

UNITED NATIONS

GENERAL
ASSEMBLY



PROVISIONAL^{*}



Distr.
GENERAL

A/AC.138/SC.II/SR.79

31 August 1973

ENGLISH

Original: FRENCH

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-NINTH MEETING^{*}

held at the Palais des Nations, Geneva,
on Thursday, 23 August 1973, at 11.20 a.m.

Chairman:

Mr. YANKOV

Bulgaria

Rapporteur:

Mr. ABDEL-HAMID

Egypt

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Adoption of the report of the Sub-Committee (continued)

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 IX 2332, United Nations, New York, by 20 September 1973.

^{*}/ This provisional summary record, together with the corrections to be issued in consolidated form after the session, will constitute the final record of the meeting.

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE (A/AC.138/SC.II/L.58 and Add.1) (continued)

Paragraph 60 (continued)

The CHAIRMAN suggested that, in view of the amendments to paragraph 60 proposed at the previous meeting, the procedure to be followed by the Sub-Committee should be: first, to adopt paragraph 60 itself, with any drafting changes, and then to decide on a new paragraph 60 A combining the proposals by Fiji, Malta and the United Kingdom, and a new paragraph 60 B combining the proposals by Spain, Turkey and the Soviet Union.

Mr. ZEGERS (Chile) agreed to the procedure suggested by the Chairman. However, in connexion with the wording proposed by the representative of Spain at the previous meeting, he wished to draw attention to the case of coastal archipelagos, which were covered by the Convention on the Territorial Sea. The International Court of Justice had also dealt with the matter in connexion with the Anglo-Norwegian fisheries case. His country had not commented on the Spanish text up to now so as to speed up consideration of the report, but it would like to propose an additional wording with regard to such archipelagos.

The CHAIRMAN said that he had simply suggested a framework within which various formulations for paragraphs 60, 60 A and 60 B might be submitted and discussed. Since there was no objection to that procedure, he invited the members of the Sub-Committee to consider first paragraph 60, in document A/AC.138/SC.II/L.58/Add.1, with an amendment by Fiji to change the end of the first sentence to read: "... or not a group of islands constituted an archipelago".

Mr. OXMAN (United States of America) reminded the Sub-Committee that he had previously pointed out that the same reference to the concept of an archipelago was contained in the first sentence of paragraph 60 and in the sentence proposed at the previous meeting by the Philippine delegation, a sentence which would probably figure in what was to be paragraph 60 A. In reply to that objection, the representative of the Philippines had said that the first sentence of paragraph 60 was neutral. His own delegation could agree if the sentence were to read: "... reference was made to the question of the special position of archipelagic States" instead of "... reference was made to the special position of archipelagic States".

Mr. MANANSALA (Philippines) said that, in a spirit of compromise, he would agree to the United States amendment.

Mr. N/ND/AN (Fiji) said that his delegation had requested the deletion of the last sentence of paragraph 60. However, the USSR representative wished to retain that sentence and his country could agree if the words "archipelagic States" were replaced by the words "archipelagic waters".

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that, in a spirit of compromise, he would agree to the change requested by the representative of Fiji in the last sentence of the paragraph.

The CHAIRMAN suggested that the Sub-Committee should adopt paragraph 60 as amended by Fiji and the United States.

Paragraph 60, as amended, was adopted.

Mr. ABDEL-HAMID (Egypt), Rapporteur, read out new paragraph 60 A, which consisted of three sentences, the first proposed by the United Kingdom, the second by Malta, and the third by the Philippines, reading as follows: "It was also stated that the concept of the archipelagic State was not accepted under existing international law and that if the concept were to be included in a new Convention on the law of the sea a precise definition would be needed as well as safeguards for international navigation and a satisfactory procedure for the settlement of disputes. In this connexion, it was also stated that the interests of archipelagic States would be fully covered by the concept of exclusive economic zone or by that of national ocean space. The view, on the other hand, was also expressed that the special status of the waters of an archipelago is an existing and accepted concept now seeking recognition in a positive and explicit manner as indispensable to the preservation of the security, integrity and unity of the archipelago".

Mr. PARDO (Malta) said that, when his delegation had proposed the insertion of a sentence, it had not expected it to be followed by a further text. It would now like to strengthen the wording it had proposed, so as to read: "In this connexion, it was also stated that the concept of archipelagic waters had grave implications and was unnecessary in that the interests of archipelagic States could be fully covered by the concept of exclusive economic zone or by that of national ocean space".

The CHAIRMAN invited the Sub-Committee to adopt paragraph 60 A, as read out by the Rapporteur, with the amendment requested by the representative of Malta.

Paragraph 60 A, as amended, was adopted.

Mr. ABDEL-HAMID (Egypt), Rapporteur, read out the text of paragraph 60 B, which consisted of two sentences, the first proposed by Spain and the second by the USSR, reading as follows: "It was stated that the special régime for archipelagic States should equally be applied to archipelagos which were an integral part of the State. On the other hand, it was noted that such a régime should not be extended to continental archipelagos of coastal States".

Mr. YTURRIAGA (Spain) said that, after submitting its proposal the day before, his country had agreed to certain changes. It now wished to submit a new text for the whole of the paragraph, one which had been shown to the USSR and Turkish delegations, which had accepted it in principle. The text was to read: "It was stated that some of the rules of the special régime of archipelagic States may be equally applied to the archipelagos which form integral parts of a State. On the other hand, it was noted that such a régime must not be extended to archipelagos which are not archipelagic States".

Mr. TUNCEL (Turkey) said he wished to have it placed on record that his delegation had not participated in the drafting of the compromise text read out by the representative of Spain. However, it had seen the text and had stated that, in order not to delay matters, it would not press the objection it had raised at the previous meeting. His country would have preferred to have no reference to islands not forming part of archipelagic States. There had been no debate on the subject in the Sub-Committee, and his country had not stated any position. It was opposed to a change in the present régime for islands with regard to the baselines applicable. In its view, the concept of an archipelagic State should not apply to islands, for it would mean departing from the definition of archipelagic States.

The CHAIRMAN thanked the Turkish delegation for its spirit of compromise.

Mr. AYALA-LASSO (Ecuador) pointed out that, at the end of the previous meeting, his delegation had made a proposal which had not been taken into account. However, the formulation proposed by Spain was now satisfactory to his country and, for that reason, it would not press its proposal. He wished to emphasize nevertheless that the rules mentioned in the Spanish text included the rules applicable to measuring of baselines both for archipelagic States and for archipelagos forming part of a State.

Mr. ZEGERS (Chile) said that the wording proposed by the Spanish delegation would be acceptable provided that the following words were added at the end of the second sentence: "whose régime is clearly established under current international law". That would indicate that there were legal rules in existence which it was proposed to amend.

Mr. LAPOINTE (Canada) thought that the Chilean proposal did not perhaps correspond to the views of all delegations. However, if there were no serious objections to it, it could be adopted.

Mr. OXMAN (United States of America) asked what was the antecedent of the pronoun "whose" and whether the Chilean representative meant that the régime relating to baselines for coastal areas was established in international law.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said that his delegation, together with the Spanish delegation, had produced a carefully worded text which reflected in a balanced manner the discussion that had taken place in the Sub-Committee and had not given rise to serious objections. The Chilean proposal destroyed the balance of that text, and he therefore asked the Chilean representative whether he would be satisfied if his opinion was noted in the record of the meeting.

Mr. ZEGERS (Chile) said that he wished his proposal to appear in the report because it represented an opinion expressed by his delegation during the Sub-Committee's discussions. He would have no objection to his proposal being included as a separate paragraph, or as a separate sentence or sentences in paragraph 60.

Mr. PARDO (Malta) thought that the purpose of the Chilean proposal was to indicate that the régime relating to archipelagos fringing coasts had already been established in the Geneva Convention on the Territorial Sea and the Contiguous Zone and had previously been the subject of a decision by the International Court of Justice in the Anglo-Norwegian fisheries case. He suggested that it might be advisable to use the wording of the relevant article of the Convention.

The CHAIRMAN suggested that the Chilean proposal should be spelt out in a separate paragraph of the report, i.e. paragraph 60 C, and that the wording should be based on the text of the Convention on the Territorial Sea and the Contiguous Zone.

Mr. OXMAN (United States of America) requested that, before including a new paragraph in the report, the Rapporteur should read out the text for consideration by the Sub-Committee.

The CHAIRMAN invited the representative of Chile to submit a written text to the Rapporteur and said that the Sub-Committee would return to paragraph 60 C at a later stage. He suggested that the Sub-Committee should adopt paragraph 60 B, as proposed by the Spanish delegation.

Paragraph 60 B, as proposed by the Spanish delegation, was adopted.

Paragraph 61

Mr. NJENGA (Kenya) proposed that the second sentence of the paragraph should be deleted, since it did not directly concern the rights of disadvantaged States, the question dealt with in paragraph 61. His delegation also wished to propose a number of amendments to the paragraph as a whole, which would read as follows: "Reference was made to the right or privilege of nationals of disadvantaged States to participate in the exploitation of living resources of the sea within the exclusive zone or patrimonial sea on the basis of equality with the nationals of the coastal States, under such modalities as may be worked out between the coastal States and the disadvantaged States concerned. Reference was also made to the rights of disadvantaged States to the exploitation of the natural resources, living and non-living, within the exclusive economic zone or the patrimonial sea".

The next (fourth) sentence would not be changed but the words "under appropriate bilateral, regional or international arrangements" would be added after the words "coastal States". The last sentence would remain unchanged.

Mr. CHAO HICK TIN (Singapore) said that paragraph 61 was supposed to give the opinion of the disadvantaged countries, of which Singapore was one, and he agreed with the Kenyan representative that the second sentence should be deleted. On the other hand, his delegation considered that the rest of the paragraph should be kept as it was. The third sentence of paragraph 61 recorded the opinion of the delegations of Singapore and other disadvantaged countries, as expressed in various draft articles submitted to the Sub-Committee (A/AC.138/SC.II/L.39, L.40, L.55).

Mr. AGUILAR (Venezuela) said that the text proposed by the Kenyan representative corresponded to what had been said during the debate and to the proposals submitted, but it should be made quite clear that the paragraph concerned developing States which were at the same time geographically disadvantaged; unless that was done, the word "disadvantaged" alone might give rise to a variety of interpretations. The text proposed by the Kenyan representative should therefore refer to "developing geographically disadvantaged States".

Mr. ROBINSON (Jamaica) agreed with the representative of Venezuela.

With regard to the second sentence, which the Kenyan representative had proposed should be deleted, his delegation wished to know what were the "other forms of economic jurisdiction which the coastal State would exercise".

With regard to the third sentence, he considered that it did not quite express the position of the sponsors of document A/AC.138/SC.II/L.55, which stated that "geographically disadvantaged coastal States" meant "developing States". Instead of referring to neighbouring States, moreover, it would be preferable to adopt a regional approach.

He proposed that the following text should be inserted after the present third sentence: "Reference was made to the rights of developing geographically disadvantaged coastal States to exploit the living resources of the maritime zones in a region or sub-region. The view was expressed that such rights should be enshrined in the general multilateral treaty and that the guarantee of those rights was intimately linked with the acceptance of limits of such zones". The second sentence expressed the opinion of his delegation, namely, that the rights of disadvantaged States should be enshrined in the treaty, whereas the modalities regulating those rights could be the subject of arrangements. His delegation would be willing to consult the Kenyan delegation with a view to producing a joint text.

The CHAIRMAN invited the delegations of Singapore and Venezuela to work out a text in conjunction with the delegations of Jamaica and Kenya and the Rapporteur.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the second sentence of paragraph 61 referred to forms of jurisdiction other than those which were exercised in the exclusive economic zone and the patrimonial sea, such as preferential rights or ocean space jurisdiction.

Mr. CISSE (Senegal) said that reference should be made, at the end of the second sentence to the forms of jurisdiction indicated by the Rapporteur. In addition, he agreed with the representative of Venezuela that paragraph 61 concerned developing States. With regard to the proposal by the delegation of Singapore, he noted that the wording of the first sentence was less favourable to the developing countries than that of the Kenyan proposal, which in fact reflected more faithfully what had been said concerning the treatment to be given to disadvantaged States. His delegation therefore supported the wording proposed by Kenya.

Mr. MASSINI EZCURRA (Argentina) noted that paragraph 61 did not mention the question of relations between land-locked States and coastal States, and did not specify how the rights and obligations of land-locked and coastal States were to be established. He proposed that the following sentence should be added at the end of the paragraph: "It was also noted that the régime to be established for the benefit of neighbouring land-locked countries should be defined by means of bilateral or sub-regional agreements, as appropriate".

Mr. WEHRY (Netherlands), Mr. LEIFER (Austria) and Mr. MHLANGA (Zambia) expressed their intention of participating in the work of the small drafting group which was to meet with the Rapporteur in order to produce a new text for paragraph 61.

Mr. KALONII TSHIKALA (Zaire) said he wished to make his delegation's position quite clear: it was the modalities regulating the recognized rights of geographically disadvantaged and land-locked States, and not the rights themselves, that would be subject of bilateral or multilateral arrangements.

The CHAIRMAN noted that the delegations concerned would meet with the Rapporteur to draft paragraph 61, and that another group of delegations would meet to draft the new paragraph 60 C. He pointed out that the Sub-Committee would also have to return to paragraph 51.

The meeting rose at 1 p.m.