

UNITED NATIONS

GENERAL
ASSEMBLY



PROVISIONAL^{*/}

GENERAL

A/AC.138/SC.III/SR.47

21 August 1973

Original: ENGLISH

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

SUB-COMMITTEE III

PROVISIONAL SUMMARY RECORD OF THE FORTY-SEVENTH MEETING^{*/}

held at the Palais des Nations, Geneva,
on Friday, 17 August 1973, at 3.30 p.m.

<u>Chairman:</u>	Mr. van der ESSEN	Belgium
<u>Rapporteur:</u>	Mr. IGUCHI	Japan

CONTENTS:

Draft letter from the Chairman of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction to the Secretary-General of the Intergovernmental Maritime Consultative Organization (IMCO) for transmittal to the International Conference on Marine Pollution
Consideration of the draft report of Sub-Committee III (continued)

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.

DRAFT LETTER FROM THE CHAIRMAN OF THE COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION TO THE SECRETARY-GENERAL OF THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO) FOR TRANSMITTAL TO THE INTERNATIONAL CONFERENCE ON MARINE POLLUTION

Mr. KATEKA (Tanzania) announced that the drafting group which had been requested to prepare the letter to the Secretary-General of IMCO had agreed upon the following text, which would be accompanied by extracts from the summary records of the meetings of the plenary Committee and of Sub-Committee III:

"The Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction at the conclusion of its July/August 1973 session has asked me to transmit to you, for the information of delegations attending the International Conference on Marine Pollution, the attached document, which reproduces relevant parts of certain summary records of its main Committee and its Sub-Committee III. The subjects dealt with by Sub-Committee III in some areas are interrelated with those with which the Conference will be concerned. Such areas may include the setting up of standards for the prevention of vessel source pollution, enforcement of such standards and intervention following a maritime casualty involving a grave and imminent threat of pollution.

"The Committee would be grateful if this letter and its attachment could be reproduced and circulated as a conference document. Also I am sending for reference, with this letter, a copy of all documents of the 1973 session of the Committee concerning the protection of the marine environment."

Mr. de FIGUEIREDO BUSTANI (Brazil) expressed his regret that the IMCO Conference in October would be taking place only a few months before the Santiago Conference on the Law of the Sea, which unlike the IMCO Conference, would be competent to deal with the full range of problems involved. His delegation hoped that the decisions of the London Conference would in no way prejudice those of the Santiago Conference, to which they should be submitted. He therefore proposed that the following paragraph should be inserted between the first and second paragraphs of the present text:

"In addition, Mr. Chairman, some delegations requested me to inform you that they consider that those items which fall within the competence of the Conference on the Law of the Sea should be left open for further decision by that Conference."

Mr. BRIGSTOCKE (United Kingdom) said it was essential that nothing should be done to discourage or hamper the work of the Conference on Marine Pollution, one of a series of conferences extending over nearly 20 years in which valuable progress had been made in the attempt to develop international rules to protect the marine environment. It would be extremely harmful if the participants in the Conference on Marine Pollution were to abandon their work on the preparation of standards, and the means of applying them, simply because a convention on the law of the sea might be concluded at a later stage. The Sea-bed Committee could not ask them to hold up their work until it had completed its own. His delegation therefore took the view that if any letter was to be sent to the Conference on Marine Pollution, it must be drafted in such a way as not to have a discouraging effect of that kind. It did not seem appropriate, moreover, for one United Nations body to tell another how to conduct its business. The Governments attending the Conference on Marine Pollution would hardly be unaware of the work of the Sea-bed Committee, since all of them would either be represented in that Committee or would be aware of its activities. To that extent the letter appeared to be strictly unnecessary. However, the text as prepared by the drafting group was not prejudicial to the work of the Conference on Marine Pollution and was therefore acceptable to his delegation. The Brazilian amendment, on the other hand, was unacceptable.

Mr. ZEGERS (Chile), supporting the Brazilian amendment, said that his delegation had already expressed its views on the relative competence of a United Nations conference convened to deal with the whole of the law of the sea and a conference of a specialized agency concerned only with particular aspects. He pointed out that the Brazilian amendment referred only to "some delegations" and thus need not include that of the United Kingdom.

It should be borne in mind that, whereas the United Nations had some 140 members, IMCO had only 70, and that whereas the United Nations adopted decisions by a majority vote, in IMCO decisions must have the support of the big maritime Powers. He was therefore strongly opposed to the United Kingdom's interpretation of the situation. He also proposed that in the first paragraph the word "inter-related" should be changed to "related" and that the word "may" should be deleted after the words "such areas", with the addition of the words "inter alia" after the word "include".

The CHAIRMAN said that he wondered whether a letter should be sent at all.

Mr. BACON (Canada) said that his delegation was, in principle, in favour of the Brazilian proposal. If the disputed words could be amended to read "the items within the competence of the Conference on the Law of the Sea should be treated in such a manner at the International Conference on Marine Pollution as to leave them open for resolution at the Conference on the Law of the Sea", the paragraph might perhaps be acceptable to the United Kingdom delegation. The amendments proposed by Chile were acceptable to his delegation.

The CHAIRMAN asked the United Kingdom representative whether he could agree to the Brazilian amendment as amended by the Canadian representative.

Mr. BRIGSTOCKE (United Kingdom) replied that he could not do so. Both the Brazilian and the Canadian delegations had attended the meeting of the drafting group. The text already represented a compromise, and it would be unfair to other delegations if it was amended.

The CHAIRMAN suggested that, since the draft letter was not generally acceptable to the Sub-Committee, it should be referred back to the drafting group.

It was so decided.

CONSIDERATION OF THE DRAFT REPORT OF SUB-COMMITTEE III (continued) (A/AC.138/SC.III/L.51)

The CHAIRMAN invited the Sub-Committee to resume consideration of the draft report paragraph by paragraph.

Paragraph 31

Paragraph 31 was adopted.

Paragraph 32

Mr. MBOBE (Kenya) proposed that in the first sentence the words "and the jurisdictional zones of the coastal State" should be added after the words "territorial sea".

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that he preferred the text as it stood, since the paragraph expressed his own delegation's opinion. The Kenyan delegation's views on the jurisdiction of coastal States had already been fully reflected in other paragraphs, and there was no need to repeat them whenever the territorial sea was mentioned.

Mr. MBOBE (Kenya) said that he saw no harm in referring to the jurisdictional zones of coastal States. The Soviet delegation might, if it wished, propose the addition of a reference to the territorial sea in the third sentence.

Mr. METALNIKOV (Union of Soviet Socialist Republics) replied that, if the procedure suggested by the Kenyan delegation was adopted, his delegation would regretfully be obliged to propose such an addition whenever mention was made of areas under national jurisdiction.

Miss MARIANI (France) said that the report was intended to reflect the views of delegations without mentioning their names. In recording those views, the Rapporteur had sometimes referred to the territorial sea, and sometimes to the zones under national jurisdiction, because there was a difference between them, especially in regard to research. Paragraph 32 expressed the view of the Soviet Union; the Kenyan delegation's views could be expressed elsewhere. A matter of principle was involved: each delegation should be entitled to the use of its own terms.

Mr. BOHTE (Yugoslavia) said that he saw no objection to the inclusion of a reference to areas under national jurisdiction, given that paragraph 47 contained an appropriate reservation in that respect. Moreover, he wondered why the term "territorial sea" alone had been used, since it was his understanding that, in the view of the Soviet Union, the continental shelf was also involved.

Mr. SEYIFU (Ethiopia) said that his delegation recognized the right of each delegation to have its own particular view reflected. Paragraph 32, however, began with the formula "it was said that", which was rather sweeping.

Mr. IGUCHI (Japan), Rapporteur, said that a number of the comments made had been inappropriate because the speakers concerned had not viewed paragraph 32 in the light of the preceding and subsequent paragraphs. He therefore urged the Sub-Committee not to read each paragraph in isolation. Paragraph 32 dealt with the view that the consent of the coastal State was required in the territorial sea. Paragraph 31 reflected the view that the consent of the coastal state was required not only in the territorial sea, but also beyond, which was why the words "areas under its jurisdiction" had been used. The Kenyan representative's view was therefore already covered. Paragraph 32 dealt with the view of another delegation, which treated the territorial sea, on the one hand, and the continental shelf and the economic zone, on the other, in different ways. That difference of approach had to be reflected.

He agreed with the Ethiopian representative's comment on the opening words of the paragraph. Perhaps the words "it was said" should be replaced by the words "there was a view"; the words "there was a view that" could then be deleted at the beginning of the second sentence.

Miss CASKEY (Canada) agreed with the Rapporteur that the report should accurately reflect the balance of the debate within the Working Group, in which a majority view regarding consent had emerged. Her delegation was therefore disturbed by the Soviet representative's insistence that, whenever mention was made of the limits of national jurisdiction, reference should also be made to the territorial sea and to the continental shelf.

Mr. HUSSAIN (Pakistan) noted that paragraph 31 reflected one view. He therefore proposed that paragraph 32 should begin with the words "According to another view".

Mr. WANG (China) said that the limits of the territorial sea were established not by international agreement but by the country concerned. His delegation therefore supported the Kenyan representative's proposal concerning the inclusion of the words "and the jurisdictional zones of the coastal State".

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that if paragraph 32 was left in the form in which it had been drafted by the Rapporteur, his delegation would not press for the inclusion of its views on the territorial sea and continental shelf in those paragraphs in which reference was made to areas under national jurisdiction. He therefore urged that the paragraph should be left as it stood, with the minor modifications proposed by the Rapporteur and the representative of Pakistan.

Mr. ISHII (Japan) supported the proposal by the representative of Pakistan. He thought that the idea raised by the Chinese representative could be dealt with elsewhere in the draft report.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) thought that the Sub-Committee would make greater progress if members adhered to the principle that every delegation had the right to ensure that its views were reflected in the report but not to modify the account given of other delegations' views. Paragraphs 31 and 32 presented a balanced picture of the views expressed in the Sub-Committee. Consequently, the present wording of paragraph 32 should remain unchanged.

Mr. MBOTE (Kenya) said that he had no objection to the amendment proposed by the representative of Pakistan. His delegation believed that there were only two areas of jurisdiction, that of the coastal State concerned and that of the high seas. What he was proposing was not the omission of any reference to the territorial sea but merely the addition of the words "in the jurisdictional zones of the coastal State", which would ensure the desired balance in the sentence in question.

Mr. BOHTE (Yugoslavia) said that, in his delegation's opinion, paragraph 31 did not represent the views of States that favoured consent.

Mr. de FIGUEIREDO BUSTANI (Brazil) agreed with the Yugoslav representative. With regard to paragraph 32, he proposed that the beginning of the third sentence should be amended to read "According to the same view, it was also suggested ...".

In response to a point raised by Mr. YTURRIAGA (Spain), Mr. METALNIKOV (Union of Soviet Socialist Republics) suggested that, in the first sentence of the paragraph, the word "general" should be replaced by the word "fundamental".

The CHAIRMAN said that if he heard no further comments, he would take it that the Sub-Committee decided to adopt the paragraph as proposed by the Rapporteur and amended by the representative of Brazil, with the purely drafting changes which had been suggested.

Paragraph 32, as amended, was adopted.

Paragraph 33

Mr. YTURRIAGA (Spain) suggested a number of drafting changes in the Spanish text.

The expression "under some form of national jurisdiction" in the penultimate sentence was not clear and a more precise wording should be used. With regard to the last sentence, his delegation suggested the insertion of the words "caused by them" between the words "damages" and "to the".

The amendment proposed by the representative of Spain was adopted.

Mr. PARDO (Malta) said that the paragraph reflected his delegation's position and suggested a number of drafting changes in the text.

Referring to the fourth sentence, he proposed the insertion of the words "for ocean space" between the words "institutions" and "to regulate". The fifth sentence should be amended to read as follows: "According to this opinion, an international register would be maintained within the framework of the institutions which would indicate who was entitled to undertake scientific research, even in some areas under national jurisdiction". Lastly, he proposed the addition at the end of the sixth sentence of the words "and could be deleted from the register if they abused the privileges which they enjoyed".

The amendments proposed by the representative of Malta were adopted.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that his delegation had some difficulty with paragraph 33. It therefore wished to propose the addition of a sentence which could be inserted at the end of the paragraph or elsewhere in the report and which would read as follows: "However, other delegations did not agree that it would be desirable to set up an international organization governing scientific research".

Mr. PARDO (Malta) said that his delegation was not advocating the establishment of an international institution to govern scientific research but of a comprehensive international institution for ocean space, one of the functions of which would be to regulate such research. If the USSR representative wished to express dissent with his delegation's view, then he would wish to express dissent with the

Soviet delegation's view and insist on the addition of a sentence indicating that some delegations disagreed with the USSR position.

Mr. BOHTE (Yugoslavia) said, with regard to the USSR proposal, that it was not correct to say "other delegations". He therefore suggested the use of a formula such as "the view was expressed ...".

The CHAIRMAN suggested that the USSR proposal might more appropriately be inserted in paragraph 42.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that that would be acceptable to his delegation.

Mr. McKERNAN (United States of America) said that his delegation objected to the adoption of a procedure whereby delegations which did not agree with the view expressed in a particular paragraph insisted on the insertion of a sentence to that effect in the paragraph in question. It seemed to his delegation that the USSR's view was adequately expressed in paragraph 32. There were a number of paragraphs to which his own delegation objected. Its view was adequately reflected in the report as a whole, however, and so long as there was a balance between the various views, there was no need for delegations to press for the inclusion of their particular position in each paragraph.

Paragraph 33, as amended, was adopted.

Paragraph 34

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said that the substance of the paragraph referred to questions already examined within a wider framework. His delegation considered that there was another view on the subject which should be recorded, and it therefore proposed two amendments. In the first sentence, the words "views were expressed to the effect" should be replaced by the words "several delegations expressed the view". Secondly, the following sentence should be added at the end of the paragraph: "However, in the view of other delegations, this solution should be adopted only if it related to scientific research in the territorial sea, or on the continental shelf or the subsoil thereof, and not in the high seas".

Mr. de FIGUEIREDO BUSTANI (Brazil), speaking on a point of order, said that it had been agreed that opposing views should not be included in individual paragraphs. Paragraph 34 reflected the view of the Latin American delegations.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said that his delegation had proposed its amendments to paragraph 34 because the Brazilian delegation had proposed a modification to paragraph 30, which had reflected the position of the Ukrainian delegation. The Brazilian representative had deemed it necessary to insert his view in paragraph 30 and the situation was now reversed. The Ukrainian delegation had proposed its amendments to paragraph 34 out of a desire for consistency and balance.

Mr. CASTILLO (Peru) said that the third sentence of the paragraph should be redrafted to take account of the points raised in sub-paragraphs 4(a) to (e) of document A/AC.138/SC.III/L.45.

Mr. de FIGUEIREDO BUSTANI (Brazil) said that his delegation had proposed an amendment to paragraph 30, because, in its opinion, it reflected two positions: the Ukrainian view that scientific research in the territorial sea and the continental shelf should be regulated and the other view that such research should be regulated in areas under the sovereignty and jurisdiction of the coastal State. He considered that there was no imbalance between paragraphs 30 and 34.

Mr. MBOTE (Kenya) said that the present text of paragraph 34 reflected his delegation's views. The USSR had objected to the addition he had proposed to paragraph 32, and he would find it difficult to accept the Ukrainian amendment to paragraph 34 unless certain paragraphs already agreed upon could be reconsidered in the light of that amendment.

Mr. KOIACHAKOV (Bulgaria) suggested that a new paragraph expressing the opposing view should be inserted after paragraph 34.

The CHAIRMAN pointed out that the discussion on the report was not intended to repeat the general debate. The report was merely supposed to record the various views expressed. All points of view should have been clearly expressed during the debate, which could not be reopened at the present stage.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said he did not understand the objection to his proposal, the purpose of which was to ensure balanced representation of the views expressed in the Sub-Committee. During the discussion on paragraph 30, which reflected his delegation's opinion that the coastal State's consent should only be required in the case of scientific research conducted in its territorial sea or on its continental shelf, the Ukrainian SSR had agreed to the Brazilian proposal that a reference to areas under the coastal State's sovereignty and jurisdiction should be included. In paragraph 34 the Brazilian view was presented in more detail and the Ukrainian SSR wished to add a separate sentence indicating that, in the opinion of other delegations, the coastal State's consent should be required for scientific research only in its territorial sea and on its continental shelf, but not in the high seas. Each delegation was entitled to have its views reflected in the manner it considered appropriate. A reference at the end of paragraph 34 to the view held by the Ukrainian SSR would give a more balanced picture of the discussion on that point.

Mr. SEYIFU (Ethiopia) said that, since each paragraph usually presented the views of a particular delegation or group of delegations, the inclusion of the opposing view should only be necessary where the wording of the paragraph might otherwise give the impression that the view presented was generally accepted.

Mr. VARGAS SILVA (Mexico) suggested that, in paragraph 34, the word "zone" in the first line should be amended to read "zones", the words "by other States" inserted after the word "or" in the third line and the word "zones" in the fifth line replaced by the word "areas".

Mr. ZEGERS (Chile) pointed out that paragraph 39 to some extent reflected the opposite point of view to that expressed in paragraph 34. Chile shared the latter point of view and hoped that paragraph 34 would be retained in its present form. The Ukrainian SSR obviously made a legal distinction between the concepts of the territorial sea and continental shelf on the one hand, and those of the economic zone and patrimonial sea on the other. Its views on the legal aspect of those concepts could be stated in a separate paragraph, although that seemed unnecessary in the present context. He supported the amendments suggested by Mexico.

Mr. de FIGUEIREDO BUSTANI (Brazil) endorsed the views expressed by the representatives of Ethiopia and Chile. If paragraph 30, as originally drafted, had represented only the view subscribed to by the Ukrainian SSR, he would be prepared to withdraw the amendment he had proposed. He had no objection to the amendments proposed by Mexico to paragraph 34, although in the first line the word "zone" in the singular more accurately reflected the position held by the Latin American countries.

Mr. YTURRILAGA (Spain) said that he supported the amendment suggested by Mexico to the first sentence, but would prefer to replace the word "and" in the first line by the word "or". The words "in those areas" should perhaps be inserted after the words "scientific research". He suggested that the words "territorial seas" in the second sentence should be amended to read "territorial sea" and supported the Mexican proposal that the word "zones" in the fifth line should be replaced by the word "areas". He was not sure what was meant by the term "scientific research proper" in the last sentence, and suggested that the end of the sentence should be amended to read "... between pure scientific research and economic, including military, exploration".

Mr. VARGAS SILVA (Mexico) said that, in view of the objection raised, he would withdraw his proposal to amend the word "zone" in the first line to "zones".

The CHAIRMAN asked whether the Sub-Committee accepted the Mexican proposal that the words "by other States" should be inserted after the word "or" in the first sentence, and the Peruvian proposal that a reference should be made to the information which the coastal State should be given by those wishing to conduct scientific research in the zone under its jurisdiction, as listed in paragraph 4 (a)-(e) of document A/AC.138/SC.III/L.45.

It was so decided.

The CHAIRMAN asked whether, in view of Brazil's offer as a compromise, to withdraw its amendment to paragraph 30 for the sake of reaching agreement on paragraph 34, the Ukrainian SSR would agree to the original text of paragraph 30 and withdraw its amendment to paragraph 34.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said his delegation had not been satisfied with the original draft of paragraph 30, as the reference to areas under the coastal State's jurisdiction was not in accordance with its belief in the principle of the freedom of scientific research in the high seas.

Mr. KOLCHAKOV (Bulgaria) said that he too could not accept the phrase "in areas under its jurisdiction", which would have to be replaced by the words "on its continental shelf" if paragraph 30 was to represent the view to which Bulgaria subscribed.

The CHAIRMAN said that if the compromise was not accepted, the amended version of paragraph 30, as approved by the Sub-Committee, would have to stand.

Mr. MOKERNAN (United States of America) reminded the Sub-Committee that the acceptance of paragraphs 29 and 30 had been made conditional upon a satisfactory text being found for paragraphs 27 and 28, which reflected the views of his own and other delegations and which had not yet been agreed upon. He suggested that paragraphs 27, 28, 30 and 34 should be left unchanged, thereby preserving the balance which the Rapporteur had tried to establish.

Mr. ARCHER (United Kingdom) said that no-one disagreed with the principle that the views expressed by delegations should be represented in the report, but it was unnecessary for each paragraph to give a balanced picture of the debate. Unless the introductory words of the paragraph indicated that there was agreement on a certain view, it should be taken as implicit that some delegations disagreed. The introductory words were the key to the status of the statement made. His delegation was satisfied as long as its views were reflected in some part of the report.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that if the original draft of paragraph 30 was reinstated it would reflect more than one point of view by virtue of its reference to areas under the coastal State's jurisdiction. The Ukrainian SSR would therefore still be justified in seeking to introduce another point of view into paragraph 34.

Mr. de FIGUEIREDO BUSTANI (Brazil) said that although paragraph 27, which reflected the United States point of view, had not been amended, Brazil had proposed an addition to paragraph 28, which took for granted the existence of the freedom of scientific research. It therefore could not agree to the compromise suggested by the United States, although willing to discuss the matter informally. He proposed that paragraph 34 should be retained in its present form and that, as a compromise, the phrase "in areas under its jurisdiction" in paragraph 30 should be replaced by the words "on its continental shelf".

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that would be acceptable if the amendment read "its continental shelf sea-bed and sub-soil".

Mr. de FIGUEIREDO BUSTANI (Brazil) agreed.

Mr. MBOTE (Kenya) said that the compromise would be acceptable if that view had actually been expressed at the present session, since the report prepared by the Rapporteur should faithfully record what had been said in the Sub-Committee. Otherwise he would suggest that the Rapporteur should consult the Ukrainian delegation to ascertain what terms had been used. In principle the Sub-Committee should not go back on texts already agreed upon.

Mr. SALAS ROEMER (Venezuela) said he objected to the amendment by two countries of a paragraph previously adopted by the whole Sub-Committee. The phrase "in areas under its jurisdiction" had been in the text adopted by the Sub-Committee and its deletion would have to be approved by all members.

The CHAIRMAN pointed out that, in going back on the previous decision, the Sub-Committee had adopted an exceptional procedure to break a deadlock.

The meeting rose at 6.10 p.m.