UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/SC.II/SR.63-80/
CORRIGENDUM
21 November 1973

ENGLISH

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

SUB-COMMITTEE II

SUMMARY RECORDS OF THE SIXTY-THIRD TO EIGHTIETH MEETINGS

Held at the Palais des Nations, Geneva,
from 3 July to 23 August 1973

CORRIGENDUM

This corrigendum contains corrections to the summary records of Sub-Committee II of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. In accordance with the decision taken by the Committee at its 94th meeting on 2 July 1973, with the issue of this corrigendum, these records may be considered final.

64th meeting

Page 11

Line 6 should read

in that respect. He said his delegation would study the Brazilian proposal with a view to determining its circumstances and binding character.

Lines 18 and 19 should read

Furthermore, the drafts proposed by Greece and Cyprus gave preeminence to the application of equidistance and median line methods, relegating agreement between interested States

Line 20: delete differences

Page 12

Lines 11 and 12 should read

It was obvious that islands, other than those of island States or archipelagic States, should be governed by a special régime.

65th meeting

Page 10

Line 5: for criticisms read comments

Line 13: for fell read was submitted

Line 14: for and not under read as distinct from

Lines 15 and 16 should read

the territorial sea: various aspects involved) but, nevertheless, he did not object to it being considered also under item 2.3.1. He referred in this connexion to the statement he had made when submitting

Line 19 should read

important thing to bear in mind in relation to that draft article was the concept of a

Line 22: for common read customary

Line 26: delete additional

Pages 16, 17 and 18

For the text substitute

500-metre isobath, but in regions where very deep waters were found nearer the coast, that limit could be fixed at 100 miles from the coast. The Soviet proposals were based on both legal and economic considerations.

Forty-one States, including the Soviet Union, were parties to the 1958 Convention on the Continental Shelf, and many States which

were not parties to that Convention had incorporated the concept of the continental shelf in their national legislation. That proved that the concept of the continental shelf was of vital importance and accorded with the interests and needs of States throughout the world. Any attempt to eliminate it or to replace it by a new concept would have harmful consequences for a large number of States and, to some extent, for all States. The coastal State enjoyed a sovereign right over its continental shelf, since the latter was a submarine extension of its territory and was closely connected with that territory. A further important consideration was that the resources of the shelf were primarily mineral resources which, unlike biological resources, were neither renewable nor mobile.

The discussions in the Working Group had revealed that some delegations wished to replace the concept of the continental shelf by that of an economic zone. Such an approach appeared to be erroneous from a legal point of view, since it embraced different kinds of areas and established a legal régime which did not make allowance for such differences.

It could be argued that the real interests of States were more important than the purity of a legal concept. Consequently, allowance had to be made for economic considerations. If the problem of the delimitation of the continental shelf was approached from a scientific point of view, i.e. in the light of the available knowledge on the sea-bed, two solutions were possible.

According to the first concept, the limit of the continental shelf could be fixed along the sharp bend of the sea-bed from the gently sloping submarine extension of the continent towards the continental slope steeply going down to great depths. In this case the legal concept of the shelf would correspond to the geomorphological concept. Such a limit of the shelf was justified from a geological point of view, since the continental shelf would then comprise a part of the sea-bed the structure of which

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corresponded generally to the structure of the continental crust: it included a consolidated sedimentary layer and a granite layer of great thickness. The outer limit of the continental shelf would then be the point at which the thickness of the sedimentary layer and of the granite layer began to diminish in the direction of the high seas. It was estimated that such a limit corresponded to an average depth of approximately 200 metres, although a detailed analysis of the relief of the sea-bed showed that the limit could be situated at a lesser (100-120 m) or at a greater depth (500 m).

Under the second concept, the continental shelf could be considered to embrace the whole of the continental margin, including geomorphological elements such as the shelf, the slope and the rise. In that case the limit of the shelf would be the outer limit of the continental rise and, in regions where there was no rise, the outer limit of the continental slope. The continental shelf would then be taken to be that part of the sea-bed, where the crust was generally characteristic of the continental type of crust - i.e. it had a consolidated sedimentary layer and a granite layer. The limit of the shelf would correspond to the limit of the granite layer. It would be situated at the point at which the crust of the continental type gave way to the oceanic type, in which there was no granite layer. As a rule, that limit would be situated at average depths of approximately 2.5-3.5 km, and in some regions it would be situated at very much more than 200 miles from the coast.

The two concepts of the continental shelf needed to be analysed from the standpoint of what was currently known about the distribution of natural resources on the sea-bed. Particular account must be taken of oil and gas resources, since oil and gas were the mineral raw materials which would be exploited in very large quantities and in the very near future. Such mineral resources as placers of precious metals would be economically exploitable in the foreseeable future in the coastal zone; the question of the delimitation of the shelf would therefore hardly affect such exploitation.

If the first definition of the shelf was adopted, the coastal States area of jurisdiction, i.e. the area of the continental shelf in the legal sense of the term, would include approximately 70 per cent of the total hydrocarbon reserves. The area beyond the limit of the shelf, namely, the international area to be covered by the international sea-bed treaty, would contain about 30 per cent of the identified oil and gas reserves attached to geological elements of the continental margin such as the continental slope and the upper part of the rise. If the seaward limit of the shelf was established at the outer limit of the continental margin, as a number of States were proposing, the coastal State would become the owner of almost all the potential oil and gas reserves of the sea-bed.

His delegation took the view that the outer limit of the continental shelf must be fixed in such a way that part of the geological elements of the continental crust containing some potential reserves of hydrocarbons - petroleum and gas - was included in the international area and was accessible to States which did not have a continental shelf, or whose continental shelf did not contain any minerals or only small quantities of them. An optimal limit of that nature could be drawn at a depth of 500 metres, which, in many regions, would correspond to the limit of the continental shelf in the geomorphological sense of the term and would include in some places only the uppermost part of the continental slope; the greater part of the slope and the whole of the continental rise would be included in the international area.

Quite a different picture emerged from a preliminary analysis of the proposal that the outer limits of the continental shelf should be established at a distance of 200 nautical miles. The Secretary-General's report (A/AC.138/87) could usefully be consulted in that respect. The figures quoted in it were, of course, only approximate, but they gave an idea of the oil and gas resources

which would be comprised in the 200-mile area. A 200-mile area would include 87 per cent of the total volume of hydrocarbon resources, including both those which had already been discovered and those which would become exploitable in the near future.

The result would be that the international area of the sea-bed, whose resources had been declared "the common heritage of mankind", would be reduced to an empty shell, and all the current discussions in Sub-Committee II as to which organ should be granted more powers - assembly or council - or who should be entitled to exploit resources - States or the sea-bed authority - would be absolutely meaningless, since the authority would not have at its disposal any part of the hydrocarbon resources involved, or only a very small part of them.

Countries whose continental shelf was poor in natural resources, particularly the developing countries, would be especially handicapped if that solution was adopted. The calculations made by his delegation showed that the extension of the rights of coastal States up to the 200-mile limit would benefit only a very small number of countries in which the 200-mile zone would cover the areas of abyssal plains with perspective of manganese concretion with high contents of nickel and copper. Such a situation would benefit the Soviet Union, but the Soviet Union preferred that the problem of the continental shelf should be solved in such a way as to serve the interests of the great majority of countries and peoples of the world, since what was involved was the creation of an

66th meeting

Page 5

Line 24: before the draft articles insert the source of

Line 25: for reproduced read was

Page 6

Line 2 should read

of a maximum distance of 12 miles, a proposal which did not reflect the Argentine legislation in force and should be interpreted as a contribution designed to facilitate negotiations. In addition, it included the question of a zone

Page 13

Line 1: for Mr. KOLESNIK read Mr. KOVALEV

Line 15: for in Eastern Siberia read in the Eastern Siberia Sea

67th meeting

Page 13

Line 1: for Mr. CHAO-HICK TIN read Mr. CHAO

Line 21: for Generally read Further

Page 19

Line 17: for freedom of transit read right of innocent passage

Page 20

For the first paragraph substitute

Turning to the subject of flight over straits and in connexion with paragraph A of the Italian draft, he said that such a theory was contrary to the international law in force, as the Italian representative himself had recognized at the 15th meeting of the Committee, when he had said that freedom of aerial navigation over straits did not seem to fall within the Sub-Committee's sphere of competence and that, in the view of the Italian delegation, the question of flight over straits should not be taken into consideration within the framework of the new effort to codify the

law of the sea. The Spanish delegation considered it unnecessary to add anything to the arguments put forward on that occasion by the representative of Italy, which were juridically sound.

Page 20

Add the following paragraphs at the end of Mr. Poch's intervention:

He added that the Italian representative's statement that the outlet from the Mediterranean to the Atlantic had traditionally been subject to the régime of free transit was totally unfounded, and was as serious as it was gratuitous. The waters of the Straits of Gibraltar had been part of the territorial seas of Spain and Morocco respectively for at least one and a half centuries and therefore constituted a zone under the sovereignty of those two States. Since, according to international law, "restrictions on State sovereignty could not be presumed", there was little point in talking of free transit, which presupposed a non-existent restriction on the sovereignty of the two coastal States.

What had existed in the Straits of Gibraltar - and to the entire satisfaction of the whole international community - was a régime of innocent passage.

68th meeting

Page 5

Line 1: for had also been read at that stage had been

Line 4: after formulated add in the meantime.

Line 15: for ought to help read was designed to help

Line 25: for first read primary

Page 6

Line 13: for was based read were based

Line 16: after detailed expression insert so far

/...

Line 21: for article 1 read article I

Line 23: for must not exclude read would not exclude

Line 30: for principal read primary

Page 9

Line 20: after developing their add fishing

Line 32: for important read significant

Line 34 should read

contributions to the International Authority to be paid from revenues derived from exploitation.

Page 10

Line 14: for determining read delimiting

Line 21: after first insert omission

Line 23: for on the contrary read on the other hand

Page 11

Line 5: for he pointed out read it needed to be pointed out

Line 10: for resources read benefits

Line 26: for the "adjacent zone" principle read the criterion of "adjacency"

Line 27: for limits measured in terms of read this issue

Line 28: delete distance

Line 31 should read

derived from such concessions? In this context, the Austrian delegation also wished to revive an idea

Page 16

Line 23: for It appeared that Italy likewise accepted that limit. read It appeared that Italy only accepted a six-mile limit.

Line 30: after national sovereignty insert

If the advocates of free transit were prepared to apply the régime of free transit through their own territorial waters, his delegation might then feel inclined to reconsider its position.

Page 17

Lines 26 and 27 should read

implied that if the State did not wish to exercise or to retain one or more of its rights, it was free to establish a smaller zone or to limit its rights within the zone. In addition, the Australian and

Line 29: for bank read rise

Page 18

Line 2: for certain rights read other rights

Lines 11-20 should read

entailing a need for delimitation between the coastal States concerned. The cardinal principle should be that adjacent or opposite States should reach agreement on the delimitation of their economic zones and corresponding sea-bed areas in accordance with equitable principles. Where there was an agreement between the States, that agreement must be decisive. Another principle was that no State should be able, by reason of rules of the new Convention, to claim or exercise rights over the natural resources of any area of the sea-bed and the subsoil thereof over which another State already had sovereign rights. The circumstances in which, in the absence of either a special agreement or existing rights, the boundary should be drawn along a median line, were difficult to state. The authors of the draft had attempted to state a reasonable and balanced, yet precise rule in principle D.

69th meeting

Page 1

The date of the document should read 24 July 1973.

Page 5

Line 28: for items read alternatives

At the end of Mr. Chao's intervention add the following paragraph

His delegation commended the delegation of Fiji for the presentation of the draft articles relating to passage through the territorial sea (A/AC.138/SC.II/L.42) which, in his view, constituted a major contribution to the work of the Committee. Those draft articles sought to inject an objective test to the concept of "innocent passage" which his delegation welcomed and those draft articles would be studied carefully by his delegation.

Insert the following statement before the statement of Mrs. Warner (Trinidad and Tobago)

Mr. RAJAPAKSE (Sri Lanka) recalled that at the session of the previous summer, his delegation had referred to two crucial issues: the exclusive economic zone, and passage through straits within the territorial sea, and it had urged the preparation of drafts which set out the positions of Governments with clarity and precision. His delegation had always believed that it was only through the preparation of concrete texts that issues could become clearer, and a solid foundation laid for the more important stage of political negotiation. Already at that session the representative of Kenya had submitted a proposal regarding the exclusive economic zone, which had since, in a modified form, received the support of a large number of States. At the spring session of the current year, his delegation had welcomed and commented on a text which dealt with the second issue, passage through straits, jointly submitted by eight delegations (A/AC.138/SC.II/L.18).

/...

It was his privilege today to welcome the draft prepared by the representative of Fiji, dealing with passage through the territorial sea (A/AC.138/SC.II/L.42). The representative of Fiji had been kind enough to take into account many of the suggestions which the Sri Lanka delegation had made in relation to the eight-Power draft, and he wished to express his warm appreciation.

The draft proposed by the representative of Fiji, while based firmly on the concept of innocent passage - and therefore, in his delegation's view, in accordance with existing law - seemed to go a considerable way towards allaying the apprehensions of those who favoured other approaches, in that it attempted to elaborate the concept of innocent passage by specifying acts that would not be regarded as "innocent". It had thus sought to develop the idea of "objective criteria", which could be of decisive importance in bringing together those who held opposing views on the matter. His delegation supported the concept of "innocent passage" although it would not object to using another term such as "lawful passage" or "peaceful passage" if that commended itself to the majority of States. Nor would it be against a simple reference to "passage", provided the rights and lawful interests of all were safeguarded through clear rules and objective criteria.

In the opinion of his delegation, the delegation of Fiji had made a major contribution to the work of the Committee in submitting its paper. The Sri Lanka delegation was in broad agreement with the principles it contained, and believed that, together with other related proposals, it would offer a sound basis for working out a régime acceptable to the overwhelming majority of States.

Page 10

Line 5: for Austrian read Australian

70th meeting

Pages 13-15

For the text of the intervention of Mr. Poch (Spain) substitute

Mr. POCH (Spain), speaking in exercise of the right of reply, said that the statement made by the representative of the Soviet Union had caused confusion on the issue of passage through straits in general and the Straits of Gibraltar in particular. The Soviet delegation had affirmed, firstly, that passage through certain straits (Malacca, Gibraltar, Bab al-Mandab) constituted a régime of navigation based on free transit, founded on a rule of customary law. Custom, as was well known, had two constitutent elements, a material element - practice - and a psychological element - the conviction that one was acting in conformity with law, and both were lacking in the case of Gibraltar. With regard to practice, the seizures carried out in the Straits clearly demonstrated the non-existence of free passage, since the coastal States had punished acts of foreign vessels in violation of the rules of innocent passage. With regard to legal conviction, Spain - and, he believed, Morocco - had never held that conviction. Since the Soviet Union had always taken a very restrictive view of the acceptance of a custom, it was surprising to hear such a suggestion being put forward. In order to stress the absence of grounds for the alleged practice of free transit, he cited the statement by Judge Read in the Fisheries case to the effect that international law did not suffice to establish sovereignty over a maritime area and that "the only convincing evidence of State practice is to be found in seizures, where the coastal State asserts its sovereignty over the waters in question ...". The 60 vessels from 15 countries seized beyond the three-mile limit since 1968 were indeed evidence that the coastal States were exercising their

competence. The fact that there had been no protest from the States of registry of the vessels was, in turn, proof that the applicability of the régime of innocent passage to the Straits was accepted.

It was even more surprising that the Soviet Union had sought to describe the alleged customs as jus cogens, since no such norm had been quoted either by the International Law Commission, in the commentary on article 50 of its Draft on Treaties, nor at the Vienna Conference of 1968-1969.

There were serious implications in the Soviet thesis. For instance, article 64 of the Vienna Convention on the Law of Treaties would apply in such a way that the new norm of international law would nullify any existing treaty containing contrary provisions. In other words, it would affect Conventions on the régime of other straits. Moreover, if such a norm existed, there would be little purpose in the Committee's deliberations, since it could simply confine itself to formulating such a rule in the future Conventions. But a rule of jus cogens must be accepted by the international community as a whole, and as was evident from the texts before the Committee, that was not the case. In short, the theory of jus cogens was contrary to practice and to reality and was totally gratuitous.

The Soviet delegation had also sought to rely upon the Declaration of 1904. But the object of the Franco-British Declaration had been the division of spheres of influence in North Africa. International legal instruments such as the 1904 Declaration had been frequent in the past, but the wind of contemporary history was not blowing from that quarter. The international community could no longer allow major Powers to impose servitudes and restrictions on the sovereignty of States in order to protect their strategic interests.

His delegation also objected to the arbitrary interpretation the USSR delegation had given of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone in seeking to prove that it

did not regulate the question of straits and left the idea of free transit unchanged. In the Spanish view, that interpretation was unfounded and he supported that view by referring to the progressive codification of the law of the sea from 1930 to 1958. For instance, the various drafts prepared by the International Law Commission between 1952 and 1953, as well as the debates of the Commission, were conclusive in that respect. He reminded the Sub-Committee that the 1958 Geneva Convention established the same régime for navigation through straits as for the territorial sea - innocent passage - subject only to the proviso that the right of innocent passage could not be suspended by the coastal State in straits. Many eminent jurists had enunciated that doctrine, as had the Soviet judge, Mr. Krylov, in his dissenting opinion in the Corfu Channel case at the International Court of Justice, when he had stated that, in the absence of an individual régime for a particular strait, the general solution was that the strait was subject to the same régime as territorial waters. He also referred to Soviet practice; in the case of the Vilkitski Straits, for example, the USSR had declared that the Vilkitski Straits came within its territorial waters. By what criteria, therefore, and on what legal basis could the Soviet Union have argued on the previous day that there was a general rule of free transit through straits which formed part of the territorial sea of other States?

The Soviet delegation had said that it was defending the interests of the developing countries. The fact was, however, that 41 developing African States had declared that, because of the importance of international navigation it was essential to uphold the régime of innocent passage and indeed to elaborate it more precisely. Moreover, six of the eight sponsors of document A/AC.138/SC.II/L.18 were developing countries and they, like most other developing countries in Asia and Latin America, had expressed support for the régime of innocent passage. The fact was that the only criticisms of that document had come from a number of highly

developed countries whose political and strategic interests were affected. He therefore wondered to whom an indiscriminate régime of free transit would be of interest. But the Soviet delegation was constantly stressing the reduction of freight charges in an endeavour to create confusion.

As a further rebuttal of the Soviet Union's arguments, he quoted the statement made by Mr. Tunkin, on behalf of the Soviet delegation, to the 1960 Geneva Conference to the effect that "the argument that the adoption of a twelve-mile limit for the territorial sea would restrict the freedom of navigation and result in longer trade routes and hence push up shipping costs and commodity prices was quite unfounded, given the generally recognized right of innocent passage for merchant shipping through territorial waters".

In conclusion, he insisted that the right of innocent passage should constitute the basis of the Committee's negotiations rather than, as the Soviet Union had proposed, the principle of free transit. His delegation was prepared to contribute in a joint effort to clarify the régime of innocent passage, so as to assure and protect, without discrimination, the legitimate interests of international trade. He believed that that view was shared by the majority of the members of the Committee.

Page 16

For the intervention of Mr. Poch (Spain) substitute

Mr. POCH (Spain) said that the Soviet delegation's views were merely a dogmatic reaffirmation of the views it had expressed earlier and therefore provided no substantive proof of its contention. What was being asked of the Committee was an act of faith and not rational support.

Line 10 should read

what procedure was envisaged. If his view was acceptable, he would

express his delegation's position on A/AC.138/SC.II/L.31 at the appropriate time, namely, when item 2.3.2 was being considered.

Line 16 should read

In reply to the representative of Cyprus, he considered that a good suggestion, but proposed that the comparative

71st meeting

Page 6

Line 14: for 17-million-ton read 70-million-ton

Page 7

Lines 1-3 should read

clearly recognized in international law. The nature and movements of many fish stocks would always require management measures taken by different States to be co-ordinated so that the international law of the sea should be so framed as to assist the functioning of international management institutions.

72nd meeting

Page 24

For the intervention of Mr. Tolentino (Philippines) substitute

Mr. TOLENTINO (Philippines), speaking in exercise of the right of reply, said he was fully aware that the United States adhered to the three-mile limit of the territorial sea. However, if the United States representative claimed that the Treaty of Paris between Spain and the United States in 1898 did not transfer any waters but only the land sea, why were the boundaries made on the waters and far away from land, 270 miles away towards the Pacific and 147 miles towards the China Sea? Moreover, the Fisheries Act of 1932, passed by the Philippine Legislature, stated that the territorial sea of the Philippines extended to the Treaty limits.

At that time, the Philippines was still under the United States and the American Governor General, representing American sovereignty in the Philippines, approved and signed that law. Also, in 1935, the Constitution of the Philippines was submitted to the President of the United States for approval. Its very first article described Philippine territory as extending to the Treaty limits. The President of the United States approved and signed that Constitution. And then when the Philippines was still under American sovereignty there were maps published by agencies of the United States Government indicating those Treaty limits as the boundaries of the Philippines. It might be very convenient now for the United States to say that she did not exercise sovereignty over the territorial sea of the Philippines because she was no longer there.

Pages 24 and 25

For the intervention of Mr. Gharbi (Morocco) substitute

Mr. GHARBI (Morocco), speaking in exercise of the right of reply, wished to inform the Italian representative that the Franco-Moroccan Agreement of 28 May 1956 had been denounced by Morocco in 1961. The purpose of that Agreement had been inter alia to settle a few matters of succession in regard to treaties concluded on behalf of Morocco during the Protectorate. It should not be forgotten that during that period the French President had acted as the Sultan's Minister for Foreign Affairs. Rarely had any truly bilateral agreement been concluded. In 1904 Morocco was still a sovereign State, and the agreement concluded in that year between France and Great Britain, if it had Morocco as its object, was certainly not concluded on behalf of Morocco. His country was then entirely free to consider that such colonialist agreements were not binding for it, the more so as they were contrary to every principle of the Law of Treaties.

73rd meeting

Page 9

For the intervention of Mr. O'Donoghue (New Zealand) substitute

Mr. O'DONOGHUE (New Zealand) said that New Zealand wished to express support for the proposal submitted by Fiji in document A/AC.138/SC.II/L.42 and especially for the definition of innocent passage contained therein. In that connexion, he understood that unofficial drafting groups were now meeting in an endeavour to produce a text acceptable to delegations with extreme positions. With regard to the Turkish proposal in document A/AC.138/SC.II/L.50, New Zealand could not support such a generalized proposal without fuller discussion of the so-called problem of islands. The proposal did not indicate what purpose the suggested study was to serve, or which were the islands whose geomorphological and bathymetric aspects were to be examined. If the proposal related to a specific situation, such as the problem of delimitation between opposite States, it would have to be much more precisely formulated before the Sub-Committee could consider it adequately. However, if the proposed study was to have more general objectives, those would have to be clarified and made the subject of a discussion in which all points of view could be expressed. After hearing the remarks on islands made that evening by the Romanian delegation, New Zealand considered that the need for open discussion of the subject had been reinforced.

Page 21

Line 27: for Mr. AKYAMAK (Turkey) read Mr. AKYAMAC (Turkey)

Line 32: after geographical scope of the proposed study add Furthermore, the régime envisaged for islands in that document highlighted the application of principles of equity in the different marine spaces of the islands. His delegation felt that the principles of equity

were as sacrosanct as those invoked by other delegations and, for an adequate application of those principles, it was necessary to collect as much technical and scientific data about islands as possible.

Page 22

Line 4: after relevant factors insert enumerated in document A/AC.138/SC.II/L.43

75th meeting

Page 6

Line 5: for the common heritage of mankind read the heritage and concern of all mankind

Line 14: before 13,000 islands insert more than

Line 15: before political control insert effective

Line 21 should read

reasons, and because the reliance of an archipelagic State on marine resources was, as in the case of islands,

Line 28 should read

for Papua New Guinea, which was likely to attain independence before the

Page 7

Line 3: for Territory read land area

Line 7: for attention to the Territory in read attention to the needs of Papua New Guinea in