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UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

A/CONF.62/C.2/SR.13
26 July 1974

ORIGINAL: ENGLISH

Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at the Parque Central, Caracas,
on Tuesday, 23 July 1974, at 10.50 a.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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CONSIDERATION OF SUBJECTS AND ISSUES AND RELATED ITEMS: STRAITS USED FOR INTERNATIONAL NAVIGATION (A/9021; A/CONF.62/C.2/L.3 and Corr.1 (Spanish only), L.11) (continued)

Mr. BEESLEY (Canada) said that he hoped that the preliminary remarks he was about to make on the proposals submitted so far would indicate his delegation's willingness to enter into serious negotiations. He shared the view that the subject under discussion was one of the fundamental issues of the Conference which would influence the solution of many interrelated problems. His delegation therefore attached great importance to the need to accommodate the interests not only of the coastal and straits States in question but also of the international community as a whole. The matters involved were the maintenance of freedom of navigation, the preservation of the marine environment and the development of regulations which would enable those aims to be achieved peacefully, rather than become an encouragement for disputes.

All the proposals submitted so far assumed a plurality of régimes - that of the territorial sea, that of straits customarily used for international passage, the possibility of alternative routes and the problem of straits less than 24 miles wide. While care must be taken not to create systems of discrimination, the establishment of world-wide regulations did not preclude the establishment of special régimes for particular straits.

While the definition of a "strait used for international navigation" must take into account its geographical aspects, many straits which appeared suitable for international navigation on charts were not so used for very good reasons. In the judgement rendered by the International Court of Justice in the Corfu channel case, the Court had adopted as a criterion of the strait's actual use for international navigation the number of ships using it and the number of flags represented.

The statement by the United States representative at the preceding meeting had drawn attention to problems of safety and pollution.

While his delegation considered that the proposals submitted so far, and in particular those of six socialist States of Eastern Europe (A/CONF.62/C.2/L.11) and the United Kingdom (A/CONF.62/C.2/L.3), were moving in the right direction, it had reservations about all of them and considered that none properly accommodated the interests of all States. Both the proposals mentioned included the idea that the management of ocean space recommended at the United Nations Conference on the Human Environment was even more necessary for narrow straits.

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(Mr. Beesley, Canada)

The growing recognition that the concept of the jurisdiction of the flag State implied also its responsibility in case of disaster caused by the passage of a ship was an encouraging development.

However, he requested clarification of various points in the United Kingdom proposal (A/CONF.62/C.2/L.3). For instance, in chapter two, part III, article 15 seemed to imply that passage must always be presumed to be innocent unless the coastal State claimed otherwise. Article 16 did not seem to take sufficient account of the fact that the coastal State's security could be threatened as much by environmental as by military problems. Paragraph 3 of that article tended to strengthen the presumption of innocence because it left the judgement as to the prejudicial nature of passage to the discretion of the ship's captain. Care should, however, be taken regarding the extent of that discretion, especially if it implied a right to override the coastal State's laws and regulations. It might be necessary to give a list of the matters over which the coastal State might make laws and regulations as proposed in article 18 in order to ensure that new regulations were not suddenly introduced to the detriment of the interests of flag States.

The question of the shipowner's liability for damage caused by the passage of ships and compensation for that damage had been raised in both proposals, but his delegation had reservations on those proposals because it did not consider them sufficiently comprehensive.

In view of the vital importance of the issues involved to coastal States, to countries with large maritime fleets and to those which, although not possessing such fleets, were vitally concerned with passage through straits, the Conference might not be able to reach an immediate solution to the problem. The articles to be drafted should set forth preventive as well as remedial measures against pollution of the marine environment, and their general provisions should take into account special situations, customary uses of straits, the needs and interests of coastal States bordering on straits used for international navigation, and those of the international community as a whole. If they contained a clear statement of the rights and duties of flag and coastal States, those interests need not conflict. It would also be necessary to propose an international machinery for the settlement of disputes arising from implementation of those provisions.

Mr. ABDEL HAMID (Egypt) welcomed the fact that the discussion so far was proceeding on a serious level, as evidenced by the statement of the representative of

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(Mr. Abdel Hamid, Egypt)

the United States at the preceding meeting confirming the need to ensure the security of the coastal State, safety of navigation and the prevention of pollution - three aspects of the question which were of primary importance to all States. The Egyptian delegation's statement in the general debate had recognized the international importance of passage through straits and the desirability of maintaining such passage in order to promote international prosperity.

While he welcomed the attention drawn by the United States representative to the question of the security of the coastal State, he wished to ask him two questions. The first was why his country did not respect the requirement that prior authorization should be given by the coastal State for passage of warships or at least that the coastal State should be notified of such passage and the second was how the coastal State could verify whether a submarine refrained from testing weapons of any kind during its passage through straits if it remained submerged.

With regard to the proposal submitted by the United Kingdom (A/CONF.62/C.2/L.3), article 1, paragraph 3, recognized the sovereignty of the coastal State and article 18 confirmed that sovereignty with regard to a long list of objectives. Those provisions might be valid if they applied to some high seas area in which the coastal State could exercise a certain jurisdiction, but if they referred to the area under national sovereignty, the complexity of the marine environment might require the coastal State to co-operate with the international community in order to facilitate navigation.

Again, although there was general agreement that such passage must be peaceful, the various proposals did not indicate how the coastal State could exercise any supervisory powers granted to it.

The United Kingdom representative had referred to his country's global commitments. Surely the matter under discussion was not military commitments but the peaceful use of the seas, and extra-legal issues could not be injected into the legal provisions for the régime.

Mr. SYMONIDES (Poland) said that his country attached particular importance to the maintenance of the right of unimpeded passage through straits because it bordered on the Baltic Sea, from which the way to other seas and oceans led through the Baltic Straits. The traditional routes of its merchant fleet also passed through other straits.

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(Mr. Symonides, Poland)

The question of what straits should be subject to the principle of free transit had been answered by the sponsors of document A/CONF.62/C.2/L.11, in article 1, paragraph 1, which obviously applied to straits of a width not exceeding 24 miles. Straits exceeding 24 miles created no problems since the waters beyond the 12-mile limit constituted part of the open sea and allowed for unrestricted free passage. It was, however, unjustified in terms of international law to classify straits into those up to six miles wide and those from six to 24 miles wide, especially since an overwhelming majority of delegations recognized a 12-mile territorial sea. In both cases, the legal status was identical and the waters of such straits were territorial waters.

That did not, however, mean that transit through straits up to 24 miles wide could be based on the principle of innocent passage through the territorial sea. Passage through straits must be subject to separate rules because both the law of the sea now in force and the draft proposals submitted to the Conference underlined that passage through straits used for international navigation could not be suspended. It was possible to bypass a territorial sea by extending navigation routes but it was impossible to avoid passage through certain straits. If the decision to grant or refuse passage could be taken arbitrarily on the basis of the still not well defined notion of "innocent passage", it might lead to discrimination against some States and to the limitation of the right of navigation for subjective reasons due to existing alliances, political ties and particular interests of coastal States. That was especially applicable to the passage of warships.

It was therefore necessary to resolve separately the question of the right of passage through and above straits. The rules governing transit through straits were enumerated in article 1, paragraph 2 of document A/CONF.62/C.2/L.11. In the case of narrow straits, the coastal State would also have the right to trace out special corridors for transit purposes.

With regard to the obligations imposed not only on ships in transit but also on the coastal State, one question required clarification. The right of transit would only be theoretical and transit would not be unimpeded if the coastal State was allowed to build structures and installations which could in fact lead to the closing of a narrow strait.

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(Mr. Symonides, Poland)

While no one wished to deprive coastal States of their sovereign right to fish, explore the area or exploit natural resources, as explicitly stated in article 1, paragraph 3 (b) of the draft proposal, coastal States should take into account the interests of international navigation when undertaking such activities.

Rules concerning the exercise of unimpeded transit through straits obviously did not mean the abrogation of existing international agreements in that respect. The task of the Conference was to draft rules to encourage the present and future development of international relations in accordance with the requirements of international co-operation and security which were met by the principle of free transit.

Mr. ARIAS SCHREIBER (Peru) said that the views of his delegation were very largely the same as those expressed by the representative of Tanzania at the previous meeting; a distinction had to be made between the interests of humanity in general and those of certain States.

The passage of merchant vessels through straits used for international navigation was a peaceful use of the seas which was considered innocent and which was of benefit to all countries. It should be preserved without discrimination; straits States must facilitate the rapid and safe passage of such vessels. Merchant vessels must comply with the regulations laid down by the coastal States so as to avoid damage to the marine environment and danger to shipping. The passage of warships was not in the general interest, nor was it a peaceful and innocent use of the seas. It served the strategic and military interests of a small number of maritime Powers. While it might, in certain cases, serve other States, it should be looked upon as a necessary evil so long as there were still possibilities of conflict between nations. It was only reasonable that warships should respect the rights and legitimate interests of coastal States. The only suitable way to reach a satisfactory agreement between States using straits and States bordering on straits was to revise and define the concept of innocent passage through the territorial sea, specifying what vessels in transit could or could not do.

The proposal submitted by the United Kingdom and that submitted by a group of socialist countries were based on a principle that was not in keeping with the nature of marine space or with the development of the law of the sea. Instead of referring to the passage of vessels through the territorial sea and straits used for

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(Mr. Arias Schreiber, Peru)

international navigation, the proposals spoke of straits linking one part of the high seas with another part of the high seas whereas the likelihood was that in future they would link not two parts of the high seas, but the economic zones of one or more coastal States. The definition must therefore be amended. The essential point was that the area involved was territorial sea; consequently, the provisions governing its use could not disregard the rights and jurisdiction which the coastal State exercised within that area.

As part of those rights and jurisdiction, it was logical that the coastal States should require notification of the passage of vessels with special status; it was even more logical to require authorization for the passage of warships. If, as the great Powers maintained, the passage was innocent, warships must prove their innocence in compliance with the Convention. The same was true for the passage of submarines, whose concealment could only be for far from innocent reasons. Like other delegations, he hoped that further explanations would be forthcoming on the subject of submarines.

He did not see why the coastal State should be denied the possibility of taking precautions if it felt that there was a serious threat to its legitimate interests from the passage of any kind of vessel through straits within its territorial sea. The draft Convention submitted by Malta covered that point: the draft articles submitted by the United Kingdom and those submitted by the socialist countries excluded it; indeed, the latter would even prohibit stopping vessels in transit or requests for information.

It was clear that certain maritime Powers intended to use the law of the sea as an instrument of their policy of freedom of action and to serve their plans for hegemony, and they expected other States to serve as accomplices in achieving those aims. They even went so far as to make recognition of large areas of national jurisdiction for mainly economic purposes conditional on the simultaneous acceptance of free passage through straits for mainly aggressive purposes in the vain hope that non-straits States would accept such a deal. His country would not be a party to that manoeuvre. He was certain that there would be a similar response from those States that opposed the claims of a minority of maritime Powers and wished to establish a new legal order governing the use of the seas based on the principles of peace and justice for all nations of the world. It appeared from an initial

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(Mr. Arias Schreiber, Peru)

examination that the proposals submitted by the delegation of Oman were a step in the right direction.

Mr. EL KOHEN (Morocco) said that he wished to clear up a misunderstanding that had arisen over his delegation's position on the question of straits. His delegation was in favour of the application of the principle of innocent passage, which was the traditional basis for navigation in the territorial sea. The application of that principle had allowed the development of international trade and of co-operation between nations and had never harmed international navigation in any way. Indeed, it had become a practice of international society and had proved entirely satisfactory. There was therefore no need to change the rule of innocent passage for something that might prove less certain, at a time when traffic had become heavier and the risk of accidents of all kinds greater than ever before. He reminded the Committee that Morocco was one of the sponsors of the draft appearing in document A/AC.138/SC.II/L.18, in which there was a very accurate balance between the elements of the concept of innocent passage. That document could serve as a useful basis for the work of the Committee.

A Moroccan law of 2 March 1973 provided that navigation through and overflight of straits were permitted on the conditions set out in the international agreements to which Morocco was a party and in accordance with the principle of innocent passage as defined in international law. As a member of OAU, Morocco supported the declarations appearing in document A/CONF.62/33, which endorsed the régime of innocent passage in straits used for international navigation.

Mr. HARASZTI (Hungary) said that, as a land-locked country engaged in considerable international trade, Hungary had a particular interest in free access to the seas and attached great importance to freedom of passage for all States without discrimination through straits used for international navigation, whether or not the straits lay within the territorial sea of a coastal State or contained areas of high seas. That well-established rule of international law should be embodied in the Convention on the Law of the Sea.

The doctrine of innocent passage was not sufficient for passage between parts of the high seas, despite the provisions of the 1958 Geneva Convention. The doctrine could still be used by a coastal State as a pretext to impede free transit. His delegation therefore supported the draft articles in document A/CONF.62/C.2/L.11, which set out clearly the concept of freedom of navigation. The doctrine of innocent passage should apply only to straits providing access from the high sea to territorial sea in which the principle of innocent passage applied. The principle was set out in article 2

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(Mr. Haraszti, Hungary)

The right of free passage did not affect the right of coastal States to regulate the passage of ships through straits within their territorial waters in the interests of safety of navigation. Regulation should not, of course, interfere with freedom of navigation.

The right of freedom of overflight should also be recognized in the new Convention. He could not agree with those delegations that maintained that overflight should be regulated by air law conventions. The sovereignty of a coastal State extended to the air space over its territorial waters; the Convention must recognize that and the right to overflight.

The draft articles contained in document A/CONF.62/C.2/L.11 could serve as a useful basis for the elaboration of articles establishing the legal régime of straits used for international navigation.

Mr. TUNCEL (Turkey), in his preliminary comments on the draft articles (A/CONF.62/C.2/L.3 and L.11), said that the United Kingdom and the Soviet Union had taken a very similar attitude to pollution from ships in international straits. They seemed to feel that the coastal State should have no jurisdiction in the matter and that vessels should comply with international regulations. There was a complementary view that the coastal State should bear responsibility, but should act in the light of international recommendations so as to ensure a uniform régime applicable to straits. His delegation reserved its position on the matter.

The issue of traffic separation had been the subject of considerable discussion in the Sea-Bed Committee. His delegation had not taken a position on the issue. It would be advisable to consider carefully whether the recommendations of the competent international organization should be given the status of compulsory treaty law.

Articles 19 and 20 of the 1958 Geneva Convention were incorporated in the draft articles submitted by the United Kingdom. They seemed to be applicable to criminal and civil responsibility in respect of merchant vessels and navigation incidents in straits. The responsibility of non-commercial vessels was set out in chapter three, article 7 of the United Kingdom draft articles. The definition employed in that article was not the same as that used in chapter two, article 25; he hoped the representative of the United Kingdom would be able to clarify that point. The Soviet proposal did not mention non-commercial vessels, and did not state whether the liability mentioned in article 1, paragraph 2 (d) was criminal or civil. It was not clear whether the

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(Mr. Tuncel, Turkey)

definition of the term "warship" given in chapter two, article 26, of the United Kingdom draft articles was applicable to passage through straits. His delegation reserved its position on the matter and would consider the implications of a definition in the context of the rules governing passage through the territorial sea and through straits.

His delegation welcomed the fact that most of the proposals made recognized the validity of treaty law. The Convention being drafted should recognize the legal régime applied in all the previous relevant conventions. Chapter three, article 10 of the United Kingdom draft articles covered multilateral conventions, including the United Nations Charter, while the draft articles submitted by the Soviet Union did not mention the United Nations Charter. The United Kingdom's article 10 should be split into two subparagraphs, one dealing with the legal régime based on treaty law and one providing a more detailed description of the régime based on the United Nations Charter. As far as treaty law was concerned, his delegation preferred the wording used in article 1, paragraph 3 (c) of the USSR draft articles, which used the term "legal régime" rather than the term "obligations".

Pilotage and assistance in the event of collision or other incidents were two issues that should be covered by the Convention. Provisions should be made for boats to be piloted by pilots from the coastal State, especially where passage was through narrow straits or straits subject to heavy traffic. The coastal State should have the right to come to the aid of vessels involved in accidents, because channels must be cleared for passage as quickly as possible.

He had noted with considerable interest the suggestion by the delegations of Denmark and Finland that a distinction should be made between traditional straits and those created by the extension of the territorial sea.

Mr. ANDERSEN (Iceland) said that the questions of a territorial sea of 12 miles, an economic zone of up to 200 miles, and unimpeded passage through straits used for international navigation were closely linked and must be resolved together. Since consensus had been reached on the first two points, the straits issue was of crucial importance. Mutual distrust and suspicion should be set aside so as to safeguard freedom of navigation through straits and in the economic zone.

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(Mr. Andersen, Iceland)

The right of unimpeded passage and adequate protection of the interests of the coastal State must be balanced. In that connexion he supported the United Kingdom proposals (A/CONF.62/C.2/L.3), which had been supplemented by the proposals of Denmark and Finland (A/CONF.62/C.2/L.15) and similar proposals such as those in document A/CONF.62/C.2/L.11.

An agreement along those lines would greatly facilitate the work of the Conference on the economic zone. He hoped that the straits issue would not become a stumbling block but rather a catalyzing factor in ensuring the successful treatment of the economic zone.

Mr. LING CHING (China), commenting on the proposals of Oman (A/CONF62/C.2/L.16) and the Soviet Union (A/CONF.62/C.2/L.11), said that the legal status of the territorial sea differed from that of the high seas. The territorial sea was undeniably an inseparable part of the territory of the coastal State, which exercised full sovereignty over it. A strait lying within the limits of the territorial sea could hardly change its status and become part of the high seas simply because it was normally used for international navigation. It stood to reason that the strait State exercised sovereignty and jurisdiction over such a strait, and had the right to make all the necessary laws and regulations governing it. The very title of the draft articles submitted by Oman, "Navigation through the territorial sea, including straits used for international navigation", showed that such straits remained part of the territorial sea of the coastal State and retained their legal status as such. Moreover, the Oman proposal explicitly provided for a number of specific rights of the coastal State in its regulation of such a strait. The Soviet proposal, however, while placing restrictions on the sovereignty and rights of the coastal State, demanded the right of equal freedom of navigation for all ships, including warships. That, in essence, was a denial of the status of such straits as territorial sea and of the coastal State's sovereignty and jurisdiction over them. Such contempt for the sovereignty of the strait State was unacceptable to his delegation.

With respect to the régime of innocent passage, his delegation believed that while the sovereignty of the strait State must be fully respected the needs of international navigation must be taken into account and all necessary measures adopted to ensure unimpeded international trade. That was a very important point on which many countries had understandably expressed concern. In principle innocent passage meant passage granted to foreign vessels provided that they did not prejudice the peace, good order

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(Mr. Ling Ching, China)

and security of the coastal State and that they observed the relevant laws and regulations of that State. The draft articles submitted by Oman not only safeguarded the sovereign security and interests of the coastal State but also took into account the convenience of international navigation. They set forth a number of reasonable objective criteria permitting unimpeded passage for foreign merchant vessels, and providing ample guarantees to such vessels engaging in normal international transport. His delegation believed that those proposals could be taken as the basis for the Committee's discussion.

The passage of foreign military vessels was, however, an entirely different matter, and must be clearly distinguished from that of foreign merchant vessels, as had rightly been pointed out by the representatives of Sri Lanka and Tanzania. The super-Powers had always tried to obliterate that distinction under the smoke-screen of "all ships", and had adopted pretexts of all kinds in an attempt to impose free passage through straits by warships.

One super-Power had asserted that its insistence on freedom of navigation through straits was aimed at developing international trade. It was the legitimate desire of the peoples of the world to develop such trade; but that had nothing to do with warships and nuclear submarines. Moreover, the free passage of such vessels through straits in itself posed a threat to the strait State or to others. The Soviet representative had quoted figures showing the increase in the volume of international trade. That increase could hardly have been brought about by the free passage of warships and nuclear submarines through straits.

The Soviet Union was also peddling its claim for free passage of warships through straits under the label of safeguarding collective security. But the Soviet Union had substantially increased its fleet in the Mediterranean and in the Indian Ocean, thus directly threatening the security of the countries in those regions, infringing their sovereignty and interfering in their internal affairs. That action could in no way be described as a measure of collective security; on the contrary it had greatly aggravated insecurity in the world.

The Soviet Union was also flaunting the ideas of peace and disarmament to cover up the expansion of its naval force. Facts showed that the very power that had been talking glibly about disarmament had in reality greatly expanded its naval force and strengthened its strategic position in the world. One of its representatives had in fact confessed that the Soviet Navy had become a diplomatic means of intimidation and containment

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(Mr. Ling Ching, China)

Thus, the ideas of "all ships" and "free passage" as advocated by the super-Powers were designed to enable their warships and nuclear submarines to cross the oceans of the world in implementation of their expansionist policies and their strategy of world hegemony. If that design were carried out, not only would the sovereignty of the strait States be infringed, but the peace and security of the world as a whole would be threatened. His country could not accept that approach. The draft articles submitted by Oman provided that the coastal State might require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State. His delegation considered that requirement to be the undeniable right of a sovereign State and firmly supported its inclusion in the Convention.

The super-Powers had advocated free passage through straits for all ships including warships as a precondition for a package settlement of various issues relating to the law of the sea. His delegation believed that since there were certain interrelationships between the various aspects of that law, due consideration should be given, in the course of dealing with a certain item, to other related items. However, that should never be done at the expense of the sovereignty of the States concerned and the interest of international peace and security. Any attempt to exchange recognition of the legitimate demands of the developing countries for free passage through straits by military vessels would not be tolerated.

Mr. TARCICI (Yemen) said that it was the duty of the coastal State to facilitate as far as possible the passage of civil and merchant vessels and aircraft of all States. The action required for that purpose made the exercise of sovereignty by the coastal State over its territorial waters obligatory. It was the duty of a coastal State not only to facilitate international trade, but also to protect itself against any attack on or threat to its national security and sovereignty. It was therefore essential for warships and military aircraft to obtain authorization to pass through territorial waters. Every State guarded its sovereignty jealously, particularly when it was small and inadequately armed; no State could tolerate the unnotified presence of warships, submarines or military aircraft in the area under its jurisdiction. Nevertheless once a coastal State had assured itself that military vessels or aircraft did not present any danger to national security, permission for their passage should be granted rapidly.

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(Mr. Tarcici, Yemen)

It was not likely that any instrument or treaty drawn up under the influence of certain Powers and without due regard to the points he had made would be signed by Governments of countries that felt threatened, and it would certainly not be ratified by Parliaments that felt responsible for the security of their country and their rising and future generations.

Mr. VANDERPUYE (Ghana) said that the question of establishing a generally accepted régime for straits used for international navigation had long concerned the international community, as evidenced by the development of the régimes of straits such as those of Gibraltar, Magellan, the Danish Strait, the Bosphorus and the Dardanelles, most of which had been evolved long before many of the countries represented at the Conference had attained nationhood. The question had been dealt with in international treaties and conventions and had engaged the consideration of the International Court of Justice. The fact that the Conference was still examining the issue showed that past solutions had been unsatisfactory. The Addis Ababa Declaration of the Organization of African Unity (A/CONF.62/33) had recognized the complexity of the problems of straits used for international navigation by stating that, in view of the importance of such navigation, the African States endorsed the régime of innocent passage in principle but recognized the need for further specific provisions governing that régime.

His delegation believed that an equitable solution to the problem must attempt to strike a balance between the international maritime community's interest in traversing such straits and the interest of the coastal State in its own territorial sea, and in particular in the security, safety of navigation and prevention of pollution in that sea. It was against that yardstick that his delegation would weigh any proposals before the Conference.

His delegation believed that the definition of a strait should be comprehensive enough to include not only geographical or geomorphological characteristics such as width and depth but also the functional aspects of the strait such as international maritime traffic and local economic interests.

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(Mr. Vanderpuye, Ghana)

With regard to the nature of the ships passing through straits, his delegation believed that if the width of a strait was such that it fell within the territorial sea of the strait State or States, innocent passage only should be allowed unless otherwise provided under treaty. His delegation appreciated the argument put forward by the advocates of the concept of freedom of navigation - which was, incidentally, quite new in its application to straits - that the application of that concept was necessitated by the proposed recognition of a 12-mile breadth for the territorial sea, which would mean that a large number of straits would fall within the territorial sea of a State of States. His delegation would support the application of the concept of freedom of navigation in respect of straits lying outside the territorial sea, but not its application to areas falling within the territorial sea. It believed that there should be different régimes for different categories of straits.

In his delegation's view, merchant vessels should enjoy greater facility of passage than warships, on the understanding that the new Convention should deal with the passage of warships only in time of peace. The question of overflight should be regulated within the framework of the Chicago Convention or another agreement, but not at the present Conference.

His delegation felt strongly that the legitimate interests of coastal States in regulating transit through straits must be recognized and protected, and that any arrangements must protect the peace and security of the coastal States. It therefore proposed the following formulations for the consideration of the Committee:

Where a strait used for international navigation between one part of the high seas and another part of the high seas exceeded 24 miles in width, all ships in transit should enjoy the same freedom of navigation as they enjoyed on the high seas for the purpose of transit over the belt of the waters of the strait which lay outside the territorial sea or the internal waters of the coastal State.

Freedom of navigation should, however, be exercised with due regard to the interests of a coastal State in respect of their national security, sanitation and pollution control, as also conservation and regulation of fisheries.

Passage through straits which fell within the territorial sea of one or more States for ships of all nations should be governed by the principle of innocent passage as applicable to passage through the territorial sea of the State. The right of overflight for an aircraft across the strait should be governed by the same principle as the passage of ships.

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Warships should be required to give advance notification to the coastal State of their intention to transit a strait which lay within the territorial waters of two or more States. Such warships should not in the area of the strait engage in any exercise or gunfire, use weapons of any kind, launch aircraft, undertake hydrographical work or engage in other acts of a nature unrelated to the transit.

Mr. STEVENSON (United States of America) in exercise of his right of reply, explained to the Egyptian representative, who had asked what assurance there would be that a submerged submarine in transit through a strait would respect the obligation not to threaten the security of that State, that the United States fully expected to comply with any treaty which it signed and ratified. Clearly, there was always a risk of States not complying with their legal duties, whether they related to a surface or submarine vessel; but his country's record in that respect had been a very good one. Indeed, the fact that it was seeking a rule indicated its intention to abide by its obligations.

A strait was an area of confined waters in which no captain, either of a ship or a submarine, would choose to take action threatening the security of a strait State. Moreover, since submarines were equipped to travel submerged, that was the safest way for them to cross an international strait.

In reply to the question why the United States had not complied with the obligation of notification or authorization with respect to military vessels crossing the territorial sea, including straits overlapped by that sea, he pointed out that there was no such requirement of notification or authorization under the existing passage régime adopted in 1958 with respect to the territorial sea. In fact, the proposals made at the 1958 Conference to require such notification or authorization had not been adopted.

His delegation felt that any such requirement for warships would not be desirable, for it would tend to involve strait States much more directly in transits having nothing to do with their own interests, and might conceivably expose them to pressures to which they would not otherwise be subject.

The representative of Egypt and others had suggested that there might be something illegitimate about the transit of warships or military aircraft through or over straits without notice or authorization. However, it was unrealistic to entertain proposals

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(Mr. Stevenson, United States)

which would discriminate against the navigation rights of warships or military aircraft. The exercise of individual and collective defence had been recognized under the United Nations Charter and in repeated actions of the United Nations. All nations, whether they bordered straits or not, recognized the importance of maintaining that right for the protection of their vital territorial and political integrity. The maintenance of transit rights for warships and military aircraft was not only consistent with the Charter but was the only policy consistent with global realities and international stability.

Mrs. KELLY de GUIBOURG (Argentina) and Mr. PRIETO (Chile) pointed out that the treaty of 1881 concluded between their countries ensured freedom of navigation through the Straits of Magellan for ships of all flags.

Mr. ABDEL HAMID (Egypt), having thanked the representative of the United States for his reply, pointed out that it was precisely because a risk was involved that he had raised the matter. The United States representative had said that the safest way for a submarine to pass was submerged; but the safety of those on shore must also be taken into account, and a balance must be struck. He reserved the right to revert to the matter at a later stage.

The meeting rose at 1.15 p.m.

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