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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 SEVENTIETH MEETING*

held at the Palais des Nations, Geneva,
on Wednesday, 25 July 1973, at 3.35 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.

ORGANIZATION OF WORK

The CHAIRMAN asked representatives who read out prepared statements to hand the texts in to the Secretariat in order to facilitate the preparation of the summary records. Original texts would be returned to the delegations concerned after use.

In view of the frequent desire of members to hold informal meetings in the search for agreement on compromise texts, he had consulted the Secretariat regarding the facilities available for such meetings. He had been informed that meeting rooms could be made available at any time, but that interpretation facilities could be provided only between the hours of 9.30 and 10.30 a.m.

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (A/AC.138/SC.II/L.21-43) (continued)

Mr. SMALL (New Zealand) said that he wished to refer to the question of islands, on which the Sub-Committee had before it draft articles or amendments submitted by Greece, Turkey and Cyprus, and a draft article (article 12) in the proposal on the exclusive economic zone presented by a group of African countries (A/AC.138/SC.II/L.40). A provision similar to the latter was contained in document A/AC.138/SC.II/L.43, and there was also a considerable amount of material on the subject of islands in the comprehensive Maltese draft (A/AC.138/SC.II/L.28). A few draft provisions on the same subject were also to be found in other proposals.

Many of the texts presented both in the Working Group and in the Sub-Committee bore on the very special problem of the delimitation of ocean space around islands situated near adjecent or opposite States, particularly islands in closed or semi-closed seas or on the continental shelf of another State. That problem was certainly the main concern of the drafts submitted by the various Mediterranean countries, and was perhaps also the primary object of document A/AC.138/SC.II/L.43, and article 12 in document A/AC.138/SC.II/L.40. Those two texts were similar in substance to certain comments made by the Tunisian representative at the last session.

In addition, article 12 of A/AC.138/SC.II/L.40 and the similar article in A/AC.138/SC.II/L.43 touched upon a more general question, which was also dealt with in A/AC.138/SC.II/L.28, namely the jurisdiction of oceanic islands over adjacent seas.

He wished to note New Zealand's interest in that question. New Zealand comprised a group of oceanic islands with several groups of outlying islands and was responsible for the international relations of islands in the South Pacific which were constitutionally linked to it. Although his delegation had every sympathy with the need to establish rules for the particular problems of island space delimitation existing in the Mediterranean and other such restricted ocean areas, it would be gravely concerned if that and similar problems were to give rise to a judgement about the allocation of ocean space to islands in other areas of the world, particularly the oceanic islands in the Pacific. For that reason, and until the subject received fuller and more balanced consideration in a debate in which his Government's attitude could be explained, he could not support the proposal of the Turkish representative to the effect that a study of islands be commissioned from the International Hydrographic Bureau. In his delegation's view the specific item on islands on the Sub-Committee's agenda would provide a focus for a proper debate on the subject.

For the moment, he merely wished to state that, like Trinidad and Tobago, New Zealand had approached the present negotiations from the beginning with the clear conviction that, save in very exceptional circumstances, there must be no distinction between islands and continental land masses with regard to the vital issue of jurisdiction over ocean space and resources.

Mr. CHADHA (India) said that the submission of a large number of proposals in the past few days augured well for the Sub-Committee's work. The task of processing them would require much time and patience and a spirit of give and take, but if the Sub-Committee succeeded in narrowing the spectrum of views into practical alternatives expressed in relatively precise language, its present session would not have been in vain.

He noted that many delegations which had presented papers had left blanks in certain articles or phrases. Some had made it clear that the proposals they had sponsored did not necessarily reflect their final views, and that they were willing to take into account the reasonable demands of others. That was all to the good, since rigid positions were inappropriate where knowledge was incomplete. As the adoption of a Law of the Sea providing for the orderly exploitation of marine resources was in the interest of all States, all delegations should, while taking their legitimate self-interest into account, approach the subject with an open mind.

The proposal relating to passage through the territorial sea submitted by the delegation of Fiji in document A/AC.138/SC.II/L.42 required and merited careful study, particularly since so much care seemed to have gone into its formulation. It attempted to analyse the concept of innocent passage, and sought to define acts incompatible with that concept by applying objective criteria. That by no means easy task had been tackled in a courageous and constructive manner.

In the Fijian proposal the coastal State was made responsible for the safety of navigation, and was also empowered to designate sealanes and traffic separation schemes for passage through its waters and to provide the necessary aids to navigation. It was also important that the sealanes so designated should conform to accepted international standards. He appreciated the desire of the Fijian delegation to ensure the maximum possible extent of safe, efficient international sea communications, and particularly welcomed the emphasis on safety.

Those were preliminary comments and he might have more to say after considering the proposal in detail. He thanked the Fijian delegation for the important initiative it had taken in submitting its proposal, which would, as its author intended, provide a useful basis for discussion.

Mr. EVENSEN (Norway) said that his delegation shared the views expressed earlier by the United Kingdom representative regarding the importance of the role played by existing regional fisheries commissions, and the need for a further strengthening and development of such regional action. His Government had fully supported proposals to that effect within the framework of the North-East Atlantic Fisheries Commission. He also agreed with the United Kingdom representative in thinking that a treaty on economic zones should include a clause requiring coastal States to co-operate with the appropriate regional and international organizations in the exercise of their fisheries jurisdiction. No such clause appeared in the proposal sponsored by Austria and Norway (A/AC.138/SC.II/L.36) simply because that proposal was not meant to be exhaustive. He recalled that in introducing the proposal he had expressed the view that the coastal State's exclusive right to the renewable sources of the zone should be coupled with a corresponding duty to exercise that right in a way which ensured that the resources concerned were not endangered through over-exploitation, and which made it mandatory for a coastal State to co-operate with the appropriate regional and global organizations to that end.

The main difference between his views and those of the United Kingdom representative was that his delegation did not share the United Kingdom delegation's optimistic belief that international regulation alone might suffice to protect stocks from over-exploitation. It was true that the introduction of national quotas by the regional fisheries commissions would be a step in the right direction, but there was also a need for other measures on which the chances of early international agreement seemed remote indeed. One of the most important was the introduction of much more stringent regulations to limit the use of equipment, such as the trawl, which represented a particular threat to the stocks.

In the past decade the total catch of fish had been more than doubled, owing both to the development of new techniques and to the pressure on world food supplies caused by the population explosion. The resulting depletion of many kinds of fish had been frightening. International restrictions imposed so far on such factors as mesh size were far from adequate, and his Government had worked consistently, within the appropriate regulatory bodies, towards the adoption of stricter rules in that respect. The opposition of certain Governments within the international bodies had thwarted those efforts. As the fishing fleets of the principal distant-water fishing nations were composed mainly of trawlers, he saw little hope that sufficiently effective regulations would be adopted internationally in the foreseeable future. Later, it might be too late. Trawlers represented only a small percentage of the Norwegian fishing fleet, owing to a deliberate national policy of licencing aimed at the protection of stocks.

The United Kingdom representative had seemed to imply that the failures which had occurred were due not to inherent weaknesses in the international regulatory system, but to lack of action by certain coastal countries. He took issue with that interpretation. His delegation did not think that the present deep difficulties could be overcome by choosing between coastal State regulation and international regulation. Both were needed: effective international regulation as well as extensive coastal State jurisdiction in matters of fisheries conservation.

Mr. MHLANGA (Zambia) said that on behalf of his own delegation and that of Uganda he would like to introduce the draft articles on the proposed economic zone contained in document A/AC.138/SC.II/L.41. First, however, he wished to thank the Secretariat for the helpful comparative table of proposals which it had prepared for the Working Group, and also wished to record his satisfaction at the achievements of the Working Group itself.

The authors of document A/AC.138/SC.II/L.41 appreciated the constructive comments made by various delegations on the content of their proposal. He was glad to note the growing conviction of members that that proposal represented the best approach to the concept of the economic zone. It differed from other proposals on the subject mainly in that it advocated a regional approach to the establishment of economic zones. He quoted paragraph 9 of the OAU Declaration (A/AC.138/89) which referred to the right of land-locked and other disadvantaged countries to share in the exploitation of living resources of neighbouring economic zones under such regional or bilateral agreements as might be worked out. In his view the present session offered the best opportunity to work out such provisions, and the paper sponsored by his delegation was a suitable basis for the task.

A great number of land-locked States, most of which were situated on the African continent, had what might be termed acquired rights. In that connexion he quoted from three of the Geneva Conventions on the Law of the Sea of 1958. First, article 24 of the Convention on the Territorial Sea and the Contiguous Zone defined the rights of the coastal State within the contiguous zone and provided that that zone might not extend beyond 12 miles from the baseline from which the breadth of the territorial sea was measured. Secondly, article 2 of the Convention on the High Seas stated that the high seas were open to all nations, and specified the freedoms of the high seas which were to be exercised by all States. He pointed out that one of the freedoms mentioned was the freedom of fishing. Finally, article 3 of the Convention on the Continental Shelf provided that the rights of the coastal State over the continental shelf did not affect the legal status of the superjacent waters as high seas. He had quoted those articles in order to remind members of the existing provisions of international law which must serve as the basis for their present work with respect to the economic zone.

In article 3 of document A/AC.138/SC.II/L.41, a blank had been left for the distance from the baseline of the outer limit of the territorial sea because that

was a point which would require careful negotiation. Article 4 dealt with the economic zone. The various references it contained to sub-regional economic zones had been prompted by the consideration that in some areas it might not be possible to establish regional economic zones worthy of the name. He drew attention to the provision in paragraph 3 of article 4 that regional or sub-regional authorities should manage the non-living resources of their economic zones on behalf of all States in the region or sub-region. It was important to take into account the interests of all States, particularly as the zones in question were beyond national jurisdiction and hence formed part of the common heritage of mankind. Paragraph 4 referred to the responsibility of regional or sub-regional commissions for supervising activities within the relevant economic zones. That provision was made with a view to the efficient management of the zones. Paragraph 5 stated that the provisions of the preceding paragraphs should not affect various freedoms which were to be applicable in the regional or sub-regional zones. That was an acknowledgement of the fact that those zones were still part of the high seas.

He hoped that the draft articles would commend themselves to the Sub-Committee. On another occasion his delegation would like to submit, or support, a proposal concerning the right of free access to the sea.

Mr. WAPENYI (Observer for Uganda), speaking at the invitation of the Chairman, said that the draft articles sponsored jointly by his delegation and that of Zambia in document A/AC.138/SC.II/L.41 were essentially a revised version of some of the ideas originally put forward by the Kenyan delegation and subsequently embodied in the draft sponsored by fifteen African countries (A/AC.138/SC.II/L.40). The authors of A/AC.138/SC.II/L.41 had tried to introduce the idea that the economic zone should be carved from an area which did not at the moment belong to any individual country, and had proceeded from the premise that that area was a matter on which decisions would have to be taken by the Conference. Accordingly, their aim had been to ensure that the fears and wishes of the land-locked and other disadvantaged countries were taken into account in the final provisions agreed on at the Conference, or if they were not, that they were at least placed on record. If the views of those countries were not recorded it might be wrongly assumed that their silence meant acquiescence. There were no less than fourteen land-locked States in Africa, of which Uganda was the largest, and at present their position was still unsatisfactory and not to the best advantage of the region as a whole.

An attempt was made in A/AC.138/SC.II/L.41 to provide equitable treatment for both the advantaged and the disadvantaged countries. His delegation had accepted the fact that it would have no claim upon the territorial waters of a coastal State, but had often expressed support for any limitation of territorial waters that would be acceptable to everyone. Speaking as the representative of a land-locked country, he did not argue against the extension of territorial waters to 200 miles, but thought that it would be unfair for a coastal State to have the area beyond that limit as its economic zone. The establishment of such zones would be fair only if they were shared equitably by advantaged and disadvantaged countries alike.

He wished to record the fact that Uganda, Kenya and Tanzania operated a joint system with respect to port and harbour facilities. He would like to see such co-operation extended as far as was compatible with the right of the coastal States to administer the areas under their national jurisdiction. The land-locked countries were anxious not so much to share the resources of the sea as to ensure that the sea was enjoyed by mankind as a whole and not just by the coastal States. The proposal in A/AC.138/SC.II/L.41 had been inspired by the desire to find a just means of achieving that aim.

His delegation was authorized to negotiate points relating to the equitable sharing of marine resources in accordance with the guidelines in the OAU Declaration. Where the proposal in A/AC.138/SC.II/L.41 differed from that Declaration, the differences were perhaps due to the peculiar position of Uganda and Zambia and did not affect the constant willingness of those countries to co-operate with other members of the international community. He expressed the hope that the proposal would gain the support of other delegations and lead to the adoption of a more regional approach to the problems it dealt with, and that at the Conference the position of the land-locked countries would receive sympathetic consideration.

Mr. ANDERSEN (Iceland) said that although there was a growing consensus on fundamental issues, the Sub-Committee should not overlook the fact that time was passing. It was important to concentrate on fundamental issues, in order to produce at least alternative texts for the Conference. The most important issue, in his view, was the extent of the coastal jurisdiction over natural resources in the coastal area, i.e. the economic zone. His delegation had submitted a working paper (A/AC.138/SC.II/L.23), which proposed that the outer limits of exclusive jurisdiction

should be reasonably defined in the light of natural conditions and should not exceed 200 nautical miles. Similar proposals on the zone of exclusive jurisdiction and the economic zone had been submitted by a number of other States, from which the general conclusion emerged that there was wide and strong support for coastal State jurisdiction and control up to a maximum of 200 nautical miles, although some States claimed sea-bed rights beyond the 200-mile limit. The urgent task was therefore to harmonize those proposals.

Referring to the suggestion by the United Kingdom that a solution could be found for the problem of extended coastal jurisdiction over fisheries by strengthening regional organizations, he said that his Government believed that regional organizations had an important part to play in the area beyond national jurisdiction and their powers and function in that field should be strengthened, but they should not be used as an alternative to or even a substitute for the economic zone. The crux of the matter was that an increasing number of delegations clearly supported a wide economic zone. The Sub-Committee was faced with a conflict between the old and obsolete system of narrow coastal jurisdiction and the new law of the economic zone. His delegation was most decisively in favour of the latter.

Mr. NJENGA (Kenya) said that he would like first of all to welcome the proposals by Afghanistan and co-sponsors, and by Fiji (A/AC.138/SC.II/L.39 and L.42). The draft articles by Fiji, in particular, introduced concrete and novel ideas for a reasonable accommodation of transit questions and went a long way towards a régime of innocent passage.

However, his main concern was with the proposal by Uganda and Zambia (A/AC.138/SC.II/L.41), with which he was in almost total disagreement. Although the proposal claimed to be based on paragraph 9 of the Organization of African Unity Declaration on the Issues of the Law of the Sea (A/AC.138/89), which recognized the right to share of land-locked and other disadvantaged countries, it completely disregarded paragraph 6 of the same Declaration, which acknowledged the right of each coastal State to establish an exclusive economic zone beyond territorial waters. The idea of a regional economic zone in Africa had been discussed by a meeting of the African Group in New York and rejected. Concrete proposals in the same sense were submitted by Zambia to the meeting of experts in April and referred to the Council of Ministers, who eventually decided that a regional economic zone could not be discussed at an international forum. That decision had been agreed by all 14 land-locked African States.

There were moreover a number of problems over the proposed economic zone (article 4). In paragraph 1 of that article it was not clear who would establish the economic zone, since there was in fact no overriding legislative authority in Africa capable of doing so. In paragraph 2 no provision was made for enforcement of the extremely stringent proposals for the joint exploitation of fisheries on a regional basis. Paragraph 3, which provided for the joint exploitation of non-living resources, totally ignored the fact that under existing law non-living resources were part and parcel of the sovereignty of coastal States. If the principle of joint exploitation of the sea-bed were accepted, it would be equally reasonable for coastal States to share the non-living resources of land-locked States on land. Paragraph 4, which provided for regional or sub-regional commissions to administer the economic zones, suffered from the same disadvantage of a lack of means of enforcement. Whereas the draft article on fisheries, submitted by Canada and co-sponsors (A/AC.138/SC.II/L.38) made reasonable provision for land-locked States, while taking into account at the same time the interests of coastal States, the Ugandan and Zambian proposals represented a grossly inequitable discrimination against coastal States.

Mr. MHLANGA (Zambia), exercising his right of reply, said that nothing in the statement by the representative of Kenya had shaken his belief in the rightness of the principle of regional economic zones. It would, furthermore, be wrong to defer desirable legislation because of doubts about the possibility of its future enforcement. He was glad to hear acknowledgement of the spirit of accommodation obtaining among African countries, and he hoped that the representative of Kenya would give a practical demonstration of that spirit.

Mr. STEVENSON (United States of America) said that his delegation attached particular importance to the satisfactory resolution of the question of transit through and over straits in the context of a satisfactory over-all settlement on the law of the sea. No right of a State - to use its territory or to use the sea - implied that it could do whatever it liked, without regard to the limitations on its conduct prescribed in the United Nations Charter and international law as a whole. Despite differences as to the precise nature of the legal régime applicable to the deep sea-beds, that was a point on which all delegations had agreed in principle 6 of the Declaration of Principles.

The purpose of the negotiations taking place in the Sub-Committee were to reach agreement on the rights and duties of States for the future. The United States believed that all States had now, and had always had, the high seas freedoms of navigation and overflight beyond a three-mile territorial sea, and considered the existence of those rights in straits used for international navigation confirmed for their historical and continual exercise. Nevertheless, his delegation was willing to modify those rights as part of its proposal to establish an agreed territorial sea limit of 12 miles. It would welcome an equally flexible attitude on the part of other delegations and regretted that the eight-Power proposal on the subject (A/AC.138/SC.II/L.18) had set out an even more restrictive concept of innocent passage than under existing international law. His delegation believed that the doctrine of innocent passage was not adequate when applied to straits used for international navigation and did not see any need to revise the concept of innocent passage as it applied to the territorial sea generally outside straits used for international navigation. The balance of international and coastal State interests was quite different in the two situations, and his delegation had made clear that, subject only to the right of free transit, territorial waters in straits should retain their national character, thus giving the coastal State concerned the right to take enforcement action against any vessel going beyond its rights. His delegation was also ready to consider whether coastal State and international interests could be reconciled in the case of island nations and had made specific proposals to accommodate the concern expressed by straits States regarding the safety of navigation, overflight and the prevention of pollution. In that connexion, he appreciated the efforts made by the Italian delegation to achieve a solution and would study that delegation's proposal most carefully.

In conclusion, he stressed the importance - in view of the schedule for the Conference - of trying to narrow the outstanding issues and approach a substantive resolution of the variety of problems involved, for which purpose it was advisable to concentrate on the underlying interests rather than the terminological labels.

Mr ZOTIADES (Greece), referring to the delimitation of territorial waters, criticized the proposals by Tunisia and Turkey (A/AC.138/SC.II/L.31 and L.32) to delete the word "insular" from the draft articles submitted by Cyprus and Greece (A/AC.138/SC.II/L.19 and L.16). The draft articles concerned embodied the principle that in the case of States with opposite or adjacent coasts, a fundamental and residual rule, failing agreement to the contrary, was that of the median line -

a principle firmly based in customary international law, found in almost all bilateral treaties on territorial sea delimitation and endorsed in article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The principle was essential to the interests of all States, since it protected them from attempts by neighbours to bargain in a legal vacuum rather than under the principles of international law, as well as from excessive demands based on special circumstances or demands based on the novel idea that islands constituted, in general, special circumstances.

The effect of the Tunisian and Turkish amendments was to fix the base lines of territorial waters from continent to continent, a novel idea which was a drastic departure from the United Nations Charter and existing international law. Such an attempt to deprive islands of their base lines for the measurement of territorial waters was a gross violation of the principles of equality of States and the integrity of national sovereignty.

The purpose of his delegation's draft articles was to remove any possible ambiguity on that point in accordance with the underlying assumption in interpreting the median line that there was no island that did not possess territorial waters. The emergence since 1958 of a number of island States and of States composed of continental and insular territory meant that it was essential to protect their territorial integrity. He therefore urged the retention of the word "insular", deletion of which was unacceptable to his delegation. To delete the word would be to commence a dangerous course of action in that it would divide States into different categories and thus pave the way for all kinds of discrimination.

With regard to the argument that the legal status of islands was irrelevant to the question of sovereignty and that no delegation questioned the issue of sovereignty in that regard, he stressed that the purpose of the Turkish and Tunisian proposals was to deprive islands which formed an integral part of a State of their inherent and inalienable right to territorial seas. It was clearly therefore an encroachment upon national sovereignty. To plan to measure base lines from continent to continent was not only illogical, unrealistic and contrary to the principles of territorial integrity laid down in the United Nations Charter but it was also a manifestation of an expansionist tendency which had no place in the United Nations.

He drew the Sub-Committee's attention to small island States or isolated islands, which because of their geographical position were vitally dependent upon the maritime environment for their sustenance and in certain cases even for their economic survival.

Mr. MBAYA (Cameroon), referring to the proposals submitted by Zambia and Uganda - to which he did not wish to attach too much importance, since they were probably too far in advance of the times to have any possibility of being adopted - said that the idea of establishing a regional or sub-regional economic zone appeared to be based on the doctrine of acquired rights and on the right to fish in the high seas. In the view of his delegation, however, the right to fish in the high seas had no regional connotation. On the contrary, that right lay with all States irrespective of their geographical position. He wished to know under what principle of law a group of States could claim an exclusive right to fish in a given area of the high seas.

Mr. POCH (Spain), speaking in exercise of the right of reply, said that the statement made by the representative of the Soviet Union had caused confusion on the issue of the right of free transit through straits in general and the Straits of Gibraltar in particular. The view of the Soviet delegation was that passage through certain straits (Malacca, Gibraltar, Bab al-Mandab) constituted a régime of navigation based on free transit, under a secular custom that formed part of customary international law. Now in Spain's view, that right of free transit was not supported by either of the constituent elements of customary international law. The first element, practice, could not be said to apply, because since 1968 Spain had seized 60 vessels which had been in violation of the rules of innocent passage. In short, Spain did not recognize that any custom existed with regard to free transit through the Straits of Gibraltar. The second element involved the juridical conviction of being under an obligation - opinio juris sive necessitatis, but he could assure the Sub-Committee that Spain did not consider itself under any such juridical obligation, and he believed that Morocco felt likewise.

Since the Soviet Union had always taken a very restrictive view of the acceptance of a custom, it was surprising to hear such a suggestion being put forward. The 60 vessels had been seized beyond the three-mile limit under the régime of innocent passage and since there had been no protest from any of the 15 countries concerned, it was an indication that the régime of innocent passage rather than that of free transit was accepted. In support of his view that there was no practice of free transit, he quoted Judge Read of the International Court of Justice, who had given an individual opinion in the Fisheries case.

It was even more surprising that the Soviet Union had sought to describe the alleged customs as jus cogens, since no such norm had been quoted either by the International Law Commission, in the commentary on article 50 of its Draft on Treaties, nor at the Vienna Conference of 1968-1969.

There were serious implications in the Soviet thesis. For instance, article 64 of the Vienna Convention on the Law of Treaties would apply in such a way that the new norm of international law would nullify any existing treaty containing contrary provisions. In other words, it would affect Conventions on the régime of other straits. Moreover, if such a norm existed, there would be little purpose in the Committee's deliberations, since it could simply confine itself to formulating such a rule in the future Conventions. But a rule of jus cogens must be accepted by the international community as a whole, and as was evident from the texts before the Committee, that was not the case. In short, the theory of jus cogens was contrary to practice and to reality and was totally gratuitous.

The Soviet Union had also sought to rely upon the Declaration of 1904, which it had described as one of the achievements in the history of mankind. But in fact that Declaration was no more than a quid pro quo arrangement between two former colonialist Powers and the concept of free passage had been introduced incidentally. It was irrelevant to refer to a Declaration of that sort, because at the present time the international community would not allow major Powers to impose servitudes and restrictions on the sovereignty of States in order to protect their commercial and strategic interests.

His delegation also objected to the arbitrary interpretation by the USSR delegation of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which, it was argued, did not affect straits or the idea of free transit. In the Spanish view, that interpretation was unfounded and he supported that view by referring to the progressive codification of the law of the sea from 1930 to 1958. For instance, the various drafts prepared by the International Law Commission between 1952 and 1953, as well as the debates of the Commission, were conclusive in that respect. He reminded the Sub-Committee that the 1958 Geneva Convention established the same régime for navigation through straits as for the territorial sea - innocent passage - subject only to the proviso that the right of innocent passage could not be suspended by the coastal State in straits. Many eminent jurists had enunciated that doctrine and he quoted the opinions of the

Soviet judge, Mr. Krylov, in his dissenting opinion in the Corfu Channel case at the International Court of Justice. He also referred to the position taken by the USSR on the subject of the Vilkiski Straits, which being in the Soviet Union's territorial waters, naturally came under its jurisdiction. How therefore could the Soviet Union argue that there was a general rule of free transit through straits which formed part of the territorial sea of other States?

Although the Soviet Union had purported to be representing the interests of the developing countries, the fact remained that 41 developing African States had declared that, because of the importance of international navigation it was essential to uphold the régime of free passage and indeed to elaborate it more precisely. Moreover, six of the eight sponsors of document A/AC.138/SC.II/L.18 were developing countries and they, like most other developing countries in Asia and Latin America, had expressed support for the régime of free passage. The fact was that the only criticisms of that document had come from a number of highly developed countries whose political and strategic interests were affected. In his delegation's view, no State would benefit from an indiscriminate régime of free transit.

As a further rebuttal of the Soviet Union's arguments, he quoted the statement made by Mr. Tunkin, on behalf of the Soviet delegation, to the 1960 Geneva Conference.

In conclusion, he insisted that the right of innocent passage should constitute the basis of the Committee's negotiations rather than, as the Soviet Union had proposed, the principle of free transit. His delegation was prepared to contribute in a joint effort to clarify the régime of innocent passage, so as to assure and protect it without prejudice to the legitimate interests of international trade. He believed that that view was shared by the majority of the members of the Committee.

Mr. KOLESNIK (USSR) said that in his previous statement he had produced cogent arguments against the extension of the régime of innocent passage to international straits. Those arguments had been completely disregarded by the representative of Spain, whose main contention appeared to be that customary usage could not be regarded as a valid criterion, since it was not so regarded in Spain. The importance of a custom resided, however, in its general recognition and his previous argument remained therefore fully valid.

Mr. POCH (Spain) said that the apparent failure of the Soviet representative to understand his arguments was perhaps due to a lack of clarity in their expression. The Soviet views themselves, however, consisted of nothing more than a dogmatic reassertion of previous claims.

Mr. YANKOV (Bulgaria) suggested that the debate between the representative of the Soviet Union and Spain could well be continued elsewhere.

Mr. JACOVIDES (Cyprus) said that, since the awaited comparative table of proposals and draft articles was now available, a start should be made with the systematic examination of the fundamental issues and he would be interested to know what procedure was envisaged.

The CHAIRMAN said that some delegations had hinted that too many Sub-Committee meetings had been held, to the detriment of a proper study of the documents. He therefore suggested that no further meetings should be held until the following week.

It was so agreed.

In reply to the representative of Cyprus, he suggested that the comparative table of proposals and draft articles should be first of all examined by the Working Group of the Whole, which would then decide on the most suitable procedure.

It was so agreed.

The meeting rose at 6.55 p.m.