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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 SEVENTY-SIXTH MEETING^{*/}

held at the Palais des Nations, Geneva,
on Monday, 20 August 1973, at 4.00 p.m.

Chairman: Mr. GALINDO POHL El Salvador

Rapporteur: Mr. ABDEL-HAMID Egypt

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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 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.

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CONSIDERATION OF THE FINAL REPORT OF THE CHAIRMAN OF THE WORKING GROUP OF THE WHOLE TO THE SUB-COMMITTEE (A/AC.138/SC.II/L.61)

Mr. KEDADI (Tunisia), Chairman of the Working Group of the Whole of Sub-Committee II, introducing the final report of the Working Group (A/AC.138/SC.II/L.61), said that the report was limited to factual information about the approach adopted by the Working Group to its task and the results achieved. He expressed gratitude for the support given by the Chairman of the Sub-Committee during the informal consultations which had made it possible to reduce the number of variants presented on some items, in particular items 2.1, 2.3.1 and 2.3.2. It was regrettable that the Working Group had not had sufficient time to consider all the variants presented. As stated in the footnote on page 4 of the report, all the variants would be annexed to the report in the order of the list of subjects and issues.

The Working Group, whose meetings had not been covered by summary records, had adopted a flexible and pragmatic approach to its work. The report and the relevant conference room documents constituted a whole, and the Sub-Committee would no doubt wish to consider how best they could be incorporated in its own report.

Mr. HAFNER (Austria) proposed that in the last sentence of paragraph 13, "9.4," should be inserted after "8.4,". He also proposed that in the first sentence of paragraph 15, "and obligations" should be inserted after "preferential rights", and that "the rights and interests of" should be inserted before "land-locked countries".

Mr. YTURRIAGA (Spain), referring to paragraph 15, asked which were the conference room documents to be annexed to the report.

The CHAIRMAN said they were Conference Room Papers Nos. 1-31.

Mr. YTURRIAGA (Spain) said that when Conference Room Paper No. 6 had been submitted to the Working Group, its lack of objectivity had been criticized by his delegation. While delegations were entitled to put forward variants, they had no right to change, distort or suppress those put forward by other delegations. That document, in both its original and revised versions, distorted and misrepresented the variants proposed in document A/AC.138/SC.II/L.18, of which his delegation was a sponsor. Consequently, he considered that neither Conference Room Paper No. 6 nor Conference Room Paper No. 6/Rev.1 should be annexed to the report of the Working Group of the Whole.

Mr. OXMAN (United States of America), referring to the remarks made by the representative of Spain, said that the appropriate place to question the value of a document as a working tool would have been within the Working Group itself. The Sub-Committee's task was not to discuss what had happened in the Working Group, but to consider the latter's report. The Working Group had adopted a procedure whereby certain documents had been submitted directly to the Secretariat without prior discussion. Under that procedure, it would be possible for delegations to consult with the Secretariat with a view to producing, if necessary, a second revised version of Conference Room Paper No.6. In the light of the comments made in the Working Group by the Spanish delegation, his delegation had in fact submitted to the Secretariat certain corrections to be incorporated in the revised version of the document. In the Working Group, most delegations had expressed the view that a comparative table of the type contained in the document would be useful for Member States in preparing for the Conference on the Law of the Sea.

Turning to the report of the Chairman of the Working Group, he said that the list of subjects and issues given in paragraph 10 should reproduce exactly the wording used in the list of items. That would entail deleting the article "the" in several places. Furthermore, he considered that the list contained in the paragraph should be confined to main items and not include any sub-items.

He proposed the insertion of the following phrase after "position" in the second sentence of paragraph 15: "or imply support for any of the alternatives presented on a matter".

The last sentence of paragraph 17 might give rise to jurisdictional difficulties, and should be deleted.

Mr. YTURRIAGA (Spain), referring to the previous speaker's remarks concerning Conference Room Paper No.6, said that his delegation had expressed its views on the shortcomings of that document in the Working Group, and had been given to understand that it would be removed from circulation. He had therefore been surprised to hear that it was to be annexed to the Working Group's report. The agreement reached in the Working Group that delegations might submit documents or make comments directly to the Secretariat did not imply liberty to distort or amend variants proposed by other delegations. None of the corrections agreed upon during the informal consultations held by the United States, Spanish and other interested delegations had been reproduced in Conference Room Paper No.6/Rev.1. A comparative table would indeed be useful, but only if it was impartial and objective. Until such time as the matter had been clarified

and a satisfactory second revision of the document produced, Conference Room Paper No.6 and Rev.1 should not be considered as an official document, and all reference to document A/AC.138/SC.II/L.18, of which his delegation was a sponsor, should be deleted from those two documents.

Mr. KOVALEV (Union of Soviet Socialist Republics) said that paragraph 15 of the report mentioned regional arrangements, i.e. item 15 of the list of items, which was not among the questions referred to the Working Group for consideration. It might therefore be preferable not to mention that item in the report.

Mr. MENDOZA (Philippines) requested clarification as to the exact status of conference room documents. His understanding was that such documents were intended to present variants in a readable form, but did not supplant the proposals reproduced in the Sub-Committee's official documents.

Turning to paragraph 15 of the report, he proposed that in the second sentence either the word "final" or the phrase "inasmuch as Governments' official proposals were lodged with Sub-Committee II" should be deleted, in order to avoid any implication that official proposals lodged with the Sub-Committee were final and unalterable.

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that paragraph 17 in the Russian text was incomplete as the last sentence had been omitted.

Mr. RAJAPAKSE (Sri Lanka) said that paragraph 8 should be dropped altogether since it covered the same ground as paragraphs 9 and 10. The last sentence in paragraph 16 expressed a subjective judgment and should be deleted.

Mr. de ARAUJO CASTRO (Brazil), referring to the point made by the Soviet representative, said that although the Working Group of the Whole might not have discussed regional arrangements as such, it had touched upon them in connexion with, for example, sub-item 2.3.2. The Brazilian proposal (A/AC.138/SC.II/L.25) was certainly relevant to regional arrangements in respect of the breadth of areas not facing the open ocean. The question of regional arrangements had also come up in connexion with fisheries in general and the development of fishing industries between neighbouring coastal States.

On the question of the status of conference room papers, some of which contained proposals by a single delegation and others alternate texts in tabular form, he supposed that proposals by delegations would be reproduced in their entirety according to their subject matter. If that were done the objection raised by the Spanish representative would be met.

The addition suggested by the United States representative to paragraph 15 would help to clarify the position. He also supported the Philippine amendment to that paragraph.

Mr. LEGNANI (Uruguay) asked whether the Uruguayan proposal submitted in 1971 concerning regional arrangements for the exploration and exploitation of the sea-bed would be reproduced amongst the proposals put forward at the present session for transmittal to the Conference on the Law of the Sea in 1974.

Mr. NJENGA (Kenya) said that it would have been more logical and orderly to present the various proposals according to their subject matter.

He also drew attention to two mistakes in the English text of Conference Room Paper No.21/Add.1. The phrase "and other geographically disadvantaged States" had been omitted from the first line in article VIII in variant F (page 7). The title given to article XII in the same variant (page 7) should be deleted as none of the other articles carried titles.

Mr. SAUD NASSER AL-SABAH (Kuwait) proposed the deletion of the words "and even, in certain cases, the survival of a State or a people" at the end of paragraph 8 in the Working Group's draft report since he could not recall anyone having discussed questions relating to a State's survival.

Mr. KEDADI (Tunisia), Chairman of the Working Group of the Whole, replying to the points raised during the discussion, said that the suggestions made by the Austrian representative concerning paragraphs 13 and 15 were acceptable.

The Spanish representative had referred to a problem which had caused a real difficulty for the Working Group. A gentleman's agreement had been reached whereby delegations submitting texts of draft articles refrained from referring to other variants and from appending footnotes. It had been pointed out that Conference Room Paper No.6, containing a comparative table of alternative texts on innocent passage in the territorial sea, had not been in conformity with that agreement and the Working Group had concluded that it might be preferable to leave it aside for informal discussion. In the meantime other delegations would be able to submit alternative

texts concerning the right of innocent passage, which could then be assembled by the Secretariat.

The United States representative's suggestions concerning paragraphs 10 and 15 were acceptable. The second sentence in paragraph 17 could be dropped, as suggested by the United States representative, but it was a true statement of fact.

As the Brazilian representative had rightly pointed out, although regional arrangements had not been specifically chosen as a subject for discussion, they had been touched upon in connexion with such matters as the territorial sea, fisheries and the exclusive economic zone. The Working Group had always aimed at being pragmatic and flexible in its discussions, and he hoped that the Soviet representative would not insist on deleting the reference to regional arrangements in paragraph 15.

The word "final" could certainly be deleted in paragraph 15 as proposed by the Philippine representative.

The second sentence of paragraph 17 would be added to the Russian version.

In spite of the objection by the representative of Sri Lanka, he would prefer to retain paragraph 8 because it summarized all the work of the Working Group and indeed of Sub-Committee II itself.

The reference to the survival of a State or a people could be omitted in paragraph 8, as proposed by the representative of Kuwait, but in fact the question had been discussed by several delegations, particularly in connexion with fisheries, which were of great importance to the economic life of certain countries.

He would not insist on retaining the last sentence in paragraph 16, which the representative of Sri Lanka wished to delete, but pointed out that informal consultations had in fact proved very useful and had resulted in the number of variants being reduced. For example, on sub-item 2.1 the 14 variants had first been reduced to 7 and subsequently to 4. Had that procedure not been followed, it would not have been possible to make even the modest progress that had been made.

As indicated in the footnote to page 4, the Secretariat would classify the different variants in the order of the list of subjects.

Mr. PARDO (Malta) said that his delegation also wished to be concerned in the revision of Conference Room Paper No.6/Rev.1, in the course of which certain omissions would have to be made good.

The CHAIRMAN suggested that the representatives of Malta, Spain and the United States of America, in consultation with the Chairman of the Working Group of the Whole, should be requested to prepare a revision of Conference Room Paper No.6/Rev.1.

It was so agreed.

The report of the Working Group of the Whole (A/AC.138/SC.II/L.61), as amended, was adopted.

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (A/AC.138/SC.II/L.58)

Mr. ABDEL-HAMID (Egypt), Rapporteur, introducing the first part of the draft report of the Sub-Committee (A/AC.138/SC.II/L.58), said that the report had been drafted on the assumption that the current session of the Committee would be the last devoted to preparatory work for the Conference on the Law of the Sea. Consequently, chapter I of the draft report contained a short description of the Sub-Committee's previous work. Chapter II concerned the organization of the Sub-Committee's work in 1973 and also contained a list of the documents submitted by delegations in respect of the subjects and issues allocated to the Sub-Committee for consideration.

The first part of the Sub-Committee's draft report, to be considered at the current meeting, comprised paragraphs 1 to 33. Paragraphs 34 et seq should be considered at a later meeting.

The CHAIRMAN invited the Sub-Committee to consider the first part of its draft report paragraph by paragraph.

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Paragraph 4

Mr. PARDO (Malta) suggested that the word "all" should be inserted before "the States" at the end of the first line.

Mr. SULEIMAN (Libya) pointed out that the word "Commissions" in the penultimate line should be in the singular, since UNESCO had only one International Oceanographic Commission.

Mr. ABDEL-HAMID (Egypt), Rapporteur, accepted those amendments.

Paragraph 4, as amended, was adopted.

Paragraphs 5 to 14

Paragraphs 5 to 14 were adopted.

Paragraph 15

Mr. ABDEL HAMID (Egypt), Rapporteur, said that an appropriate change would be made to indicate that Mr. Holder of Liberia had been replaced by another member of the Liberian delegation as Vice-Chairman.

Paragraph 15, subject to that change, was adopted.

Paragraphs 16 to 29

Paragraphs 16 to 29 were adopted.

Paragraph 30

Mr. PARDO (Malta) suggested that the words "ways and means" in the first line should be replaced by "the manner".

It was so agreed.

Paragraph 30, as amended, was adopted.

Paragraphs 31 to 33

Paragraphs 31 to 33 were adopted.

STATEMENTS MADE IN EXERCISE OF THE RIGHT OF REPLY

Mr. MIRCEA (Romania) said that his delegation had often expressed its satisfaction at the cordial working atmosphere in the Sub-Committee and the open-mindedness shown by members in carrying out a particularly difficult and complex task, in which points of view could differ or could even be diametrically opposed. It was now constrained, however, to exercise its right of reply in respect of a statement which had not been in keeping with the atmosphere that should prevail at a meeting of sovereign and equal States. Such an untenable attitude certainly could not help the Sub-Committee to clarify the complex problems before it; to reach acceptable solutions, members should use substantive arguments and should respect the fundamental principles of relations between States and the rules for international conferences arising therefrom.

Mr. MENDOZA (Philippines) said he wished to reply to certain statements made on the subject of archipelagos. In the first place, although there might not be full accord on definitions and on the rights implicit in an archipelago situation, there seemed to be substantial agreement that the peculiarity of the geographic character of archipelagos called for the application of special rules to their surrounding waters.

Secondly, the Maltese representative had observed that the archipelago principles before the Sub-Committee would convert about 20 per cent more of the world's oceans into international waters. That statement proceeded from the erroneous premise that waters of archipelagos were currently regarded as high seas. The Philippines, in particular, had never thus regarded its archipelagic waters, but considered them to be internal waters, although the draft articles under consideration somewhat qualified that view. A bridge had just been completed in the Philippines connecting the islands of Leyte and Samar: it would indeed be anachronistic to claim that the waters under that bridge were high seas or even territorial seas. Accordingly, what his delegation was seeking was explicit recognition of an existing situation brought about by geographical circumstances and the right of every State to maintain and protect the integrity and unity of every component of its territory.

Thirdly, the fear had been expressed that the principle would allow any State consisting of more than one island or any continental State with an oversea island, no matter how distant, to claim the status of an archipelago. Yet that fear could only have some basis if it was assumed that States acted without reason or in utter bad faith; if that view was taken as a starting point, it was doubtful whether any kind of convention would be concluded. The proposed definition might not answer all questions, but the same could be said of many legal texts.

With regard to the United Kingdom draft articles, fixing a maximum length for the baselines which archipelagos might draw, he referred to the decision of the International Court of Justice in the Anglo-Norwegian Fisheries case. The Court had stated that the practice of States in that connexion did not justify the formulation of any general rule of law and that attempts to subject groups of islands or coastal archipelagos to conditions analogous to the limitations concerning bays had not got beyond the stage of proposals. It had suggested that several lines could be envisaged and expressed the view that in such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.

In conclusion, his delegation was grateful to all those who had submitted articles or made comments on archipelagos, since even the statements of those who held different views from the Philippines implied recognition of the de facto and de jure existence of the geographical configurations known as archipelagos which required the application of special rules to preserve their integrity and unanimity.

Mr. GAJARDO (Chile) said that his delegation wished to clarify two points in connexion with its statement at the 75th meeting. In the first place, it had had no intention of implying that the draft submitted by Ecuador, Panama and Peru supported the idea that the territorial sea should not exceed 12 miles; that was manifestly not the case. Secondly, his delegation had at no time stated that the consensus to be reached on the question of straits, with regard to the recognition of the rights of coastal States and of users of the straits, did not require negotiations between the interested parties. On the contrary, it considered such negotiations to be indispensable.

The meeting rose at 6.10 p.m.