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COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

SUB-COMMITTEE II

PROVISIONAL SUMMARY RECORD OF THE SEVENTY-FIFTH MEETING*/

held at the Palais des Nations, Geneva,
on Wednesday, 15 August 1973, at 8.30 p.m.

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

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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 45th MEETING OF THE COMMITTEE HELD ON 12 March 1971 (A/AC.138/SC.II/L.15-56) (continued)

Mr. ZUTIADES (Greece), referring to document A/AC.138/SC.II/L.43, informed the Sub-Committee that there were a large number of island States and mixed States and that one third of the territory of his own country consisted of archipeligos and islands. Consequently, his delegation attached particular importance to the need to harmonize the law of the sea with the principles enshrined in the Charter of the United Nations, particularly in its Articles 1 and 2. It was discriminatory to determine the territorial waters of an island on the basis of size, population, geographical location and geological criteria: such criteria not only were vague and arbitrary but also violated Articles 1 and 2 of the Charter. Moreover, they violated the principle of the indivisibility of territorial sovereignty, because, in the absence of a servitude under international law, the portion of the earth's surface in which a State exercised authority was indivisible as far as legal rights were concerned. Since land, as an element of a State, necessarily included not only continental but also insular territory, the draft articles contained in document A/AC.138/SC.II/L.43 were in violation of the Charter, which guaranteed sovereign equality to all States regardless of size or location. No-one could deny that islands formed an integral part of the territory of a State and therefore had an equal right, like any other coastal part of a State to a territorial sea and other maritime zones of national jurisdiction. That principle, which was also endorsed in the 1958 Geneva Convention, was deeply rooted in international law, and his delegation could hardly visualize a legal situation in which the notion of territorial sovereignty, integrity and indivisibility was open to question. One consequence of the implementation of the criteria contained in document A/AC.138/SC.II/L.43 would be to deprive certain islands of their territorial sea. The second consequence would be to make the population of such islands second-class citizens. As an example of the second consequence, he put forward the possibility of islanders who, while utilizing their maritime space, might be apprehended as intruders in the territorial waters of the opposite State.

He reminded the Sub-Committee that, under article 6 of the 1958 Geneva Convention on the Continental Shelf, delimitation should be determined by agreement and that in the absence of agreement, and unless another solution was justified by special circumstances, the boundary should be determined by the median line. That was a clear principle in all cases where the coasts of several States were opposite each other. Indeed, the International Court of Justice had held in paragraph 57 of its Judgment in the North Sea Continental Shelf Cases that a median-line delimitation between opposite States would always be an equitable division of the shelf. Where the same continental shelf was adjacent to the coasts of States bordering each other, the rule in article 6(2) of the 1958 Convention was very much the same as in the case of States opposite each other. The delimitation could be determined by agreement or in the absence of agreement by the principle of equidistance.

His delegation was in no doubt that, under present international law, the principle of equidistance was based upon law and practice and had secured general recognition. If that were not so, everything would be open to negotiation and ad hoc solutions. Such a situation would amount to a negation of the rule of law and could lead to an increasing number of disputes between States. State practice had shown that the median-line principle had been considered the only suitable basis of settlement in a great many agreements, for the delimitation not only of the continental shelf but also of the territorial sea, the contiguous zone, rivers, lakes etc.

Article 1 (b) of the 1958 Convention laid down that the provisions concerning the continental shelf applied equally to islands as to coasts. An oceanic island, therefore, should have a full sea-bed area while an island situated closer to another country should benefit from the principle of equidistance, in accordance with article 6.6 (1) of the Convention.

Agreeing with the views expressed by the delegations of Denmark and Italy, he reminded the Sub-Committee that the population of many islands depended heavily upon the sea for their maintenance and survival. That was particularly true of small island States and of isolated islands, which should therefore receive the same rights to the continental shelf as continental States. In that connexion, his delegation welcomed the statement made by the representative of Jamaica when introducing document A/AC.138/SC.II/L.55, concerning geographically disadvantaged States.

Deviation from the principle of equidistance should occur only in special circumstances, but it was wrong to consider islands generally as being in special circumstances. Reiterating his delegation's general view that it was right for national legislation to prescribe the same delimitation of the continental shelf for islands as for the State having jurisdiction, he agreed that, if the régime governing the position of islets and rocks led to a distortion of the general rules, the burden of proof of "special circumstances" should lie with the State affected.

After quoting paragraph 2 of document A/AC.138/SC.II/L.43, he stressed that the sponsors did not attempt to establish a uniform régime, thus jeopardizing the position of a large number of States in all continents that happened to be composed of both coastal and insular territory. What seemed to be even more discriminatory was the fact that, although archipelagic States were allowed extensive marine space, islands, groups of islands, chains of islands and archipelagos belonging to a mixed continental and insular State were not only excluded from the concept of territorial unity but were also placed in the position of being victimized by the application of the extra-legal criteria in paragraph 1. Both national and international law were inextricably linked with the concept of equality of treatment by the law of the sea, and it was absolutely discriminatory for islands of one category to have a privileged position while others had their rights threatened by arbitrary, extra-legal criteria.

After reaffirming his delegation's traditional support for the concept of the freedom of the seas, freedom of navigation and freedom of fishing, coupled with legislation limiting the territorial seas and national jurisdiction generally, he stated that, as far as islands were concerned, his delegation wished nothing more than a continuation of the existing rule of law, namely that every island, being an integral part of national territory, had the same rights and deserved the same treatment as any other coastal territory. State sovereignty over territorial waters was not negotiable and no member of the Committee was empowered to give away its sovereignty. As the representative of Venezuela had said, the new law of the sea could only develop in accordance with the fundamental principles of territorial unity and sovereignty. The Conference on the Law of the Sea would only be successful if international law were allowed to develop progressively and if all States would deal with controversial issues in a spirit of accommodation together with - and that was most important - respect for the fundamental principles of the United Nations Charter.

Mr. SHEN WEI-LIANG (China), after referring the Sub-Committee to his delegation's working paper on general principles for the international sea area (A/AC.138/SC.II/L.45), observed that the attitude of the international community to the seas and oceans had been going through a process of evolution. Citing various examples, he concluded that there now appeared to be a majority which believed that there should be a differentiation between the sea area within the limits of national jurisdiction and the sea area beyond the limits of national jurisdiction. In other words, there should be, beyond the territorial sea, another sea area within the limits of national jurisdiction. The concept of the "high seas" was outmoded and there was no further basis for a principle of high seas immediately beyond the territorial sea. The traditional régime of the freedom of the high seas, which had been misused by the super-Powers, certainly needed to be re-examined at the Conference on the Law of the Sea. His delegation had preferred to substitute the term "international sea area" for the term "high seas", and in its working paper, it had provided that the international sea area should be used in such a manner as not to prejudice the legitimate interests of other States or the common interests of all States.

His delegation supported the proposal that the concept of the common heritage of mankind should be applied not only to the international sea-bed area but also to the sea area beyond the limits of national jurisdiction and its resources. Consequently, in its working paper, his delegation had stated that that area and its resources were jointly owned by the peoples of all States.

Turning to fishing, he drew attention to the dangers to the world at large of the indiscriminate fishing conducted unscrupulously by the fishing fleets of the super-Powers. There had been a serious reduction in some fish stocks and others were near exhaustion. There was no doubt, therefore, that international regulations should be enacted to govern fishing so as to preserve fishery resources. His delegation believed that coastal States of a given sea area should set up regional fishery committees to work out appropriate rules and régimes to regulate fishing and to govern the conduct of vessels from other States entering certain areas of the seas and oceans to fish.

The Chinese delegation's working paper was based on the concepts of safeguarding the legitimate interests of all States and international common interests and of opposing maritime hegemony.

In conclusion, he hoped that the proposals would receive the serious consideration of all delegations and expressed his own delegation's wish to work out, jointly with all countries that upheld justice, a new law of the sea.

Mr. HARRY (Australia), after referring to the statement by the representative of Malta introducing document A/AC.138/SC.II/L.28 and to document A/AC.138/SC.II/L.48, which contained the enunciation of the archipelagic principles sponsored by Fiji, Indonesia, Mauritius and the Philippines, said that, although his delegation agreed that the oceans of the world were the common heritage of mankind, coastal States, in which 95 per cent of mankind lived, had special interests in certain oceanic areas. Those interests derived from the potential of the oceans in contributing to or detracting from the security of coastal States and their potential to affect the environment of coastal States. That view was, he felt, recognized by all delegations and the problem before the Sub-Committee was to identify the extent of jurisdiction.

Although he could assure the Sub-Committee that Australia had no plans to claim archipelagic status for itself, it did support the aspirations of its neighbouring archipelagic States - the sponsors of document A/AC.138/SC.II/L.48. A State that was spread over a wide area of ocean - in the case of Indonesia, comprising 13,000 islands - could not be expected to exercise political control over its component islands if those islands were separated by areas of water accorded the status of high seas. In such cases, the theoretical potential for outside interference in the political affairs of a State was manifestly greater than in the case of a coastal State. Equally, the consequences of pollution of the marine environment of an archipelagic State were significantly more serious than in the case of a continental coastal State. For those reasons, and because the reliance of an archipelagic State on marine resources was normally greater than in the case of a continental State, his delegation accepted that an archipelagic State had special interests related to the preservation of its security and political unity, the preservation of its environment, and the exploitation of its marine resources. Consequently, it felt that all the waters within an archipelago should come under the sovereignty of the archipelagic State.

As members of the Sub-Committee were aware, Australia still had a responsibility for the Territory of Papua New Guinea, which might attain independence before the entry into force of the new law of the sea. He gave the Sub-Committee a number of factual details about the emerging State and laid particular stress on its need to maintain national unity in the face of difficult problems of communication and potentially divisive geographical factors as well as the need to make the most

advantageous use of the natural resources available to it. His Government's view was that the decision as to the legal status to be claimed for the waters between the 600 islands comprising the Territory should be made by the future government of an independent Papua New Guinea. For the present, the Australian Government only wished to keep all the options open. Nevertheless, it was possible that Papua New Guinea might wish to seek recognition as an archipelagic State and he was confident that members of the Sub-Committee would pay sympathetic attention to the Territory in connexion with its definition of such States.

Notwithstanding its support for the archipelagic principle, his delegation did not envisage that every single island over which a State exercised sovereignty should necessarily be included within the archipelagic perimeter, any more than islands included in the territory of a continental State but situated outside its territorial sea, needed to be included within the area of sea over which the continental State exercised sovereignty. Moreover, his Government firmly believed that there must be an assured and unimpeded right of passage through the waters enclosed within an archipelagic State - at least along adequate traffic lanes.

His delegation believed that document A/AC.138/SC.II/L.48 was an important document that could provide a most useful basis on which the Sub-Committee could develop an acceptable set of articles. In particular, it liked the idea of the new and distinct status of "archipelagic waters", which was not synonymous either with territorial seas or internal waters. It also agreed that there should be a right of innocent passage through archipelagic waters, subject to a satisfactory definition of that term. Unfortunately, the definition in the 1958 Convention was not fully satisfactory and his delegation believed that there should be a right of passage without notification, at least in the case of surface vessels, through archipelagos, provided that ships adhered to prescribed traffic lanes and complied with appropriate navigation standards. In that context, he welcomed the proposal that there should be no right to suspend innocent passage and that, if a particular traffic lane was closed for security purposes, a substitute must be made available immediately.

On the other hand, with reference to draft article V(5) of the document, his delegation felt that the list of matters which could be regulated by an archipelagic State should be exhaustive and that the expression "inter alia" should be avoided.

Whereas some archpelagic States had a long history of political unity, in other cases, unity might be a relatively new phenomenon. However, his delegation did not believe that an archipelagic State necessarily had to be a single geographical entity, although clearly there had to be a close geographical relationship between the islands in the group or groups of which it was comprised. When determining what was or what was not an archipelagic State, it would be necessary to consider all the factors listed in articles I to III - political unity, economic entity, historical relationship, geographical relationship, together with objective criteria if possible.

His delegation agreed with the United Kingdom, whose views were set out in document A/AC.138/SC.II/L.44, that there should be some limit to the number and extent of recognized archipelagos. The proposal for a baseline distance of 48 miles and the sea-to-land ratio of 5:1 could be a useful guide, although one or two longer closing lines would not, in his delegation's view, disqualify a State, provided that such lines were not an unreasonable proportion of the total perimeter.

His delegation believed that the approach adopted in document A/AC.138/SC.II/L.48 which was one which, mutatis mutandis might be applied to the related question of passage through straits used for international navigation, another issue which was central to the preparation of the convention to which all aspired.

Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed concern at the fact that the Sub-Committee had not yet worked out a single generally acceptable draft article, although the preparation of agreed texts was the principal task entrusted to the Committee under General Assembly resolution 2750 (XXV). However, there was still time to make useful progress in narrowing the differences between points of view and the existing proposals showed in what areas compromise solutions might be worked out.

The drafts concerning archipelagic States submitted in documents A/AC.138/SC.II/L.44 and L.48 warranted careful study and could serve as a basis for constructive proposals accommodating the interests of both the archipelagic States and the international community as a whole. He agreed with much of what the Australian representative had just said on the subject. However, the sponsors themselves had admitted that they held differing views on the interests of the international community, and especially on the

passage of foreign vessels through archipelagic waters. The forthcoming Conference would have to work out rules for safeguarding the interests of archipelagic States and the proposals put forward by those States deserved support, provided that they adopted a realistic approach to the accommodation of the international community's interests. That should not be too difficult for them. Any new convention prepared at the Conference would have to provide for the free, unimpeded passage of all vessels through straits used for international navigation, including straits in archipelagos. Such rights should not of course apply to all straits in the water of an archipelagic State, but only to those which provided the shortest route from one part of the high seas to another, or which were traditionally used for international navigation. In other straits in archipelagos the principle of innocent passage could be applied.

The convention should also lay down precise rules for the length of baselines used for measuring the territorial waters of archipelagic States. While article I (3) of document A/AC.138/SC.II/L.48 rightly defined an archipelago, it should not be possible to include isolated islands or islets hundreds of miles from the principal territory of a State in the system of baselines used for measuring the territorial sea. The draft articles submitted by the United Kingdom, in document A/AC.138/SC.II/L.44, contained some very constructive proposals in that regard. The provisos that no baseline should be longer than 48 nautical miles and that the ratio of the area of sea to the area of land inside the perimeter should not be greater than 5:1 were useful principles, although other figures were possible.

If the two provisions in respect of straits and the length of baselines he had mentioned were accepted by the States directly affected by the problems raised by archipelagos, the Soviet Union would support their proposals. However, it could not agree to the proposals of some States that wished to establish a special régime for the archipelagic waters of islands or groups of islands belonging to a continental State. That would hopelessly confuse the issue. The adoption of such proposals would have undesirable consequences and would mean carving out large areas of the high seas. The customary principles used for measuring the territorial sea around islands should be applied in such situations.

Mr. JAYAKUMAR (Singapore) said that the numerous references to the rights of States in a disadvantageous position in the drafts submitted, including A/AC.138/SC.II/L.39, which Singapore had co-sponsored, were evidence of an emerging consensus of opinion that any proposals for extending coastal State jurisdiction over resource exploitation must include provisions safeguarding those States' rights and interests. Any convention concerning such an extension agreed upon at the forthcoming Conference should expressly recognize the right of neighbouring land-locked and other disadvantaged States to exploit living resources in the extended zone on an equal and non-discriminatory basis and provide for a satisfactory dispute settlement procedure. Such rights should entail certain responsibilities. For example, the right of such States to fish in the extended zone should not be assigned to third parties, although they should be free to enter into an arrangement with third parties for the purpose of developing viable fishing industries of their own. They should comply with all conservation and management regulations in force in the zone and co-operate with the coastal State in the regulation of the exploitation of the living resources it contained.

Among the proposals submitted by some African States, in document A/AC.138/SC.II/L.40, draft article VIII, dealing with the interests of land-locked and other disadvantaged States, departed significantly from the principles enunciated in that connexion in the OAU Declaration. According to that Declaration such States would be entitled to share in the exploitation of living resources of neighbouring economic zones on a basis of equality with nationals of the coastal States, whereas article VIII referred only to the "privilege" to fish in the exclusive economic zones of the adjoining neighbouring coastal States. That privilege was not extended to disadvantaged States opposite the coastal States. The restriction of that privilege to an area to be settled by agreement with the coastal State was also contrary to the principle of equality and non-discrimination. If there was to be a choice between article VIII in document A/AC.138/SC.II/L.40 and the relevant passage in the OAU Declaration, Singapore would prefer the latter.

The draft articles on fisheries proposed in document A/AC.138/SC.II/L.38 also spoke of the "privilege to fish" it accorded only to land-locked States. The reference to the "neighbouring area of the exclusive fishery zone" further restricted that privilege. He welcomed the approach adopted by China to disadvantaged States in

document A/AC.138/SC.II/L.34, which did not expressly confine the rights of such States to living resources. The draft articles proposed by Uruguay in document A/AC.138/SC.II/L.24 accorded preferential fishing rights only to land-locked States in areas not reserved for the coastal State's own nationals. It was not clear whether such rights would derive from a convention or would depend entirely on bilateral arrangements. The draft articles proposed by Ecuador, Panama and Peru in document A/AC.138/SC.II/L.27 also offered land-locked States "such uses and such preferential régime as they may agree upon with the neighbouring coastal States within the seas adjacent to the latter". Such an approach would be difficult to accept.

In the draft proposed by Argentina in document A/AC.138/SC.II/L.37, article 8 established a preferential fishing régime for States which for geographical or economic reasons did not see fit to extend their sovereign rights to an exclusive maritime area adjacent to their territorial sea. That approach was very similar to one adopted in the proposal co-sponsored by Singapore in document A/AC.138/SC.II/L.39. Article 14 of Argentina's draft made similar provision for land-locked States.

Uganda and Zambia, in document A/AC.138/SC.II/L.41, adopted a novel approach to the sharing of marine resources by proposing that all States should have a common right over all marine resources of their region or sub-region beyond the territorial sea. Such an approach was truly equitable and expressed the highest degree of regional co-operation and solidarity. His delegation would also carefully study Jamaica's draft articles on regional facilities for developing, geographically disadvantaged, coastal States; they contained interesting positive elements.

Agreement on a just and acceptable formula for safeguarding the rights and interests of disadvantaged States would facilitate the solution of other problems before the Committee, such as that of the limits of national jurisdiction. There the solution depended on the precise determination of the continental shelf. The 1958 Geneva Convention on the Continental Shelf, and especially the exploitability criterion, were no longer applicable for reasons which were now well known. Singapore was in favour of a clear and precise distance limit for the area of ocean floor within national jurisdiction. The limit adopted should leave sufficient sea-bed resources outside national jurisdiction for the concept of an international sea-bed area to have some meaning. Singapore had

submitted a draft dealing with the delimitation of the continental shelf in the Working Group. The concept of the continental shelf already had a specific meaning and there was no valid reason for extending it to cover the continental margin. Had that been the intention at the time of the preparation of the 1958 Convention, the continental shelf would have been so defined. The concept of acquired rights over sea-bed areas must be qualified by that of adjacency. The judgments of the International Court of Justice in the North Sea cases applied to areas within the 200-metre isobath and did not refer to the continental margin. Those judgments could not therefore be regarded as supporting the argument of acquired rights.

His Government would carefully study the draft articles proposed in document A/AC.138/SC.II/L.48, which elaborated on the archipelagic principles enunciated at the previous session.

Mr. MONCAYO (Ecuador), introducing the draft articles on fisheries sponsored by Ecaudor, Panama and Peru (A/AC.138/SC.II/L.54) said that the sponsors' position was that the sovereignty, and therefore the jurisdiction of the coastal State, extended to the sea area adjacent to its coasts and to the renewable and non-renewable resources of the sea, the sea-bed and its subsoil up to a distance of 200 nautical miles measured from the appropriate baselines. The right of the coastal State to regulate and exploit the living resources within that area was thus a consequence of the exercise of its sovereignty, from which it could not be dissociated. The draft articles submitted also included some of the concepts contained in proposals made by other delegations.

For over 20 years the sponsors had exercised, seriously and responsibly, sovereignty and jurisdiction over a territorial sea of 200 miles, in accordance with the genuine needs of their peoples. Their stand had brought undoubted benefits, but it had also involved them in constant struggle. They had sometimes been subjected to retaliation and coercive measures by the fishing Powers defending the interests of particular enterprises. The latter, though seeking to weaken the sponsors' position, had succeeded only in further strengthening their peoples' belief in the justice of their position, in the need to continue to defend it and in the desirability of its adoption by other States, particularly developing countries, as a basis for the elaboration of an equitable law of the sea consonant with present and future circumstances.

Article A set forth the right of the coastal State to regulate the management and exploitation of living resources in the maritime zone under its sovereignty and jurisdiction, up to a distance of 200 miles, and indicated the main purposes of that regulation, such as the conservation and rational utilization of those resources, the improvement of the nutritional levels of its people and the development of its fishing industries. Those purposes involved both rights and responsibilities for the coastal State.

Article B provided that the coastal State might reserve the exploitation of living resources to itself or to its nationals, having regard for the need to promote the efficient utilization of such resources and for the economic and social factors involved.

Article C provided for the exploitation of living resources by nationals of other States, subject to conditions to be established by the coastal State. Special emphasis was laid on the control of fishing operations through a system of licences and permits obtained against payment of the corresponding fees, as well as on compliance with conservation requirements and on the procedures and penalties applicable in cases of violation.

Article D dealt with the conservation of living resources and stated that the coastal State in adopting the appropriate measures in the zone under its sovereignty and jurisdiction, should endeavour to avoid effects prejudicial to the survival of living resources within and beyond that zone by promoting any necessary co-operation with other States and with competent international organizations.

Article E established the generally recognized right of the coastal State to board and inspect foreign-flag vessels and to apprehend them and take proceedings against them in the event of a violation of the laws of that State.

Article F provided that any dispute concerning fishing or hunting activities by foreign-flag vessels within the zone under the sovereignty and jurisdiction of the coastal State should be settled by the competent authorities of that State.

The draft articles reflected a positive approach to the whole problem of fisheries and were designed to secure the effective exercise by the coastal State of its sovereignty and jurisdiction over the renewable resources of the sea adjacent to its coasts. Thus the coastal State was not a mere custodian or inspector, as was maintained by some States with the obvious intention of depriving the coastal State of its resources.

Part II of the draft articles was concerned with the rules which should govern fisheries outside the zone subject to national sovereignty and jurisdiction. Articles G and H provided for the international regulation of fishing outside that area in conformity with the articles of the Convention and with agreements concluded at the world or regional level for the purpose of securing the rational conservation and utilization of living resources and the equitable participation of all States in their exploitation, with due regard to the special needs of the developing countries, both coastal and land-locked. Article I referred to the preferential rights accorded to the coastal State so that it could prevent nationals of distant countries from intensively and indiscriminately exploiting resources, thereby endangering their survival, and exploit rationally the resources in the area under its sovereignty and jurisdiction.

Article J contemplated the conclusion of agreements among States of a particular area where there were resources situated outside the limits of their sovereignty and jurisdiction, which bred, fed and lived by reason of the resources of that area.

Mr. ARIAS SCHREIBER (Peru), supporting the Ecuadorian representative's comments on document A/AC.138/SC.II/L.54, said that the sponsors' approach was based on the view that fisheries could not be treated separately from the other aspects of marine space. They had to be considered in direct connexion with the two major areas into which marine ocean space was divided - namely, zones of national jurisdiction up to a limit of 200 miles, and the international area beyond that limit.

In the first of those areas, the régime governing fisheries was inseparable from the general régime governing renewable and non-renewable natural resources, which was derived, in turn, from the exercise of the rights of the coastal State within that area.

The claim that fisheries should be subject to no limitations other than those imposed by a narrow territorial sea and special regulations in respect of particular species represented an unacceptable attempt by certain maritime Powers to continue to exploit, for their own benefit, the living resources located not only off their own coasts but off the coasts of other States, to the detriment of countries whose lesser degree of development prevented them from competing with them. The sponsors could not accept such a claim, which was harmful to the development of their peoples and which was justified by reference to a supposed general interest in the conservation and rational use of resources. Such an argument was fallacious when invoked by precisely those States whose fishing methods had endangered the survival of species.

It was often forgotten that fishing had always been practised by the inhabitants of coastal regions to provide for their food, industry and commerce. Local fishermen had lived in peace, without any danger of resources being exhausted, until the large fleets of distant-water fishing nations had appeared, leading to conflicts and the danger of over-fishing. Faced with such an abuse, a large number of coastal States had extended the limits of their sovereignty and jurisdiction in order to protect the resources of their adjacent seas and to use them for the benefit of their inhabitants. The results had been immediate: countries like Peru, endowed with meagre means but with an unshakable will, had developed their fishing industry to the point at which it had become one of the pillars of their economic and social development.

Faced with that inevitable and irreversible process, the big Powers were now proposing to the other coastal States that they should not extend the limits of their national jurisdiction and that they should agree, as a gracious concession, to recognition of what some still held to be "special interests" and others accepted as "preferential rights", but only in respect of particular species, and subject to a series of conditions. It had been suggested that those conditions should include a provision whereby the coastal State should reserve to itself only that part of the maximum allowable catch which its nationals were in a position to extract, a suggestion that was tantamount to requiring it to renounce the right to develop its own fishing industry or, pending such development, to agree to unrestricted fishing by the big Powers, with the danger that its resources might be exhausted. It had also been suggested that the "historic rights" of those Powers should be recognized, in other words, that the coastal State should continue to tolerate the unfair régime which had been practised by the more advanced countries, even though it might be directly detrimental to the needs of its own people. Such conditions had been rejected by the developing coastal States and by other coastal States which had no aspirations to hegemony.

While the sponsors appreciated the desire of the big Powers to protect the interests of their own fishing enterprises, they considered that the best way of doing so was not to oppose the extension of the limits of national sovereignty and jurisdiction of other countries. For instance, in the United States of America enterprises engaging in distant-water fishing were in favour of retaining the narrow

limits of national jurisdiction, whereas important sectors engaged in local fishing were pressing for an extension of the United States fishing zone up to 200 miles or up to the edge of the continental shelf or margin. The decision, of course, lay with the United States Government. However, while recognizing the right of the United States Government to take such a decision, the sponsors claimed a similar right for their own Governments to protect the interests of their own fishermen. It was logical and proper that the measures to be applied off the coasts of any specific country should be decided, not by the Governments of distant nations, but by the Government of the country concerned, whose right was based on the duty to secure the resources required for the development and welfare of its own people. The same logic required that the Governments of distant nations should respect that duty, and should take appropriate measures to ensure that it was also respected by their nationals.

Furthermore, distant-water fishing would inevitably gradually decrease as the development of local fishing operations reduced their profitability and the fishermen of traditional distant-water fishing nations lost their incentive to engage in what had always been an arduous and risky occupation.

The sponsors also considered that recognition of the right of the coastal State to lay down conditions for the protection of fishery resources within the limits of its national jurisdiction was incompatible neither with the adoption of agreed international provisions on conservation measures and fishing methods, nor with the conclusion of regional, subregional or bilateral agreements permitting nationals of other States to engage in fishing operations off the coasts of the coastal State. The limits of national sovereignty and jurisdiction had not been established solely to protect fisheries; they were also designed to protect the mineral resources of the sea-bed and its subsoil and other interests of the coastal State. Those limits did not constitute an insurmountable barrier, but a framework for the exercise, by the coastal State, of rights based on geographical, geological, ecological, economic and social factors. The sponsors therefore considered it reasonable that the coastal State should be able to regulate the protection and exploitation of living resources connected with its habitat, even beyond the limits of its national sovereignty and jurisdiction, and that, in the case of species which fed, bred and lived off the resources of a particular

region beyond the area of sovereignty and jurisdiction of two or more States, the States concerned should be able to co-operate in their exploration, conservation and exploitation. A study by a group of experts in the Peruvian Ministry of Fisheries of the exploitation of the country's fish resources had shown that only 10.6 per cent of the total catch was taken within the first 12 miles off the coast, whereas 89.4 per cent was taken in the zone between 12 and 200 miles off the coast. It was therefore easy to appreciate why Peru could not accept the 12-mile limit. Fishing had so far taken place mainly within a 50-mile line, but his Government had taken measures to develop the exploitation of resources located at a greater distance from the coast, even beyond 200 miles.

The firmness with which his country had defended its sovereign rights over the sea had been interpreted by some countries as intransigent and arbitrary. Nothing could be further from the truth, since, although Peru reserved to itself the exploitation and marketing of species such as anchovy, it also permitted vessels flying any flag to fish other resources, subject to conservation regulations and to the issue of the corresponding licenses and permits. It had also agreed to joint operations for the extraction of specific resources within its zone of sovereignty and jurisdiction by other countries - including certain socialist States - and had embarked upon various forms of international co-operation, to the satisfaction of the parties concerned.

It was therefore clear that the establishment of a 200-mile limit in no way precluded recognition of the interests of the international community as a whole, while it enabled the coastal State to engage in a rational exploitation of the resources within that limit. A specific example was the decision taken that year by the Government of Peru to nationalize the anchovy fishing industry and to proceed to the closure of factories and the reduction of the anchovy fishing fleet because of the displacement of anchovy stocks as a result of ecological changes off the Peruvian coast. That decision had received the support of Peruvian fishermen, for whom the Government had helped to find work in allied industries; it also showed what could be done to regulate fisheries when they were subject to the sovereignty of the coastal State concerned and not to foreign commercial interests or to the recommendations of ineffective international bodies.

The sponsors' view, now shared by the overwhelming majority of States, was that the forthcoming conference on the law of the sea would have to recognize the establishment of wide limits of national sovereignty and jurisdiction up to a distance of 200 miles - except in the case of certain continental shelves - as a reasonable and appropriate solution of the régime governing fisheries. Such a solution would, firstly, enable the coastal developing countries and other coastal States without any big Power designs to utilize, in peace, the living resources of their adjacent seas with a view to promoting the prosperity of their fishing industries and raising the living standards of their peoples. It would, secondly, give the geographically disadvantaged countries, including the land-locked countries, an opportunity to participate in fishing operations, which would no longer be at the mercy of the big Powers. It would, thirdly, enable the big Powers to concentrate on the application of conservation measures off their own coasts, without interference from anyone. Consequently, the régime proposed by the sponsors, which also provided for various forms of co-operation in regard to ocean space, would benefit all three categories of countries.

Lastly, he wished to draw the attention of the representative of Singapore, who had commented on the draft article relating to geographically disadvantaged States, to articles 13 and 16 of document A/AC.138/SC.II/L.27.

Mr. LEGNANI (Uruguay) explained that the draft treaty articles on the territorial sea, submitted by his delegation in document A/AC.138/SC.II/L.24, were designed to accommodate the widest possible range of interests and to achieve the consensus which was essential if effective progress was to be made in preparing the draft treaty. Consequently, his delegation had incorporated many provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone in its draft articles, since, although his Government had not ratified any of the Geneva Conventions, it recognized their value. The provisions concerned were mostly rules applied by the majority of States or endorsed as appropriate solutions by international legal decisions.

For example, the low-water line had long been the normal criterion for determining the line dividing internal from territorial waters. That criterion had been accepted by the International Court of Justice in its judgment in the Anglo-Norwegian Fisheries Case. It had been adopted in article 3 of the Geneva Convention on the Territorial Sea and the Contiguous Zone and was reproduced in article 4 of his delegation's draft.

Since the low-water line criterion was not applicable to deeply indented coastlines, article 4 of the Geneva Convention, reproduced in article 5 of his delegation's draft, permitted the drawing of straight baselines joining appropriate points, for the purpose of delimiting the territorial sea. That provision, too, reflected a method which had been applied by certain States for some time and which had been endorsed in legal decisions. Similarly, articles 5, 6, 7, 8, 9, 10, 11 and 13 of the Convention were reproduced in articles 6, 7, 8, 9, 10, 11, 13 and 14 respectively of his delegation's draft.

Since many of those provisions had originated in the customary usages of many States or international legal decisions and had been formulated at a previous international conference in which the great majority of the States represented in the Sub-Committee had participated, they could, subject to certain modifications, provide a generally acceptable basis for the adoption of appropriate solutions.

The method of measuring the territorial sea of archipelagic States proposed in draft article 12, apart from reflecting proposals put forward by other delegations, was also an extension of the straight baseline method to geographical situations presenting, inter alia, irregularities similar to the indented coastlines of some coastal States. The application of the method was subject to the States concerned being authentic archipelagic States and to other criteria such as those contained in draft article 5. It was a fair and reasonable solution. However, if the method was to be properly applied, it would have to be related to the definition of an "island" and to precise definitions of "permanent installations", "low- and high-tide elevations", and other features.

There were no grounds for suggesting, as the Maltese representative had done at a previous meeting, that the application of such a method, and the further extension of territorial waters, would lead to a situation in which all that would remain of the common heritage of mankind would be a few fish and some seaweed. It might equally well be maintained that if full satisfaction was given to certain special interests, the developing coastal countries would, in future, be entitled to only a little seaweed and to no fish at all. Even where rules were sound and equitable, their arbitrary and inappropriate application led to irrational results.

In preparing the basis of the future treaty on the law of the sea, his delegation had no intention of rejecting, in advance, any proposals which did not accord with its own; its aim was merely to co-ordinate and to reconcile the many varied interests involved, as was evidenced by the provisions of its draft articles, which sought to harmonize the interests and rights of all States, not only of coastal States. Provisions had therefore been included on the régime of land-locked countries, based on the principle of free access to the territorial seas of neighbouring coastal States or of States in the same subregion.

Moreover, the coastal State had, in addition to sovereign rights over its territorial waters, certain corresponding duties, notably the duty to respect of the right of innocent passage within the first 12 miles and of free navigation and overflight beyond 12 miles and up to 200 miles, and to permit the laying of submarine pipelines and cables within the zone established. It also had a duty to adopt, within the territorial sea, appropriate measures to protect the marine environment from pollution and to take account of the general interest in promoting and facilitating scientific research.

The breadth of the territorial sea was one of the most controversial aspects of the new law of the sea. His delegation's draft articles reconciled the rights and interests of the international community with those of the coastal State, without doing violence to, or departing from, the traditional legal rules governing ocean space, which had merely been adapted to the requirements of modern times. In the draft articles submitted by his delegation, the extension of the territorial sea within limits not exceeding 200 nautical miles in no way affected the freedom of navigation and overflight and the laying of submarine pipelines and cables beyond 12 miles from the coast, and did not prejudice the right of innocent passage within a belt of 12 nautical miles.

At the same time, the exercise of the coastal State's sovereignty over a territorial sea of up to 200 nautical miles, including the airspace above that sea on the sea-bed and its sub-soil, would enable that State to protect its security, preserve the integrity of its marine environment, explore, conserve and exploit the natural resources of its territorial sea, and to make rational use of those resources in order to promote its economic development and to raise the standard of living of its people. Consequently, the draft articles represented a compromise between the legal status of the territorial sea, based on the principle of sovereignty, and the status of the high

seas, based on the principle of freedom. The articles laid down corresponding rights in respect of the safety and development of international communication, while other interests relating to the territorial sea fell within the sovereignty of the coastal State. Such a solution, at a time of particularly rapid development of science and technology - matters of great potential importance to coastal States - would provide those States with adequate means of defending their security and protecting their resources. His delegation's proposals harmonized and reconciled the various rights and interests involved without prejudice to the interests and rights of the coastal peoples over their marine resources.

Lastly, his delegation supported Jamaica's position in regard to geographically disadvantaged States, although it felt that the wording of the draft articles submitted by that delegation (A/AC.138/SC.II/L.55) could be improved. The representative of Singapore had criticized the provisions relating to land-locked States in his own delegation's text. He agreed that those provisions could be improved, but in accordance with the principles laid down in the Jamaican proposal.

Mr. MBAYA (Cameroon), reaffirming his delegation's wish to respect the spirit and the letter of the OAU Declaration (A/AC.138/89), said he recognized that the criticisms made by the representative of Singapore of article VIII of document A/AC.138/SC.II/L.40, sponsored by his own delegation and other African States, were well founded. The corresponding provisions in the draft articles on fisheries, submitted by Canada, Senegal and other delegations (A/AC.138/SC.II/L.38), were more in conformity with the OAU Declaration. According to the sponsors of the latter provisions, they were intended to form part of the concept of the exclusive economic zone, and their incorporation in the provisions relating to that zone would solve the problem of article VIII in document A/AC.138/SC.II/L.40.

Turning to document A/AC.138/SC.II/L.41, sponsored by the delegations of Zambia and Uganda, he said he was quite unable to accept the concept of regional and subregional economic zones, which would imply the participation of geographically disadvantaged States in the exploitation of mineral resources. He entirely endorsed the criticisms which the representative of Kenya had made of that proposal and considered that the arguments given in support of that concept were entirely inadequate.

Mr. JEANNEL (France), replying to points raised by earlier speakers, said that according to some delegations, in cases where straits were within the territorial waters of one or more States, the solution to the problem of the freedom of international navigation and communications lay in a proper definition of the right of innocent passage and its adaptation to that freedom and in further restriction of the jurisdiction of the coastal States over their territorial sea. That was neither desirable nor necessary for solving the problem. The principle of innocent passage through territorial waters should be maintained as a general rule, within the limits at present prescribed. A solution was needed to the special problem of the very small areas of territorial sea which the vessels and aircraft of many other States had to cross. The problem, which arose in only a few straits, required a pragmatic solution accommodating the interests of the coastal State, those of other States directly concerned and those of the international community.

The question of islands had arisen in connexion with the general desire of coastal States to extend their national jurisdiction. He was not referring to archipelagos, which constituted a separate problem. Such an extension would reduce the marine space whose natural resources were regarded as the common heritage of mankind. In the search for ways of compensating for that diminution of the common heritage; it had been proposed that a distinction should be made between continents and islands, in order to be able to claim that there were resources over which the coastal State had rights by virtue of its islands. The obvious unacceptability to the international community of a distinction contrary to the basic principles of international law had led to the elaboration of subtle formulas designed to restrict, in a discriminatory and arbitrary manner, the number of countries penalized by such an operation in order to reduce the opposition to it. The distinction was legally and morally indefensible, but had been seized upon in the pursuit of national interests. Cases where a State with few or no islands was opposite one with many islands and the distance between the States was less than the width of the combined territorial seas prescribed by their legislations, application of the principle of equidistance would obviously be to the advantage of the State with more islands. A rule established for settling such a specific problem would not be generally applicable.

Moreover, the proposed distinction was based on the notion that islands as such and continental territory as such were entitled to national jurisdiction, but territory had no sovereign rights; it was the State to whose sovereignty the territory was subject which enjoyed sovereign rights. The adoption of such a distinction would involve the division of State sovereignty, contrary to a fundamental rule of international law, and a violation of the principle of the sovereign equality of States. Such a step would be paradoxical at a time when efforts were being made to move in the opposite direction for the benefit of archipelagic States. National interests should not, of course, be ignored, but it was essential to avoid introducing private disputes, which could obviously only be solved bilaterally, into the Committee's already difficult task. Existing rules of international law, supplemented by the 1969 judgment of the International Court of Justice on the Danish-German-Dutch continental shelf provided a basis for equitable solutions accommodating the legitimate interests of all countries. If the Conference was to be a success, the discussion of such private problems must not be allowed to take up time which should be devoted to those concerning the international community as a whole.

The meeting rose at 11 p.m.