UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL*/

Distr.
GENERAL

A/AC.138/SC.II/SR.71
14 August 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 SEVENTY-FIRST MEETING*/

held at the Palais des Nations, Geneva,
on Wednesday, 8 August 1973, at 3.15 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. KEDADI (Tunisia), of the Working Group of the Whole, informed the Sub-Committee that between 18 July and 7 August 1973 the Working Group had held 10 meetings, during which it had discussed questions concerning the delimitation of the continental shelf, the economic zones and preferential rights, and fisheries.

One of the problems with which the Working Group had had to contend was that of the delimitation of the continental shelf of adjacent States, and also that of the continental shelf of islands. Among the considerations examined had been those of equidistance or the median line, the principle of equity, and the existence of special circumstances. It had been said that international law recognized as a general principle the concept of the median line. Another matter raised had been the case of two States which could not reach agreement and it had been suggested that in such cases alternative machinery should be brought into play.

With regard to the continental shelf of islands, a distinction had been drawn between, on the one hand, islands as such, and, on the other, islets and rocks.

There had been suggestions that independent islands should enjoy the same rights as continental coastal States with regard to the continental shelf. Another point that had been mentioned, however, was that in the case of islets and rocks, there should be an obligation to prove the existence of special circumstances in order to justify the principle of the median line.

It had been stated that coastal States should have the right to the national resource zone in that part of the sea adjacent to the territorial sea so as to conserve and exploit the renewable and non-renewable resources of that zone. In that connexion, a distinction had been drawn between the national resource zone on the one hand and the international resource zone, on the other. Stress had been laid on several principles that ought to govern the balance between the interests of coastal States and those of the international community, and in that connexion reference had been made to the preservation of the marine environment, scientific research, the conservation of resources and the exploitation of resources.

The view had been expressed that there should be two different régimes for renewable and non-renewable resources. On the other hand, there had been sentiment in favour of the principle of the unity of the applicable régime.

On the question of fisheries there had been considerable comment on document A/AC.138/SC.II/L.38, submitted by Canada, India, Kenya and Sri Lanka, which many delegations considered a most valuable basis from which to arrive at a single text. Several delegations admitted that, at the very least, that document had stimulated debates in the Working Group, which appeared to be leading it towards agreement. The sponsors of that document had in fact formed the nucleus of a group of delegations that had held informal consultations on the subject of fisheries and one of the more encouraging aspects of their endeavours was that they all appeared to have the political will to reach agreement.

Other views on fisheries had also been submitted. Stress had been laid on the need to ensure the conservation, maximum utilization, and equitable distribution of the resources of the sea. Coastal States, for their part, had an obligation with regard to the living resources in the adjacent zone. Moreover, they should use those resources judiciously in co-operation with other States. Another view had been that with regard to the international régime for fisheries, no additional advantages could be obtained unless all resources were fully exploited.

Another topic which had attracted much attention was that of migratory species of fish and there had been much discussion on the problem of how to conserve and regulate them. Different points of view, however, existed on how they should be apportioned and organized. Mention had been made, in that connexion, of the role that international regional bodies should play. Equally, stress had been laid on the need to take account of all States including the geographically disadvantaged, the land-locked States and those with limited coast-lines, the fishing States and States whose economy depended upon fisheries, as well as States that had made investments in certain fishing areas. A number of delegations had expressed the view that an equitable and rational régime should be drawn up that would take account of all such interests.

Another view that had been expressed was that anadromous species should have a different system. Mobility was not the real problem. The answer lay in regional co-operation which would lead on to international co-operation. Some delegations had pointed out that rules were already in existence to govern research, management, the division and sharing of resources and the system thus far devised could provide an example for other cases.

Several other viewpoints had been expressed with regard to fisheries. Support had been given to the idea that account should be taken of the interests of third-party States with regard to fisheries in the national resource zone. Equally, criticism had been levelled against the notion of an exclusive economic zone beyond the limit of the territorial sea. Such a concept was, in the view of some delegations, only acceptable, in so far as it took account of the interests of other countries. Document A/AC.138/SC.II/L.38 had continued to provoke discussion and the theory that other States should only be allowed to fish in certain waters subject to conditions imposed by the coastal State concerned had produced the objection that it would not really guarantee the position of third-party States.

With regard to preferential rights in the adjacent zone, the view had been expressed that no specific references could be made thereto without stating the limits within which the coastal State could exercise its preferential rights. It had been stated that the majority had decided in favour of a distance of 200 miles for the exercise of rights over renewable and non-renewable resources. Another point that had been made was the need to give authorization to developing coastal States to fish in that zone. Some delegations had also stated that the question was linked to the principles of regional agreements.

With regard to the economic zone and fisheries, many delegations felt that there was a need to establish a sound basis on which to agree upon procedure in accordance with international law. Some delegations had stated that the resolution of such issues could not be achieved unilaterally - by a declaration of national sovereignty over a given part of the high seas. It was an equitable solution that should be sought, and there would be no equity where the interests of all States were not taken into account. Consequently, there was a need to find a reasonable combination of the interests of coastal States and those of other States.

On procedural matters, he had advocated a flexible and pragmatic approach. In that spirit, he had insisted that texts submitted after the time-limit originally fixed by the Working Group should be treated on an equal footing with those that had been submitted within the time-limit.

He then referred the Sub-Committee to various documents which had been submitted to and prepared by the secretariat in pursuance of that decision. Several of them had no official symbol because they were still informal.

He was happy to inform the Sub-Committee that in the last few days, the Working Group had managed to make good progress as a result of concentrating its efforts on individual points and articles. Rather than synthesize the proposals, it had decided to present the alternatives on each subject. Even that was less simple than might at first appear. The Working Group had refused to break up into small drafting groups and, because the subjects and issues were inter-related, had preferred to advance cautiously - step by step - in view of the lack of political agreement. At present, its work would consist of presenting in a clear and unequivocal fashion the various alternatives. It could not be said, however, that those alternatives did not conceal issues of substance. They represented the basic choices for the various States involved. At the present stage, the Working Group had endorsed fifteen alternatives.

The items contained in the list of subjects and issues which had been examined by the Working Group included the territorial sea, on which there were 13 alternatives. Article 2 had given rise to two alternatives. For item 2.3.1., concerning the delimitation of the territorial sea, five draft articles had been considered. A number of alternatives had been received and consideration of six articles on the issue had been deferred to a later date. It should be mentioned that the Working Group had decided to avoid the system of square brackets. The reason for that was that only clear alternatives were acceptable.

He had accepted the view of the Chairman of the Sub-Committee that they should both use their influence to reduce to the minimum the number of alternatives, and proposed to take up at least one article at each meeting.

The Officers of the Sub-Committee and of the Working Group had decided that their regular work would continue without interruption. A number of afternoons would be reserved for informal consultations, which were already taking place on the subject of fisheries. It was sincerely hoped that such consultations would result in a reduction of divergences of view.

With only 10 more meetings available, the task of the Working Group was becoming more and more urgent. The Sub-Committee should bear in mind that the Third Conference of the Law of the Sea was carrying the hopes and aspirations of mankind as a whole, and he therefore appealed to all delegations to co-operate to the full and to display a spirit of compromise, so that the efforts of the members of the Sub-Committee would be rewarded with success.

Mr. POPPER (Food and Agriculture Organization of the United Nations), speaking at the invitation of the Chairman, confirmed the readiness of FAO and its Committee on Fisheries to co-operate fully with the Sea-bed Committee, in pursuance of General Assembly resolution 2750 (C). In fact, FAO's Department of Fisheries, under the guidance of its Committee on Fisheries, had already prepared a series of scientific and technical documents which had been favourably received by the Sea-Bed Committee. The documents had also been of value to FAO and to fishery people in general, and he looked forward to continuing the collaboration.

He informed the Sub-Committee that the statement made by his predecessor, Mr. Roy Jackson in March 1971 (A/AC.138/32) had described trends in fisheries and fish stocks which had continued in the intervening period. The total world production of fish in 1972 would, because of sharp fluctuations in the abundance of a few very important stocks, turn out to have been about five million tons less than in 1970 or 1971, when it was just below the 17-million-ton mark.

The work of the Sea-Bed Committee had stimulated all those concerned with fisheries to review the situation, and the Committee would undoubtedly receive the results of that review through a variety of channels. For FAO, the most important objectives in world fishery development were that the fullest possible use should be made of the living resources of the sea for human nutrition - consistent with their conservation for future generations - and that the use made of those resources should progressively benefit the people of the developing countries. The achievement of those objectives would clearly depend, among other things, on the legal framework within which world fisheries would be exploited in the future, and the work of the Committee and the Conference would therefore be of great importance.

The achievement of full and rational utilization of resources depended upon effective management, which in turn depended upon the provision of adequate and timely statistics on catches and fishing effort, together with other related data. Unfortunately, although that need was generally known, it was not being satisfactorily met. In an attempt to do so, the recent FAO Technical Conference on Fishery Management and Development had again called upon Governments to exercise their responsibility to ensure that national and international management institutions were provided with adequate data. It would obviously be of great value if that responsibility were

clearly recognized in international law. The importance of international management institutions, which it was hoped would be brought into being by the Conference on the Law of the Sea, lay in the fact that fish paid no regard to national boundaries.

With regard to the objective of benefiting the people of the developing countries, FAO had long been active in the transfer of technology, and its fishery bodies had often and successfully called for co-operation in developed and developing countries for that purpose. Any new legal régime should certainly allow for the further development of international co-operation of that kind through international organizations, bilateral arrangements and direct co-operation between industrial enterprises. FAO would be glad to provide further information on the means at its disposal, and on those it was seeking, to provide scientific advice and, in the long run, to build up technical expertise in the developing countries. He singled out as being particularly relevant the reports of the Technical Conference on Fishery Management and Development, of the Consultation on the Conservation of Fishery Resources and the Control of Fishing in Africa, held in May 1971, and of the Third Session of the FAO Fishery Committee for the East and Central Atlantic held in December 1972. As the developing countries assumed increased responsibilities for fishery management, there would be a need to transfer the techniques for assessing stocks and the effects of fishing on them. International bodies, often of a regional nature, could be particularly effective.

In conclusion, he expressed the hope that the future of world fisheries would be given due consideration in the further work of the Committee.

The CHAIRMAN said that the Sea-Bed Committee had received great assistance from FAO in the past few years, and he wished to express in public the appreciation felt by the members of the Committee for that co-operation.

Mr. PARDO (Malta), commenting on some of the proposals concerning the limits and delimitation of the marine area or areas subject to the sovereignty or jurisdiction of a coastal State, said that the first problem was the line from which sovereignty or jurisdiction should be measured. He noted that the proposals submitted by Uruguay on that subject were virtually identical to the provisions of articles 3-13 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. Unfortunately, a number of key terms in the text of the Convention, which he quoted to the Sub-Committee, were not properly defined, and as a result of that vagueness, a large majority of coastal States had, by elastic interpretations of article 4 (1) and (2), established

their base lines in such a way as to give them the maximum area of territorial sea. Their actions, which had passed largely unnoticed and undisputed, had resulted in probably over one million square kilometres of what had been territorial waters and high seas in 1958 being claimed as internal waters. As the matter stood, there was every likelihood that more international-sea area would become internal waters within the next few years, and the delegation of Uruguay, if it wished to avoid such a state of affairs, was surely being rather optimistic in reproducing the straight baseline provisions of the 1958 Convention.

He then read out to the Sub-Committee the proposals on archipelagic principles submitted by Fiji, Indonesia, Mauritius and the Philippines in document A/AC.138/SC.II/L.15. Those principles also involved the question of the line from which the sovereignty or jurisdiction of the archipelagic State over the sea was measured. Since there were no special provisions concerning archipelagos in the 1958 Geneva Convention, the Sub-Committee might usefully turn its attention to some of the implications of the four-Power proposal, particularly since they had been endorsed in substance by OAU, by Uruguay and by the sponsors of document A/AC.138/SC.II/L.27. His own delegation had noted that, with the exception of Nauru, all island States, of which there were now 27, were also archipelagic States within the terms of the definition contained in document A/AC.138/SC.II/L.15. It had also noted that in certain cases the outermost islands or drying reefs were situated at considerable distances from the main islands. He drew the Sub-Committee's attention to a number of such islands, which, if the archipelagic principles were adopted, would enable the Philippines, Indonesia, Fiji, Mauritius, Japan, New Zealand and the United Kingdom to claim as internal waters between 10 and 15 per cent of the worlds oceans. Moreover, there were a large number of archipelagos, such as Papua-New Guinea, Seychelles and Cook Islands, that could be expected to achieve independence at a future date, thus further increasing the area of internal waters. Furthermore, if the four-Power draft were adopted, a number of other archipelagos which constituted an integral part of a coastal State, of which he cited six out of many possible examples, would also enable the coastal States concerned to enclose as internal waters tens of millions of square kilometres of the high seas.

Another question that arose, if the four-Power draft were adopted, was whether Australia was legally a continent or an island. He then gave the Sub-Committee two examples of baselines that could be drawn by the Australian Government to enclose as internal waters large areas of the high seas. On the most conservative drawing of its baselines, Australia could, without contravening international law as it stood today, appropriate millions of square miles of ocean.

Such an interpretation of the implications of the proposed archipelagic principles, might be considered absurd, but it was no more absurd than the interpretation of the term "continental shelf" to mean "continental margin" made by others. In a situation in which some States were determined to maximize their claims, all States would sooner or later be forced to follow suit in order to retain bargaining counters in the confused negotiations which would follow decisions protecting the short-term interests of some oceanic States, which had inexplicably obtained the support of developing countries whose interests would be fatally damaged in the situation which they were helping to bring about. In short, the combined effect of the vagueness of the provisions relating to baselines contained in the 1958 Geneva Convention on the Territorial Sea and of the adoption of the archipelagic principles contained in document A/AC.138/SC.II/L.15 could be expected to be the immediate enclosure, as internal waters, of some 15 per cent of the oceans, and the enclosure of a further 15-20 per cent of the oceans in the near future. Thus, some 30 or 35 per cent of ocean space was already disposed of by the choice of appropriate baselines. In that connexion it was most gratifying to remark that the explanatory note attached to document A/AC.138/SC.II/L.15 stated that the proposals on archipelagos submitted by Fiji, Indonesia, Mauritius and the Philippines were designed to accommodate not only the interests of archipelagic States but also those of other States and of the international community as a whole. Indeed, with only a slight modification of the archipelagic formula - by permitting a coastal State owning an archipelago to draw straight baselines to it - it might have been possible to confine the work of the Santiago Conference to the question of baselines alone, with a great saving in time.

Furthermore, the acceptance of a territorial sea having a breadth of 12 miles and adjacent to internal waters as defined in accordance with the proposed archipelagic principles and in the light of the interpretations given to article 4 of the 1958 Convention on the Territorial Sea would add at least a further 5 per cent to the marine areas under the sovereignty of coastal States. It could thus be anticipated that some 35 or 40 per cent of the oceans would be under coastal State sovereignty if proposals before the Sub-Committee which had aroused little or no opposition were adopted.

There had been widespread support for the concept of an economic zone or patrimonial sea, which would extend the exclusive economic jurisdiction of a coastal State to an area of ocean space, adjacent to its territorial sea, not exceeding 200 nautical miles in breadth. In that connexion it was important to note that the patrimonial sea would be adjacent not to the coast, but to a territorial sea which was in turn adjacent, not to the coast, but to rather extensive internal waters. Also the majority of the Sub-Committee seemed to take the view that tiny islets would have a patrimonial sea in addition to a territorial sea. Consequently, the area of the patrimonial sea would be substantially larger than that indicated by the secretariat on page 39 of document A/AC.138/87, since the secretariat estimate was based on the assumption that the patrimonial sea would be adjacent to the coast. A conservative calculation indicated that the future patrimonial sea would comprise not less than 35 per cent, and more probably around 40 per cent, of ocean space.

Under draft articles submitted to the Sub-Committee the coastal State was urged, in establishing the breadth of its patrimonial sea within the 200-mile limit, to be reasonable and to take into account geographical, geological, economic and social factors and also interests relating to the preservation of the marine environment. However, coastal States not inconvenienced by a State lying opposite them were unlikely, in establishing the breadth of their patrimonial sea, to interpret reasonableness to mean anything less than 200 miles. Indeed, some of the draft articles contained indications that some coastal States, in their anxiety to serve the interests of the international community and to preserve the marine environment from irreparable contamination, might even be willing to assume control of whatever high seas might still exist beyond the expansively defined internal waters, territorial sea and patrimonial sea. Thus the proposals before the Sub-Committee, which had received very wide support, implied that about 80 per cent of ocean space, including the resources

thereof, would be placed under the sovereignty or exclusive jurisdiction of coastal States, leaving only some marine plants, some floating seaweed, a few migrating species of fish and some manganese nodules in the area beyond. Even that oversight was remedied in some documents. Document A/AC.138/SC.II/L.38 suggested that coastal States should be given the power on a regional basis, to make regulations for the exploration, exploitation, conservation and development of the living resources of the area of the sea outside the limits of the exclusive fishery zone, where those resources were of limited migrating habits and bred, fed and survived on the resources of the region. Since the living resources referred to included marine plants, and since the limits of the exclusive fishing zone were intended to coincide with the limits of the patrimonial sea, virtually all marine plants and living resources of the seas were to pass under the control of coastal States. Document A/AC.138/SC.II/L.36 provided that "the coastal State has the right to retain, where the natural prolongation of its land mass extends beyond the patrimonial sea, the sovereign rights with respect to that area of the sea-bed and subsoil thereof which it had under international law before the entry into force of this convention: such rights not to extend beyond the outer edge of the continental margin". However, since the theory of the natural prolongation of the coastal State under the sea, as currently interpreted, was hardly in accord with any reliable scientific facts, since it was not clear what rights, as distinct from unilateral claims, a coastal State possessed under international law with regard to the area of the sea-bed, and since the area of the sea-bed beyond the patrimonial seas would amount to only 20 per cent of the total, it might well be wondered to which continent the word "margin" in document A/AC.138/SC.II/L.36 referred, particularly as, in most parts of the world, the geological continental margin where it existed, often could not be determined within an accuracy of 100 miles. In any case that proposal, and others in the documents before the Sub-Committee, would cover the bulk of whatever sea-bed resources were not already included in the area under the sovereignty or exclusive jurisdiction of the coastal States.

There was also the question of the rights and duties of the coastal State in relation to the major uses of the sea, within and outside the marine area under its sovereignty or exclusive jurisdiction. Apart from the comprartively minor restraints suggested in document A/AC.138/SC.II/L.44, none of the proposals before the Sub-Committee indicated any perception of the need for substantial changes in the

traditional concept of absolute sovereignty, at a time when internal waters were no longer insignificant portions of ocean space but comprised no less than 15 per cent, and might in future comprise more than 30 per cent, of the seas, including the great majority of international straits. In the proposals before the Sub-Committee the sovereignty of the coastal State remained absolute and presumably included the right to regulate, at its discretion, overflight over those waters. Document A/AC.138/SC.II/L.15 conceded the innocent passage of foreign vessels in archipelagic waters in accordance with national legislation and through sea-lanes designated by the coastal State; but what was conceded through national legislation could also be withdrawn through national legislation, and in any case the concept of innocent passage, unqualified by any further treaty provisions, left to the discretion of the coastal State the decision as to whether the passage of any particular foreign vessel was innocent or not.

According to traditional international law, States in their territorial sea exercised full sovereignty subject only to the obligation not to hamper the innocent passage of foreign vessels. Traditional law was retained unchanged in the Santo Domingo Declaration and in the proposals contained in document A/AC.138/SC.II/L.21. Yet, the proposals contained in documents A/AC.138/SC.II/L.18, A/AC.138/SC.II/L.24 and A/AC.138/SC.II/L.27 tended to restrict, sometimes rather severely, the practical exercise of passage through territorial waters. Apart from the question of innocent passage, none of the proposals submitted to the Sub-Committee suggested that the coastal State might have any other international obligations within its territorial sea.

In traditional international law the high seas started immediately beyond territorial waters, and on them freedom reigned, apart from certain controls that could be exercised by the coastal State in a zone not exceeding 12 miles in breadth from the applicable baseline, and apart from rights over the resources of the continental shelf and certain other rights regarding the effective exploitation of sea-bed resources. The exercise of those rights was carefully restrained by obligations, such as the obligation of the coastal State to give notice of the construction of installations for the exploitation of continental shelf resources and its obligation not to withhold its consent for scientific research on the continental shelf.

The situation was now entirely changed. According to proposals supported by the overwhelming majority of the Sub-Committee, there lay, beyond territorial waters, an exclusive economic zone or patrimonial sea 200 miles wide in which the coastal State enjoyed exclusive jurisdiction over living and non-living resources and had full jurisdiction over the management and conservation of resources. The coastal State also had the right to regulate as it wished scientific research of whatever nature, as well as the right to enact any regulations which it deemed appropriate in order to prevent and control marine pollution. In several of the documents before the Sub-Committee those rights of the coastal State were unrestricted and their precise extent was not subject to any impartial judicial review. Other documents indicated that the rights of the coastal State should be exercised without prejudice to the freedom of navigation or overflight or to the freedom to lay submarine cables and pipelines. In still other documents, such as document A/AC.138/SC.II/L.40, those freedoms were to be exercised only subject to the rights of the coastal State in the area. In any case, it was clear that international navigation in the patrimonial sea could be reduced to little more than innocent passage if the coastal State chose to exercise, in full, its extensive rights, particularly in the field of pollution control. Thus it was anticipated that coastal States would assume few international obligations as a counterpart to their new exclusive rights within their economic zone or patrimonial sea. However, a few of the documents before the Sub-Committee suggested that the exploitation of the living and mineral resources of the economic zone should take place without undue interference with other legitimate uses of the sea. It remained to be seen whether that rather general provision would be included in the final treaty. Also of interest were the proposals contained in document A/AC.138/SC.II/L.41, which suggested that the economic zone or patrimonial sea should be conceived on a regional or subregional basis.

Three major conclusions could be drawn. First, the situation was now totally different from what it had been 15 or even 5 years previously. When the 1958 Geneva Conventions had been negotiated, the principle of the freedom of the seas had been generally accepted: the acrimonious squabbles on the breadth of the territorial sea had involved, at most, the extension of national sovereignty over an additional 1 or 2 per cent of ocean space. Now, however, widely supported proposals had been submitted that would place under national control, either immediately or in the

foreseeable future, some 80 per cent of ocean space, virtually all its living resources, and even the greater part of the manganese nodules of the abyss. A regime of virtually total freedom over virtually the whole of ocean space was being replaced by a regime of virtually total sovereignty over virtually the whole of ocean space. Almost the only common trait was the obstinate refusal of coastal States to assume any internationally enforceable obligations with regard to the manner in which they used and exploited the seas - total irresponsibility within total sovereignty "for the common benefit of mankind".

Secondly, conceptual thinking did not appear to have changed at all since the days of Grotius and Selden, despite the immense advances of technology, the continuing revolutionary changes in the use of ocean space, and the growing interdependence of peoples, of which account could not be taken within the two opposing concepts of total sovereignty and total freedom. The idea underlying the approach adopted in document A/AC.138/SC.II/L.24 and elsewhere seemed to be that, since the world had always thought in terms of sovereignty and freedom, it must continue to do so, irrespective of objective facts which called for radical changes in outlook if the seas and their riches were not to become a curse to mankind.

Thirdly, there seemed to be little awareness that the uses of the sea, and their intensity, were changing rapidly. For instance, in the proposals before the Sub-Committee, there was not a single article dealing with sea-bed petroleum and gas storage tanks, and no serious proposals had been made on the harmonization of the major uses of ocean space in those areas where it was becoming necessary. One document (A/AC.138/91) dealt with artificial islands and installations, but it was essentially concerned with the question of who might construct them, and not with the nature of the activities which might be carried out on them.

Several articles reproduced almost verbatim from the 1958 Geneva Conventions now read curiously in the light of contemporary conditions. For example, some proposals reproduced the provisions of article 5 of the 1958 Convention on the Continental Shelf, concerning the establishment of 500-metre security zones around installations and devices for the exploration and exploitation of the natural resources of the continental shelf, without regard for the fact that the nature and size of most of those installations had radically changed since 1958 and that superports and artificial islands measuring several square kilometres in area would soon be in existence, and without regard for the fact that many modern ships could

not stop or change course within a distance of less than several kilometres. The 500-metre security zone, in other words, was a survival from the past. Underwater habitats, the number of which was increasing, were also ignored in the proposals before the Sub-Committee. Another survival from the past in many of the proposals was the freedom to lay pipelines in ocean space. For some reason article 2 of the Convention on the High Seas did not distinguish between submarine cables and submarine pipelines, although the purpose of the former, apart from electricity cables, was international communications, while the purpose of the latter was essentially economic. Damage to submarine cables might interrupt international communications; damage to submarine pipelines might pollute some hundreds of thousands of square miles of sea. It was therefore surprising that, at a time when submarine pipelines were becoming more numerous, no distinction had been made between cables and pipelines and no norms had been proposed for their construction, maintenance and protection.

On the basis of the proposals before the Sub-Committee, up to 20 per cent of ocean space would become internal waters immediately and another 15 to 20 per cent within a few years; up to another 40 per cent would be brought at least under the exclusive economic jurisdiction of coastal States, and it could only be a matter of time before that zone fell in practice under their sovereignty, since the practical exercise of exclusive economic jurisdiction inevitably entailed the gradual assertion of jurisdiction in matters other than resources exploration and exploitation. Dangerous new technologies and many new uses of ocean space were to remain unregulated. Apart from the establishment of a sea-bed agency, no significant strengthening of the existing technical international institutions dealing with ocean activities was envisaged.

The consequences of such a legal order for navigation and overflight, and thus for international commerce and intercourse, might well be catastrophic, particularly as far as the regularity and reliability of sea and air communications was concerned. The exclusion of certain types of ships from maritime areas under the sovereignty of some States, the multiplicity of regulations for the admittance of vessels to the vast internal waters of States, the unnecessary multiplication of compulsory sea lanes, the varied requirements for authorization to pass through waters under coastal State sovereignty, and even, perhaps, the extraction of arbitrary tolls for passage through important straits could all be expected to increase the cost of

transport quite considerably, to delay the introduction of new technologies in shipping, and generally to hamper commerce and communications. Naturally, no State would want that to happen, but concern for security and pollution, the possibility that States might wish to reserve maritime commerce to national flag carriers, and the natural desire to maximize control over strategic areas of the oceans could easily start a chain reaction in the international community. In such circumstances vessels would be designed for, and ply, those routes where conditions were most favourable, and States accessible only through the internal waters of half a dozen other States would be at a great disadvantage.

While no great difficulties might be anticipated with regard to the management and exploitation of mineral resources, the situation was somewhat different in the case of fisheries, assuming that States whose economy was heavily dependent on international fisheries would acquiesce in a situation in which virtually all known fish stocks would pass under the exclusive jurisdiction of coastal States. The coastal State would exercise sovereign rights for the purpose of conservation and management of fish stocks. But even if all coastal States had the necessary expertise, would it be possible for them to manage effectively the fish stocks under their jurisdiction? A fairly accurate answer might be that no State would be able to manage, by itself, all fish stocks within its exclusive fishery jurisdiction, because no State would control the entire stock of all such fish; that oceanic States with long coastlines would be able to manage effectively the majority of the stocks of fish of major economic importance to them; that States with a coastline on the ocean less than 300-500 miles long would be unlikely to be able to manage effectively even one major stock of fish of economic importance to them, because the range of most stocks of fish was greater than 300 miles; and that very few States fronting on enclosed and semi-enclosed seas would be in a position to manage effectively any stock of fish of economic importance to them, owing to their lack of effective control over the bulk of the stock. Thus, while all States would have the exclusive right of exploitation of fish within their jurisdiction, the actual value of that right would depend on the degree of control over a stock of fish which could be asserted by the coastal State. It could therefore be expected that well-established or developing fishing industries of States in enclosed or semi-enclosed seas would soon find that they had fallen out of the frying pan into the fire.

The international implications of marine pollution were so obvious as to call for no comment, as was the reluctance of States to assume legal responsibility under

enforceable and impartial judicial procedures for the damage caused to neighbours by pollution originating in marine and land areas under their sovereignty or jurisdiction.

However, as far as technology and scientific research were concerned, it was clear from the documents before the Sub-Committee that most coastal States intended to interpret the term "scientific research" rather strictly, to subject it, in the marine areas under their jurisdiction, to authorization, and to supervise and control rather closely whatever research was authorized. One obvious consequence could be that the conduct of scientific research over large marine areas would be hampered and the possibility of balanced scientific progress in the various fields of ocean science would be impaired, since some types of scientific research were more likely to obtain coastal State approval than others. Secondly, scientific research would tend to be conducted in areas of ocean space under the jurisdiction of oceanic States with long coastlines, for authorization by such States would give scientific access to a much larger area than would the authorization of coastal States having a relatively small maritime jurisdiction. Indeed, oceanic areas under the jurisdiction of no more than two dozen developed and developing States would account for more than half, and perhaps as much as two-thirds, of ocean space under national jurisdiction - vast areas that would keep scientists occupied for many decades, without any need for them to concern themselves with areas under fragmented national jurisdiction. Thus, the development of maritime areas not easily accessible to scientists, including exploration for manganese, petroleum and other minerals, was likely to be delayed.

Coastal States could not develop the maritime areas under their sovereignty or jurisdiction unless they possessed adequate financial resources and appropriate technology. The development of local technology was both expensive and time-consuming and not more than half a dozen States had or could hope to acquire, within the present context of international co-operation, sufficient indigenous technology. In the circumstances, it was interesting to note the absence of any serious proposals to establish a more adequate international framework for the effective transfer of technologies relating to the development of ocean resources. He wished, however, to point out that the proposal to endow the future sea-bed Authority with the power to establish regional oceanographic institutions was not likely to contribute to an effective acceleration of technological transfers.

It might be true that a division of the oceans among coastal States, as envisaged in the proposals which had been submitted, would to some extent benefit all States that were neither shelf-locked nor land-locked. However, while most coastal States would gain some thousands of square miles in terms of area, a few States, developed and developing would stand to gain a few million or more square miles.

The alternative was certainly not freedom of the seas as it had been traditionally interpreted. Multiplying uses of the seas and intensifying exploitation of their resources had led to increasingly serious abuses. The ruthless destruction of living marine resources by certain fishing fleets, without regard for the most elementary principles of conservation, was intolerable, as was, for example, the use of scientific research as a cover for espionage. Some adcovated the establishment of a supranational authority for the oceans to which States would surrender their powers, but that concept was not politically acceptable, nor was it realistic at the present stage of world development.

The best course was to establish a new régime for the oceans which would provide a flexible international framework within which solutions could be sought for the increasingly serious problems arising in ocean space. The traditional dilemma of sovereignty or freedom could be solved by introducing the element of international co-operation, emphasising the need for peaceful settlement of disputes, for impartial and binding international judicial procedures if other peaceful means of settlement failed and, above all, for the creation of comprehensive international institutions for ocean space to hold the balance between the legitimate rights and interests of coastal States and the necessity for increased international co-operation as technology advanced and ocean exploitation intensified.

His delegation had been among the first to accept a 200-mile overall limit for coastal State jurisdiction, regarding it as the most equitable from the standpoint of the international community. A much greater limit would benefit a minority of countries, while a much smaller limit was not likely to be internationally acceptable in view of existing claims by States. However, the limit proposed by his country in the preliminary draft articles on the delimitation of coastal state jurisdiction in ocean space (A/AC.138/SC.II/L.28) was an over-all limit, one which included the continental shelf. Furthermore, the zone under the jurisdiction of the coastal State should be divided into two areas: an

inner area 12 miles in breadth, corresponding roughly to the territorial sea, and an outer area corresponding approximately to the exclusive economic zone. Malta had not accepted the concept of a territorial sea, mainly because that concept made it very difficult to solve the question of straits and because a coastal State must accept within its territorial sea international obligations that went beyond the mere concession of innocent passage. The maritime area under coastal State jurisdiction would be determined by baselines, not more than 24 miles in length joining appropriate land points either on the mainland or adjacent islands. The 24-mile baseline had been chosen because it was twice the breadth of the proposed territorial sea and twice that of the proposed inner belt of coastal State jurisdiction.

The preliminary draft articles made no special provisions for archipeligos for three reasons: first, it was virtually impossible to define an archipeligo reasonably; secondly, the implications of adoption of the archipelagic concept proposed by some delegations were extremely serious; and thirdly, the introduction of the archipelagic concept was not needed in order to ensure archipeligic unity in the context of coastal State jurisdiction extending to 200 miles from the coast. According to that concept, all true archipelagic States would have exclusive jurisdiction over the resources in the entire archipelagic area and, in addition, rights approaching those of sovereignty with regard to most other users of the sea. He saw no legitimate reason for transforming archipelagic waters into internal waters and claiming a 200-mile jurisdiction around the perimeter of the archipeligo.

It might be asked why his country suggested distinguishing between islands and islets and why, if a distinction was necessary, islets were defined as naturally formed areas of land, less than 1 square kilometre in area, surrounded by water, and above water at high tide. In the view of his delegation an ocean space jurisdiction of nearly half a million square kilometres each for isolated rocks and sandbanks was totally unacceptable. In addition, from the geological and geographical standpoint, it was absurd to claim that islands far from the coast had a continental shelf when, by no stretch of the imagination, could they be regarded as forming parts of continents. The area chosen in order to define an islet was in part arbitrary, but it had been found that very few islets of less

than one square kilometre had a permanent indigenous population unless they happened to be in the immediate vicinity of the mainland, in which case they would normally be points on straight baselines. The interests of any inhabitants could of course be preserved by issuing appropriate regulations within the security zones proposed by his delegation. The net effect of the proposals regarding limits would be to reduce the present extent of internal waters slightly and to limit the jurisdiction of coastal States to somewhat less than 30 per cent of ocean space. Publicity would also be given to baselines and limits not only by the coastal States concerned but also by international institutions, for the establishment by a coastal State of its jurisdiction of limits in the oceans was not exclusively a national concern - it also involved the interests of the international community.

Chapters VI, VII, VIII and IX of the Malta draft treaty (A/AC.138/SC.II/L.28) dealt with navigation, overflight, submarine cables and scientific research, matters in which there had to be international legislation and also international protection, both inside and outside national jurisdiction. In the absence of effective international legislation, the coastal State was of course free to enact appropriate non-discriminating regulations that would be subject to international judicial review. The preliminary draft articles rejected the concepts of free passage and innocent passage through straits and through the inner belt of ocean space under coastal State jurisdiction. They were replaced with the concept of passage under treaty-defined conditions.

His country also believed that the coastal State was under the obligation to transfer to the future international institutions, for equitable allocation to poor countries, a portion of the financial benefits it gained from exploitation of the natural resources of the ocean space under its jurisdiction. The forthcoming Conference on the Law of the Sea would accord international legitimacy to quite extensive unilateral claims by States, and it was only appropriate that the international community should share in the benefits derived by individual States. Moreover, the establishment of comprehensive international institutions for the oceans was likely to enable States to exploit national ocean space more efficiently. Methods to ensure observance of that obligation could be discussed in negotiations within the framework of the future international institutions.

Distinguishing clearly between the conservation and the exploitation of living resources within national jurisdiction, his country proposed that the exploitation of such resources should be left to the discretion of the coastal State, subject only to special provisions with regard to subsistence fishing and the obligation to provide adjacent land-locked countries with access to those resources under conditions similar to those required of nationals of the coastal State. On the other hand, Malta's draft articles were designed to encourage the adoption of rational conservation measures by the coastal State and hence to maintain or, if possible, increase the stock of living resources available. Accordingly, a distinction was made between measures for biological management, economic management, and regulatory measures. Conservation programmes were also envisaged and it was suggested that coastal States should accept certain international obligations in respect of their management and exploitation of living resources. Acceptance of those obligations was essential if intensified fishing and more sophisticated fishing techniques were not to lead to serious decreases in desirable stocks of fish. With a view to solving the problem of migratory stocks, it was suggested that co-operative management and exploitation programmes should be undertaken, preferably on a regional basis, by the international institutions and the coastal State or States concerned.

Draft articles 43 - 52, relating to overflight, should be regarded as highly tentative and designed simply to elicit alternative suggestions. There was, unfortunately, a distinct possibility that, as a result of the forthcoming Conference on the Law of the Sea, many straits that were now international might be transformed not into territorial waters but into internal waters. Accordingly, for the time being his delegation interpreted the phrase "straits which are used for international navigation" as meaning straits which, because of their characteristics, e.g. width and depth, are of such a nature that they permit the passage of ships of types and classes normally used in voyages between one State and another.

A serious omission in the Malta proposal was the absence of articles on a large number of new uses of ocean space. In due course, the secretariat might be requested to engage a small group of expert consultants to advise the Committee and the future Conference on the technical aspects of those new but increasingly important uses.

His delegation hoped that its general approach to the law of the sea would commend itself to the Sub-Committee.

Mr. ARIAS-SCHREIBER (Peru), replying to the remarks made by the representative of Malta relating to the draft co-sponsored by Peru, said that the draft tried to make adequate provision for the needs of countries suffering from certain disadvantages and upheld the right of all countries to share equitably in

the benefits derived from exploitation of the sea's resources. Hitherto only a few States had been in a position to undertake extensive exploitation of those resources and those States were not yet meeting their obligations towards the less favoured nations. The developing countries were now maturing and acquiring the means to ensure their own economic independence. The draft made adequate provision for the interests of the international community as a whole and provided for the continued freedom of navigation and communications.

Mr. LUPINACCI (Uruguay) said his country's proposal had been submitted in a spirit of conciliation in an attempt to narrow the gap between conflicting points of view. It was designed to protect the interests of coastal States, while safeguarding freedom of navigation and communications and tried to reconcile the concept of coastal State sovereignty with the indisputable rights of the international community as a whole. The vagueness objected to by the representative of Malta was in fact flexibility permitting further refinement and rational interpretation. The Uruguayan proposal was in harmony with the proposed draft articles on archipelagos and other proposals. His delegation therefore maintained all of the proposals in its draft and reserved the right to return to the question in due course.

Mr. DJALAL (Indonesia) said that the representative of Malta had given an erroneous interpretation of the basic concept of the archipelagic State, which was clearly defined in the principles set forth in document A/AC.138/SC.II/L.15. The concept of an intrinsic geographical entity would not include Wake Island and Hawaii. Such islands as Anambas and Natuna were not hundreds of miles from the principal islands of Indonesia but sixty to seventy miles from Borneo. There were also intervening islands. According to the criteria proposed in the Maltese draft, Indonesia would be entitled to regard the Anambas and Natuna islands themselves as principal islands. At least, those populated islands were much bigger than Malta. It had also been claimed that adoption of the concept of an archipelagic State would convert 15 to 20 per cent of the high seas into internal waters. Internal waters were not mentioned in the proposals submitted in documents A/AC.138/SC.II/L.18 and L.48, which referred to archipelagic waters. The principle that innocent passage of foreign vessels through the waters of the archipelagic State should be allowed in accordance with its national legislation had been cited as likely to create difficulties, but the proviso "having regard to the existing rules of international law" had been ignored. Indonesia saw the archipelagic concept as a means of protecting its economic development, political stability and security

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that, for his country, the question of the régime for straits used for international navigation and linking high seas or two parts of the same high sea was of primary importance. It was an accepted rule that the high seas were highways open to all nations, but those highways often passed through straits which offered the shortest and most convenient routes between seas and oceans. The trade and communications of most countries passed through straits such as the Straits of Calais, Gibraltar, Malacca and Singapore. Freedom of passage through straits used for international navigation was therefore an integral part of the freedom of the high seas. That freedom might become a fiction if vessels were denied freedom of passage from one part of the high seas to another. It might be argued that the high seas, and therefore straits, were not used to the same extent by all countries for navigation, but many developing countries were building their own merchant fleets and would not always have to use foreign vessels for their trade and communications. Moreover, shipping was still the cheapest form of transport for most international trade. The economic importance of international straits used as world highways was bound to increase. Any new law of the sea must be drafted in the light of such prospects.

The geographical location of countries must also be borne in mind. For many countries access to the oceans lay through certain straits. That applied particularly to Mediterranean and Black Sea countries, most of which had access to the Atlantic Ocean only through the Straits of Gibraltar. Any interference with navigation in those straits would therefore affect their vital interests. The Ukraine was in that position. The régime for straits linking high seas and used for international navigation must therefore allow for the special interests of countries whose only access to the oceans lay through certain straits. The interests of the coastal States concerned in respect of such matters as security, observance of navigation rules and pollution prevention must of course be safeguarded. As in other aspects of the law of the sea, it was essential to balance the interests of international navigation, those of the countries using the straits and those of the coastal States concerned.

In his opinion, the draft articles on straits used for international navigation proposed by the Soviet Union in July 1972 (A/AC.138/SC.II/L.7) offered such a reasonable solution. While providing for equal rights to free passage through such straits, the draft would enable the coastal States to establish in narrow straits sealanes suitable for all vessels. Such vessels would be required to ensure that they in no way endangered the security of the coastal States, to observe rules designed to prevent accidents and to take precautions to avoid pollution or any

other harm to the coastal States. They would be liable to the coastal States for any damage resulting from their passage through the straits. The draft provisions in no way infringed the sovereign rights of the coastal States over the living and mineral resources of the waters or sea-bed in the straits. The Soviet Union had expressed its willingness to incorporate amendments or additions which maintained that balance of interests. The draft could serve as a basis for a solution that would meet the interests of all States.

On the other hand, the eight-Power draft in document A/AC.138/SC.II/L.18/Rev.1 could not serve even remotely as a basis for the codification of rules of law governing international straits. Its main fault was that it confused the régime for territorial waters with that of international straits and would place international navigation in important straits under the national jurisdiction of the coastal States. The application of the concept of innocent passage to such straits would in effect enable the coastal States to determine the nature of the régime for the straits - who should be allowed to pass through them and who should be denied their use in certain circumstances. Such a one-sided solution was totally unacceptable. The adoption of that proposal would mean changing the régime of internationally important straits, abandoning the principle of the freedom of passage through such straits for vessels of all countries and replacing it by the so-called right of innocent passage, which would in effect give the 12 to 15 coastal States of such straits control over the shipping of the vast majority of countries. It would seriously damage the interests of international navigation, which would be subject to the decisions of individual coastal States and the convenience of military and political groupings. A régime of straits based on the concept of innocent passage would also discriminate against countries dependent on certain straits for their access to the ocean and so affect their vital interests.

In praising the advantages of basing the régime of straits on the concept of innocent passage, the representative of Spain had argued that no rule of treaty or customary law accorded universal freedom of passage through the Straits of Gibraltar. International custom was based on the will of the States instituting that custom and was in the nature of a tacit agreement. In article 38 of its Statute, the International Court of Justice was required to apply, inter alia, "international custom as evidence of a general practice accepted as law". The international practice had to be of long standing and recognized as a rule of law. Freedom of passage through the Straits of Gibraltar for the vessels of all countries had been accepted international practice for centuries. It had also been recognized as a

rule of law in the 1904 and 1907 treaties between the United Kingdom, France and Spain and had been reaffirmed in the 1912 Franco-Spanish Treaty. That practice had been recognized by the tacit agreement of all States, including Spain, which for a long time had not stopped vessels passing through the Straits or protested against such passage.

The representative of Spain now claimed that the practice of recent years had established the principle of innocent passage, and not freedom of passage, through the Straits, and had referred to the arrest of 60 foreign merchant vessels beyond the three-mile limit in 1968-1972. He had not said whether those vessels had been engaged in smuggling in Spanish territorial waters or had merely been passing through the Straits of Gibraltar. In the latter case, such a practice would be illegal for it would violate a generally accepted rule of international customary law. The reference to a three-mile limit was strange, as Spain had established a six-mile territorial sea. The Spanish representative's statement that freedom of passage through the Straits of Gibraltar had never been accepted psychologically or juridically in Spain as a rule of law suggested that certain elements in Spain were bent on establishing control over international navigation in the Straits. The psychological willingness of a State to recognize a certain practice as a rule of customary international law could only be ascertained from that State's actions. The absence of any open rejection of such a rule over a very long period signified its tacit acceptance.

The representative of Spain had also claimed that the discussion in the International Law Commission during the preparations for the 1958 Conference on the Law of the Sea supported his argument that the same régime should apply to navigation in the territorial sea and in international straits. As a matter of fact, however, the Commission had stated in its commentary on the article dealing with the rights of protection of the coastal State that it had "included a clause formally prohibiting interference with passage through straits used for navigation between two parts of the high seas" (Yearbook of the International Law Commission, 1956, Vol.II, p.273). It had quite obviously not suggested any identification of the régime for navigation in the territorial sea with that of straits. The Spanish representative had also referred to the Corfu Channel in that context, but such straits, which led from the high seas to territorial waters and to which the principle of innocent passage should be applied, obviously could not be compared with or treated in the same way as straits on major maritime routes used by tens of thousands of vessels from many countries every year.

In criticizing the position of the Soviet Union, the representative of Spain had stated that the advocates of freedom of passage through the Straits of Gibraltar and similar straits were pursuing their own political and strategic interests. The Soviet Union had ports on the Black Sea which were accessible from other parts of its territory only via the Straits of Gibraltar. France and Spain itself were in a similar position. If other States tried to exercise control over international navigation in those Straits and interfere with the passage of Spanish ships through them, Spain would not hesitate to protest that such action was illegal and that its vital interests required freedom of passage for its vessels through the Straits. The régime for straits used for international navigation could not be decided unilaterally. Any interference with international navigation in such straits would not be an act of peace. It would affect the interests of the majority of countries and might lead to international friction and tension.

Mr. NJENGA (Kenya) suggested that the statement made by the Chairman of the Working Group should be reproduced in extenso in the summary record.

It was so agreed.

Mr. FRANGOULIS (Greece) said that his delegation reserved its position on the section of that statement dealing with the question of islands, since the views of some delegations mentioned in that connexion had not been adequately reflected.

The meeting rose at 6.50 p.m.