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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 III

PROVISIONAL SUMMARY RECORD OF THE FORTY-FIFTH MEETING*/

held at the Palais des Nations, Geneva,
on Thursday, 16 August 1973, at 11.10 a.m.

Chairman: Mr. van der ESSEN, Belgium
Rapporteur: Mr. IGUCHI, Japan

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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 LX 2332, United Nations, New York, by 20 September 1973.

*/ 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.

REPORTS OF THE WORKING GROUPS

Mr. VALLARTA (Mexico), Chairman of Working Group 2 on Marine Pollution, introduced document A/AC.138/SC.III/L.52 containing the note addressed by him to the Chairman of Sub-Committee III with the agreement of the members of the Working Group, to inform the Chairman of the results of the Group's work in the field of marine pollution. The Working Group had taken note of certain texts prepared at informal consultations. Those texts were reproduced in Annex 1 (A/AC.138/SC.III/L.52/Add.1). Alternative texts submitted by the Brazilian delegation were reproduced in Annex 2.

Mr. OLSZOWKA (Poland), Chairman of Working Group 3 on Marine Scientific Research and Transfer of Technology, said that the Working Group had held ten meetings during the session. In accordance with its terms of reference, it had considered the proposals formally submitted in documents A/AC.138/SC.III/L.18, L.23, L.31, L.34, L.42, L.44 and L.45, as well as certain relevant texts reproduced in ~~the~~ document A/AC.138/SC.II/L.28.

Its discussions had been concerned with the definition and objectives of marine scientific research, but it had not managed to begin consideration of the question of transfer of technology. At its first meeting, the Working Group had decided to hold informal consultations open to all delegations. Those consultations had produced a number of texts which were annexed to the note addressed to the Chairman of Sub-Committee III (A/AC.138/SC.III/L.53). Those texts were based on proposals and suggestions by delegations in the Working Group. Due to lack of time, however, the Working Group had not been able to consider all the draft articles contained in the proposals submitted to Sub-Committee III. Consequently, it had confined itself to taking note of those texts.

Mr. VALDEZ ZAMUDIO (Peru) said he was grateful to the Chairmen of Working Groups 2 and 3 for their efforts, which had been assisted by the Secretariat. The discussions in the Working Groups and drafting groups had facilitated exchanges of views, but his delegation felt that, despite the efforts of the Chairmen of the Working Groups and members of delegations, the texts presented did not reflect all the opinions expressed and that the Working Groups had not, therefore, carried out their terms of reference.

The informal groups, of limited membership, had not considered all the proposals submitted to them by delegations and, due to both lack of time and the complexity of the questions involved, the Working Groups had taken note, without examining them, of the texts prepared by the informal groups. Furthermore, those texts had been submitted in English and had not been translated into the other languages. The reports submitted by the Chairmen of the Working Groups as well as their annexes were therefore informal documents which, as such, could not be considered by the Sub-Committee. It should be added that more substantial progress would have been achieved if certain questions bound up with the subjects dealt with by the informal groups had been settled beforehand.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that Working Groups 2 and 3 had endeavoured to carry out their terms of reference, and he was grateful to the Chairmen of those Groups who, with the help of the Secretariat, had done everything within their power to make some progress.

Nevertheless, the results achieved by the Working Groups caused some concern with regard to the documents to be submitted to the Conference. Of the thirty-five articles to be devoted to the question of marine pollution, those that had been considered by the Working Group on Marine Pollution, about half, were presented in the form of alternatives and had not been given a second reading, as they should have. The Working Group on Scientific Research had only examined a third of the texts put forward as a basis for the convention, and there again several alternatives had been proposed. In fact, there was not a single draft article that had not given rise to doubts on the part of some delegations.

That situation was due not only to the conflicting views of delegations and to lack of time, but also to the fact that a number of fundamental questions had not yet been settled, even provisionally. The Working Groups had not yet succeeded in establishing a standard terminology for the basic concepts of international law. That applied particularly to the concept of national jurisdiction. In the various drafts, different terms were used to describe the same concept and new concepts also made their appearance, such as zone of maritime sovereignty, zone of national interest, and economic zone.

The Soviet delegation considered that States should enjoy full sovereignty within their boundaries, but that it was impossible to fix areas of jurisdiction either for marine pollution or for scientific research. Marine pollution knew no boundaries. For example, pollution originating in the region of Ecuador could spread to Mexico and then via the Gulf Stream to the North Atlantic, Norway and even further, finally settling in the polar regions. Many similar examples could be quoted. Establishing an area of jurisdiction for the prevention of pollution would not help to solve the problem of the protection of the marine environment.

During the discussion in Working Group 2, it had been suggested that a procedure for inspection of ships should be drawn up; it had even been proposed that some countries should have the right to perform certain activities on behalf of other States. That kind of proposal was not justified. Working Group 2 had held a long discussion on standards for the discharge of pollutant substances by ships. In the view of his delegation, that question should be considered by IMCO and not by the Sub-Committee. IMCO had appointed a group of experts which had adopted recommendations for the establishment of a special committee on pollution by ships, and those recommendations had been adopted by IMCO. The Conference must confine itself to laying down general principles for the control of marine pollution and leave it to the specialized agencies to work out specific standards.

The Soviet delegation also considered that no attempt should be made to limit the possibility of carrying out scientific research in the oceans. Freedom of research was indispensable if the field of knowledge open to all mankind was to be widened. Only such freedom could form the basis for international co-operation in that sphere. It was therefore disquieting to note that some delegations wished to limit research in large areas, which would become exclusive economic zones or zones of national jurisdiction. Those zones might well embrace practically half the oceans of the world. In such circumstances it might be necessary, before organizing an expedition, to obtain the permission of forty or fifty States. Such provisions ran the risk of defeating the Committee's aim, which was to extend co-operation and develop economic relations. Research would be reduced and the interests of all States, particularly the developing States, would suffer. Those were extremely serious matters which must be taken into account during consideration of the articles on the protection of the marine environment and research.

Mr. VELLA (Malta) said that he had submitted preliminary draft articles (A/AC.138/SC.II/L.28) to Sub-Committee II. He noted with satisfaction that the Working Groups of Sub-Committee III had, in respect of matters within their competence, taken account of some of the proposals made in that document, and he wished to express his thanks to the Chairmen of the Working Groups.

Mr. BEESLEY (Canada) said that he disagreed categorically with the view that the Sub-Committee had not made progress. If the results achieved were judged by any objective standard and compared with those of the other Sub-Committees, or if the agreed texts which included most fundamental obligations with respect to the preservation of the marine environment were examined, it had to be admitted that the Sub-Committee had made substantial progress, considering the difficulties in getting the Sub-Committee and its Working Groups working. He was therefore very troubled to hear a note of gloom. In fact, the progress achieved was such that the Conference could go ahead with respect to marine pollution. They had a text laying down the basic obligation to protect the marine environment from pollution, which did not exist in international law. The text stated that States should take all necessary measures to protect the marine environment from pollution from all sources; the measures were to include land-based as well as marine-based sources.

Anyone who had worked in that field for a certain length of time with a genuine commitment to the preservation of the environment and the development of international law, could not fail to conclude that what had been done in Sub-Committee III would have major significance for the development of international law. He had just returned from a seminar held at The Hague on some of the questions before the Sub-Committee and a few weeks earlier had taken part in another seminar of the same kind and he wished to state that, considering what had already been done, if the Sub-Committee continued to try to provide for enforcement and to determine whether international standards were necessary whether they were developed by IMCO or by other means, it would already have established the framework for a general comprehensive safeguarding treaty. That was a considerable achievement, bearing in mind the number of obstacles to be overcome and, in particular, the difficulties in using the results of the Stockholm Conference.

Mr. YTURRIAGA (Spain) thanked the Working Groups of Sub-Committee III and their Chairmen, Mr. Vallarta and Mr. Olszowka, as well as the members of the Secretariat who had helped them.

He regretted however that for many of the meetings of the Working Groups there had been no interpretation. He also regretted that a number of the approved texts had not been considered by the Working Groups themselves. Lastly, in document A/AC.138/SC.III/L.52 there should be a reference to the preliminary draft submitted by Malta (A/AC.138/SC.II/L.28), which contained a whole chapter devoted to pollution, and also to the relevant sections of other documents submitted to Sub-Committee II.

Mr. MCKERNAN (United States of America) said he thought that the reports of the Chairmen of the Working Groups clearly reflected the work done by those groups. He also thought that their work had enabled some progress to be made; obviously it would have been better if consideration of all the questions had been completed and drafts had been prepared on all of them. He thanked the Working Groups and their Chairmen, Mr. Vallarta and Mr. Olszowka, who had had to deal with some very delicate questions.

Mr. HUSSAIN (Pakistan) said he too thought that substantial progress had been made in Working Group 2 and in Working Group 3. He wished to thank the Chairmen of those two groups as well as the Secretariat.

Mr. BORRAYO REYES (Guatemala) said that even if the Working Groups of Sub-Committee III had not solved all the difficulties, they had accomplished some satisfactory work and he thanked their Chairmen.

Mr. STEINER, Secretary of the Sub-Committee, said that in the note by the Chairman of Working Group 2 (A/AC.138/SC.III/L.52), the words "as well as in document A/AC.138/SC.II/L.39" should be added after "Annex 1" in the fourth line of the last paragraph.

INTERIM REPORTS ON THE WORK OF THE WORKING GROUPS. (continued)

Mr. ZEGERS (Chile) said he wished to support the statement by the representative of Canada. The Working Group on Marine Pollution and the Working Group on Scientific Research had both made progress. The agreed texts which had been drawn up bore witness to the importance of the work done.

International customary law was dynamic in character and international instruments paid a great deal of attention to custom; that applied particularly to the Geneva Conventions of 1958. But in 1958, many members of the United Nations had not yet achieved independence - the African States in particular. It was therefore necessary to carry out a reappraisal of international custom, of which an important element was the unilateral declarations of States and the reactions to those declarations.

Mr. MANANSALA (Philippines) said that after sometimes exhausting and repetitive deliberations, the two Working Groups had produced good results. Those results would perhaps have been better still if certain delegations had shown a more accommodating spirit. However that might be, he shared Canada's opinion on the quality of the work accomplished.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said he too was grateful to the two Working Groups and their Chairmen. However, the results achieved were scarcely conducive to optimism. On many questions there were no approved texts, not even alternatives. More than half the articles had not been examined. When there were alternatives, they were often very different and mere repetitions of earlier drafts.

In document A/AC.138/SC.III/L.52, it would have been better not to have mentioned enforcement in the second paragraph, as that question had created procedural difficulties in Working Group 2, which had not considered it.

The CHAIRMAN said that document A/AC.138/SC.III/L.52 had already been approved by Working Group 2 and could not now be amended by the Sub-Committee.

Mr. KOLTCHAROV (Bulgaria) said he agreed with the representative of the Ukrainian SSR that enforcement should not have been mentioned in the second paragraph; it should have been mentioned in the following paragraph with the subjects which the Working Group had begun to consider.

Mr. MBOTE (Kenya) said that his delegation, like those of Bulgaria and the Ukrainian SSR had taken part in the work of Working Group 2, and that the question of enforcement had been considered by the Working Group; the second paragraph of document A/AC.138/SC.III/L.52 was a true reflection of the facts.

Mr. BAILEY (Australia) said he wished to thank the Chairmen of the Working Groups. He did not share the pessimism of the representatives of the Soviet Union and the Ukrainian SSR with regard to the results. The work already accomplished by Working Group 2 could provide the basis for a convention. Like the representative of Kenya, he considered that the question of enforcement had been fully discussed.

Mr. YTURRIAGA (Spain) said he also disagreed with the comments of the representatives of the Ukraine and Bulgaria. The question of enforcement had been considered, even if no text had been drafted.

Mr. KIRTON (Jamaica) said that the Working Group had made great progress and had prepared the way for the future negotiations on the articles which had been submitted to them. The work done on enforcement had been well described in document A/AC.138/SC.III/L.52.

The CHAIRMAN said that document A/AC.138/SC.III/L.52 could not be amended. The opinions expressed on the subject would be entered in the summary records.

The terms of reference of Working Groups 2 and 3 were to draw up a certain number of draft articles; they had largely done so. Moreover, the documents of delegations retained their value.

On behalf of the Sub-Committee, the Chairman thanked the two Working Groups and their Chairmen, Mr. Vallarta and Mr. Olszowka, who had solved a great many delicate problems. He also thanked the Secretariat for their valuable help.

He suggested that the Sub-Committee include the reports of the Working Groups in its report to the Committee.

Mr. YTURRIAGA (Spain) said that before that was done his delegation would like to see the Spanish version of the note by the Chairmen of Working Group 3.

Mr. VALDEZ (Peru) expressed the same wish. He would also like to see the Spanish translations of the agreed texts drawn up by the Working Groups.

The CHAIRMAN said that the report of Working Group 3 would be translated into Spanish when the Sub-Committee's report was drawn up. As regards the agreed texts, with which they were all familiar, they would be translated and annexed to the reports of the Working Group.

He suggested that the Sub-Committee include the reports of Working Groups 2 and 3 (A/AC.138/SC.III/L.52 and 53) in its report to the Sea-Bed Committee.

It was so agreed.

PROPOSAL TO SEND A LETTER FROM SUB-COMMITTEE III TO THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

The CHAIRMAN said that the Tanzanian delegation had proposed that IMCO should be kept informed of the Sub-Committee's work. He asked if the Tanzanian delegation had produced a precise text for its proposal.

Mr. KATEKA (Tanzania) said that his delegation would like the Chairman of the Sub-Committee to send a letter to IMCO, reading as follows:

"I have the honour to inform you that, at its ... session, Sub-Committee III requested me to convey the following to you:

"In view of the interest shown by the Sub-Committee in the work and scope of the proposed IMCO Conference to be held in October 1973, it was felt that the views of the Sub-Committee should be conveyed to that Conference. It is the view of the Sub-Committee that there should be co-operation between the Sea-Bed Committee and IMCO in so far as marine pollution from vessels is concerned. In this respect, the Sub-Committee wishes to stress that whatever is decided by the IMCO Conference should in no way prejudice the work of the Law of the Sea Conference to be held in Santiago next April. On behalf of the Sub-Committee, therefore, I am requesting you to address a note to the Secretary-General of the IMCO Conference conveying the views of the Sub-Committee expressed on IMCO in one document".

Mr. VELLA (Malta), thanking the Tanzanian delegation for its proposal, suggested that delegations interested should discuss the draft with the author with a view to making any necessary modifications to it.

Mr. BRIGSTOCKE (United Kingdom) said he agreed with the representative of Tanzania that all States should follow the work of the IMCO Conference that was to be held in October. The report of Sub-Committee III should also be sent to the IMCO Conference. On the other hand, it was not appropriate to ask that the work of the IMCO Conference should in no way prejudice the work of the Law of the Sea Conference, since that would mean holding up IMCO's work on marine pollution, which was already very advanced. The letter should be drafted in more encouraging terms.

Mr. BEESLEY (Canada) said he too welcomed the Tanzanian proposal but shared the doubts expressed by the United Kingdom representative. The letter to IMCO should be drafted very carefully and avoid mentioning purely technical questions which fell within the competence of IMCO. It should keep strictly to questions relating to the law of the sea which were the province of the Committee, such as the right of intervention, who should set environmental standards applicable to shipping - the ship owners, the coastal State or both - who should enforce those standards

if they were both national and international, and whether the coastal State should have a residuary right in the matter. What was essential was not to impede the work of IMCO, so it was important to weigh the terms of the letter very carefully. His delegation supported the Maltese proposal and was willing to collaborate in drafting a text.

Mr. ZEGERS (Chile) thanked the Tanzanian delegation for its proposal and said he supported the view expressed by the representative of Canada. Chile had been one of the first to draw attention to the terms of reference of the Conference summoned by IMCO, namely to consider a draft convention for the prevention of pollution from ships, since they partly overlapped with those of the future United Nations Conference on the Law of the Sea. In his government's opinion, IMCO was competent to deal with matters concerning safety of navigation and pollution by ships but not to draw up general standards for the law of the sea, which was the responsibility of the Plenipotentiary Conference convened by the United Nations at Santiago in April-May 1974.

His delegation shared the view of the Tanzanian delegation that all members of IMCO should attend the Conference to be held in October 1973. It also thought that IMCO should be informed of the views of the Sub-Committee and, in that connexion, he would read out a letter which had been circulated informally to other delegations by the delegation of Kenya and which seemed to him to be clearer than that proposed by Tanzania. Kenya's letter read as follows:

"A conference has been convened, under the auspices of IMCO in October 1973, to discuss and approve a convention on pollution from vessels. This effort duplicates the work of the Conference on the Law of the Sea, convened by the General Assembly for April-May 1974 in Santiago and detracts from the mandate of the said Conference, tending to affect the unity of the law of the sea. Any draft convention on marine pollution which may come out from the IMCO Conference should have to be forwarded for consideration and approval by the Conference on the Law of the Sea."

In the event of a drafting group being appointed to work out the text of a letter to be sent to the IMCO Conference, his delegation would like to be a member.

Mr. MBOTE (Kenya) said he supported the statements by Canada and Chile.

The purpose of the Tanzanian proposal was to establish co-operation between IMCO and the Preparatory Committee for the Conference on the Law of the Sea. In his view, IMCO had every reason to establish such co-operation if it wished all States to take part in its October 1973 Conference. The text drafted by the Kenyan delegation, which the representative of Chile had read out, had the same aim as that of the Tanzanian delegation. He would be willing to take part in a meeting to draft a satisfactory text.

Mr. YTURRIAGA (Spain) said he approved of the Tanzanian proposal generally, but, like the Canadian and United Kingdom delegations, felt that there was a need to reconsider the wording of the letter. He consequently supported the Maltese proposal.

Mr. FATTAL (Lebanon) said he must point out that it was for the Plenary Committee to communicate its views to IMCO and that if States were afraid that the IMCO Conference might cut across principles that might be adopted at the Law of the Sea Conference it was for them to go to London in October.

Mr. ABDEL-HAMID (Egypt) said he supported the Tanzanian proposal and shared the view expressed by Canada and Chile that there was a need to establish co-operation between IMCO and the Preparatory Committee for the Conference. Delegations appeared to agree with the idea of establishing a drafting group to work out the text of the letter to be sent to the IMCO Conference, and he proposed that the group should take the two texts that had been read out as a basis for its work. He would like to be a member of the group.

Mr. VALLARTA (Mexico), supporting the Tanzanian draft, said that the purpose was to draw the attention of representatives attending the IMCO Conference to a problem that IMCO sometimes tended to forget. His delegation thought that the date of the IMCO Conference had been chosen deliberately so as to precede the United Nations Conference on the Law of the Sea. In his view, the letter to be sent to the General Committee of the IMCO Conference should also ask that the opinions expressed in the Sub-Committee on the subject of the IMCO Conference should be circulated as a Conference document; it was also desirable that the representatives of the developing countries should go to London to express the views of their countries to IMCO.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that his delegation had no objection to establishing contact with the IMCO Conference and agreed that it would be helpful to send IMCO the documents prepared by Sub-Committee III. It was right and proper that co-operation should be established between two plenipotentiary conferences. On the other hand, his delegation did not approve of some of the suggestions that had been made concerning the content of the letter. One could not request a conference not to take any decision that might prejudice the work of another conference, particularly when one was not in a position to communicate to it the documents to be considered by the second conference. The letter to be sent to IMCO would have to be very carefully worded and his delegation would like to participate in the drafting.

Mr. McKERNAN (United States of America) said he approved of the suggestion that a small drafting group should be set up to study and review the Tanzanian text, provided the new text was then submitted to the Sub-Committee. He supported the statements by Lebanon and the USSR, and thought that the relevant documents of Sub-Committee III and the other Sub-Committees should be attached to the letter to be sent to the IMCO Conference and that the hope should be expressed that co-operation would be established with a view to organizing the campaign against pollution from ships as soon as possible.

Mr. BAILEY (Australia) said he welcomed the Tanzanian proposal. His country hoped to see a wide representation of States at the IMCO Conference, as well as co-ordination between that Conference and the Conference on the law of the sea. Australia supported the Maltese proposal and would like to take part in the consultations over the drafting of the text of the letter.

The CHAIRMAN said that all delegations that had spoken supported in principle the proposal to send a letter to the IMCO Conference to be held in October 1973, as well as the suggestion that a drafting group should be set up to prepare a text for submission to the Sub-Committee. He suggested that the drafting group be composed of the delegations that had expressed a wish to participate in the drafting, namely, Tanzania, Malta, the United Kingdom, Canada, Chile, Kenya, Spain, Lebanon, Egypt, Mexico, USSR, the United States and Australia, and that it be asked to meet as soon as possible.

It was so agreed.

The meeting rose at 1.20 p.m.