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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 II

PROVISIONAL SUMMARY RECORD OF THE SIXTY-SIXTH MEETING*/

held at the Palais des Nations, Geneva,
on Thursday, 19 July 1973, at 11 a.m.

Chairman:	Mr. CALINDO POHL	El Salvador
Rapporteur:	Mr. ABDEL-HAMID	Egypt

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CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE, HELD ON 12 MARCH 1971 (continued)

Mr. STEFANO D'ANDREA (Italy) introduced his delegation's draft article, circulated in document A/AC.138/SC.II/L.30.

In part A of the draft articles, Italy reaffirmed the need for freedom of transit through or over straits used for international navigation. Many delegations had stressed in the Committee that trade conducted through such straits was increasing yearly, particularly with the developing countries. It would be absurd if in the present state of international relations those straits were controlled by a small minority of States. It was to avoid such a situation that his country had, in part A, defined some of the rights and obligations of coastal States; on the one hand, they could "designate appropriate channels and corridors" for transit traffic and, on the other, they would avoid "all (unnecessary) obstruction of traffic". Obviously, the use of straits for dangerous or polluting activities would not be permitted.

The solution of the problem of straits was imperative for the entire international community and, in particular, for the coastal States along seas which might otherwise become closed or semi-closed. Such was the case of the Mediterranean, which had only one outlet to the Atlantic; there had always been freedom of navigation through that outlet and it was vital that the situation should be maintained. For years the international community had agreed that land-locked countries should have free access to the sea - he was thinking particularly of article 3 of the Convention on the High Seas; it would be absurd if the Committee now acted in a way contrary to the interests of a great number of coastal countries situated on closed or semi-closed seas.

Part B affirmed his country's position that the right of transit could be exercised only when it was a necessity and no other solution was available. The criteria for the right of innocent passage, set out in sub-paragraphs (1) and (2), namely, straits not more than six miles wide and lying between the coasts of the same State, were justified by historical experience.

There were two schools of thought concerning the problem of islands. Some contended that islands should receive the same juridical treatment as continents, while others would deprive them of any special or privileged zone either in the sea or on the continental shelf. As against the doctrine of archipelagos, which would give islands preferential treatment in order to promote their economic, social and political development, there were those who would go so far as to deprive islands of

their territorial sea, which meant condemning them to a slow economic death and forcing their populations to emigrate. In his delegation's view, the wisest course lay between those two extremes: the doctrine of archipelagos merited more careful consideration, while the opposing theory should be rejected without further discussion. He stressed that the question of territorial waters was not within the competence of the Conference. The Committee should avoid questioning the territorial integrity of any country; that should be one of its guiding principles. In that respect, he referred to part I, paragraph 4 of document A/AC.138/SC.II/L.34, submitted by China, and recalled that under the terms of the 1958 Convention on the Territorial Sea, islands had the same rights as continents so far as territorial waters were concerned (articles 10 and 12).

Referring to other draft articles, he noted that the principle of territorial integrity with respect to islands was wisely reaffirmed in paragraph 3 of the Greek delegation's draft on the régime of islands (A/AC.138/SC.II/L.29). Paragraph 4 of that document opened the way for negotiations on the continental shelf and zones of national jurisdiction with respect to islands.

The working paper presented by Australia and Norway contained certain basic principles relating to an economic zone and its delimitation (A/AC.138/SC.II/L.36). He wished to draw attention to some of the points contained in part 2 under the heading "Delimitation": Adjacent or opposite States would endeavour to reach agreement; such agreement should be based on equitable principles; where an agreement already existed, it would determine the solutions; subject to the above principles and rules, and unless the drawing of another boundary was justified by special circumstances, the boundary of the economic zones would be the equidistant or, as the case might be, the median line.

Mr. LUPINACCI (Uruguay), commenting on his delegation's draft articles concerning the territorial sea (A/AC.138/SC.II/L.24), said that they did not deal with questions such as innocent passage or international straits but were simply intended to set out a few basic ideas on the new structuring of the territorial sea. The concept of territorial sea should be adapted to present-day international realities and to the needs of the peoples. Accordingly, the aim of his delegation's draft was to ensure that that concept was in keeping with the demands of State security, international communications, the conservation and rational exploitation of the living resources of the sea, the protection of the marine environment, and scientific

research. His delegation had thus tried to adapt the concept of territorial sea by basing it on a plurality of régimes; the aim of the draft was to strike a balance in the present context between the two major principles applicable to maritime zones, namely, the principle of sovereignty and that of freedom.

Under the solution proposed, a coastal State could determine the breadth of its territorial sea within limits not exceeding 200 nautical miles measured from the applicable baselines. Where the coasts of two States were opposite or adjacent to each other, the criterion of equidistance would be applied. The provision of a limit of up to 200 miles removed any uncertainty as to the legal status of that zone. Some delegations had spoken in favour of a narrow territorial sea - generally of a breadth not exceeding 12 miles - supplemented by a zone within which the coastal State would exercise jurisdiction for essentially economic or conservationary purposes. His delegation feared that such a solution would merely give rise to difficulties or ambiguities of application. Moreover, consideration should be given not only to economic or conservationary factors but also to political and security factors. There were all kinds of freedoms of the high seas: freedom to test remote-controlled missiles, to use nuclear-armed submarines, to gathering data by means of electronically equipped vessels, to operate off-shore radio and television stations and, in future, possibly to control the climate from the sea, etc. The exercise of such freedoms might entail risks unless the coastal State's sovereignty stretched beyond a distance of 12 nautical miles. On the other hand, recognition of a zone of up to 200 miles made it possible to apply the principle of sovereignty in such a way as to solve such problems.

In order to preserve the rights and freedoms of third States, his draft drew a distinction between narrow territorial seas not exceeding 12 miles in breadth, and broad territorial seas of up to 200 miles. In the first case, it restated the traditional concept of innocent passage. In the second, technical, legal and political reasons required more thorough protection of the interests of third States, particularly with regard to navigation, overflight and other forms of international communication; that was why the draft envisaged a dual régime: a first one identical to that applied to territorial seas of 12 miles, and a second, applicable beyond that limit, which recognized the freedom of navigation, overflight and the laying of submarine cables while at the same time taking into account restrictions deriving from the coastal State's regulations governing security, the preservation of the environment, exploration, the conservation and exploitation

of resources, scientific research, and maritime and aerial navigation. Under that second régime, therefore, the application of the principle of sovereignty would be far more limited than under the first. Incidentally, the draft articles on the laying of pipelines and cables were drawn from the Geneva Convention on the High Seas.

The nature of the Uruguayan draft was such as to ensure an equitable balance between the coastal State's rights and duties. The rights it conferred were counter-balanced by duties such as the implementation, in the territorial sea of the coastal State, of such measures to protect the marine environment as might be recommended by international technical bodies, and the duty to take into account the general interests of scientific research within the territorial sea.

His delegation had contemplated various special situations and had incorporated in its text the ideas concerning archipelagos set out in document A/AC.138/SC.II/L.15, submitted by Fiji, Indonesia, Mauritius and the Philippines; it had also mentioned the preferential treatment to be accorded to neighbouring land-locked countries.

In that respect, his country fully supported the land-locked countries of the American continent and would conclude with them bilateral or regional arrangements in their favour. Uruguay was also taking into consideration the special case of certain Caribbean countries, although it had made no allusion to them in its draft.

Lastly, he noted that some of the suggestions and drafts presented to Sub-Committee II had many points in common with his own delegation's draft; perhaps solutions could be worked out on the basis of those common points. In that task, Uruguay would eschew all rigidity in its approach so as to arrive at solutions acceptable to all.

Mr. ORTIZ DEROZAS (Argentina) said that the draft articles submitted by his delegation in document A/AC.138/SC.II/L.37 reproduced an informal text that it had circulated at New York during the Committee's last session. Generally speaking, in order to harmonize the various positions with a view to submitting equitable formulas to the Santiago Conference, due account should be taken of rights acquired by coastal States by virtue of international, conventionary or customary standards. The Argentine draft attempted to reconcile those rights with the necessities arising from recent developments in the uses of the sea.

With respect to the territorial sea, the project took over the classical concept of a maximum distance of 12 miles. In addition, it included the question of a zone of the sea adjacent to the territorial sea which the coastal State could delimit up to a maximum distance of 200 miles, or to a greater distance corresponding to the limit of the epicontinental sea. The draft specified that the epicontinental sea was the column of water covering the sea-bed and subsoil situated at an average depth of 200 metres. The rights of a coastal State over the area of sea adjacent to its territorial sea, as defined in various articles, related to the prospecting, exploration and exploitation of natural resources, prevention of marine pollution and control over scientific research. The draft provided that the prospecting, exploration and exploitation of natural resources could be reserved to the coastal State or its nationals or exercised by third parties in accordance with the provisions of the internal laws of the coastal State and of such international agreements as it might have concluded on the matter.

Article 11 of the draft provided that the coastal State would have jurisdiction to enact measures to prevent, mitigate or eliminate pollution damage and risks, while with respect to scientific research, article 12 protected the right of the coastal State to authorize research activities in the area, to participate in them and to be informed of the results.

Freedom of navigation and overflight, together with the laying of cables and pipelines, were also covered by the draft, since Argentina had always been anxious to preserve international communications in the interests of all from high-handed action by an individual State.

Moreover, having Bolivia and Paraguay as neighbours, Argentina was fully aware of the special situation of the land-locked countries. Consequently, it was laid down in article 14 of its draft that the coastal State shall grant the right of access to the sea and transit rights to neighbouring land-locked countries, together with preferential fishing rights.

The continental shelf was treated in detail (articles 15-27) in the draft, owing to the special position of Argentina in that respect. A clear distinction was made between the standards relating to the legal regime for the waters and those regulating the continental shelf proper, namely, the sea-bed and the subsoil thereof. His delegation thought that the institution of the continental shelf should be treated separately in the new norms of the law of the sea, as had been done in 1958. In that connexion, he recalled the judgement of the International Court of Justice in the

North Sea Continental Shelf cases, which stated that the continental shelf constituted a natural prolongation of the land territory of a State into and under the sea.

The concept of the continental shelf, which had stemmed from many declarations by nations in the Americas, was now accepted in other parts of the world and incorporated in the norms of international law in force. National jurisdiction over the sea-bed being anterior to the idea of establishing an international zone, it would have to be taken into account lest the sovereignty of coastal States be impaired and their rights limited.

In his delegation's document, the continental shelf was defined as comprising "the bed and subsoil of the submarine areas adjacent to the territory of the State but outside the area of the territorial sea, up to the outer lower edge of the continental margin which adjoins the abyssal plains or, when that edge is at a distance of less than 200 miles from the coast, up to that distance". By that proposal, his delegation was attempting to reconcile the acquired rights of coastal States and the existence of the international sea-bed zone established by General Assembly resolution 2749 (XXIV). On the other hand, the draft provided another solution in the form of a distance criterion to delimit the area in the case of countries that did not possess a continental shelf in the geomorphological sense of the term.

To conclude, he hoped that his delegation's draft and the arguments that he had just presented in its favour had made his country's viewpoint clear and that, in consequence, it would be easier to link it in a satisfactory way with the views of the other countries represented on the Committee.

Mr. TUNCEL (Turkey), speaking on behalf of his own delegation and that of Tunisia, introduced document A/AC.138/SC.II/L.33, which proposed an amendment whereby article 13, paragraph (b) of the draft articles of treaty submitted by Colombia, Mexico and Venezuela (A/AC.138/SC.II/L.21) would be deleted. By that amendment, the term "continental shelf" would not be applied to the sea-bed and subsoil of analogous submarine regions adjacent to the coasts of islands. The Tunisian and Turkish delegations wished to make it clear that they were not opposed to the attribution to islands of maritime spaces in the form of a continental shelf, the limits of which had yet to be defined, and that their proposal should be understood solely in the context of the concept of the continental shelf as it appeared in the three-Power draft. In other words, the sponsors of the amendment did not intend to propose that, as a general rule, no continental shelf should be attributed to islands. They were aware that many

States possessed islands, whether close to or remote from the mainland, and that recent technical progress made it possible to hope for a great deal from such islands with respect to submarine resources.

On the other hand, the Turkish and Tunisian delegations wished to point out that the 1958 Geneva Convention on the Continental Shelf granted rights to the coastal State on the disposal of submarine resources, and that the shelf was defined according to the criteria of depth (200 metres) and exploitability, the latter criterion being the more controversial. In article 13 of the three-Power draft (A/AC.138/SC.II/L.21), there was no longer any reference to depth but to a distance extending to the outer limits of the continental rise bordering on the ocean basin or abyssal floor. The size of the continental shelf was thus enlarged and the same area of enlarged continental shelf was attributed to islands. Now, under the Geneva Convention, a limited expanse was reserved for islands so that the three-Power text would have the effect of amending the Geneva Convention. Moreover, the three-Power proposal contained no provisions relating to the delimitation of the areas. Consequently, what Tunisia and Turkey were actually proposing was that consideration of article 13, paragraph (b) of the document (A/AC.138/SC.II/L.21) should be deferred until the question of the delimitation of the zones and of zones of islands had been discussed.

Mr. SHEN WEI-LIANG (China) gave some explanations concerning the working paper submitted by his delegation on the sea area within the limits of national jurisdiction (A/AC.138/SC.II/L.34). The first major point related to the limits of jurisdiction of a coastal State, a particularly acute problem at the present time when countries were struggling for their maritime rights. The great Powers had tried in every way to place unreasonable restraints on the limits of jurisdiction of other coastal States, thus threatening the security and the interests of the national economies of those countries. In consequence, a large number of developing countries had decided to resist and were struggling grimly against hegemony to define their national rights. The countries of Latin America had taken the lead by extending their jurisdiction to 200 nautical miles and had won the support of a large number of small and medium-sized countries. Moreover, by the Declaration on the Law of the Sea that they had adopted in their summit conference in May, the African States had affirmed that a coastal State had the right to establish a 200 mile exclusive economic zone, a further initiative against maritime hegemony.

In that connexion, his delegation drew the Sub-Committee's attention to the attitude of a great Power that claimed to be the friend of the developing countries but which in fact attacked the position of those countries when they were defending their fundamental interests. Recently, that delegation had alleged that the establishment of a 200-mile economic zone would reduce the resources in the international sea-bed area. In other words, its opposition would appear to be based on concern to protect the common interest. On the other hand, however, it proposed that the continental shelf should be extended to a depth of 500 metres which, in the specific case of that country, would be tantamount to extending its continental shelf by far more than 200 miles, in certain places, to 700 and even 1000 miles.

For its part, the Chinese Government firmly supported the proposal by the countries favourable to an area not exceeding 200 nautical miles. In its working paper, his delegation declared that "a coastal State may reasonably define an exclusive economic zone ... beyond and adjacent to its territorial sea in accordance with its geographical and geological conditions, the state of its natural resources and its needs of national economic development.

The outer limit of the economic zone may not, in maximum, exceed 200 nautical miles measured from the baseline of the territorial sea".

In view of the diversity of conditions peculiar to each country, some countries desired to define an exclusive fishery zone while others wished to define the limits of the continental shelf under their exclusive jurisdiction beyond the territorial sea or economic zone. Consequently, the working paper submitted by his delegation contained provisions in respect of the exclusive economic zone, exclusive fishery zone and the continental shelf. As to the maximum limits of the continental shelf, his delegation considered that they could be determined by consultation among States.

The territorial sea formed a major part of the maritime area within the national jurisdiction, and the question arose what the breadth of the territorial sea should be and by whom it should be determined. His delegation had always maintained that States had the right to determine, within reasonable limits, the breadth of their own territorial sea according to their specific circumstances. In concrete terms, the coastal State, in determining the breadth of its territorial sea, would consider its own geographical conditions and the need to safeguard its security as well as the legitimate interests of neighbouring States and those of international navigation. That was the fundamental principle for determining the breadth of the territorial sea.

On that basis, States in the same region with similar national conditions and having common national interests could, through consultation, determine a unified breadth, or single limit, for the territorial sea in the region. The question whether a maximum limit to the territorial sea should be fixed for all States should be settled by consultation among all States on a basis of equality. Nevertheless, the super-Powers, disregarding the sovereignty and economic interests of other States, were trying to force their will upon others to promote their policies of hegemony. China was firmly opposed to such practices.

The position of his delegation on the question of the law of the sea respected the fundamental interests of the vast majority of the developing countries and the fundamental interests of the peoples of the world. His delegation reiterated that the Chinese Government and people firmly supported the developing countries and their reasonable proposal, and that it would assist in the efforts of all to formulate a new law of the sea.

Mr. KJENGA (Kenya) said that he wished to make some remarks on the draft articles on fisheries proposed by Canada, India, Kenya and Sri Lanka (A/AC.138/SC.II/L.38), which had been joined since by Madagascar and Senegal. As stated in the note at the beginning of the document, the substance of that proposal was complementary to the cocept of the exclusive economic zone and should be considered as a part thereof. The number of sponsors was not any greater because all the delegations had been very busy working on draft articles against the deadline laid down for drawing up the comparative table. As for the African countries, 41 Heads of State had already endorsed the concept of an exclusive economic zone, but had not yet had the time to consult among themselves in order to introduce into the draft articles the ideas embodied in their Declaration (A/AC.138/89). The Asian countries had encountered similar difficulties. In order to ensure that their ideas were included in the comparative table, the sponsors of the draft articles had decided to submit them without delay. No doubt those articles would be examined and endorsed, with or without change, by all those who accepted the concept of an exclusive economic zone, so that the number of sponsors would increase and thereby reflect clearly the broad support that the proposal would not fail to attract.

Draft article 1, which was based on the concept of an exclusive economic zone, affirmed the sovereignty of the coastal State over the exploration, exploitation, conservation and management of the living resources of the exclusive fishery zone. Since that zone was concurrent with the exclusive economic zone, it had been neither defined nor delimited in the draft. As was known, the sponsors of the draft fully supported the OAU Declaration and also the draft articles presented by the African Group, both of which stated that the exclusive economic zone should not exceed 200 nautical miles.

One of the criticisms levelled, although now less frequently, against the exclusive economic zone was that it would lead to under-exploitation of living resources which would thus be lost for ever to the international community. The sponsors of the draft articles had therefore inserted in draft article 4 a provision to the effect that "The coastal State may allow nationals of other States, to fish in its exclusive fishery zone, subject to such terms, conditions and regulations as it may from time to time prescribe". It was obvious that the coastal State would have no interest to impose irrational conditions. In any case, article 4 enumerated some of the requirements which the coastal State could impose. All those requirements were concerned with the effective conservation and rational management of fishery resources which had been so woefully lacking under the so-called regime of the freedom of the high seas. The concepts of an exclusive economic zone and an exclusive fishery zone had been evolved as a defensive mechanism against those countries, which had misused the freedom of the seas to plunder the resources of other countries and to deny to them their just and equitable share of the resources within the seas adjacent to their territory. It was not the sponsors' aim to compartmentalize the seas and that was why they had adopted a reasonable attitude towards nationals of the developing countries and land-locked countries mentioned in articles 5 and 6 of the draft.

Draft article 5 specified that neighbouring developing coastal States had to allow each other's nationals the right to fish in a specified area of their respective fishery zones. For the land-locked countries, reciprocity could obviously not be required: draft article 6 therefore followed the generous example given by the OAU Heads of State, who had proposed that the land-locked developing countries should be granted the privilege to fish in the neighbouring area of the exclusive fishery zone of the adjoining coastal State on an equal basis with the nationals

of that State. Other proposals would perhaps also be made in that regard, since it was not possible to depart from the principle that the coastal State continued to enjoy sovereignty over the resources in its exclusive zone. Agreements would therefore have to be entered into on the modalities of the exercise of the fishing rights granted.

The provisions of draft article 7 seemed obvious for it would be inadmissible that States which exercised domination over a territory should be allowed to extend their control to new areas.

He read out the paragraph of the OAU Declaration (A/AC.138/89) relating to fishing on the high seas. The ideas contained in draft article 8 coincided with the provisions of article 6, paragraph 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, and were to be found also in the various proposals which had been made to the Committee, in particular by the delegations of Japan, the USSR and the United States, all of which had supported the principle of the preferential rights of the coastal State in the high seas beyond the economic zone.

Draft article 9 specified that, with regard to the exploration, exploitation, conservation and development of the living resources of the area of the sea outside the limits of the exclusive fishery zone, States could establish regulations only by agreement or convention. It was, however, obvious that the regulations to be applied to the highly migratory species would have to be made by the Authority designated for the purpose by the Conference on the Law of the Sea (draft article 10). It should, however, be added that when those species entered the exclusive economic zone, they fell under the regime applicable to that zone.

The sponsors of the draft articles appreciated that the anadromous species posed special problems and that the States concerned with those species would have to consult among themselves. That was why no proposal had been made in draft article 11 in respect of those species.

Draft article 13, on the settlement of disputes, drew a distinction between disputes arising within the exclusive fishery zone, which fell under the jurisdiction of the coastal State concerned, and disputes arising from fishing activities beyond that zone, which should be referred to the Authority designated for the purpose by the Conference on the Law of the Sea.

Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed regret at the fact that, in the statement by one delegation, a remark had been made with the clear intention of casting doubts on the Soviet Union's intentions. It was unnecessary to reply to those insinuations, since it was known to all that the Soviet Union pursued a policy aimed at supporting the struggle of the developing countries for their political independence. Accusations of that kind would not succeed in shaking the confidence which the developing countries had placed in the Soviet Union. According to the delegation in question, the USSR, with its proposal to take the 500-metre isobath as the limit of the continental shelf, intended to cause harm to other countries, in particular the developing countries, and sought to acquire substantial privileges. The figures of 700 miles and 1000 miles had been mentioned. Those figures were completely fanciful since the 500-metre isobath in the USSR was generally less than 200 miles away from the coast of the mainland and islands. In the Far East, that isobath was between 40 and 60 miles from the coast. There was one single exception, in Eastern Siberia, where the 500-metre isobath was 360 miles from the coast but the area concerned was of no interest from the point of view of the exploitation of the resources of the sea. His delegation had a map showing the 500-metre isobath and in order to dispel all misunderstanding, it was prepared to make that map available to those who had mentioned the figures of 700 miles and 1000 miles.

Mr. FIGUEREDO (Venezuela) said that, following the remarks by the Turkish representative on the draft articles submitted by Colombia, Mexico and Venezuela (A/AC.138/SC.II/L.21), he felt it useful to explain the meaning of article 14 of that draft. That article clearly showed that the rights of the coastal State over renewable and non-renewable natural resources extended only up to 200 miles, and that the régime of the continental shelf applied beyond that limit.

Mr. TUNCEL (Turkey) thanked the representative of Venezuela for the clarifications given by him. Article 15 of the draft specified that, in that part of the continental shelf covered by the patrimonial sea, the legal régime provided for the latter would apply. Article 4, however, stipulated that the coastal State exercised sovereign rights over the renewable and non-renewable natural resources of the patrimonial sea. The coastal State could therefore exercise very extensive rights in the areas and the waters covering the continental shelf. The result would be to broaden the scope of the Geneva Convention particularly with regard to islands. His delegation, however, was not prepared to accept at that stage such a régime for islands.

The meeting rose at 12.55 p.m.