UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL */

Distr.
GENERAL

A/AC.138/SC.II/SR.73
17 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-THIRD MEETING */

held at the Palais des Nations, Geneva,
on Monday, 13 August 1973, at 8.30 p.m.

Chairman:	Mr. KAZEMI	Iran
Rapporteur:	Mr. ABDEL-HAMID	Egypt

CONTENTS:

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CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued) (A/AC.138/SC.II/L.21-53)

Mr. OLSZOWKA (Poland), referring to the problem of straits used for international navigation, said that where such straits were more than 24 miles wide no special régime was needed, since all ships in transit enjoyed freedom of navigation on the high seas beyond the territorial seas of the coastal States. However, where the width of such straits was 24 miles or less, a special régime was clearly necessary. Such a régime already existed in the customary rules of international law, the régime of passage through international straits being different from the right of innocent passage through territorial waters. That difference had been acknowledged explicitly or implicitly in a number of proposals. Generally, the draft articles dealing with the régime of the territorial sea stated that there should be no suspension of the right of innocent passage through straits used for international navigation, indicating that the jurisdiction of the coastal State in such straits should be more limited than in other parts of the territorial sea. The régime of straits, and especially the question of unimpeded passage through them, should therefore be considered under item 4 of the list of subjects - straits used for international navigation - rather than item 2.4 - innocent passage in the territorial sea. In the case of straits situated within the territorial sea, precise conditions would also have to be laid down for overflight by aircraft.

The concept of free passage through international straits was of particular importance to Poland because of its geographical position. The legitimate rights and interests of the coastal States should of course be safeguarded, but such States also had obligations. For example, they should be required to publicize information on any obstacles or dangers to navigation known to them. In some cases the right of free passage would become meaningless if the coastal State was allowed to construct certain installations in the straits, for example submarine or overhead cables and pipelines too near the surface, bridges across the shipping lanes or installations for exploring and exploiting sea-bed resources. The coastal State should be required to pay due regard to the interests of the international community before taking such action. Poland therefore considered that the following sentence should be included in the provisions governing international straits: "The coastal State shall not place in the straits used for international navigation structures of any kind which could hamper or obstruct the passage of ships through such straits". It had submitted a formal proposal to that effect in document A/AC.138/SC.II/L.49.

As to the question of shelf areas, the main provisions of the Geneva Convention on the Continental Shelf had proved viable and, although some adjustments might be made, Poland saw no reason to revise the legal status of the continental shelf established by that Convention. However, its provisions concerning the outer limits of the continental shelf were obsolete and those dealing with the delimitation of shelf areas between neighbouring States needed clarification, particularly in cases where there were special geographical circumstances. The only equitable and viable basis for establishing the limit of the coastal State's jurisdiction over the continental shelf was a combination of depth and distance criteria. The outer limit fixed for the continental shelf should not be too far from the coast, in order to leave the largest possible area of marine space for the use and benefit of the international community. As to continental shelf delimitation between adjacent States, an equitable, clearly-defined solution would have to be found for the problem of islands. Poland shared the view that such delimitation issues should be settled by agreement between the States concerned in accordance with equitable principles and in the light of all the relevant factors and circumstances. It did not agree that the median line should automatically apply in the absence of agreement between the States concerned on the delimitation of the sea-bed areas appertaining to an island close to another State. The mere possibility of automatic application of the median line would seriously jeopardize any negotiations, since the party seeking median-line delimitation would be in a position to impose its will on a State wishing to apply other criteria. His delegation had dealt with other problems of coastal area delimitation and fisheries in its statement in the Committee on 5 April 1973.

Mr. GLOVER (Mauritius), introducing the draft articles submitted in document A/AC.138/SC.II/L.48, said that the sponsors had prepared the draft articles after carefully considering the comments of other delegations on the general principles they had proposed earlier in document A/AC.138/SC.II/L.15. General recognition of the concept of archipelagic States would fill a gap in international law. The draft articles defined an archipelagic State and dealt with the manner in which such a State could draw baselines for delimiting its territorial sea, the delineation and régime of archipelagic waters, and the conditions under which the right of innocent passage would exist in those waters. They were not concerned with archipelagos in general but only with those which wholly or partly made up archipelagic States.

The concept of archipelagic States was not intended to cover continental coastal States whose territory included islands. The definition did not invoke geomorphological conditions, which would be unfair to some States, but stressed the criterion of unity. The introduction of such extraneous criteria as size, length of coast-line and population could only lead to arbitrariness and confusion. The provisions dealing with baselines also stressed the concept of unity and provided safeguards against the infringement of other States' interests.

The main provisions, in articles III, IV and V, tried to reconcile the rights of archipelagic States in the exercise of sovereignty over their archipelagic waters with the interests of the international community as a whole in such matters as navigation and communications. There was provision for the innocent passage of foreign ships through archipelagic waters in "sealanes suitable for a safe and expeditious passage of ships". The coastal State would be required to give due publicity to the designation of such sealanes, to take into consideration the recommendations or technical advice of competent international organizations on such matters, to refrain from closing the sealanes even for reasons of national security, and to observe the applicable rules of international law when enacting national legislation regulating passage through those sealanes. As the sponsors had different approaches to the practical application of the concept of innocent passage in archipelagic waters, they had agreed that each delegation should be free to express its views on that subject and, if necessary, suggest appropriate additions to article V to clarify the point. Mauritius had no strong views on the subject and was prepared to accept whatever provisions emerged from the Conference regarding innocent passage in the territorial sea. Agreement would nevertheless have to be reached on the form of passage to be accorded through archipelagic waters as a prerequisite for the international acceptance of the concept embodied in the draft articles. The archipelagic concept had important economic and social implications and should be accepted as a fact of life. There was nothing in the draft articles that would enable such countries as Australia, the United States or the United Kingdom to exploit that concept to their advantage. The sole purpose of the draft articles was to ensure that a State consisting wholly or mainly of archipelagos knew what others were doing in its waters. It was a reasonable proposal, which would give archipelagic States proper safeguards and would not absorb as much ocean space as the 200-mile solution to which Malta subscribed.

Mr. NANDAN (Fiji) said that the draft articles in document A/AC.138/SC.II/L.48 of which Fiji was a sponsor, provided a basis for considering the problem of archipelagos and it hoped that they would ultimately be incorporated in the convention which the Conference on the Law of the Sea was expected to adopt. They reflected the sponsors' interpretation of the archipelagic principles they had proposed earlier and should help to dispel the doubts expressed about the possible effect of translating them into practice. Many of the provisions concerning the establishment of archipelagic baselines were direct adaptations of similar provisions in the 1958 Convention on the Territorial Sea and the Contiguous Zone. In order to reconcile the divergent opinions on the question of archipelagos and to enable the Committee to find an equitable, effective solution, the sponsors proposed a new approach independent of the existing concepts of inland waters and territorial waters. The new concept of archipelagic waters offered the prospect of accommodating the interests of archipelagic States without disproportionately affecting the interests of other States or of the international community as a whole.

Archipelagic waters would be in every way subject to the sovereignty of the archipelagic State to which they appertained, but would also be subject to a special regime with respect to the passage of foreign vessels. Draft article IV reaffirmed the right of innocent passage of foreign ships through archipelagic waters. That right was qualified only by the provisions of article V which enabled the archipelagic State to restrict that right to sealanes suitable for the safe and expeditious passage of ships through such waters. The term "innocent passage" had not been defined in the draft articles, as that concept was already being clarified in relation to the territorial sea. Innocent passage in archipelagic sealanes should have the same meaning as in the case of the territorial sea; otherwise there would be confusion. No country need fear that the draft articles did not adequately guarantee the right of innocent passage through archipelagic waters, or adequately provide for the special security problems of archipelagic States. The provision reserving to archipelagic States the right to designate and substitute sealanes through archipelagic waters was an essential safeguard for the preservation of peace, good order and security in the archipelagic State. That State was nevertheless required to give due publicity to such measures. Traffic separation schemes and other regulations for navigation in the sealanes would have to be based

on certain criteria and also given due publicity. Because of the immunity attaching to government vessels, warships which failed to comply with such regulations could be required to leave the archipelagic waters by a route designated by the archipelagic State, which would be empowered to prohibit the passage of persistent offenders through its archipelagic waters. Otherwise the archipelagic State would not be permitted to suspend the right of innocent passage of foreign vessels through its sealanes. In cases of extreme national emergency, however, an archipelagic State might close a sealane after due notification and substitute an alternative route for foreign vessels.

His Government would carefully examine the Turkish proposal for a study on islands, submitted in document A/AC.138/SC.II/L.50. He doubted however, whether such a wide study, which would have important implications for island States, was desirable or feasible in the short time available to the Committee, especially in view of the political nature of the issues involved. There was also the problem of finding an appropriate body to carry it out. Fiji could not accept any derogation from the existing regime applicable to oceanic islands and would find it difficult to support the Turkish proposal.

Mr. MIRCEA (Romania), after announcing that his delegation was joining the list of sponsors of document A/AC.138/SC.II/L.45, observed that a large number of the proposals before the Sub-Committee were based on the idea that coastal States should have more extensive economic rights in the zones adjacent to their coasts. In his delegation's view, it was necessary to draw up, with the participation of all States, a generally acceptable regime for the seas and oceans which would take into account the realities of international life and current developments, priority consideration being given to the needs and interests of the developing countries. As the representative of a socialist developing country, his delegation welcomed the fact that, in many respects, the sponsors of the various proposals had left open the question of the preservation and exploitation of the biological resources situated in those economic zones. Such flexibility was one of the means by which generally acceptable solutions could be achieved. A solution to the problem of economic zones should not, however, prevent agreement on the best means of utilizing the biological potential of the seas. The future law of the sea must be based on the need for increased co-operation between members of the international community in a spirit of mutual comprehension of their respective needs.

If the new rules for the biological resources of the sea were to be realistic, they must be based, firstly, on the need to guarantee an equitable share of those resources to developing countries bordering the oceans, and secondly, on the need to take due account of the needs of other States, particularly the land-locked States and States which did not possess any biological resources in the seas adjacent to their coasts but which, because of their economic situation, needed to obtain such resources on reasonable terms. For that reason, it was advisable that the nature and scope of the rights of coastal States, and the principles, forms and procedures for their co-operation with other members of the international community should be considered together.

His delegation had carefully analysed the proposals submitted to the Sub-Committee concerning the continental shelf, as well as the suggestions put forward in the Working Group of the Whole. It shared the general view that the rules to be drawn up should reflect the changes in the situation since the adoption of an international convention on the subject. Many delegations had rightly emphasized the question of the outer limit of the continental shelf. His delegation considered that the two criteria specified in the 1958 Convention were wholly or partially inadequate. It agreed with other delegations that a combination of the depth criterion, reasonably extended, and of a distance criterion of 150-200 miles would be possible, but it did not rule out acceptance of a distance criterion only. The question of delimitation between adjacent States, particularly in the case of countries fronting on narrow seas, deserved closer attention than it had so far received. It was in such cases that the question of special circumstances often arose.

His delegation's decision to become a sponsor of document A/AC.138/SC.II/L.43 was motivated by the view that legal considerations should be considered in conjunction with economic, geographic, geological and other criteria. Such an approach seemed more realistic and more logical, since the Committee and the forthcoming Conference would be called upon to draw up rules applicable to a variety of special situations, and not general, theoretical provisions requiring interpretation, like those of the 1958 Conventions. Document A/AC.138/SC.II/L.43 was directly based on the Declaration of The Organization of African Unity (A/AC.138/89) and on document A/AC.138/SC.II/L.40, but similar ideas were contained in the draft articles submitted by China and Malta in documents A/AC.138/SC.II/L.34 and A/AC.138/SC.II/L.28.

The provision in the Chinese proposal (A/AC.138/SC.II/L.34) that the breadth and limits of the territorial sea as defined by a coastal State was, in principle, applicable to islands belonging to that State reflected a realistic recognition of the fact that there might be cases in which circumstances made it impossible for an island to be treated in the same way as the actual coastline of a State. The Maltese proposal, (A/AC.138/SC.II/L.28) also provided for the possibility of distinguishing between ocean space appertaining to coasts and ocean space appertaining to islands; the idea that islets should not have their own ocean space was realistic. Other delegations had expressed themselves in favour of a detailed study of the problems of islands. Indeed, that aspect could not be ignored if the basis was to be laid for rules acceptable to all. His delegation had stated its views on the matter on several occasions, emphasizing the injustices that might result from the treatment of islands on the same footing as the coast of a State.

His delegation found it difficult to concede that the provisions adopted in 1958 had then been, or had since become, customary rules. As the representative of Turkey had pointed out, an analysis of the preparatory work of the 1958 Conference and of the work of the Conference itself showed that, even at the time, many problems had arisen; it was no accident that the provisions finally adopted had been drafted in indirect terms or by analogy. In the case of the continental shelf at least, there could have been no question of customary rules, for the simple reason that the term itself had had to be defined. Nor could it be said that the relevant provisions had become a customary rule since the Conference, because in many cases the continental shelf had not been delimited and the way in which States intended to apply the provision was not known. Moreover, the question of the ocean space of islands was closely linked with the concept of special circumstances, and, in the opinion of several delegations, the content and implications of that concept needed to be clarified.

His delegation had submitted an additional document (A/AC.138/SC.II/L.53) dealing with the case of small uninhabited islands without economic life situated on the continental shelf. In that document, his delegation, while providing for the possibility of an island having waters of its own, wished to make it clear that the existence of islands, particularly small uninhabited islands without economic life, in the proximity of another State did not affect the delimitation of the continental shelf or the territorial sea as between the adjacent States concerned. A similar opinion had been expressed in international legal decisions and in writings on international law. For example, in paragraph 57 of its judgment in the

North Sea Continental Shelf Cases, the International Court of Justice had taken the view that the presence of islets which might have a distorting effect on delimitation should be ignored. The United States writer, David Padwa, in an article in the International Law Quarterly of October 1960, had also expressed the idea that it was reasonable for small uninhabited islands to be excluded from the legal recognition of the continental shelf. While his delegation sympathized with some of the arguments put forward by those who wished to retain the provisions of the 1958 Conventions as they stood, it felt that it would be much better to have clear rules. Lastly, his delegation again wished to emphasize that it was not challenging the right of islands constituting State or of islands forming part of an archipelagic State or of a territorial unit comparable to an archipelago to their respective sea areas.

Mr. O'DONOGHUE (New Zealand) said he had intended to express support for the proposal submitted by Fiji in document A/AC.138/SC.II/L.42 and especially for the definition of innocent passage, but understood that further efforts would be made to produce a more generally acceptable text. With regard to the Turkish proposal in document A/AC.138/SC.II/L.50, New Zealand could not support such a general proposal without fuller discussion of the so-called problem of islands. The proposal did not indicate what purpose the suggested study was to serve, or which were the islands whose geomorphological and bathymetric aspects were to be examined. If the proposal related to a specific situation, such as the problem of delimitation between opposite States, it would have to be much more precisely formulated before the Sub-Committee could consider it adequately. However, if the proposed study was to have more general objectives, they would have to be clarified and made the subject of a discussion in which all points of view could be expressed. That conviction had been reinforced by the Romanian representative's remarks about islands.

Mr. TOSIHANAKA (Madagascar), introducing the draft article on the régime of islands in document A/AC.138/SC.II/L.43 on behalf of the sponsors, explained that the draft article had the support of all the African delegations. It reflected the importance which the sponsors attached to the concept of the common heritage of mankind and their concern that the interests of all States in the matter of islands should be taken into acoount. The sponsors had recognized the need to determine clearly the maritime spaces of islands, in respect of which existing law was defective. In paragraph 1 they had listed some of the factors that should be taken into consideration, although the list was not exhaustive. In paragraph 2 they had emphasized that island States and archipelagic States were not affected.

He hoped that both the draft article and the principle of equity which it reflected, would receive the consideration which they deserved.

Mr. DJALAL (Indonesia) said that the draft articles on archipelagos in document A/AC.138/SC.II/L.48 represented an attempt to formulate, in greater detail, the three basic principles put forward by the same delegations in document A/AC.138/SC.II/L.15. In drafting the text, the sponsors had taken very careful account of the views expressed by a large number of delegations. However, some of the points raised - particularly, the problems associated with the passage of warships and submarines through archipelagic waters, including the passage of nuclear ships or ships carrying nuclear weapons or other dangerous substances - had not been adequately covered, primarily because the archipelagic States, owing to their varied domestic and geographical circumstances, had not yet arrived at a common position. For some, archipelagic States such problems were not so significant, but his own country, because of its important and very strategic location, was extremely conscious of the significance of passage of foreign warships and submarines through its archipelagic waters. His Government would therefore like to be informed of the movements of such vessels. The information would not be distributed to other Powers or to the "enemy" of the warships or submarines concerned; it was needed merely to meet security requirements at the domestic and regional levels.

In article I the sponsors had attempted to define the concepts of "archipelagic state" and "archipelago". An archipelagic State was defined as a State constituted wholly or mainly by one or more archipelagos. The article did not deal with coastal archipelagos for which a special regime existed. The definition was intended to cover only those countries which were archipelagic States in the real sense, and for which a special legal regime, including a special regime on passage, would be necessary. The words "closely interrelated" were very important: isolated islands in the middle of nowhere could not be regarded as forming an archipelago with other isolated islands. A further requirement was that the component islands must form an "intrinsic geographical entity"; that would exclude, for instance, most island groupings in the pacific ocean, because there was no geographical connexion between them. The application of the archipelagic State concept was further limited by the criterion of economic, political and historical unity. Islands which did not possess

that unity should not be regarded as an archipelagic State. The historical element had been introduced because it was very important for some archipelagic States which had regarded themselves as a single entity from time immemorial. In short, although an archipelagic State must consist of one or more archipelagos and an archipelago must consist primarily of islands, not all islands or island groups met the tests for an archipelago. Therefore, not all island States could be considered as archipelagic States.

Article II defined the right to draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, from which the extent of the territorial sea was to be measured. That arrangement was important to his country, not only to protect the natural resources of the archipelago for the benefit of its people, but also for other non-resources purposes such as the maintenance of political stability, the promotion of inter-island communication and economic relations, and the preservation of domestic peace, good order and security. For Indonesia the waters between the islands were not a separating, but a unifying, factor. His country had learned, particularly during the period of colonial domination, that its unity as a nation could be preserved only by the archipelagic concept. Indeed, the Indonesian National People's Congress had decided, at its most recent session, that the archipelagic principles adopted by Indonesia in 1957 should continue to form the basis of the country's national policies.

Article II also specified the conditions under which straight baselines might be drawn, in order to prevent any arbitrary use of the straight baseline method. In drafting those conditions, the sponsors had been guided primarily by the 1958 Geneva Convention, in which coastal archipelagos were given the right to draw straight baselines. If a coastal archipelago was given the right to draw such baselines under certain conditions, it would be illogical and unfair to deny a similar right to archipelagic States.

The very reasonable provision that the drawing of straight baselines should not depart to any appreciable extent from the general configuration of the archipelago reflected the position in regard to coastal archipelagos pertaining to a continental State. In determining the starting point for drawing the baselines, the sponsors had taken a great deal from the 1958 Convention, in which problems such as low-tide elevations had been considered. The article also stipulated that, in

drawing the baselines, an archipelagic State must not cut-off the territorial sea of another State and that it must clearly indicate the straight baselines on a chart to which due publicity must be given. The article would therefore prevent any misunderstanding as to the extent of the archipelagic waters. Thus, the right of the archipelagic State to draw straight baselines was subject to a number of conditions, reflecting a balanced approach in which an attempt was made to prevent arbitrary measures from being taken by any State, while preserving the basic interests of a particular group of States.

Article III attempted to define the nature of the right of the archipelagic State over the archipelagic waters. The waters within the baselines of the archipelago were considered to be archipelagic waters under the sovereignty of the archipelagic State, and that sovereignty extended to the water column, the airspace, the sea-bed and the subsoil thereof, and all the resources contained therein. The archipelagic States considered the archipelagic waters as an essential part of their national territory and, as far as they were concerned, territorial seas must be considered to cover an area outside the archipelagic waters, and thus outside the straight baselines of the archipelagic State. Nevertheless, in exercising sovereignty over the archipelagic waters, the archipelagic States were mindful of the need for the vessels of other countries to pass through some of those waters. Article IV accordingly stipulated that the innocent passage of foreign vessels should exist through archipelagic waters.

The question had often arisen of whether waters within the baselines of an archipelagic State should be considered as internal waters or as territorial seas. The four sponsors followed different practices with regard to that problem. Indonesia recognized that the waters inside its baselines were internal waters but guaranteed innocent passage for foreign ships through sealanes. The Philippines regarded the waters within its baselines as purely internal waters, with all the consequences resulting therefrom. Fiji maintained that the waters within the baselines had the character of territorial seas, with the consequence that the right of innocent passage through them was guaranteed. For all practical purposes, Mauritius also regarded the waters within the baselines as territorial seas. The practices of other States and the opinions of writers also varied.

In order to meet that difficulty, the sponsors had introduced a new concept, according to which the waters inside the baselines would be known as "archipelagic waters" or "waters of the archipelagic State", having an attribute of internal waters namely, sovereignty over the waters and their resources - and an attribute of territorial seas - the recognition of innocent passage through sealanes. Unlike the concept of "internal waters", the concept of "archipelagic waters" admitted the existence of innocent passage. Unlike the concept of "territorial sea", it admitted innocent passage only through sealanes, and not through the whole body of archipelagic waters.

The archipelagic States had no intention of preventing the passage of foreign vessels as long as such passage was innocent passage. It was in the interests of the archipelagic States themselves to facilitate it, because they too were heavily dependent on international communications for their economic development. Consequently, while recognizing the need for the vessels of other countries to pass through the archipelagic waters, the archipelagic States also recognized that not all archipelagic waters were necessary for international navigation. That was why the draft articles stipulated that an archipelagic State might designate sealanes suitable for the safe and expeditious passage of ships through its archipelagic waters. Of course, not all archipelagic States might need to establish such sealanes, either because their waters were not indispensable for international navigation or because the establishment of sealanes would not contribute significantly to the maintenance of their domestic peace, good order and security. If the archipelagic State did not establish any sealanes, the right of innocent passage through its archipelagic waters would still exist.

The principle of the balanced approach was further applied in the provisions on the designation of sealanes through the archipelagic waters within which the right of innocent passage would exist. Firstly, the sealanes might be designated solely by the archipelagic State, which might change them from time to time, primarily for reasons of domestic security. It might also prescribe traffic separation schemes within the sealanes, as well as make laws and regulations for its own protection. All those rights originated in the view that archipelagic waters were part and parcel of the archipelagic State's sovereign territory.

On the other hand, the article clearly stipulated the obligations of the archipelagic States in designating sealanes and prescribing traffic separation schemes. Firstly, although an archipelagic State might substitute other sealanes for those previously designated, it might do so only after due publicity. Secondly, in prescribing traffic separation schemes through sealanes, it must take into consideration, inter alia, the technical advice of competent international organizations, any channels customarily used for international navigation, the special characteristics of particular channels, and the special characteristics of particular ships and their cargoes. Thirdly, if an archipelagic State designated sealanes through its archipelagic waters, it was under an obligation to demarcate them clearly and to indicate them on charts to which due publicity must be given. Fourthly - and that was the most important provision - the draft articles stipulated that the right of passage through the sealanes could not be suspended. If for any reason a particular sealane had to be closed, the archipelagic State would designate another sealane in its place, and then only after giving the matter due publicity. That provision constituted the strongest guarantee that the right of innocent passage of foreign ships through archipelagic waters would be respected; it was specifically designed to allay any fear that an archipelagic State holding an important key to international navigation might misuse it.

While article V laid down conditions which the archipelagic State had to observe in determining sealanes and traffic separation schemes, it also required passing ships to observe the rules and regulations enacted by the archipelagic State. The power to enforce the rules and regulations would have to remain within the competence of the archipelagic States. Paragraph 8 dealt with non-compliance by foreign warships with the rules and regulations enacted by archipelagic States to promote safety of navigation, the preservation of their environment, and the protection of their peace, good order and security, without purporting to prevent the passage of such warships. If any foreign warship disregarded all or any of those regulations, the archipelagic State would have the right to request the offending vessel to leave its archipelagic waters, as directed by it, and if necessary to consider the passage of such warships, for a certain time in the future, as no longer innocent.

In any case, the difficult problem of the passage of warships, submarines, nuclear-powered vessels or ships carrying nuclear weapons was of special interest to only a few Powers; it was of little or no interest to the majority of States, and in particular, to the developing countries, which did not usually possess warships, submarines or nuclear weapons, at least not in large numbers. Only certain Powers seemed to be interested in guaranteeing the freest possible passage of their warships through archipelagic waters, a practice which tended to increase rather than to diminish world tension. World peace and security would therefore be best protected if States were to think less in terms of power politics and more in terms of development politics. Moreover, the very essence of the free passage required by the global Powers affected the security and political stability of an archipelagic State like Indonesia. Consequently, his delegation reserved the right to submit separate draft articles on the passage of warships, including submarines, nuclear-powered ships or ships carrying nuclear weapons, at an appropriate time.

Many delegations had also referred to the problems associated with "straits used for international navigation". One of the arguments put forward in support of the new concept of "free transit" was that, since "straits used for international navigation" were used by so many ships, the régime of passage through such straits must be the régime of "free transit"; otherwise the international community would suffer. His delegation did not share that view, since the more important a strait became for international navigation, the more ships would pass through it and the greater the danger to the coastal States in the form of pollution, security and other hazards. Other parts of the territorial sea, in which the régime of innocent passage was applicable, were not subject to the same dangers; yet the coastal State was recognized to have more rights there than in "straits used for international navigation". The Moroccan representative had rightly pointed out that coastal States bordering on important and crowded straits used for international navigation were also geographically disadvantaged States. The contention that innocent passage was detrimental to the interests of the international community was a myth, not only because the coastal States concerned were also members of the international community, but also because history had shown that the principle of innocent passage had proved quite satisfactory in striking the balance between the interests of States whose vessels used the straits and the interests of the coastal States themselves. Consequently, his delegation would continue to defend that principle.

Another argument put forward in defence of the "free transit" concept was that the principle of innocent passage could easily be subjected to arbitrary suspension by the coastal States. The 1958 Geneva Convention stipulated the principle of the "non-suspension" of innocent passage through straits used for international navigation and had recognized that the régime of such straits was part of the régime of the territorial seas. The only difference between the territorial sea in general and the territorial sea forming part of "straits used for international navigation" was that the right of innocent passage could not be suspended in such straits, whereas it could be suspended in other parts of the territorial seas. The requirement that the right of innocent passage should not be suspended had also been incorporated in the draft articles in document A/AC.138/SC.II/L.18, of which his delegation was a sponsor. Therefore, the contention that innocent passage through "straits used for international navigation" could be easily and arbitrarily suspended was a fallacy.

The optional nature of the clause on notification and authorization with regard to warships, research ships, ships carrying nuclear weapons or nuclear-powered ships had also been misinterpreted by some delegations. The optional clause was intended to make it possible for coastal States to establish such a requirement if they wished. In any case, the requirement must be non-discriminatory. If some delegations feared possible discrimination, the Indonesian delegation would have no objection to making the clause on notification and authorization compulsory instead of optional.

The problem of straits had also been confused with the problem of international trade and the global strategy of the big Powers. His country had every sympathy with those who needed international trade, because it too was dependent on such trade. Nevertheless, history had shown that innocent passage had never caused any difficulties for international trade. For centuries international trade had flowed through straits regardless of the breadth of the territorial seas of the coastal States and regardless of whether the straits concerned were more or less than six miles wide. The principles of innocent passage had never been questioned, because they had proved to be very satisfactory. The problem had arisen only recently with the progress of technology and the need for the big Powers to pursue their respective global strategies. Yet the progress of technology had created more and more ships entailing more and more potential danger to the coastal States, such as mammoth tankers, nuclear-powered

vessels and ships carrying nuclear weapons. That development called for a more regulated, not a freer, passage. Moreover, some countries which claimed the right of free passage through the waters or straits of others did not even permit the innocent passage of the warships of others through their own territorial seas. The attempt to confuse the problems of international trade and economics with the power politics of the big Powers would merely complicate the issue.

A further criticism made of document A/AC.138/SC.II/L.18 was that it sought to impose a stricter régime of innocent passage than had been generally admitted. Article 11, paragraph 3, stating that the coastal State should have the right to be compensated for works undertaken to facilitate passage, had been singled out in that connexion. Yet the compensation provided for in that article was not intended to be a toll, but merely compensation for the work which the coastal States might have done to facilitate the passage of others. For example, Indonesia was a developing country which had to use any available funds as efficiently as possible. It might not be in a position to allocate funds to make its waters safe for mammoth tankers. However, if Indonesia failed to improve its navigational aids, it would be accused of neglecting those straits, and the dangers to the country itself would be multiplied. If it used its scarce resources to remedy the situation, the expenditure would be for the benefit of those wishing to pass through the straits, and not of its own people. Consequently, the purpose of article 11, paragraph 3, was not to institute a toll or a device to complicate international navigation, but merely to facilitate such navigation without over-burdening the coastal States.

Lastly, he drew attention to an error in the tenth and thirteenth lines on page 15 of the English version of document A/AC.138/SC.II/SR.70, where the words "free passage" should read "innocent passage".

Mr. POCH (Spain) said that his delegation wished to define its initial position on one of the most important problems before the Sub-Committee, that of the "régime of islands". The problem was important because of the large number of States it directly affected and because of the great variety and complexity of the situations involved. In addition to insular or archipelagic States, there were also what had been called "mixed States", namely, States that included one or more archipelagos or groups of islands as an integral part of their national territory, and the very many States that possessed islands of other kinds.

Another fact that should be borne in mind was that, from a purely geographical standpoint, not all lands emerging from the sea possessed the same characteristics. From the standpoint of the general codification of the law of the sea, it was essential to determine which geographical factors should be selected and defined.

In his delegation's view, there were two important preliminary tasks to be carried out: that of preparing a generally acceptable definition of islands and, if the future Convention was to follow in the footsteps of the 1958 codification and adopt the hypothesis of "special circumstances" for delimitation purposes, that of clarifying which territories were genuinely affected by such "special circumstances". The mere presence of islands in the neighbourhood of an ocean space to be delimited did not per se constitute a special circumstance.

Once those preliminary questions had been resolved, it would be easier to determine what "régime of islands" should be included in the law of the sea. The Sub-Committee should proceed methodically to establish solid general principles from which it would be possible to derive just solutions for all the hypotheses encountered. The starting point should be identity of treatment for all the integral parts of a State's territory in the matter of the rights and duties connected with the ocean spaces adjacent to those territories.

The basic principles that should govern the régime of islands, like the law of the sea as a whole, were the unity and territorial integrity of the State, including its territorial waters and suprajacent air space, the indivisibility of the sovereignty of the State over its territory, and the sovereign equality of all States. Application of those principles would make it possible to establish a just régime for all island territories.

The problem of archipelagos, however, required special attention and separate treatment. The time had come to meet the longstanding claim of the so-called "archipelagic States". Since the last century, Spain had supported the idea that an archipelago constituted a natural unit, with the islands and the waters uniting them forming an indissoluble whole. Consequently, his delegation fully endorsed the ideas and principles contained in documents A/AC.138/SC.II/L.15 and L.48, which should constitute the basis of the Sub-Committee's work on the subject.

Archipelagic States were understandably concerned about their security and the régime of navigation through archipelagic waters should therefore be that of "innocent passage", as proposed in those two documents. Such a concept fully satisfied the requirements of peaceful navigation and free communication among the peoples, while safeguarding the legitimate security interests of the coastal States.

His delegation could not, however, accept paragraph 7 of the United Kingdom draft article (A/AC.138/SC.II/L.44). There was no legal basis for the condition which it attempted to establish as a counterpart to the recognition of the factual existence of the archipelagic State. Moreover, paragraph 8 of the draft article, when taken in conjunction with paragraph 7, revealed that such a solution would lead to an artificial division of the régime of navigation within archipelagic waters, to the detriment of the political unity of the State concerned.

Pollution problems were especially acute in the case of archipelagos, not only because their geography multiplied the risks of accidents at sea, but also because in some cases (coral islands, etc.) the very nature of the islands made them highly vulnerable to damage from pollution. Hence the need for the coastal State to be empowered to establish sealanes and traffic separation schemes in archipelagic waters.

Since the situation of archipelagoes or island chains forming an integral part of a "mixed State" was similar to that of archipelagic States, they should be treated in the same way. In that connexion, his delegation supported the idea in article 1, paragraph (6), of the Chinese proposal (A/AC.138/SC.II/L.34) that an archipelago or an island chain consisting of islands close to each other might be taken as an integral whole.

The Turkish delegation had made an interesting proposal for a study on islands (A/AC.138/SC.II/L.50), to be carried out by the International Hydrographic Organization. The suggestion, though highly laudable and constructive, was not a very realistic one. The International Hydrographic Organization possessed no hydrographic data of its own and would have to approach the various States for the necessary data if, in fact, they were available. It might consequently be more practicable to address a direct request for such data to the various States, particularly to the more technologically developed States.

As for the comments by the representatives of the Ukrainian Soviet Socialist Republics and Bulgaria, the Sub-Committee was already well aware of the arguments put forward in favour of free transit through straits. The Ukrainian representative had asked what would be the result if free transit through straits was not permitted. The answer was clear. A nuclear submarine would have to travel on the surface, showing its national flag, and the overflight of military aircraft would be controlled. There would be no interference with merchant shipping. The vast majority of countries would be strongly in favour of such a régime, to which only the great Powers would object.

The Bulgarian representative had stated frankly that the régime of free transit through straits was a political necessity in that, since disarmament was not likely to be achieved in the foreseeable future, it was required to maintain the balance of military power.

Whatever the strategic problems of the great Powers might be, the countries bordering on straits were not prepared to be the victims of their policies. The General Assembly had decided to convene a Conference on the Law of the Sea on the basis of peace on the seas and not for the purpose of tailoring the law of the sea to the strategies of the great Powers.

Mr. DUDGEON (United Kingdom) said that his delegation had always maintained that, in drawing up a new convention on the law of the sea, a balance had to be struck between the interests of individual States and those of the international community as a whole. It recognized the great importance that a number of States attached to the concept of the political, economic and social entity of an archipelagic State. It did not believe, however, that that concept should be phrased in such general terms that it could be used to link islands separated by considerable distances across large areas of ocean. In that connexion, it felt that the draft articles on archipelagos in document A/AC.138/SC.II/L.48 did not go far enough along the road towards a definition.

His delegation had submitted a draft article on the rights and duties of archipelagic states (A/AC.138/SC.II/L.44) to assist in establishing new and equitable rules to cater for the concept, a concept that was not, in fact, accepted under existing international law, either customary law or the 1958 Geneva Conventions. For that reason, the Spanish representative's objection that paragraph 7 of the draft article had no legal basis, though perfectly accurate, was irrelevant. The United Kingdom was proposing an entirely new legal régime.

The criteria put forward in paragraph 1 of the draft article represented a reasonable basis on which a State might declare itself to be an archipelagic State. Such declarations would clarify the situation and avert doubts and uncertainty in the future. The criteria that an archipelagic State should be entirely composed of three or more islands and that no territory of another State should lie within the perimeter of the enclosed area were self-explanatory. The criterion of the length of the straight baseline might, however, require some explanation. The majority of the coastal States that had implemented article 4 of the 1958 Geneva Convention on the

Territorial Sea appeared to have accepted that the length of their straight baselines should not exceed 48 miles, namely, four times the figure most often mentioned as a suitable maximum breadth for the territorial sea.

The criterion of the ratio of land area to water area was an important and necessary one. There was a natural relationship between a coastal archipelago and its mainland, but no such relationship existed in the case of an oceanic archipelago. The purpose of the water/land ratio was to replace that relationship and establish the fact that an archipelago was a genuine geographic entity.

Paragraph 7 of the draft article was designed to ensure that those parts of archipelagic waters which were now used as routes for international navigation would continue to be available to the entire international community. The proposals were predicated on the assumption that there would be a régime on passage through the territorial sea, as well as in straits, which would safeguard the interests of his own country and those of the international community. In that connexion, his delegation had always supported proposals that there should be unimpeded passage for ships and aircraft through and over straits used for international traffic.

He wished to draw the Sub-Committee's attention to the procedure for compulsory settlement of disputes that was provided for in paragraph 12 of the draft article. Such a procedure was an essential element in ensuring conformity of State practice since, however carefully rules and criteria were drafted, there would always be room for genuine differences in their interpretation, and such differences should not be allowed to fester when negotiations had been tried but had failed.

The introductory note accompanying the draft article was not a mere formal reservation of his Government's position. His delegation was ready to consider modifications of the draft article to accommodate the interests of other delegations within the framework it had suggested.

Mr. AKYAMAK (Turkey), referring to the comments made by a number of representatives on his delegation's proposal for a study on islands (A/AC.138/SC.II/L.50), said that that proposal should be read in conjunction with paragraph 2 of another proposal before the Sub-Committee (A/AC.138/SC.II/L.43), of which his delegation was a sponsor and which clearly indicated the limitations on the geographical scope of the proposed study.

It was impossible to disregard the fact that new concepts regarding the law of the sea had evolved or were evolving, such as those of the economic zone and the patrimonial sea, which gave rise to specific problems, some of them affecting islands. The considerable number of proposals submitted with respect to islands revealed an awareness of such problems.

The proposed study would be a purely scientific and technical one, with no political implications. The representative of New Zealand had enquired whether it would touch on the question of delimitation between opposite States. Only two of the relevant factors - contiguity to the principal territory and situation on the continental shelf of another territory - could have any bearing on that question. None of the other factors could be said to have any direct connexion with delimitation between opposite States.

The Spanish representative had expressed some doubt concerning the reliability of a study carried out by the International Hydrographic Organization, on the ground that that organization would obtain the relevant data from States and not by direct research. While the Turkish delegation was in no position to speak for the organization, its representative had offered its services for the purpose and presumably, therefore, it regarded itself as qualified. It should be borne in mind in that connexion that a number of United Nations organs had already prepared useful reports for the Committee on the basis of information supplied by States.

Mr. SAPOJNIKOV (Ukrainian Soviet Socialist Republic), speaking in exercise of his right of reply, said that some of the Spanish representative's comments called for an answer. There could be no doubt that the proposal on navigation through the territorial sea in document A/AC.138/SC.II/L.18, of which Spain was a sponsor, was intended to establish control by the coastal State over international navigation in straits connecting two parts of the high seas which were, in fact, international shipping lanes.

It was true that the right of innocent passage was asserted but the question whether passage was innocent was left to the judgment of the coastal State. There were obvious reasons for the application of such a régime to territorial waters, and the ships of any State which objected to its application could simply refrain from entering the waters in question. Shipping lanes through straits used for international navigation were in no way comparable. Ships passing through such straits were not intending to visit the coastal State but were moving from one part of the high seas to another. In such a case, the right of passage could not be left to the arbitrary decision of the coastal State.

Some of the speakers supporting such a régime had openly referred to strategic interests and had expressed the hope that the régime would restrict the activities of navies on the high seas. It could not, however, be argued that the control of straits would lead to the discontinuance of naval operations, since the vast majority of countries possessing navies did not need to pass through straits to reach the high seas.

In that connexion, he warned the States bordering on straits that the introduction of the proposed régime would create acute tension between the military alliances, each of which would do their utmost to secure the support of such States.

The representative of Bulgaria had drawn attention to a curious provision in article 15 of the proposal in document A/AC.138/SC.II/L.18. Paragraph 1 of that article specified that the coastal State might require prior notification of the passage of foreign nuclear-powered ships or ships carrying nuclear weapons. Paragraph 2 of the same article stated that the provisions of paragraph 1 should not prejudice any agreement to which the coastal State might be a party. That was a direct incentive to the great Powers to incorporate the coastal State in a military grouping, and was clearly a loophole for the introduction of discriminatory measures.

Mr. BOJILOV (Bulgaria) said that his delegation reserved its right of reply to the Spanish representative's statement.

Mr. ZOTIADES (Greece) said the representative of Turkey had given an assurance that the purpose of the proposed study on islands would not be political but purely scientific and technical. However, his explanatory remarks, the formulation of the proposal in document A/AC.138/SC.II/L.43 and the exclusion of island States and archipelagic States showed that such a study would be discriminatory and superfluous.

The meeting rose at 11.50 p.m.