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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-SEVENTH MEETING^{*/}

held at the Palais des Nations, Geneva,
on Tuesday, 21 August 1973, at 4.25 p.m.

<u>Chairman:</u>	Mr. GALINDO POHL	El Salvador
<u>Rapporteur:</u>	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 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.

REPORT OF THE CHAIRMAN OF THE WORKING GROUP OF THE WHOLE TO SUB-COMMITTEE II
(A/AC.138/SC.II/L.61/Rev.1) (concluded)

The CHAIRMAN drew attention to the revised text of the report of the Chairman of the Working Group of the Whole, circulated in document A/AC.138/SC.II/L.61/Rev.1.

Mr. KEDADI (Tunisia), Chairman of the Working Group of the Whole, said that in the new version of his report, he had endeavoured to take account of all the constructive suggestions that had been made at the previous meeting and expressed the hope that in its revised form his report would be acceptable to all members of the Sub-Committee.

He reiterated his suggestion at the last meeting that his report should be included in the report of the Sub-Committee, as had been the case for the working groups of Sub-Committees I and III.

Mr. NJENGA (Kenya) wished to congratulate the Chairman of the Working Group of the Whole for having been able to reflect the work of the Group in such a short and concise text. He, too, thought that the report should form an integral part of the Sub-Committee's report.

Mr. OXMAN (United States of America) noted with satisfaction that some of the suggestions made by his delegation for improving paragraphs 10 and 15 had been accepted, at least in part. He regretted, however, that the last sentence of paragraph 17 had not been deleted; the original wording did not seem very appropriate and was liable to be wrongly interpreted.

Mr. KEDADI (Tunisia), Chairman of the Working Group of the Whole, said that, although he had been tempted to delete the last sentence, as the United States delegation had suggested, he had in the end decided to retain it and to leave the matter to the decision of the Sub-Committee. He assured the United States representative that his intention had in no way been to criticize anybody for not having given the Working Group the necessary time to examine all the proposed alternatives. In the first version of his report, he had made reference to the Santiago Conference and to the preparatory negotiations, but the members of the Working Group had considered that that would be going beyond its terms of reference and that it would be better to stick to facts. That was precisely his intention in stating that the Working Group had not had the time to study all the proposed alternatives. If that fact was not mentioned, the Working Group might be open to criticism for having reduced the alternatives to a more reasonable number on only a few items. Perhaps the United States representative would be able to suggest a more satisfactory wording.

Mr. OXMAN (United States of America) suggested, by way of compromise, that the second sentence of paragraph 17 should read as follows: "The Working Group of the Whole has not been able to study all the variants presented to it in the time available."

Mr. KEDADI (Tunisia), Chairman of the Working Group of the Whole, said that he would be happy to accept that change.

The CHAIRMAN invited the members of the Sub-Committee to approve the report of the Chairman of the Working Group of the Whole, subject to the change proposed by the United States representative.

The revised report of the Chairman of the Working Group of the Whole to Sub-Committee II (A/AC.138/SC.II/L.61/Rev.1), as further revised, was adopted.

The CHAIRMAN pointed out that Mr. Kedadi and Mr. Njenga had raised the question of the place of the report of the Chairman of the Working Group of the Whole in the report of the Sub-Committee. There were two possibilities: either the report of the Chairman of the Working Group should be included in the body of its own report, or, as was stated in paragraph 67 of the Sub-Committee's draft report (A/AC.138/SC.II/L.58/Add.1), it should be reproduced in an annex.

Mr. TUNCEL (Turkey) asked whether the Secretariat was planning any other annexes apart from that which would contain the report of the Chairman of the Working Group.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the Secretariat intended to prepare an index of the proposals made to the Sub-Committee, as an annex to the report.

Mr. RAJAPAKASE (Sri Lanka) agreed with the representative of Kenya that it would be preferable to follow the method used by Sub-Committees I and III and to include the report of the chairman of the Working Group of the Whole in the body of the Sub-Committee's report.

The CHAIRMAN suggested that the question of the place of the report of the Chairman of the Working Group of the Whole should be settled when the Sub-Committee considered paragraph 67 of its draft report (A/AC.138/SC.II/L.58/Add.1).

It was so agreed.

ADOPTION OF THE REPORT OF SUB-COMMITTEE II (continued)

Second Part (A/AC.138/SC.II/L.58/Add.1)

The CHAIRMAN invited members of the Sub-Committee to consider, paragraph by paragraph, the second part of its draft report entitled "Consideration of questions referred to the Sub-Committee under the terms of agreement reached on the organization of work read by the Chairman at the 45th meeting of the Committee on 12 March 1971".

Paragraph 34

Paragraph 34 was adopted.

Paragraph 35

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that in the second line of the paragraph, after the words "At the same time" the following words should be added: "in addition to the documents submitted in 1971 and 1972,".

Mr. YTURRIAGA (Spain) pointed out that there was no mention in the draft report that the proposals submitted during the session would be annexed to the report.

Mr. ABDEL-HAMID (Egypt), Rapporteur, assured the members of the Sub-Committee that all the proposals made during the session would be annexed to the report, in accordance with the practice followed at previous sessions.

Paragraph 35, as revised, was adopted.

Paragraph 36

Paragraph 36 was adopted.

Paragraph 37

Mr. KOVALEV (Union of Soviet Socialist Republics) noted that the last sentence of the paragraph explained the view that the determination of the breadth of the territorial sea should be subject to other questions, but did not refer to the opposite position held by, among others, his own delegation. Accordingly, he requested the addition, at the end of the paragraph, of a sentence that would read as follows: "It was also held that the question of uniform breadth of the territorial sea should not be connected with the recognition of zones or other kinds of coastal State jurisdiction in the adjacent sea area".

Mr. PARDO (Malta) proposed a two-fold amendment to paragraph 37. The second sentence would be redrafted as follows: "It was stated that among the defects of the Geneva Convention on the Territorial Sea and the Contiguous Zone 1958 were its failure to define the breadth for the territorial sea and the vagueness of its provisions with regard to the baselines for measuring the breadth of the territorial sea". He also proposed to add at the end of the text proposed by the Soviet delegation a new sentence to read: "It was also stated that the determination of the breadth of the territorial sea was the concern of not only the coastal State or States but also involved the interests of the entire international community".

Mr. NJENGA (Kenya) proposed that in the last sentence, the word "contiguous" should be replaced by the word "adjacent" and that the words "in such a zone" should be replaced by the words "and its jurisdiction over such a zone".

Mr. WEHRY (Netherlands) proposed the insertion in the first sentence after the words "fishery zone or rights" the words "intermediate zone".

Mr. RAMIREZ (Ecuador) proposed the insertion, after the first sentence, of a new sentence that would read: "It was said that the concept of sovereignty and jurisdiction of the coastal State over a zone of the sea adjacent to its coast effectively guaranteed its rights and interests". He emphasized that the texts that his delegation had submitted, itself or jointly with other delegations, had always been based on the principle of State sovereignty over a zone of the sea adjacent to its coast of a breadth of 200 miles.

Mr. KOVALEW (Union of Soviet Socialist Republics) expressed the view that such a basic defect as the absence of a definition of the breadth of the territorial sea in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone ought to be mentioned separately, and he suggested that the first Maltese amendment should be in the form of two separate sentences.

Mr. PARDO (Malta) agreed that the second sentence of the paragraph could be left unchanged but suggested that immediately after it a sentence should be inserted that would read: "The view was also expressed that another defect of the 1958 Convention of Geneva was the vagueness of its provisions with regard to the baselines for measuring the breadth of the territorial sea".

Mr. ARIAS-SCHREIBER (Peru) supported the Ecuadorian proposal and endorsed the principle of a territorial sea of a breadth of 200 miles.

Mr. OXMAN (United States of America) commented that the amendments that were being proposed reintroduced questions which the Rapporteur had taken care not to touch upon. In order to ensure that the report also reflected the United States position, he requested the inclusion of the following sentence: "It was also observed that there was no possibility for agreement on a broad territorial sea, and limits under consideration would necessitate satisfactory agreement regarding straits used for international navigation".

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) maintained that, in accordance with generally accepted practice, the breadth of the territorial sea could not exceed 12 miles.

Mr. RAMIREZ (Ecuador) said that no limit was mentioned in his delegation's amendment. All he asked was that the summary record of the meeting should state that the documents submitted by his country were based on the principle of "extended" sovereignty and jurisdiction of the coastal State.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that he was prepared to accept the amendments proposed by Kenya, the Netherlands, Malta and the Soviet Union. The question raised by Ecuador was already dealt with in another part of the report, where it was recognized that different breadths existed for the territorial sea.

Mr. RAMIREZ (Ecuador) said that his delegation was fully conscious of the high quality of the report as a whole. Nevertheless, it was clear from the documents submitted to Sub-Committee II that some delegations had stressed the concept of extended sovereignty and jurisdiction, which did not appear in paragraphs 37 et seq. of the report. That was why his delegation had proposed the inclusion of an additional sentence in paragraph 37.

Mr. ARIAS-SCHREIBER (Peru) said that he fully endorsed the statements made by the representative of Ecuador and suggested that the drafting problem could best be solved by direct discussion with the Rapporteur.

Mr. ABDEL-HAMID (Egypt), Rapporteur, expressed his willingness to collaborate with the delegations of Peru and Ecuador.

Mr. OXMAN (United States of America) maintained his amendment and requested consultation with the Rapporteur on the subject.

Mr. YTURRIAGA (Spain) said that his delegation believed that the fixing of a 12-mile limit for the territorial sea was accepted by international law.

The CHAIRMAN, summarizing the discussion, said that the amendments to paragraph 37 of the report were acceptable to the Rapporteur, with the exception of the amendment submitted by Ecuador and supported by Peru and the amendment submitted by the United States, both of which would be the subject of informal consultations.

Paragraph 38

Mr. D'ANDREA (Italy) said that the median line question dealt with in paragraph 38 was another difficult subject. It had been approached by way of semi-closed seas and the coasts of States that were adjacent or opposite to each other. As it stood, the paragraph appeared to imply that the median line principle was an exception, which was not the case. The question could be presented in a more balanced way if the word "circumstances" was replaced by "conditions" in the last line.

Mr. YTURRIAGA (Spain) observed that the median line principle was a good solution for countries opposite to each other but not for adjacent countries. The end of the paragraph should therefore be amended to read: "and the conditions under which the principle of the median line or of equidistance would be applicable".

Mr. ABDEL-HAMID (Egypt), Rapporteur, accepted the amendments proposed by the Italian and Spanish delegations.

Mr. TUNCEL (Turkey) noted that the principle of negotiation referred to in the 1958 Geneva Convention was not mentioned in the paragraph under consideration. He suggested that reference should be made to that principle, since the median line principle was applicable only in the absence of agreement.

Mr. JACOVIDES (Cyprus) said that his delegation was the author of the original proposal on the question. He requested that no changes should be made in the paragraph that were not accepted by the Rapporteur.

Mr. AGUILAR (Venezuela) said that the paragraph dealt with a delicate issue which had given rise to animated debate in the Working Group of the Whole. His delegation feared that the debate might be resumed if the present wording of the text was changed, and shared the opinion of the Cypriot delegation.

Mr. TUNCEL (Turkey) said it was natural that those who subscribed to the median line principle should wish the present text to be retained. He was willing not to re-open the discussion but it would be only logical for the supporters of the principle to accept the deletion of the last clause of the paragraph if they wished to avoid mention of other opinions in the report.

Mr. ZULETA (Colombia) supported the suggestion by the Cypriot and Venezuelan delegations that the paragraph should be left unchanged.

Replying to a question by Mr. AGUILAR (Venezuela), Mr. JACOVIDES (Cyprus) said that in the view of his delegation, it would be preferable to stick to the text accepted by the Rapporteur. However, if other delegations insisted on the inclusion of controversial opinions in the report, his delegation might request that the opposing view should also be recorded.

The CHAIRMAN suggested that further consultations should be held on the matter.

It was so agreed.

Paragraph 39

Mr. PARDO (Malta) suggested that the following sentence should be added at the end of the paragraph: "In this connexion, the view was expressed that there should be established an appropriate and binding dispute settlement machinery".

Mr. OXMAN (United States of America) suggested the insertion, at whatever place seemed appropriate to the Rapporteur, of the following sentence; "It was also stated that there was no need to revise the concept of innocent passage as it applied in territorial sea areas other than straits used for international navigation."

Mr. TRESSENT (Norway) suggested that the following sentence should be inserted after the third sentence: "Other statements expressed reservations with regard to the compatibility of general regulatory powers for coastal States with the principle of innocent passage".

Mr. LAPOINTE (Canada) suggested the insertion of the following phrase at the end of the third sentence, before the sentence just proposed by the Norwegian representative: "as well as regulations for the protection of the marine environment and the control of marine pollution".

Mr. McLOUGHLIN (Fiji) considered that the words "certain types of ships", at the end of the third sentence should be replaced by the words "ships having certain characteristics" or should be followed by the words "including ships with special characteristics".

Mr. WEHRY (Netherlands) asked why the reference to the concept of overflight, which had appeared in the first sentence in the original draft, had been omitted from the text before the Sub-Committee.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said it had been feared that the concept might cause difficulty since it was governed by civil aviation regulations and might therefore be considered as not coming within the competence of the Sub-Committee.

Mr. WEHRY (Netherlands) observed that paragraph 42, concerning the status of straits, contained a reference to aircraft and therefore touched on the question of overflight.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that he accepted the amendments suggested by the representatives of Malta, the United States, Canada and Fiji. He was willing to introduce the idea expressed by the Norwegian representative, but would prefer not to use the word "reservations".

Mr. TRESSENT (Norway) stressed that the word "reservations" reflected the position of his delegation, which had expounded its views on the matter at length at the previous session.

Mr. ROBINSON (Jamaica) thought that the following wording might be acceptable to the Norwegian delegation: "The view was expressed that such coastal regulatory powers were not compatible with the principle of innocent passage".

Mr. TRESSENT (Norway) said that he could accept that wording.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the text proposed by the representative of Jamaica was acceptable to him.

Paragraph 39, as revised, was adopted.

Paragraphs 40 to 45

Mr. ABDEL-HAMID (Egypt), Rapporteur, urged delegations to refrain from suggesting amendments which might upset the balance achieved on the very delicate question of straits after long discussion.

Mr. OXMAN (United States of America) proposed that the order of the two sentences in paragraph 42 should be inverted, and that the new first sentence should be amended to read: "It was stated that in straits used for international navigation all ships and aircraft should enjoy the same freedom of navigation and overflight for the purpose of transit as they have in the high seas".

Mr. LAPOINTE (Canada) suggested that a sentence along the following lines should be inserted: "The only problem under discussion with reference to the list of subjects and issues was that of straits used for international navigation".

Mr. PARDO (Malta) requested that the following new paragraph should be inserted between paragraphs 41 and 42: "The view was also expressed that there should be established a régime of navigation through the territorial sea and straits which would involve passage under treaty-defined conditions supplemented by a binding dispute settlement machinery forming part of international institutions for the oceans."

Mr. KOVALEV (Union of Soviet Socialist Republics) wished the following sentence to be inserted in paragraph 42: "It was also stated that the régime of free passage should apply to straits connecting two parts of the high seas and used for international navigation". He also wished the following sentence to be inserted after the first sentence of paragraph 44: "It was also stated that regulation of passage through straits used for international navigation should be established at the international level and that there was no need for prior notice and authorization".

Mr. D'ANDREA (Italy), referring to paragraph 42, said that there were two current theories on the geographical definition of an international strait, namely a strait which connected two parts of the high seas and, secondly, a strait which connected a part of the high seas with the territorial sea of a foreign State. If it was decided to mention one definition in paragraph 42, reference should also be made to the other. Alternatively, the question of the

geographical definition of international straits could be left aside by excluding any reference to either definition, and retaining in paragraph 42 only the concept of straits used for international navigation.

Mr. PRIETO (Chile) proposed the insertion, wherever the Rapporteur deemed appropriate, of the following sentence: "It was stated that the area to which the list of subjects and issues referred was that of straits used for international navigation as defined by the International Court of Justice in the Straits of Corfu case and by the Geneva Convention on the Territorial Sea (article 16.4)."

Mr. KOVALEV (Union of Soviet Socialist Republics) said that in the light of the comments by the representative of Italy, he was prepared to withdraw his proposed amendment to paragraph 42. However, he would maintain that amendment, which concerned straits connecting two parts of the high seas, if the Chilean proposal was accepted: the Judgment of the International Court of Justice and the Geneva Convention referred to in that proposal related to straits connecting a part of the high seas with the territorial sea of a foreign State.

Mr. CUENCA (Spain) said he could accept the amendment proposed by the United States representative.

Delegations which favoured the introduction of some reference to the definition of straits might meet for the purpose of producing a text, in which his delegation reserved the right to express its opinion.

The amendment proposed by the Soviet delegation to paragraph 44 injected an idea which upset the harmony of the paragraphs dealing with straits, and his delegation reserved the right to submit its own amendment in that connexion.

Mr. DUDGEON (United Kingdom) said that the only point to which his delegation attached importance was the reference in paragraph 42 to the concept of overflight.

In his view, the amendments proposed by Canada and Chile were superfluous since paragraph 29 already stated that the Sub-Committee had to deal only with straits used for international navigation.

Mr. ZEGERS (Chile) considered that the amendments proposed to paragraph 42 by the Canadian and Chilean delegations were in line with item 4 of the list of subjects and issues allocated to the Sub-Committee, reflected the concern of a number of delegations, and referred to a recognized concept in customary international law. As a compromise, he suggested that the Canadian amendment should be retained with the addition of the following words at the end: "as they were defined by customary international law".

Mr. KOVALEV (Union of Soviet Socialist Republics) said he was prepared to accept the suggestion by the representative of Chile.

The CHAIRMAN requested the Rapporteur and interested delegations to consult and try to produce a text for the paragraphs on which agreement had not yet been reached. He strongly hoped that the paragraphs regarding straits could be adopted together.

The meeting rose at 7.50 p.m.