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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 EIGHTIETH MEETING*/

held at the Palais des Nations, Geneva,
on Thursday, 23 August 1973, at 5.40 p.m.

<u>Chairman:</u>	Mr. GALINDO POHL	El Salvador
<u>Rapporteur:</u>	Mr. ABDEL-HAMID	Egypt

CONTENTS

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 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.

GE.73-8533

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

Paragraph 51

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that, following informal consultations, a compromise wording had been agreed on for paragraph 51. The original text would remain, with the addition of the word "geomorphological" after the word "geological".

Paragraph 51, as revised, was adopted.

New paragraphs to be inserted between paragraphs 55 and 56 (A/AC.138/SC.II/L.58/Add.1)

Mr. AGUILAR (Venezuela) said that the delegations taking part in the informal consultations had agreed, as part of the compromise reached on paragraph 51, on the text of four new paragraphs to be inserted between paragraphs 55 and 56. They would read as follows:

"Statements and draft articles on the patrimonial sea or exclusive economic zone referred to 12 and 200 miles respectively in connexion with the maximum limits of the territorial sea and patrimonial sea or economic zone.

"Maximum limits proposed regarding the territorial sea, a zone of national sovereignty and jurisdiction, exclusive economic zone or patrimonial sea, preferential zone beyond the territorial sea, economic sea-bed area, national ocean space and fishery zone ranged from 12 to 200 nautical miles.

"Statements were also made regarding coastal State jurisdiction over sea-bed resources or fisheries based on geological, geomorphological, economic or biological criteria, either alone or in combination with distance limits.

"On the other hand, it was stated that the extension of exclusive rights of the coastal States over the water column and its resources beyond 12 nautical miles was unjustified."

The four new paragraphs were adopted.

Paragraph 60 C

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that the delegations of the United States, Canada, Norway and Spain had agreed on the text of one of the paragraphs to be inserted after paragraph 60, referred to informally as paragraph 60 C. It read: "In this connexion, it was stated that the régime applicable to the waters contained within a fringe of islands along the coast was clearly established under international law."

Mr. TUNCEL (Turkey) said he wished it to be recorded that his delegation's understanding of that text was that it referred to islands belonging to the coastal State.

Paragraph 60C was adopted.

Paragraph 61

Mr. VIS (Secretariat) said that paragraph 61 should be replaced by paragraphs 61 and 61A, to read as follows:

"61. Reference was made to the rights of landlocked and other disadvantaged States, developing or developed, to the exploration and exploitation of the natural resources, living and non-living, of sea and sea-bed areas comprised by an exclusive economic zone or a patrimonial sea, or other forms of resource jurisdiction which the coastal State would exercise. Statements were made regarding the rights of landlocked and other disadvantaged States neighbouring such areas to exploit the living resources therein on an equal and non-discriminatory basis and to their responsibilities for conservation and management. Reference was made to the rights of developing geographically disadvantaged coastal States to exploit the living resources of the maritime zone 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. Reference was also made to free access by such States to the areas in question and, as regards landlocked States, to facilities for transport and communications and non-discriminatory treatment in the ports of the respective coastal State under appropriate bilateral, regional or other arrangements specified in the new convention. Reference was further made to the need for adequate procedures for the settlement of disputes.

"61A. Reference was made to the rights or privileges of nationals of neighbouring developing disadvantaged States to participate in the exploitation of the living resources of the sea within their exclusive economic zone or patrimonial sea on a basis of equality with the nationals of the coastal State with such modalities to be worked out between the coastal States and the disadvantaged States concerned. The view was expressed that instead of treatment on an equal basis, preferential treatment should be accorded to nationals of developing landlocked or other disadvantaged States vis-à-vis third States."

The new paragraphs 61 and 61A were adopted.

Paragraph 62

Mr. BALLAH (Trinidad and Tobago) said that the view expressed by his delegation on the question of islands had not been reflected in paragraph 62. He therefore proposed the insertion after the third sentence, of a sentence that would read:

"It was also stated that no distinction whatsoever should be made between islands, irrespective of their size and population, and continental land masses; and that the criteria relating to the delimitation of the territorial sea, the continental shelf, the exclusive economic zone or patrimonial sea and the matrimonial sea must apply to islands in the same way as they applied to continental land masses."

In the fourth sentence, he proposed the insertion of the words "other than those of island States and archipelagic States" after the word "islands".

Mr. AKYAMAC (Turkey) said that his delegation had no objection to the amendment proposed by the representative of Trinidad and Tobago.

His delegation wished to propose some amendments to the second part of paragraph 62, which reflected the school of thought to which his delegation subscribed. In the fourth sentence, the words "certain types of" should be inserted before the word "islands" and the word "geographical" should be replaced by the word "geomorphological". A new sentence should be added at the end of the paragraph that would read:

"It was further stated that the existence of special circumstances and the consideration to be given to such circumstances did not prejudice the principle of the indivisibility of sovereignty of States but related merely to the determination of the maritime spaces of the islands concerned".

Mr. ZOTIADES (Greece) said that paragraph 62 as it stood would have been quite acceptable to his delegation since it contained the necessary balance. His delegation had no objection to the addition proposed by the representative of Trinidad and Tobago but, if it were accepted, it would wish to have the first half of the paragraph expanded to reflect its own view. He therefore proposed, first, that the word "criteria", in the first, second and fourth lines of the paragraph, should be replaced by the word "principles"; and, secondly, that the end of the third sentence of the paragraph, after the word "made", should be replaced by the words "to the principles of the median line of equidistance as well as to the principles of the sovereign equality of States, of the indivisibility of territorial sovereignty and its implications under international law and the Charter of the United Nations".

Mr. MIRCEA (Romania) said that he had asked the Rapporteur to include, at the end of paragraph 62, the sentence: "Mention was also made of the problems raised by the existence of islands, and particularly islets, in maritime spaces to be delimited". If the Rapporteur was unable to include that sentence, he would like to see added, at the end of the paragraph, the following sentence: "It was argued in this connexion that to treat islands, and particularly islets, on an equal footing with the actual coasts of States would have a distorting effect on the delimitation of maritime spaces".

Mr. RAKOTOSIHANARA (Madagascar) supported the proposal of the representative of Trinidad and Tobago.

As to the second proposal of the Greek representative, however, his delegation would prefer to see no reference in paragraph 62 to the principles of the sovereign equality and indivisibility of States since, in that context, such a reference might be interpreted to mean that a State could declare itself to be both continental and insular. Those principles had a universally accepted neutral connotation and should not have conferred upon them an interpretation which might have regrettable results in the future.

Mr. ROUX (France) said that his delegation would have accepted paragraph 62 as originally drafted, but if amendments expressing other views were to be incorporated, his delegation would also like its own views to be included. He therefore proposed adding, at the beginning of the last sentence of the paragraph, the words: "Reference was also made to individual national interests, which led to the idea of distinguishing between islands and continental land masses, and it was stated that such interests could be satisfied without infringing in any way the fundamental principles of the equality of States and the indivisibility of their sovereignty."

Mr. JACOVIDES (Cyprus) said that his delegation would have liked to see included, before the final sentence of paragraph 62, the following sentence: "It was also stated that, *mutatis mutandis*, islands are in the same position, in so far as rights and obligations are concerned under international law, as continental territories". He would not press for the amendment, however, in the light of the proposal made by the representative of Trinidad and Tobago, which he was prepared to accept.

As regards the second Greek proposal, he suggested that its style might be improved by adding, before "the principles of the median line" the words "the applicability of".

He supported the proposal of Trinidad and Tobago to add "other than those of island States and archipelagic States", since that would safeguard their interests.

He had no objection to the Turkish suggestion and supported the inclusion of the French amendment.

The CHAIRMAN asked the Greek representative if he could accept the sub-amendment proposed by the preceding speaker.

Mr. ZOTIADES (Greece) said that, while he preferred his own text, in a spirit of compromise he could do so.

Mr. ABDEL-HAMID (Egypt) Rapporteur, said that the amendments proposed by the representatives of Trinidad and Tobago, Turkey and Greece could be incorporated in paragraph 62. He suggested that the French and Romanian amendments should form separate paragraphs.

Mr. ANDERSON (United Kingdom) said that he was prepared to accept the proposals, subject to some minor drafting changes.

Mr. AKYAMAC (Turkey) suggested that, as paragraph 62 had now become so long, a new paragraph should be started with the present fourth sentence beginning with the words "It was also stated ...".

Paragraph 62, as amended by the representatives of Trinidad and Tobago, Turkey, Greece, Romania and France, was adopted.

Paragraph 63

Mr. GHARBI (Morocco) said that the brevity of the reference to historic rights appeared to give it the status of an almost unanimous recommendation of the Sub-Committee, particularly when it was read in the light of the next paragraph which began with the words "No consensus was reached". He did not believe it was the Rapporteur's intention to imply that there had actually been a consensus on historic rights and he therefore suggested that a truer perspective would be given by adding the following sentence:

"It was pointed out however, that while the criterion of continuity and uninterrupted acceptance was essential for the definition of historic rights, no State could claim historic rights in the contiguous waters of another State on the basis, in particular, of a former or recent colonial presence or occupation by force".

Mr. MENDOZA (Philippines) said that he believed that paragraph 63 of the draft report was intended to reflect a statement made by his delegation. He had no objection to the proposed Moroccan amendment if it was intended to reflect a statement which the Moroccan representative had made.

Mr. NJENGA (Kenya) said that he had no objection to paragraph 63 as it stood but would like to insert after the words "adjacent to its coasts", the words

"or in its historic bay". While he had not made an actual statement on the subject, that view was reflected in a document submitted by his delegation and he therefore considered it tantamount to having been stated. His delegation attached importance to the point and, if necessary, would restate it at the present meeting.

Mr. GHARBI (Morocco), in reply to the comment made by the Philippines representative, said that his delegation had made a statement on a subject connected with paragraph 63, but had not made a specific statement on the subject of his proposed amendment. He was under the impression, however, that it had been agreed that the report would be not merely a summary of the debate but a reflection of the opinions prevailing in the Sub-Committee. For that reason he considered that his amendment should be included. He, too, was prepared if necessary to make a statement on the subject at the present meeting. But it had been indicated at a previous meeting that not all delegations would be expected to speak on every subject of interest to them. The report, however, which was the collective work of the Sub-Committee, should contain a balanced reflection of all the views held, particularly on matters where national interests were at stake.

Mr. DAO (Mali) said that his delegation whole-heartedly supported the Moroccan proposal. It was essential to ensure that foreign Powers did not use paragraph 63 as the basis for claims that they had an historic right to perpetuate their presence opposite the coasts of sovereign States. That question was also closely related to the point made in paragraph 57.

He also agreed with the Moroccan representative that, even though a delegation might not participate in a debate, perhaps for reasons of courtesy or to save time, it was fully entitled to express its views at a later stage, if necessary during the consideration of the draft report.

Mr. MENDOZA (Philippines) said that his delegation had no objection to the various amendments which had been made, provided that the basis for those amendments was reflected in the records. He suggested that in the Moroccan proposal the word "however" should be replaced by the word "also".

Mr. KALONJI TSHIKALA (Zaire) supported the Moroccan proposal, which might be amended to indicate clearly that historic rights should not stem from a colonial situation.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that it had been suggested, and he agreed, that it would be more appropriate to place paragraph 63 after paragraph 38 of the draft report. All that remained then was to incorporate the amendments proposed

by the delegations of Morocco, Kenya, the Philippines and Zaire. To that end, he suggested that the representatives of those countries should consult him in order to agree on a suitable form of words.

It was agreed that the procedure suggested by the Rapporteur should be followed.

Paragraph 63, as amended in accordance with that procedure, was adopted.

Paragraph 64

Mr. TUNCEL (Turkey) said that his delegation was unable to support the paragraph because it implied that a consensus might have been reached on other, more important questions, which was not the case. He therefore proposed that the words "No consensus was reached" should be replaced by the words "There was no discussion", which would leave the question open.

Mr. AGUILAR (Venezuela) opposed the Turkish proposal, since a discussion had in fact taken place. Indeed, his delegation had been one of several which had opposed the proposal. He therefore proposed that the paragraph should be deleted.

Mr. ZOTIADES (Greece) said that he opposed the Turkish amendment and supported the Venezuelan proposal.

Mr. JACOVIDES (Cyprus) said that he opposed both the Turkish and the Venezuelan amendments. It was only right that the report should contain some reference to the discussion on the question.

Mr. HARRY (Australia) suggested that the problem might be solved by the replacement of the words "No consensus was reached" by the words "No action was taken".

Mr. ROSENTHAL (Mexico) supported the Venezuelan proposal.

Mr. O'DONOGHUE (New Zealand) supported the Australian proposal.

Mr. TUNCEL (Turkey) said that, since his delegation intended to revert to the question in the General Assembly, the paragraph should be retained. He therefore suggested that the first four words should be replaced by the words "various references were made ...".

Mr. ZOTIADES (Greece) said that the report should reflect what had actually occurred in the Sub-Committee. He therefore suggested the following wording: "A proposal that a study be made on geomorphological and bathymetric aspects of various islands was submitted. However, objections were raised to this proposal".

Mr. NEEDLER (Canada) suggested that the best course would be to agree to the Venezuelan proposal to delete the paragraph.

It was so agreed.

Paragraph 65

Paragraph 65 was adopted.

Paragraphs 66 and 67

Mr. GAUCI (Malta) proposed that the words "set forth in Annex ..." in paragraph 67 should be replaced by the words "as follows", since the report of the Sub-Committee would itself constitute an annex to the report of the plenary Committee.

Mr. BAKULA (Peru) supported the Maltese proposal.

Mr. ABDEL-HAMID (Egypt), Rapporteur, said that, in a spirit of compromise, he was prepared to accept the Maltese proposal. He nevertheless suggested that the first three paragraphs of the report of the Chairman of the Working Group should be deleted because they were already covered in paragraphs 31-33 of the report of the Sub-Committee.

Mr. ROSENTHAL (Mexico) proposed that the second sentence of paragraph 67 should be deleted since it was meaningless.

Mr. NJENGA (Kenya) proposed that the following sentence should be inserted after the first sentence of that paragraph: "This report was discussed, and adopted at the 77th meeting on 21 August 1973."

Mr. RAJAPAKSE (Sri Lanka) agreed that the report of the Chairman of the Working Group should be included as an integral part of the report of the Sub-Committee. He did not agree that any part of the draft paragraph should be deleted.

Mr. YTURRIAGA (Spain) supported the proposals made by the representatives of Malta, Mexico and Kenya.

Mr. DAO (Mali) proposed that the references to "the Chairman" of the Working Group should be deleted from paragraph 67 since the Chairman's report had been adopted by the Sub-Committee.

Mr. GAUCI (Malta) supported the proposals made by the representatives of Mexico and Kenya.

Mr. MBEYA (Cameroon) supported all the proposals which had been made in connexion with the report of the Chairman of the Working Group.

Mr. TUNCEL (Turkey) suggested to the Rapporteur that paragraphs 66 and 67 might be combined, and might include a reference both to the letter of 18 August and to the letter of 16 August 1973 (A/AC.138/SC.II/L.57) to the Chairman of the Sub-Committee from the Chairman of the Working Group. He agreed with the representative of Kenya, with reference to the adoption of the report, that it should

first be indicated that the Chairman of the Working Group had submitted his report at the 76th meeting of the Sub-Committee on 20 August 1973, and that a sentence should be inserted stating that the report had been adopted by the Sub-Committee at the 77th meeting. That would be an accurate reflection of what had happened.

Mr. DAO (Mali) said it appeared that his suggestion had been misunderstood; he merely wished to suggest to the Rapporteur that in paragraph 67 the words "of the Chairman" should be deleted, since the reference should be to the report of the Working Group.

Mr. BARABOLIA (Union of Soviet Socialist Republics) said he thought it was inappropriate to delete the words "of the Chairman" from paragraph 67, and asked the representative of Mali not to insist on that suggestion.

Mr. YANKOV (Bulgaria) said that when the report of the Chairman of the Working Group had been discussed, it had been done on a somewhat informal basis through the making of various suggestions and comments; it had not been approved paragraph by paragraph, because of shortage of time. It was his delegation's understanding that the Chairman of the Working Group had been asking for advice from the members of the Working Group in the drafting of his report, and in fact document A/AC.138/SC.II/L.61/Rev.1 referred to the report of the Chairman of the Working Group. It would not be correct now to attempt to change the legal status of the report.

At the same time he wished to express his appreciation of the work done by the Chairman of the Working Group, and to make it clear that Bulgaria's comments were in no sense a criticism of the Chairman's efforts, being designed only to put on record what the situation was. He accordingly hoped that the delegations who wished to change the formal position of the report of the Chairman of the Working Group would not insist on their suggestions.

Mr. HARRY (Australia) said that in the discussion on paragraph 15 of the report of the Working Group (A/AC.138/SC.II/L.61/Rev.1) there had been a reference to the question of the final form in which the conference room papers would be considered in relation to paragraph 67. He had suggested at the time that the conference room papers should be included in an annex not in the order of the list of subjects and issues, but alternative after alternative, in the order of the items and sub-items. He understood that the secretariat was proceeding on that basis, and he looked forward to seeing a clean copy of the proposed annex.

The CHAIRMAN suggested that the Sub-Committee might approve the proposals to which there had been no objection. There had been a proposal to delete from paragraph 67 the second sentence, "Various observations were made.". It had also been suggested that the report of the Chairman of the Working Group should be incorporated in the Sub-Committee's report but in a way that would show that it was a separate document. It also appeared that there was no objection to the proposal by Turkey that paragraphs 66 and 67 should be combined and that there should be a reference both to the letter of 18 August and to the letter of 16 August from the Chairman of the Working Group.

The amendments mentioned by the Chairman were adopted.

Paragraphs 66 and 67, as amended, were adopted.

The CHAIRMAN invited the Committee to adopt the report as a whole, as amended.

The report as a whole, as amended, was adopted.

The CHAIRMAN congratulated the Committee on its adoption of the report, in a spirit of friendship and harmony, after having overcome great difficulties. He also expressed his thanks to all those who had contributed to the success of the Sub-Committee's work.

The meeting rose at 8.20 p.m.