UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL */

Distr.
GENERAL

A/AC.138/SC.II/SR.69
20 July 1973

Original: ENGLISH

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-NINTH MEETING*/

held at the Palais des Nations, Geneva,
on Tuesday, 24 July 1973, at 3.40 p.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)

Mr. KOLESNIK (Union of Soviet Socialist Republics) recalled that his delegation had submitted some concrete proposals on the regime of straits at previous sessions. In July 1972 the Soviet delegation had submitted detailed draft articles on straits used for international navigation (A/AC.138/SC.II/L.7). That proposal was based on the principle of ensuring a balance between the interests of the States users of straits, which are interested in freedom of passage, and the interests of the adjacent States, and it included concrete security safeguards and provisions for compensation by the States users for any damage caused during passage or overflight.

The role played by international straits connecting two parts of the high seas, their social function, made it inevitable that the regime of those sea routes could not and should not be determined by one or two States to the detriment of others. It was common knowledge that over the centuries customary rules of international law had been established providing for freedom of passage through international straits without any discrimination as to flag. Those rules had later not only been reflected in the works of jurists and statesmen but had been incorporated in a series of international instruments. Provisions on "freedom of passage" could be found in the Treaty between Argentina and Chile of 28 July 1881; in the Copenhagen Treaty of 1857 on the exemption from Zundes duties, as well as in a number of agreements on the Strait of Gibraltar. Without wishing to dwell upon the substance of those documents, he would cite article 7 of the Franco-British Declaration of 8 April 1907, which stipulated that "passage through the Strait of Gibraltar shall be free". That provision had later been reaffirmed by the Franco-Spanish Treaty of 1912.

Although those documents were part of history, the freedom of passage through the straits fixed in them remained unimpaired. The rules on free passage through straits used for international navigation had become an inherent attribute of freedom of high seas, since it was obvious that if vessels could not freely pass from one part of the high seas to another, the very principle of the freedom of the high seas became a fiction.

He had mentioned the established rules of law relating to international straits because the Committee had before it a draft in which an attempt was made to revise those rules (A/AC.138/SC.II/L.18/Rev.1). The main shortcoming of the eight-Power proposal was that it confused the regime of territorial waters with the regime of international straits repeating mainly the provisions of the regime of territorial waters - an issue already settled in the Geneva Convention of 1958 on the Territorial Sea and Contiguous Zone. Straits used for international navigation were referred to

in the proposal incidentally, as if such straits were a mere continuation of the territorial sea and nothing else. The matter was presented in a way that assumed that no difference existed or could exist between the regime of the territorial sea and the regime of straits of the category in question.

In an attempt to justify such an over-simplified approach the sponsors of the eight-Power proposal cited the Geneva Convention of 1958 apparently without suspecting that that Convention did not assert such an approach, but on the contrary rejected it.

First of all, the Convention allowed suspension of innocent passage through the territorial sea, but it banned any suspension in the case of straits used for international navigation. Thus, the Convention made a very important distinction between the regime of the territorial sea and the regime of straits. Consequently, the two regimes could not in any case be identified, and the draft in question, which permitted such identification, was wrong in its very approach to the problem. Nor was it correct for the sponsors of the draft to assert that it followed from the Geneva Convention that only the regime of innocent passage could exist in respect of international straits.

It was clear from the Convention that it was not designed to determine the regime of straits connecting two parts of high seas and used for international navigation. That clearly emerged from the discussion of the question in the International Law Commission, which had drafted the convention. One section of the Geneva Convention concerned rules of innocent passage through territorial waters, but obviously neither the International Law Commission, nor the Geneva Convention of 1958 had intended - or could have intended - to exhaust the problem of straits by one phrase, contained in paragraph 4 of article 16. That had been impossible at the time.

As was known, the Geneva Convention referred to two categories of straits used for international navigation: (1) straits connecting two parts of the high seas; and (2) straits connecting the high seas with the territorial sea of a foreign State. Retaining that division, it could be stipulated that the regime of straits connecting the high seas with a territorial sea was determined by the rules of innocent passage, and the USSR delegation was prepared to include a provision to that effect in its draft. As to the straits connecting two parts of the high seas, the regime of free passage through them should be codified in the future international convention, taking into consideration the great importance of such straits as parts of world sea routes. At the same time, the coastal State should be given appropriate guarantees of its security and of protection against pollution of the waters of its adjacent straits.

It would seem that the point was not whether the lawful interests of the coastal State should or should not be ensured. The point was that the concept of innocent

passage could not be accepted as applying to the principal straits used for international navigation because it was too widely interpreted as a concept giving, so to speak, "the last word" to the coastal State or States concerned. According to that concept the coastal States could in the end decide by themselves what regime of the straits would be applied, who should be allowed passage through the straits, and who should in particular circumstances be denied such passage irrespective of the fact that vital interests of a user State might depend on the passage of its vessels through the straits, or irrespective of the fact that the very existence of States that were victims of imperialist aggression and colonialism might depend to a very great extent on freedom of passage. If earlier there could have been some hesitation on whether the regime of innocent passage could be interpreted in such a way, the sponsors of the eight-Power draft had clearly shown that in their endeavours to apply that regime to the most important straits used for international navigation they interpreted the concept as one giving them the right to establish arbitrarily an authorization or notification regime for the passage of certain vessels through straits and the right to decide unilaterally the question of their passage through the straits.

It was scarcely necessary to prove that such a concept of "innocent passage" had never been and could never be applied to such straits as those of Gibraltar, Dover, Malacca, Singapore and Bab-el-Mandeb, where freedom of navigation had always been enjoyed.

The Soviet delegation did not concur with the criticism that had been made of the Italian draft article on straits (A/AC.138/SC.II/L.30). In its view, the assessment given to that draft article by a number of delegations lacked a constructive approach. That was not the way to find an acceptable solution.

The Italian draft taken as a whole recognized the principle of free passage through international straits. That was its chief merit. It was quite obvious that refusal to recognize the principle of free passage through straits would practically mean establishing the domination of only 12 to 15 States adjacent to straits over the passage of the vessels of some 130 States of the World.

There were, of course, some provisions of the Italian draft with which his delegation could not agree. As he had already said, it did not share the idea of the regime of free passage being applied to straits connecting the high seas with a territorial sea. It also had certain objections to the provisions of paragraph "B" of the Italian draft concerning straits six miles wide. It would be more reasonable to apply the provisions of that paragraph to straits which were narrower and were rarely used for international navigation because, as the Italian draft implied, there were wider and more convenient straits nearby.

One need only look at the map of any archipelagic State to see that the realities envisaged in the Italian draft were not specific and in fact did exist in many other regions of the world.

The Soviet delegation would welcome constructive means of working out draft articles on straits. It was ready to make some changes and amendments in its draft articles on straits, provided other countries displayed a similarly conciliatory attitude. For example, it was ready to delete from its draft articles on the passage of vessels through straits the words "as they have on the high seas". As a matter of fact, the Soviet draft articles did envisage banning some actions in straits which were permitted on the high seas.

The Soviet delegation was prepared to define more clearly the rules governing two-way traffic separation schemes in straits. It was also ready to include in its draft articles a paragraph which would provide that the principle of innocent passage should be applied in straits connecting the high seas with the territorial sea of a coastal State and leading only to that particular territorial sea. The Soviet delegation was also prepared to discuss thoroughly the draft article on overflight of straits and examine ways of bringing different positions into accord.

It expressed the hope that other delegations, too, would adopt flexible and constructive positions in order to reconcile their points of view and find a mutually acceptable solution.

Mr. CHAO (Singapore) said that earlier in the session the Sub-Committee had requested the Secretariat to prepare a comprehensive table of all the proposals or draft articles, submitted by 16 July 1973, and he understood that that document would be available shortly for distribution. He believed that the task of the Law of the Sea Conference could be greatly facilitated, if the large number of proposals and draft articles before the Sub-Committee could be consolidated and combined on the basis of the list prepared by the Secretariat. It might be possible to reduce the number of proposals to three or four main items and he suggested that perhaps that task might be undertaken by the Chairman of the Sub-Committee in conjunction with the Chairman of the Working Group, who he understood was already in the process of preparing a consolidated text on territorial waters.

The aim of the Sub-Committee was of course to reach complete agreement, but it was at the same time realistic to appreciate that such agreement might not be possible and to consider on that assumption how best to prepare the way for the Conference.

Mrs. WARNER (Trinidad and Tobago), referring to the question of delimitation as it related to islands, said that her delegation did not wish to enter into a political dispute with any other member of the Committee but wished to warn the

Sub-Committee against the danger of accepting any rules that would have the effect of establishing systems prejudicial to small and weak States. Delimitation between States must be based on equitable principles, the most important of which was the sovereign equality of all States.

There must be no distinction between islands and continental land masses, and the rules relating to delimitation of the territorial sea, the air space above it, the continental shelf, the exclusive economic zone, and the patrimonial or matrimonial sea must apply to islands in the same way as they applied to continental land masses. Her delegation, representing a small archipelagic State, rejected categorically the creation of any separate régime for islands.

Mr. LARSSON (Sweden) said that his delegation had noted with satisfaction that the overwhelming majority of new proposals before the Sub-Committee took account of the problem of accommodating the interests of the land-locked States and States in a similar disadvantaged geographical position that would arise if the Conference on the Law of the Sea accepted the principle of economic zones. His delegation fully supported the basic ideas behind the draft article proposed by the delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore (A/AC.138/SC.II/L.39), the main aim of which appeared to be to mitigate some of the adverse effects which a world-wide acceptance of the "economic zone" philosophy might have. It was quite logical to draw a distinction between the jurisdiction of coastal States over the living and the mineral resources of the sea. The wish to extend coastal State jurisdiction over the living resources stemmed mainly from the conflicting interests of coastal States and distant-water fishing States, and in resolving that conflict, it was important to avoid damaging third parties, such as the neighbouring land-locked States or States in a similar disadvantaged geographical position.

The boundary of coastal State jurisdiction over mineral resources served to balance the interests not of individual States but of the coastal State and the international community. Consequently, there was no need for the same sort of protective clause as for living resources, and it was to be hoped that coastal States would adopt a generous approach that would benefit the international community as a whole.

His delegation felt that there should be a link between the extension of the sea-bed area and coastal State jurisdiction, on the one hand, and the percentage of net profits from the exploitation thereof which was to be transferred to the international authority on the other - thus the wider coastal State jurisdiction over sea-bed resources, the higher the percentage to be paid to the international community. He was glad to note that the proposals on the subject by the delegations of China (A/AC.138/SC.II/L.34 and of Uganda and Zambia (A/AC.138/SC.II/L.41) were in line with his own delegation's thinking.

In the draft articles on an exclusive economic zone proposed by a number of African countries (A/AC.138/SC.II/L.40), the accommodation was restricted to developing land-locked States, which was a variation from the OAU Declaration. His delegation preferred the OAU formulation if the draft articles contained in document A/AC.138/SC.II/L.40 were intended to apply also in regions outside Africa. He pointed out that the distinction made in document A/AC.138/SC.II/L.40 would have a somewhat strange effect in regions bordered by developed States. If the accommodation was to be restricted to developing land-locked countries, it would mean that developed coastal States would have a more privileged economic zone than developing coastal States, since the former would not have to share the living resources of the zones with their land-locked neighbours.

In conclusion, he supported the Singapore suggestion that efforts should be made to reduce the total number of proposals that had been submitted, so as to facilitate the work of the Sub-Committee.

Mr. TUNCEL (Turkey) said that three subjects had frequently been referred to in the Sub-Committee. The first, which was mentioned in some ten draft articles, was the juridical nature of the maritime spaces of the coastal State. The territorial integrity of the coastal State was unquestioned, but the actual exercise of its right of sovereignty was less clear. Two proposals (A/AC.138/SC.II/L.21 and L.41) reproduced the stipulation in the Geneva Convention that sovereignty would be exercised in conformity with the provisions of the Convention and other rules of international law. It remained evident, however, that one of the principal tasks of the forthcoming Conference on the Law of the Sea would be to determine the rights to be exercised by States over their territorial sea, continental shelf, economic zone and patrimonial sea.

The second main subject was that of delimitation. Various criteria that had been put forward in the draft articles relating to delimitation had been criticized as "subjective", "vague" or "confusing". He wished to point out, however, that

similar terminology was used in many legal texts, including the Geneva Conventions. At all events, to preclude any subjective utilization of those criteria, his delegation had proposed a procedure of peaceful settlement.

The third subject, that of islands, would eventually constitute one of the most important questions to be dealt with by the Conference, and many of the draft articles submitted to the Sub-Committee contained references to it. His delegation thought, therefore, that a study on the geomorphological aspect of islands would be useful. In that connexion, it would be recalled that the International Hydrographic Organization had offered its services to the Sub-Committee. He formally proposed, therefore, that the said Organization be requested to prepare a study on the geomorphological structure of islands for presentation to the Conference.

Mr. ZULETA (Colombia) said that his delegation had noted with satisfaction that the majority of the proposals before the Sub-Committee were in line with the basic formulations submitted by Mexico, Venezuela and Colombia during the Spring session. He also noted that the three-Power proposals, which referred to the "patrimonial sea" had been approved by the Caribbean countries in the Santo Domingo Declaration.

His delegation was very conscious of the enormous responsibility before the Committee and of the fact that the delegations to the Santiago Conference would have to establish a basic political agreement in advance, if the Conference, which was to inaugurate a new era of international co-operation without precedent in the history of the law of the sea, were to be successful. Already some progress had been achieved, such as the Declaration of Principles, which pointed the way to an equitable solution, and the List of Topics and Questions which ensured an impartial and balanced agenda. There were also numerous drafts and texts before the Committee. Perhaps, however, the most valuable asset of the Conference was the structure of its preparatory committee and the persons forming its membership.

Since 1969, there had been a widespread feeling that the 1958 Geneva Conventions and some of the other elements of international law on the sea required amendment. But that did not mean that because they had defects, existing legal instruments should be totally ignored, and a great effort had to be made to merge traditional elements of the law with the new institutions that were being created by the Committee. In that context, it should be pointed out that those countries that argued in favour of acquired rights came to the sessions of the Committee to explain their legal position and

not merely to receive cash offers in exchange for their rights. A purpose of the session was to enable sovereign States to seek agreement through negotiations and compromise - for the benefit of mankind.

Subject to the political will of Governments, it should be possible to draw up a Convention capable of securing universal acceptance that would protect the legitimate rights of all States without neglecting the urgent needs of the developing countries, particularly the land-locked countries or those disadvantaged by geography.

He was glad to note that the proposals on the subject of the patrimonial sea proposed by China (A/AC.138/SC.II/L.34), by Argentina (A/AC.138/SC.II/L.37), by Canada, Kenya, India and Sri Lanka (A/AC.138/SC.II/L.38) and by 16 African countries (A/AC.138/SC.II/L.40) were close to the views held by Colombia. After referring to the proposals of Australia and Norway, (A/AC.138/SC.II/L.36), the United States (A/AC.138/SC.II/L.35) and Uruguay (A/AC.138/SC.II/L.24), he noted that the only document that put forward a traditionalist position was that of the Soviet Union (A/AC.138/SC.II/L.26).

His delegation felt that the African proposal, which sought to establish a balance between the interests of coastal States and the interests of the community in the zone to be declared the common heritage of mankind, might be capable of being combined with the traditional concept of the continental shelf, particularly if the abstract concept of exploitability were omitted.

The recognition by a number of delegations of the need to grant special treatment in the exclusive economic zones to the developing land-locked countries and other geographically disadvantaged States in the same region was a good omen for future progress - at least on one basic question, namely the drafting of texts that reflected the coming together of views on the economic zone or the patrimonial sea, in which coastal States would have certain sovereign rights and functional jurisdiction over natural resources.

His delegation was very willing to participate in that work and believed that it could be successful, particularly if delegations remembered that the law did not simply derive from philosophical theories originating in ivory towers, but had the purpose of solving living problems amidst changing cultural and economic conditions and was the result of civilized compromises between communities that wished to live together and progress.

Mr. BEESLEY (Canada) said it was encouraging to note that the Sub-Committee was now considering specific texts rather than a range of ideas and concepts; it was moving from the general to the particular. He wished to refer to three proposals, while reserving his right to comment on them further at a later stage.

With regard to the first, which was that of the Austrian and Norwegian delegations (A/AC.138/SC.II/L.36), he only wished to reaffirm that its substantive provisions, particularly with regard to the continental shelf, reflected his own delegation's position.

The second was the draft articles relating to passage through the territorial sea submitted by the delegation of Fiji (A/AC.138/SC.II/L.42). He wished to compliment the Fijian delegation on that proposal and on its excellent introductory statement. The text represented a sophisticated attempt to solve one of the most intractable problems facing the forthcoming Conference, namely the question of innocent passage and passage through straits in general. It brought a fresh approach to ways of solving that problem and took account of all the key issues involved. His delegation did not in all cases find the proposed solutions in keeping with its own views, but would give them serious consideration. Where the designation of sea lanes and the question of innocent passage were concerned, for example, there was the problem of balancing the interests of coastal States with those of the international community in order to maintain the freedom of commerce and navigation. He noted with interest the provisions enabling coastal States to make and enforce laws and regulations. The idea that, although the coastal State exercised authority over its territorial waters, the sealanes within them should be generally open to all traffic except in certain circumstances, might appear contradictory, but he did not think it would give rise to any difficulties. He also noted with approval the provision requiring tankers and other ships carrying dangerous substances to give prior notification of their passage (article 6). The attempt to establish a régime to protect the peace and security of coastal States (article 12) was novel and constructive, as was the provision that charges might be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship (article 7). The latter should allay any fears that "toll-gates" might be set up at the limit of economic zones.

The third proposal was that submitted by the delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore in document A/AC.138/SC.II/L.39. It represented a sincere and constructive attempt to reconcile the interests of the land-locked States with those of coastal States. It also raised questions which had not been raised before and approached some of them in a novel way. His delegation, in explaining its attitude to the question of fisheries, had stated that it did not envisage exclusive ownership of the living resources of the economic zone, but a sharing of them with preferential rights for the coastal State. Such arrangements might not be suitable in all regions, however, and their suitability would also depend on decisions taken with regard to fisheries. He understood that one regional group of countries had already agreed on the sharing of living resources, and thought that their case deserved careful consideration. Another point requiring further study was the possibility of drawing a distinction between sharing the catch and sharing the proceeds of it.

He welcomed the attempt made in document A/AC.138/SC.II/L.39 to approach the problem on the basis of revenue-sharing. That approach raised a host of questions, but they could undoubtedly be resolved. He noted with approval that article 1 provided that coastal States should have the right to establish a Zone adjacent to the territorial sea; the acceptance of that provision by the land-locked countries was vitally important to the success of the Conference. The sponsors were to be complimented on their efforts to make their proposal as widely acceptable as possible, instead of merely putting forward their preferred position. He approved the thinking behind the proposal, and was encouraged by the spirit of compromise which it expressed.

His delegation welcomed any attempt to establish a common basis for the work of the Conference. Some of the proposals which had been submitted certainly had sufficient elements in common to lend themselves to the preparation of a compromise text. It was still too early to set up a working group or drafting group to undertake that task, however, for members needed time to consider the more recent proposals and exchange views on them informally. His delegation was prepared to take part in that process and also to assist in the co-ordination of proposals. He believed that the possibility of preparing a compromise text for submission to the Conference was greater now than it had been earlier.

Sir Roger JACKLING (United Kingdom) said that in some of the recent proposals relating to the jurisdiction of the coastal State over the resources of the sea beyond its territorial sea, the extent and nature of the zones proposed conflicted with freedoms to fish on the high seas long enjoyed under international law. In several instances no provision was made for international regulation or consultation in the exercise of such jurisdiction. His delegation therefore considered it important to remind the Sub-Committee of certain considerations which should be borne in mind in the study of those proposals in so far as they related to fisheries.

His delegation recognized that coastal States had a special interest in the living resources of the sea adjacent to the territorial sea and should be given a special position in respect of them; nor was it unmindful of the overriding need to conserve the sea's living resources and prevent their depletion. It believed, however, that the coastal State's rights should not be unlimited, and that the crucial issue before the Conference would be that of striking the correct balance between the rights in regard to fisheries of individual coastal States and the rights of the international community.

He believed that conflicting interests could be reconciled by establishing some method of international regulation. The experience of Regional Commissions in the North Atlantic had shown that, given adequate powers, they could perform that function both quickly and effectively. A colleague of his, speaking nearly two years previously in defence of the North East Atlantic Fisheries Commission, had observed that the few failures in the maintenance of fish stocks within the Commission's area could generally be attributed not to the depredations of distant-water fleets but to technological advances. The resulting increase in their fishing effort by the States concerned had not only outstripped the Commission's powers but had also led to a radical revision of the scientific advice available to the Commission.

Increased fishing effort had also been a major worry in the North West Atlantic. The International Commission for the North West Atlantic Fisheries (ICNAF), however, after obtaining the requisite power to deal with the problem by means of catch limits apportioned between member countries, had acted with notable promptness in 1972 in setting catch limits for various threatened stocks of fish. In 1973 it had extended that control to cover all the major stocks in its area. He pointed out that in

apportioning catch quotas it had become standard practice to give the coastal State a generous preferential share. His delegation regretted that the North East Atlantic Fisheries Commission had been denied similar effective powers by the refusal of one member country to ratify the relevant decision of the Commission.

His delegation by no means claimed that Regional Commissions were perfect, but in its view equitable solutions and the reconciliation of conflicting interests could best be secured by building on existing international machinery. It would like to see the existing Commissions given more effective powers and perhaps better arrangements for enforcement; at the same time coastal States might be given a privileged position in the organization as well as in the sharing of catches, and efforts might be made to set up new commissions where they did not exist at present. In the past three or four years FAO had launched two International Commissions in the South East Atlantic and the Central Atlantic; in addition, several international bodies were evolving under its own wing and backed by its own highly expert staff.

Lastly, he wished to stress one feature of the living resources of the ocean which made them particularly suitable for control by international arrangements. Unlike mineral resources, living resources were both renewable and mobile. The fact that they were renewable should mean that they were perpetual and not diminished by annual harvesting, but that very quality made them vulnerable to abuse and set a high premium on proper management. The international community suffered not only if they were exploited without effective control, but also - because of the needless loss involved - if they were under-exploited. Moreover it was necessary to bear in mind, first, the mobility of the living resources and, secondly, the evident fact that the scientific skills and know-how on which good management must depend were relatively scarce even in most developed countries. His delegation therefore questioned the wisdom of conferring on any coastal State sole responsibility for the management and control of any living resources, except in the circumstances provided for in the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, and except also in the special case of anadromous species. It believed that International Regional Commissions were the appropriate agencies. He quoted paragraph 84 of the FAO document entitled "Review of the Status of Some Heavily Exploited Fish Stocks" (FID/C/313), in which it was stated that there appeared to

be little relation between the success or otherwise of management actions and the type of jurisdiction within which the resources lay, and that there were at least as many examples of depleted resources under the control of a single country as of those occurring outside national jurisdiction.

In conclusion, he reserved his delegation's right to put forward draft articles embodying the principles which he had just discussed.

Mr. ARIAS-SCHREIBER (Peru), speaking in exercise of his right of reply, said that the Austrian representative in his statement at the previous meeting had made various references to the proposal submitted by the delegations of Ecuador, Panama and Peru (A/AC.138/SC.II/L.27). He wished to refer to only one of the questions he had raised, but one which he himself regarded as fundamental, namely the philosophical basis of the Committee's work. The Austrian representative had seemed to imply that the principal aim of the work in progress was to put into effect the concept of the common heritage in all areas of the sea. The effect of setting that precedent above existing law would be to give the Committee carte blanche. Admittedly, consideration of the sea-bed beyond the limits of national jurisidction as the common heritage of mankind was part of the Committee's mandate, but it was not supposed to be the point of departure. Sub-Committee II had been set up primarily to deal with the law of the sea as it related to the continental shelf, the territorial sea and the contiguous zone. In those areas States had rights and duties which did not arise from the concept of the common heritage. If an attempt was being made to subordinate pre-existing rights to that concept, in order to eliminate the differences between rich and poor nations, the next step would have to be the abolition of existing rights to the resources of the earth, so that they too became part of the common heritage. It was commendably generous of the Austrian delegation to wish to reconcile the interests of all States by giving them rights to the resources of each other's adjacent seas, particularly in view of the fact that Austria was land-locked. Only when such generosity was extended to include land resources would it be possible to talk seriously of distributive justice benefiting all mankind.

He wished to ask two questions relating to the statement made by the Soviet delegation. First, the Soviet representative had defended the right of free passage through straits for all trading nations; he would like to know who was threatening that right. Secondly, it would be very useful to know how many countries were using the right of innocent passage through straits in order to move warships and nuclear submarines with not altogether innocent aims in view.

The statement just made by the United Kingdom representative could have been made twenty years ago. In saying that fishery problems could easily be solved by special international commissions and other bodies, he could have cited the example set by the International Whaling Commission, which was neatly solving the problems of whaling by allowing whales to become extinct.

Lastly, he wished to congratulate the Fijian delegation on its proposal (A/AC.138/SC.II/L.42). With its precise enunciation of the rights and duties of coastal States, that proposal exemplified the best way of avoiding the still considerable obstacles in the Committee's path.

Mr. Antonio POCH (Spain), speaking in exercise of the right of reply, said he wished to refer to the assertions made in the Soviet delegation's statement with regard to straits in general and the Straits of Gibraltar in particular. The statement had been full of obscurities, and in order to do it justice he must think carefully before commenting on theses which had so little relevance to the interests of the international community and the true interests of the countries which the Soviet delegation professed to defend. He would therefore refer to the matter again at the next meeting.

Mr. KOVALEV (Union of Soviet Socialist Republics) said that the questions raised by the Peruvian representative were of such a nature that the latter could hardly expect any factual answer. The history of the past ten or twelve years could provide examples of the bringing of assistance by sea to national liberation movements. Rather than dwell on those, however, he would take a hypothetical case. The Soviet Union had consistently supported the struggle of the peoples of southern Africa to liberate themselves and combat racist régimes. Aid to those peoples unfortunately had to be brought through international straits controlled by coastal States which were often allies of the racist régimes. Meanwhile, the racist régimes themselves were able to receive assistance by sea from their allies, who did not need to use international straits for that purpose.

Mr. LEIFER (Austria), speaking in exercise of his right of reply, said that he wished to allay the fears expressed by the Peruvian representative, which might have been due to a misunderstanding. He would gladly give him the text of the statement in question, but for the present wished to make two points. First, he had made it clear that the need to reduce the gap between rich and poor countries had been one of the main premises behind the proposal sponsored by his delegation. Secondly, he had stressed that the proposal did not specify the limits of the area to which the principle of the common heritage of mankind should apply, because the precise extent of that area was yet to be determined. The proposal merely set forth considerations which, in the view of the sponsors, should be taken into account in reaching a decision on the matter.

He supported the Singapore delegation's suggestion that similar proposals should be consolidated into a single document. It seemed that what the Singapore representative wanted was a true comparative table, whereas the document which was in course of preparation would probably only collate different positions. He also supported the Swedish representative's proposal.

Sir Roger JACKLING (United Kingdom), speaking in exercise of the right of reply, said that the Peruvian representative's comment on his statement would have been more apt if it had been made twenty years ago. The International Whaling Commission, even with its present inadequate powers, was managing to rebuild whale stocks, and all species were now on the increase.

Mr. ANDERSEN (Iceland) said that the United Kingdom representative had referred to the fact that one country had opposed the widening of the powers of the North East Atlantic Fisheries Commission (NEAFC). As that country was Iceland, he thought he should explain his delegation's position on the matter, but would reserve his right to do so at a later stage. For the present he only wished to point out that the NEAFC had nothing to do either with fishery limits or with the establishment of economic zones, which was the question currently under discussion in the Sub-Committee.

The meeting rose at 6.10 p.m.