138/SC.II/L.36) concerning innocent passage.

Mr. HARRY (Australia) said that with the Chairman's permission he would like to summarize before the Sub-Committee the explanations he had given to the Working Group on 17 July, when he had introduced A/AC.138/SC.II/L.36.

In that document the Australian and Norwegian delegations had submitted a proposal for establishing an economic zone or patrimonial sea within which the coastal State would exercise sovereign rights over the natural resources of the zone; the zone itself, however, was not to be confused either in theory or in practice with the territorial sea. The principles underlying the proposal were very similar to those found in the proposal submitted by Colombia, Mexico and Venezuela in document A/AC.138/SC.II/L.21. Those proposals differed, however, on two points. Instead of setting up a separate régime for the continental shelf, the Australian and Norwegian proposal provided that the coastal State had the right to retain, where the natural prolongation of its land mass extended beyond the aforementioned zone, the sovereign rights with respect to that area of the sea-bed and the subsoil thereof which it had enjoyed under international law before the entry into force of the new convention. He explained that the phrase "the coastal State has the right" implied that if the State did not wish to retain its rights, it was free to establish a smaller zone or to limit its rights to that zone. In additon, the Australian and Norwegian proposal did not define the outer edge of the continental margin in relation to the continental bank and abyssal plain.

Within the economic zone ships and aircraft would enjoy the right of freedom of navigation and overflight; all States would retain certain rights connected with the high seas; and the right of the coastal States should be limited to functions relating to the protection and exploitation of the natural resources. There would also have to be provisions on the subject of fisheries. The authors of the proposal had confined themselves to setting out some basic principles on the nature and extent of the economic zone.

A novel feature of the draft was the group of principles on delimitation. The fact that the coastal State retained sovereign rights over the continental shelf and that coastal States had an economic zone 200 miles wide would create new situations entailing a need for delimitation between the coastal States concerned. One of the cardinal principles should be that adjacent or opposite States should reach agreement on the delimitation of their economic zones and corresponding sea-bed areas in accordance with equitable principles. Another principle was that no State could claim or exercise rights over the natural resources of any area of the sea-bed and the sub-soil thereof over which another State already had sovereign rights. In the absence of either a special agreement or existing rights the drawing of a boundary along a median line would certainly give rise to difficulties. The authors of the draft had attempted to state a reasonable and balanced, yet precise rule in principle D.

ORGANIZATION OF WORK (continued)

The CHAIRMAN announced that a number of speakers had asked to take the floor, either to explain their proposals or to exercise their right of reply. The Sub-Committee would not be able to meet in the afternoon, as a meeting of the Working Group had been scheduled, but he would take the necessary steps to enable the Sub-Committee to meet as early as possible in the course of the week.

Mr. KOLESNIK (Union of Soviet Socialist Republics) said that in view of the importance of the statements which had just been made, it would be preferable to continue the discussion immediately and to schedule a meeting of the Sub-Committee in the afternoon, accordingly cancelling the meeting of the Working Group.

Mr. ZULETA TORRES (Colombia), Mr. ARIAS SCHREIBER (Peru) and Mr. YANKOV (Bulgaria) supported the proposal made by the representative of the Soviet Union.

Mr. TUNCEL (Turkey) also supported that proposal and pointed out that the Working Group might perhaps be able to make use of the three afternoons in the week which were still free.

Mr. KEDADI (Tunisia), speaking as Chairman of the Working Group, pointed out that the Group had not met for four days. Moreover, the comparative table would be ready in the afternoon and several delegations had already asked to take the floor. It would also be possible, however, to adopt the Turkish representative's suggestion. It was of course up to the Sub-Committee to take a decision.

The CHAIRMAN, in response to a comment made by Mr. JEANNEL (France), said that the Secretariat would be able to circulate the English version of the comparative table on that day, while the Spanish and French versions should be available in two days' time and the Russian and Chinese versions probably a day later.

Mr. ZULETA TORRES (Colombia) pointed out that the comparative table did not indicate precisely what the positions of delegations were, and that it would be useful to hear the sponsors explain their various proposals before going on to consider the table.

Following an exchange of views, the CHAIRMAN proposed that the Sub-Committee should meet in the afternoon.

It was so decided.

The meeting rose at 1.20 p.m.