2. Exploration and exploitation of the sea-bed ;
   (a) The limits of national jurisdiction over the sea-bed, including a concept of "trusteeship" over the continental margin as proposed by United States ;
   (b) The type of regime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction and types of international machinery.
3. International straits.
4. Islands and the archipelago concept.
5. Preservation of the marine environment and other questions.

II. The extent of the territorial sea, including rights of coastal States in respect of fisheries and zones of economic jurisdiction beyond the territorial sea

In the course of the discussion some Delegations urged that a functional approach be taken to the question of establishing jurisdictional limits. Thus, it was suggested that different limits might be established for different purposes. However, the endeavour should be to arrive at uniform limits for each type of jurisdiction. One Delegation was of the view that a coastal State should not have exclusive fishery jurisdiction beyond its territorial sea.

The Sub-Committee with the exception of a very few Delegations considered that at the present time any State would be entitled under international law, to claim a territorial sea of twelve miles from the appropriate baseline. The majority of Delegations indicated that a State had the right to claim certain exclusive rights to economic exploitation of the resources in the waters adjacent to the territorial sea in a zone the maximum breadth of which should be subject to negotiation. Most Delegations felt able to accept twelve miles as the breadth of the territorial sea, while supporting, in principle, the right of a coastal State to claim

exclusive jurisdiction over an adjacent zone for economic purposes.

A few Delegates emphasised that in their view the maximum breadth of the territorial sea could be twelve miles subject to certain conditions, and that it would not be to the interests of all countries in maximum utilization of the living resources of the sea to establish an exclusive jurisdictional zone for economic purposes beyond the twelve-mile territorial sea. One of those delegates further indicated that it would have no objection to conferring on developing countries which are coastal States a special status in relation to exploitation of the living resources of their adjacent seas.

One Delegation urged that problems of fisheries and fish conversation of living marine resources be approached on a regional or ocean basis, the States in the region or ocean being encouraged to enter into agreements among themselves regulating the rights and obligations of each other in relation to fishing, free from outside interference.

III. Exploration and exploitation of the sea-bed

(a) *The limits of national jurisdiction over the sea-bed including a concept of "Trusteeship" over the continental margin as proposed by the United States.*

The Sub-Committee discussed the question whether to consider first the proposed international regime for the sea-bed beyond national jurisdiction over the sea-bed.

Some Delegations suggested that the Sub-Committee should commence its work by considering the extent of a coastal State's jurisdiction over the sea-bed adjacent to its coast, or continental shelf, since in their view the nature of the international regime to be established would depend to a great extent on the limits of national jurisdiction.

Some Delegations urged that the question of the limits of national jurisdiction over the continental shelf be taken

up only after there had been a discussion of the international regime for the sea-bed beyond national jurisdiction such as was envisaged in the General Assembly's Declaration of 17th December, 1970. In their views there was a vital connexion between the character of that regime (including the international machinery) and the question of limits. If agreement could be reached on a strong organization which offered a reasonable prospect of providing real benefits to the developing countries in accordance with a scheme which would fairly take into account the needs of those countries, there might be support for relatively narrow limits of national jurisdiction. On the other hand, if the machinery contemplated were to lack comprehensive powers or were for some other reason unable to discharge such functions acceptably, then it might become necessary to consider recognising much wider limits of national jurisdiction so as to allow coastal States themselves maximum opportunity for exploitation.

Following a discussion of the relative merits of depth, distance, and a combination of both factors as criteria for measuring the limits of the continental self, several members, while expressing a preference for a distance criterion on the grounds that a simple depth criterion might be unfair to States with narrow continental shelves, indicated that they would prefer to leave the matter open for the time being until they had been able to gather more scientific data and had studied the full implications of using each particular criterion. Whatever criterion or figure was arrived at, it must be related to the equities of the situation and take account of a variety of factors, including the nature of the proposed international machinery,

A few Delegations indicated their clear preference for a depth criterion of say, 200 metres, which had been accepted and acted upon by many States over the years. Some Delegations objected to limiting national jurisdiction to the 200-metre isobath because the Geneva Convention

on the Continental Shelf had already admitted a deeper limit beyond that depth and because there are parts of the sea-bed area deeper than the 200-metre isobath but surrounded by areas of lesser depth of one or two States which in their view should be under national jurisdiction, primarily on the ground of propinquity. It was pointed out that some States had in fact authorised exploitation of their adjacent sea-bed areas on the assumption that the depth plus exploitability criterion prescribed in Article 1 of the Geneva Convention on the Continental Shelf was settled law, and that it would be unfair and unrealistic to expect States to abandon that criterion altogether, even though its revision in some respects might be necessary.

Some Delegations proposed that States should abandon the depth plus exploitability criterion for the limits of national jurisdiction and consider recognizing a limit of 200 miles to be measured from the coastal State's baseline as this, in their view, was the most equitable criterion and hence most likely to command the support of the majority of the international community. A number of members were inclined to view the proposal favourably and considered it desirable to study the concept further.

Other Delegations pointed out that while they might favour the distance criterion in preference to a depth criterion if very wide limits of national jurisdiction were to be recognised, the remaining area of the sea-bed that may be placed under the control of the international authority would be at such depth as to be impossible to exploit in the near future. This would endanger the financing and viability of any proposed machinery, or permit the creation of only machinery with restricted powers and functions.

The United States' proposal for a "trusteeship" area that might extend from the 200-metre isobath to the end of the continental margin was examined at length. It was pointed out that the wide powers and extensive benefits

which would be conferred on a "trustee" coastal State under that system, would be incompatible with the status of the area and its resources as the common heritage of mankind. Moreover, it appeared to be inconsistent with the basic principles of trusteeship, as that concept was known in private law systems, in that the trustee and not the beneficiaries appeared to receive the bulk of the benefits of exploitation of the "trusteeship area".

(b) *The type of regime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction and types of international machinery.*

The Sub-Committee considered that all the basic principles contained in the Declaration of 17th December, e.g. the common heritage concept, non-appropriability, peaceful uses, benefit-sharing, etc. should be duly defined and incorporated in the Convention on the international regime, thus placing their legally binding force beyond controversy.

The majority of Delegations were in broad agreement that the International Authority to be set up should have a range of powers along the following lines :

(i) To explore the International Sea-bed Area and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose ;

(ii) To issue licences to Contracting Parties, individually or in groups, or to persons, natural or juridical, under its or their sponsorship with respect to all activities of exploration of the International Sea-bed Area and the exploitation of its resources for peaceful purposes, and related activities, subject to such terms and conditions, including the payment of appropriate fees and other charges, as the Authority may determine ;

(iii) To provide for the equitable sharing by Contracting Parties of raw materials obtained from the International Sea-bed Area, funds received from the sale thereof, and all other receipts, as well as scientific information and such other benefits as may be derived from the exploration of the International Sea-bed Area and the exploitation of its resources ;

(iv) To establish or adopt in consultation, and where appropriate, in collaboration with the competent organ of the United Nations, and with the specialised agencies concerned, measures designed to minimise and eliminate fluctuation of prices of land minerals and raw materials that may result from the exploitation of the resources of the International Sea-bed Area, and any adverse economic effects caused thereby ;

(v) To encourage and assist research on the development and practical application of scientific techniques for the exploration of the International Sea-bed Area and the exploitation of its resoures, and to perform any operation or service useful in such research ;

(vi) To make provision in accordance with the Convention for services, equipment and facilities to meet the needs of research on the development and practical application of scientific techniques for the exploration of the International Sea-bed Area and the exploitation of its resources for peaceful purposes ;

(vii) To foster the exchange of scientific and technical information on the peaceful uses of the International Sea-bed Area and its resources ;

(viii) To promote and encourage the exchange and training of scientists and experts in the field of

exploration of the sea-bed and the exploitation of its resources ;

(ix) To establish and administer safeguards designed to ensure that materials, services, equipment, facilities and information made available by the Authority or at its request or under its supervision or control are not used in such a way as to further any military purpose ;

(x) To establish and adopt, in consultation and, where appropriate, in collaboration with the competent organ of the United Nations and with the specialised agencies concerned, standards of safety for protection of health and minimisation of danger to life and property, and the protection of the marine environment as a whole, and to provide for the application of these standards to its own operations as well as to all other operations authorized by it or under its control or supervision ;

(xi) To acquire or establish any facilities, plant and equipment useful in the carrying out of its authorised functions, whenever the facilities, plant and equipment otherwise available to it are inadequate or available only on terms it deems unsatisfactory ; and

(xii) To take any other action necessary to give effect to the provisions of the Convention.

Several Delegations emphasised that in their view the international machinery to be set up to administer the proposed international regime governing the sea-bed beyond national jurisdiction should have comprehensive powers and functions. The machinery should have the capacity to carry out exploration and exploitation activities on its own, even though in the initial stages of its existence it might not be in a position to exercise that function. A few Delegations

expressed doubts regarding the advisability of conferring the power of direct exploitation on the international machinery, and expressed reservations regarding some of the functions outlined above.

IV. International Straits

It was acknowledged by all Delegations that if it were generally accepted that each State had the right to establish a territorial sea 12 miles wide, several if not all States were likely to exercise that right without delay. As a result, several straits 24 miles or less in width would fall under the exclusive jurisdiction of the riparian States concerned.

Several Delegations referred to recent suggestions for safeguarding the right of passage through and over straits used for international navigation which might thus fall within the territorial sea of the riparian States. According to those suggestions, in order to safeguard freedom of passage through "straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State", the riparian States would be required to delimit their territorial sea as "always to provide a corridor of high seas suitable for transit by all ships and aircraft".

Several Delegations took the view that where a strait or part thereof consisted of the territorial sea of the riparian States, the latter must retain under all circumstances a special authority to control navigation through or above that strait for economic or security purposes or for purposes connected with preservation of the marine environment. For those reasons they would be unable to accept the "corridor of high seas" concept. They were also unable to accept the definition of the term "international strait" implied in those suggestions. They were likewise unable to accept a more recent suggestion whereby "all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have

on the high seas".

While all Delegations were in agreement that a strait used for international navigation should in times of peace remain free for the innocent passage of merchant ships of all countries, subject to rules and regulations of the riparian States, many Delegations rejected both the "corridor of high seas" and "free transit" concepts. A few Delegations expressed themselves in favour of the "free transit" concept.

V. The archipelago concept

The Delegations of Indonesia and the Philippines requested the Committee to consider the problems of archipelagic countries. They urged that archipelagic countries like Indonesia and the Philippines, which consist of thousands of islands, had a special interest in, and relation to, the waters between and around those islands for historical, geographical, ethonological, political and economic reasons, as well as for reasons of national defence and security. In their view, an archipelagic country of this kind was entitled to measure the breadth of its territorial sea from baselines which would guarantee the unity of the archipelago, viz., from baselines connecting the outermost points of the outermost islands of the archipelago. The right of innocent passage from one part of the high seas to another through the waters of an archipelagic country would be guaranteed by that country subject to any rules and regulations it might enact in that regard.

Several Delegations expressed their appreciation to the Delegations of Indonesia and the Philippines for their elaboration of the archipelago concept. They agreed that sympathetic consideration should be given to the archipelago concept as outlined by the members from Indonesia and the Philippines.

Some Delegations expressed support for the concept.

One Delegation indicated that it was not in a position to accept the archipelago concept.

VI. Other questions

Although it was recognised that several other aspects of the Law of the Sea needed careful study in preparation for the forthcoming international negotiations on those subjects e.g., pollution and other problems connected with preservation of the marine environment, the Sub-Committee was unable to consider them for lack of time.

Adopted by the Committee

Sd/—
T. S. Fernando
27.1.71

WORKING PAPER ON THE LAW OF THE SEA

C. W. Pinto (CEYLON)*

Rapporteur of the Sub-Committee on the Law of the Sea

Colombo, 6 February 1971

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*The statements in this Working Paper may be attributed to the Rapporteur personally, and do not necessarily reflect the views of the Government of Ceylon.

CONTENTS