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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-NINTH MEETING*/

held at the Palais des Nations, Geneva,
on Monday, 20 August 1973, at 11.45 a.m.

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

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE (A/AC.138/SC.III/L.51 and Adds. 1 and 2, and L.53) (concluded)

Paragraph 67 (A/AC.138/SC.III/L.51) and paragraph 68 (A/AC.138/SC.III/L.51/Add.1) of the Sub-Committee's draft report were adopted.

The CHAIRMAN pointed out that the Sub-Committee had decided to include the report of Working Group 3 (A/AC.138/SC.III/L.53) in its own report, and that it had been a definite decision. He therefore invited delegations that had not been able to comment on the report of Working Group 3 because they had not had the written text, to do so at the present stage.

Mr. YTURRIAGA (Spain), referring to the Spanish text, requested that the words "consultas officiosas en las que pudieron participar todas delegaciones" in the third paragraph should be replaced by "consultas officiosas que escuvieron abiertas a la participación de todas las delegaciones".

The CHAIRMAN suggested that document A/AC.138/SC.III/L.51/Add.2, which contained an index of proposals submitted to the Sub-Committee from 1971 to 1973 and an index of statements made during the same period should be annexed to the Sub-Committee's report, on the understanding that both indexes would be brought up to date.

It was so decided.

PROPOSALS RELATING TO MARINE SCIENTIFIC RESEARCH (A/AC.138/SC.III/L.50 and L.55)

Mr. TREVES (Italy) introduced his delegation's proposal concerning obligations of the coastal State regarding scientific marine research (A/AC.138/SC.III/L.50), which was a compromise between the various proposals submitted to Working Group 3. In the interests of effectiveness, the first paragraph stipulated that the coastal State should give its reply promptly whenever its consent was requested. In the second paragraph, the time-limit after which the coastal State would be presumed to have given its consent if there had been no reply was left blank so that delegations could make suggestions. His delegation considered that a three-month time-limit would be reasonable.

Mr. BOHTE (Yugoslavia) introduced the draft article on consent to conduct marine scientific research (A/AC.138/SC.III/L.55) submitted by fifteen delegations and subsequently co-sponsored by the delegations of Argentina, Ecuador, El Salvador, Indonesia, Mexico and the United Republic of Tanzania as well. Since Working Group 3 had not been able to adopt any of the variants submitted to it, the only proposal concerning consent of the coastal State to marine scientific research beyond the

territorial sea was the Italian proposal, which referred only to the coastal State's obligations and made no mention of those of the requesting party. The sponsors of the draft article contained in document A/AC.138/SC.III/L.55 sought to protect the coastal State from any pressure, and they did not agree that consent could be presumed. The existing international law of the sea required the consent of the coastal State before scientific research could be undertaken on the continental shelf. As to the time-limit allowed to the coastal State for reply, that was a matter of courtesy, but it also depended on the scientific and administrative possibilities of that State, and those considerations were disregarded in the Italian proposal.

Mr. JALED (Pakistan), speaking as a co-sponsor of the proposal contained in document A/AC.138/SC.III/L.55, said that his delegation could not accept the Italian proposal, which tended to bring pressure to bear on the coastal State and did not respect the concept of the exclusive jurisdiction of the coastal State.

DRAFT LETTER BY 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 COMMUNICATION TO THE INTERNATIONAL CONFERENCE ON MARINE POLLUTION (concluded)

The CHAIRMAN invited the representative of the United Republic of Tanzania to introduce the text prepared by the informal drafting group set up at the forty-seventh meeting of the Sub-Committee.

Mr. KATEKA (United Republic of Tanzania) said that the drafting group had produced the following new paragraph to be inserted between the first and second paragraphs of the text submitted at the forty-seventh meeting:

"The Committee has noted article 9.2 of the draft text of the proposed international convention for the prevention of pollution from ships, 1973.

While not questioning the mandate of the 'International Conference on Marine Pollution', I have been asked by the Committee to inform you that the Law of the Sea Conference would not consider itself limited by any decisions taken on these matters by the marine pollution Conference."

Account had been taken of the modifications requested by the Chilean delegation at the forty-seventh meeting. Furthermore, at the request of the same delegation, the title of the IMCO Conference would be placed in inverted commas in the letter.

The CHAIRMAN suggested that the draft letter should be adopted, with the amendments proposed, for submission to the Committee.

The draft letter, as amended, was adopted.

Mr. PARDO (Malta) recalled that his delegation had raised another important question, that of the creation by IMCO of a permanent marine environment protection committee. At the thirtieth session of the Council of IMCO, the United States had proposed the creation of a committee responsible for all work in connexion with the prevention and control of marine pollution. The Council had decided to set up an ad hoc working group to study the question; the ad hoc group had met from 23 to 27 July and had just issued its report. It had been composed of a certain number of members of the Council, including only two developing countries. It had recommended to the Council that a marine environment protection committee should be established by the IMCO Assembly as a permanent body pursuant to articles 12 and 16 C of the IMCO Convention, neither of which referred to either "pollution" or "protection of the marine environment".

In its report, the ad hoc working group had recommended that the proposed committee should be entrusted with important functions, in particular the establishment, adoption and communication to governments of new regulations relating to pollution of the marine environment and applicable within the framework of the conventions for whose enforcement IMCO was responsible. The proposed committee would also act as a co-ordinating body between the various organizations and establish such subsidiary bodies as it might consider necessary. The first session of the committee was scheduled for early in 1974 hence, prior to the Santiago Conference.

The question was whether a specialized agency had the right to change or enlarge its functions without prior consultation with any other organization in the United Nations family and without the endorsement of the Economic and Social Council and the General Assembly. A grave question arose of co-ordination within the United Nations system. There had certainly been cases in which agencies had taken initiatives somewhat outside their competence, but those were not examples to be followed.

It should also be noted that there was nothing in the IMCO Convention that gave that organization any power whatsoever with regard to marine pollution or protection of the marine environment. It was true that IMCO had some technical functions to perform, and had performed them efficiently in the past.

His delegation considered that that organization could take certain initiatives with regard to the prevention of pollution of the marine environment; however, it was unacceptable that IMCO should change its functions on its own authority.

It would also be unfortunate that questions relating to pollution of the marine environment should come principally within the competence of an agency dominated by the major shipping powers. It should be borne in mind that important interests, in particular financial interests, were at stake.

It had been pointed out that if the marine environment protection committee was not created, the proposed functions would be taken over by the Marine Safety Committee of IMCO. Since the majority of the developing countries did not participate in the functions performed by that Committee, matters concerning marine pollution would, in that case, be handled in a relatively restricted forum. That was perfectly true, but at the same time his delegation wondered whether, for the time being, that solution would not be the better of the two.

The report of the ad hoc working group would be considered by the IMCO Assembly. The composition of that Assembly was such that the working group's recommendations would certainly be adopted. Furthermore, the General Assembly would not be able to take any action, since the decision by IMCO would have been taken before the General Assembly had been able to consider the question. His delegation intended to raise the matter, which was serious, at the twenty-eighth session of the General Assembly.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) observed that the IMCO Conference on marine pollution was an independent and sovereign body with an important task to perform, namely, the prevention of pollution from ships. It was impossible for the Committee to bring any pressure whatsoever to bear on that Conference, or even to give it any advice. The Conference had the right to take any decision it might deem necessary, including that of drawing up a convention, a move which appeared necessary in order to prevent pollution of the marine environment by ships. However, in response to the wish expressed by some delegations, the informal drafting group had succeeded in finding a compromise solution and had drafted a letter which established a link between the Committee's activities and those of the IMCO Conference.

He had been surprised at the criticisms levelled by the representative of Malta against the internal functioning of IMCO. That organization performed very useful work in establishing rules for maritime navigation, and questions concerning the prevention of marine pollution from ships came within its competence. It was therefore unjustified to ask whether or not IMCO should establish the committee in question. On the contrary, all the activities undertaken by IMCO in that field should be noted with satisfaction, for they were linked with the Committee's activities and would facilitate achievement of the common goal.

Mr. FATTAL (Lebanon) said that any international organization or group of States was free to call a conference and to conclude a convention and that the United Nations did not have a monopoly in such matters. Furthermore, as stated in the draft letter approved by the Sub-Committee, the convention to be prepared by IMCO was not binding on the Conference on the Law of the Sea. In the final resort, the convention to be concluded at Santiago would take precedence over that of London, because it would have been concluded subsequently and the Conference on the Law of the Sea, at which all the States of the world would be represented, would therefore be much more universal in nature. He did not think that the Sub-Committee had any right to challenge the competence of IMCO. The unity of the law of the sea had been invoked, but that did not mean that there had to be a unity in the instruments which governed it or that the matter could only be dealt with by a single organization. In his delegation's opinion, the Committee had no reason to be concerned about the activities of IMCO. The Committee worked slowly and nobody knew when it would complete its work. The IMCO convention would therefore be concluded first and would thus have the advantage of coming into force before the Convention on the Law of the Sea and of being applied until such time as the latter Convention came into force.

Mr. MBOTE (Kenya) endorsed the comments made by the representative of Yugoslavia when he submitted draft articles in document A/AC.138/SC.III/L.55, of which his delegation was one of the sponsors.

The reason why the General Assembly had decided to set up a Sea-Bed Committee was that it considered that the existing law of the sea no longer reflected the present situation and that a new law had to be established. Certain delegations had however tried to raise difficulties by stating that certain new concepts, such as the ocean space, the patrimonial sea and the exclusive economic zone, could not be used because they had not been clearly defined or embodied in a law. However, the formulation of new rules of law required new concepts.

He was glad that the Sub-Committee had been able to agree on the text of a letter to IMCO. In his opinion, the IMCO Conference should be held after the Conference on the Law of the Sea. He hoped that the work of the two conferences would be carefully co-ordinated and that the decisions taken at the IMCO Conference would not be binding on States except to the extent that they had been examined and endorsed by the Conference on the law of the Sea.

Mr. BEESLEY (Canada) said that his delegation, like that of Malta, attached great importance to the co-ordination of the activities of the organizations within the United Nations system. However, while it was perfectly justified to raise at IMCO or in the Sea-Bed Committee issues such as those under discussion, no one body should attempt to dictate to another what its mandate should be.

Canada was a member of the IMCO working group referred to by the representative of Malta, and during the discussions in that body, it had emphasized the need for co-ordination and consultation. Canada considered that the setting up of subsidiary organs, such as the marine environment protection committee proposed by that working group, was within IMCO's mandate. It believed, however, that certain activities of the new committee had been defined in too general terms. Thus, with regard to the functions referred to by the representative of Malta, he noted that although the first function was restricted to the prevention of pollution from ships, no mention was made of ships in the third and fifth functions, concerning scientific research; instead, much broader language was used. Such terms of reference could give rise to difficulties with other organs, including UNEP. That was something which needed watching; Canada hoped that the countries members of the Committee would raise the matter at the IMCO Conference and elsewhere, in the way suggested by the representative of Malta and in other ways.

The USSR had rightly emphasized that IMCO had an important part to play in the prevention and control of marine pollution. Canada was in favour of whatever would guide the activities of that organization more in the direction of the environment. However, he believed that, for example, on a question such as the relationship between the jurisdiction of a flag State and the responsibilities of that State, decisions concerning the environment could not be made on a purely economic and commercial basis. The international community should adopt a pluralistic approach in the matter, and there should accordingly be co-operation, especially as between IMCO, the Sea-Bed Committee and UNEP.

He noted further that the Deputy Executive Director of UNEP, in his statement to the Committee at its 100th meeting, had not mentioned the Statement of Objectives, adopted unanimously at Stockholm and concerning the management of the environment and the special interests of coastal States, nor had he mentioned the 23 Marine Pollution Principles adopted unanimously at Stockholm. With regard to standards, he had only referred to minimum international standards, but had said nothing about the special standards which were necessary in some parts of the world. He (the speaker) believed that, unlike IMCO, UNEP should widen its horizon on the basis of the work of the Stockholm Conference as a whole, instead of focussing its attention on certain recommendations only.

Mr. KOLCHAROV (Bulgaria), referring to the draft letter to IMCO, said that the IMCO Conference would be a diplomatic conference of sovereign States which should be able to study any questions and take any decisions they deemed appropriate. No pressure should be exerted on that conference, since that would be tantamount to exerting pressure on the participating States.

Mr. PAPAGEORGIOU (Greece) agreed with the USSR representative that IMCO was competent to take any action it considered justified for the prevention of pollution from ships.

Mr. McKERNAN (United States of America) said that his delegation disagreed with the views of Malta as to the competence of IMCO. That organization had been dealing with vessel-source pollution for many years. The setting up of a Marine Environment Protection Committee was clearly in conformity with its mandate.

Mr. BURCHAK (Ukrainian Soviet Socialist Republic) said that although his delegation had some doubts about sending a letter to IMCO, it had not wished to oppose that move. It would now like to say that the Conference to be held in London would be a sovereign conference, on which no pressure should be exerted. Sending a letter to IMCO would be inappropriate. What was more, it was important to take effective action against marine pollution as soon as possible. His delegation also doubted whether the Committee had the right to speak for the Santiago Conference. It would be for that Conference to study the decisions of IMCO.

Mr. ZAORSKI (Poland) shared the views expressed by the USSR, Greece, Bulgaria, the Ukrainian SSR and the United States of America on the competence of IMCO. It was a United Nations specialized agency which had been very successful in its work. Each of its conferences should have full powers. The Sea-bed Committee had nothing to say about the internal organization of IMCO.

Mr. BRIGSTOCKE (United Kingdom) said that he wished to comment on two points made by the representative of Malta.

First, it could not be said that IMCO had a limited membership. It had 77 members, all with equal voting rights, of which only 20 were traditional maritime powers. Most of those 77 member States were developing countries. Furthermore, it could not be said that an organization consisting of 60 per cent of the States Members of the United Nations was not representative.

Secondly, if the representative of Malta believed that IMCO did not obtain sufficiently quick results, the remedy lay in the hands of the States, more of which should ratify its conventions.

As to the competence of IMCO, he recalled that the General Assembly, in its Resolution 2414 (XXIII), had invited "Member States and organizations dealing with marine pollution, especially the Inter-Governmental Maritime Consultative Organization and the International Atomic Energy Agency, to promote the adoption of effective international agreements on the prevention and control of marine pollution as may be necessary". The setting up of a Marine Environment Protection Committee was in accordance with that invitation of the General Assembly and was not open to criticism.

Mr. PARDO (Malta) regretted that he had been misquoted. He had said that the IMCO Council - and not the Assembly - had a limited membership. Furthermore, he had not said that IMCO did not act promptly.

Like other delegations, Malta did not wish the Sea-bed Committee to deal with questions concerning the internal organization of IMCO. What was at issue was a major change in the functions of that organization. As matters had been arranged the change could not be discussed outside IMCO, and would become operative before the United Nations General Assembly could express its views; as for the Economic and Social Council, it had not been consulted. Such a situation was almost unprecedented.

Holding a conference on marine pollution would indeed be in harmony with the resolution quoted by the United Kingdom representative; however, that resolution did not justify any modification of IMCO's terms of reference.

COMPLETION OF THE WORK OF SUB-COMMITTEE III

The CHAIRMAN noted that the work of Sub-Committee III was drawing to a close. It had been said that the Sub-Committee had not entirely carried out its tasks: to that he would reply that the other Sub-Committees had not done so either and that the principle of consensus inevitably slowed down the work in a body which comprised so many delegations. In short, he was satisfied with the results obtained and he was of the opinion that the credit belonged to the members of the Sub-Committee, who had shown a praiseworthy spirit of co-operation and conciliation, and to the Chairmen of the two working groups. He also thanked the Vice-Chairmen of the Sub-Committee, Mr. Gibre Kidan of Ethiopia, and Mr. Espinosa Valderrama and Mr. Zuleta Torres of Colombia, who had greatly helped him and often taken his place, as well as the Rapporteur, Mr. Iguchi of Japan, who had been responsible for the preparation of the Sub-Committee's reports for the last three years. Finally, he wished to thank the Secretary of Sub-Committee III, Mr. Steiner, and the members of the Secretariat who had helped the Sub-Committee in its task.

The meeting rose at 1.10 p.m.