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COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

PROVISIONAL SUMMARY RECORD OF THE ONE HUNDRED AND FIRST MEETING*/

held at the Palais des Nations, Geneva,
on Friday, 22 August 1973, at 10.40 a.m.

Chairman:	Mr. AMERASINGHE	Sri Lanka
Rapporteur:	Mr. VELLA	Malta

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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.

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GENERAL STATEMENTS (continued)

Mr. STEVENSON (United States of America) said that now that the Committee had reached its final week, the question was how the many important interests involved in the negotiations for each country could be accommodated within a framework of broad agreement among States on the law of the sea. It was vital that the proposed conference should meet, and should succeed. As ocean uses intensified, the potential for conflict increased. There was a risk of conflict whenever a State or a group of States attempted to alter legal rights that another State believed it had; there was also a risk of conflict if the law did not respond with reasonable promptness to changing needs. To avoid those risks, it was not enough to seek a treaty: the proposed treaty must be widely acceptable to all segments of the international community. A mere voting "victory" of one or more groups of interests, even by a substantial majority, would not produce such a result. Both the procedures adopted and the substantive positions advocated must be formulated so as to ensure universal acceptance of the treaty.

Delegations should certainly arrive at the conference well prepared, but that did not mean that the conference should be delayed. The negotiations of the present session suggested that many States would postpone until the conference itself the hard decisions of policy which could alone afford the basis for negotiations. Postponing the conference would delay the start of effective negotiations, and jeopardize their success. Pressure for unilateral action might mount in some countries, and regional and other interest groups might also harden their positions. Far from postponement of the conference, the aim should be for the conference to seek means to ensure the immediate implementation of some parts of the future treaty on the law of the sea.

If the conference achieved broad agreement that adequately accommodated the interests involved, it should be possible to consider provisional application of the new treaty not only with respect to the parts dealing with the deep seabeds, as proposed by the United States in March, but also for other sections. For example, some countries considered the need for a new regime on fisheries as equally urgent, if not more so. It would be unfortunate indeed for disputes to continue while the ratification process was being completed. The United States was prepared to support provisional application for both the articles on the deep seabeds and those on fisheries, and to consider provisional application for other articles as well.

If there was to be agreement at the conference, there must first be agreement as to the major elements of a successful conference. The United States considered that major issues could not be resolved by relying on coastal States alone to exercise their rights in a manner consistent with the interests of others. In other words, no such rights should exist without corresponding enforceable duties related to the exercise of those rights. Every State represented in the Committee was a party to treaties and thus subject to rules of international law that limited the exercise of its rights even in its own territory. The same was true of the relationship to be established between the States and the new international machinery to be set up: if States were to agree to give it significant powers, they must at the same time ensure that the treaty clearly defined the limits of its mandate, and also that the interests of all States were reflected in the decision-making process and in the rule-making system.

The United States appreciated the fact that the proposals of States were intended for negotiation. Nevertheless, while it had attempted to adjust its own proposals to accommodate the views and interests of others, there had been little sign of the same attitude on the part of some other countries. If that approach persisted at the conference, the possibility of reaching agreement might vanish. The negotiations would fail if States attempted to solve all problems through concepts of absolute rights and absolute freedoms. The United States regarded as inadequate arguments that a proposal was unacceptable because it was inconsistent with certain abstract general concepts such as "national sovereignty" or "exclusive economic zone". Nevertheless, the results of the substantive negotiations could be expressed in treaty language that took account of political and juridical sensitivities and the need for maximum acceptance of the treaty.

In the future negotiations States would have to reduce their claims, in the interest of avoiding international conflict in the oceans. But, in doing so the United States had no desire to repeat the mistakes of 1958, when it had compromised with States that ultimately had not become parties to the treaty, and when no mechanism had been established to ensure that conflict could be avoided or resolved. As a result, disagreement had continued as to both the legal rules governing the use of the oceans, and their interpretation and application. The United States regarded a system of incentives to ensure ratification and a system of peaceful and compulsory settlement as essential to a comprehensive law of the sea.

The United States view on settlement procedures was that a system was needed that ensured, to the maximum possible extent, uniform interpretation and immediate access to dispute-settlement machinery in urgent situations, while leaving it open to States to agree to resolve their disputes by a variety of means. Many States wished to resolve disputes through regional procedures. The United States favoured the idea of dispute settlement by general, regional or special agreement, but with a law of the sea tribunal available when States failed to agree to settle the disputes through other procedures. The United States had just submitted draft articles on the subject (A/AC.138/97), and hoped that in the coming months it could discuss them with other delegations, obtain their comments, make amendments responsive to their suggestions and, it was to be hoped, gain their support.

He did not believe that the substantive articles of the treaty emerging from the conference would make it possible to avoid all conflicts. The articles would help to reduce them, but they would not eliminate the need for means to ensure the peaceful settlement of disputes that were bound to arise. The United States premise for achieving a broadly ratified treaty was that coastal State or flag State jurisdiction should be accompanied by specific duties for the State exercising such jurisdiction. Since those duties were designed to ensure protection for the interests of others, confidence that those duties would be fairly observed was likely to spell the difference between a successful and unsuccessful conference. The United States delegation had to say that it could not agree to many of the things it had itself proposed for a new law of the sea convention, in the absence of a general system of compulsory dispute settlement for ocean uses. In conclusion, he called for negotiating procedures designed to produce agreed treaty texts accommodating all points of view, rather than documents reflecting all the differences. The United States was prepared to negotiate a treaty on the law of the sea at Santiago, and hoped that other delegations would be attending in the same spirit.

Mr. WARIOBA (United Republic of Tanzania), in assessing the Committee's work, said that the session had at least made it possible to identify the problems, set out the issues and define positions. With respect to draft articles, he observed that only Sub-Committee III had produced some completed texts, together with others including some alternative wording; Sub-Committee I had produced some texts with alternative wording, while Sub-Committee II was still coping with a

multitude of different texts. As a result some delegations, including his own, had misgivings about the possibility of the conference being held at the proposed date without any further preparatory sessions, or at least without further negotiations in some other form.

It must be recognized that although the Committee had not succeeded in producing draft articles, the reason was not lack of time but unwillingness to negotiate. Tanzania had come to the present session with the intention of negotiating as a member of the African group that had defined its position in the OAU declaration adopted at Addis Ababa (A/AC.138/89). The main stumbling block in the negotiations was the question of the exclusive economic zone, a concept that had been criticized by certain States. The African group had taken those criticisms into account, and envisaged the possibility of negotiating on the question of the breadth of the territorial sea - which should be as narrow as possible - and on the question of straits. Thus the African countries had agreed to a breadth of twelve miles for the territorial sea on condition that the concept of the economic zone was accepted. With respect to the special situation of some States, he said that the African countries had recognized their right of access to and from the sea, and were prepared to pursue negotiations on the subject. The question of a regional economic zone was still on the OAU agenda.

Unfortunately the African delegations had not met with the same readiness to negotiate in other delegations. The African delegations had been accused of "zone locking" some States, and also of threatening sea-bed investments, for which safeguards were being asked. Some States refused to accept the concept of an economic zone, and would recognize only the territorial sea and the continental shelf. It appeared that the aim was to preserve the existing law, since acquired positions were being defended because they were enshrined in constitutions. The African delegations were beginning to regret the concessions they had made, particularly on the question of straits, where they found that others had made no concessions, and they were considering reverting to their original position.

It would be too difficult to change the Committee's terms of reference or prolong its work and its negotiations, and consequently Tanzania would make its preparations to participate in the conference, although without giving up the idea of pursuing consultations in the meantime with other delegations. Tanzania was prepared to take part in any consultations with a view to closing the gaps between the various positions.

Mr. ZULETA (Colombia) said he would undertake an objective appraisal of the results of the session now coming to an end, with particular reference to the question of the patrimonial sea, or economic zone, which had been given considerable attention. That concept had been submitted to the Committee for the first time as the result of agreements among the developing countries: the Declaration of Santo Domingo and the conclusions of Yaoundé had brought out that new development in international law which reflected the needs of the developing countries wishing to ensure access to the resources of the sea. Gradually the new move had acquired a certain momentum, and had received the support of other, more developed countries situated in other regions, very different from one another, with the result that it had been supported by a group of countries that represented a certain majority in the Committee.

That description of the nature of the consensus of the economic zone did not necessarily reflect the viewpoint of any delegation other than his own. For all the countries that advocated the concept of a patrimonial sea or economic zone, that notion was closely linked to the idea of the sovereignty of the coastal State beyond its territorial sea or its internal or archipelagic waters, as the case might be, over an adjacent zone called the patrimonial sea, whose breadth could not exceed 200 nautical miles. Beyond the territorial sea the coastal State would exercise sovereign rights with respect to the exploration and exploitation of the renewable and non-renewable resources of the sea-bed, its sub-soil and its superjacent waters. Those sovereign rights necessarily implied duties and powers for the coastal State with respect to the international community, particularly concerning the preservation of the marine environment and scientific research.

The maximum limit of 200 miles was not arbitrary; it corresponded to a distance that made it possible to correct the inequalities between States arising from the breadth of their continental shelf, while allowing all States to exploit the living resources of the sea and to have access to the resources of the sea-bed and the sub-soil of a zone of the sea adjacent to their coast. The developing countries had a duty to preserve a source of the livelihood of their population now and for the future, and that duty should be enshrined in international law.

In the Committee some of the major Powers had been able to appreciate the strength of the movement of opinion in favour of the theory of the economic zone, and had tried to adapt to the realities of the situation instead of trying to oppose them. The

United States delegation had not ruled out the possibility of constructive negotiations, and the Chinese delegation had given its unhesitating support. On the other hand, other Powers, developed countries that claimed to be revolutionary, had not wished to recognize the obvious fact that the new international law of the sea must take into account the rights and obligations of the developing countries.

Nevertheless, the Colombian delegation looked forward with optimism to the period after the present session, a period which would be devoted to a process of assimilation and synthesis and which might continue until the twenty-eighth session of the General Assembly. As the representative of Tanzania, among others, had suggested, consultations could be continued informally among the delegations which had detected a certain measure of agreement among themselves. In conclusion, he said that although each representative sat on the Committee on behalf of his country and his people in order to defend the legitimate interests of a State, he must not forget, if he wished to contribute to the conclusion of constructive agreements, and to the achievement of a better balance between the different regions of the world, that he was also the representative of mankind as a whole to his fellow-countrymen.

Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the session of the Committee was drawing to a close but his delegation did not feel a sense of satisfaction either about the session itself or about the Committee's preparatory work for the Conference.

The Committee had not carried out the instructions it was given by the General Assembly in resolution 2750 C (XXV). No draft articles or other document had been prepared to serve as a basis for discussion at the Santiago Conference. In three years no solution had been found to questions of great importance: the breadth of the territorial sea, freedom of passage and over-flight in straits, international standards for fishing beyond the 12-mile limit, the outer limit of the continental shelf, and so on. Failure to make progress on such key questions prevented others from being dealt with.

In the circumstances the Soviet delegation was most pessimistic about the drafting of a convention. The situation in which the Committee was now placed was abnormal and probably unprecedented: with the scheduled date of the Conference on the Law of the Sea only a few months away, and after six sessions totalling thirty weeks, nothing decisive had been done. That was because there was no spirit of co-operation or willingness to seek concerted solutions. Many delegations did nothing but present extreme demands and ultimatums, which other delegations were simply supposed to accept. That was a misguided view and a cause of failure.

With regard to rights of fish beyond the 12-mile limit, certain delegations had, session after session, argued that there should be a 200-mile zone within which the coastal State would have exclusive rights. Advocates of that formula did not seem to realize that the legal status of such a zone would not guarantee the coastal States the economic results expected. The USSR had proposed that developing countries should have the right to reserve for themselves the quantities of fish they were capable of catching. It had been objected that that was not enough since the developing countries' fishing capability was still limited. The creation of a 200-mile zone would not increase that capability, however. The question was, therefore, what would happen to the potential yield of the zone proposed for the coastal State. What would become of the quantities which the coastal State was unable to fish up to the authorized catch limits? There was also the question of respect for the rights of other States.

How would the status of international fishing in such a zone be defined? Would it be determined internationally or by the coastal State? What rules would apply to foreign fishing fleets? What about international standards? Those were the issues raised but they had scarcely been touched upon. They must be examined if there was to be a solution which took into account the interests of all States, including those engaged in distant-water fishing and the landlocked States. The Soviet delegation was ready to examine those questions with a view to arriving at agreed solutions and it hoped that the advocates of a 200-mile zone would adopt a similar attitude.

Lack of a spirit of compromise had also prevented progress on the question of straits used for international navigation. On that question the USSR position, which was well known and had been clearly stated, took into account the wishes of other States and such factors as the security of the coastal States, the protection of their interests in the fight against pollution, overflight, and so on. There too the Soviet Union was quite prepared to more towards the views of other delegations, but could the same be said of them? At the Committee's previous session delegations which for four sessions had insisted on abolition of the present regime had proposed that straits used for international navigation should be part of territorial waters and that the regime of innocent passage should apply in such straits. That would mean disregarding the matter of existing treaties. The USSR had proposed a formula which would strengthen the requirement that innocent passage be accorded in those straits; it had thus gone part of the way towards agreement and expected other delegations to do so as well. Some countries, however, had gone so far as to say that the questions of concern to the USSR did not arise in reality. But it would be illusory to think that the question of straits could remain unsolved. If it could, then such questions as that of zones of jurisdiction beyond 12 miles might also remain unsolved.

No draft article was ready, either on fisheries or on straits. It appeared that all that was needed for progress was a small shift by some delegations away from their extreme positions. In that connexion, he recalled the dispute that had existed from the beginning over the question of rights to exploit resources. Some delegations wanted to give that right to States, others to an international authority. At first, the Soviet Union had taken the view that such rights should be given to the States and had opposed their being exercised by an international agency. However, at the spring 1973 session, the Soviet Union, noting that a number of countries favoured an international-authority approach, had suggested that resources might be exploited both by States and by an international agency. It had thus shown a spirit of compromise. However, some countries, although unable to conclude a treaty without the consent of others, stubbornly refused to recognize States' rights to exploit resources.

He expressed the hope that a spirit of compromise would eventually prevail and enable solutions to be reached on all the questions mentioned in General Assembly resolution 2750 C (XXV).

At the moment, however, the Conference on the Law of the Sea had not been adequately prepared. Not a single article was ready. That being the case, the USSR found it hard to see how the Conference could succeed. The difficulties encountered in the Committee had caused some States to wish to go on to the Conference stage. But that was the easy way out. The Conference must be preceded by efficient preparatory work, including the necessary consultations on all questions, if it was to be able to bring forth international standards that would be observed.

Mr. OLSZOWKA (Poland) said that the time had arrived for the Committee to make a general evaluation of the preparatory work it had been instructed to do. While recognizing the useful work done by the Committee, the Polish delegation doubted whether the work was sufficiently advanced to enable the Conference to fulfil its task in the short time available to it. The Committee's mandate had been to draw up a list of subjects and issues to be dealt with by the Conference and to prepare draft articles on them. Both from the technical and from the substantive point of view, that task had not been completed. It was clear from the explanatory note in the annex to the report of Sub-Committee I (A/AC.138/94/Add.1) that some texts had not been given a second reading and might not necessarily reflect with accuracy the various views within the Working Group. Thus, from the technical standpoint, the preparation of draft articles was not finished. As to substance, it was obvious, for instance, that Sub-Committee I had been unable to arrive at clear political options or to narrow the differences in points of view. The Polish delegation felt, therefore, that the preparatory work done by the Committee was insufficient to enable the Conference to fulfil the enormous task it had been given, which was to draft and adopt a convention covering all the questions relating to the law of the sea.

Sub-Committee II, whose mandate was particularly important, had been unable to get beyond the stage of preparing comparative tables of a purely analytical character. It was therefore difficult to see how the Conference could, within a reasonable period of time, adopt provisions constituting a new law of the sea. The 1958 Conference had had, as the basis for its work, texts carefully drafted by the International Law

Commission which had been submitted to governments and had been commented on by them. In his delegation's view, the forthcoming Conference should concentrate on those problems which remained to be resolved. Even then its task would be difficult and complicated.

The question was what were the necessary prerequisites for the drafting and adoption, by the Conference, of a new set of viable rules. First of all, those new rules of law must be universally accepted. That idea had already been enunciated in the Declaration of Principles governing the Sea-Bed and its subsoil (General Assembly resolution 2749 (XXV)). Such universality could only be achieved if the interests of the various States and groups of States were taken into consideration and if the new law struck a proper balance between the interests and needs of all. No group of States should be allowed to impose its will on others. The achievement of a reasonable compromise was therefore the first prerequisite. The Polish delegation had demonstrated its readiness to take into consideration the legitimate interests and needs of other countries, especially those of the developing countries. It was prepared to co-operate with a view to finding reasonable solutions and hoped that other States would do the same. Unfortunately, not all States had been willing to give consideration to the views of other States.

He wished to make some remarks on the legal situation in which the Conference would undertake its tasks of elaborating new rules or adapting the existing law to a changing international situation. In laying down new rules it would have to take existing customary rules into account. Existing general rules could only be modified by common consent, through conventions or treaties agreed upon and ratified by the interested States. A mere resolution adopted by a majority of States or by a group of countries could obviously not be binding on all States. Revision of the existing rules of the law of the sea or the drafting of new rules must be carefully prepared so as to satisfy certain objective criteria. If those criteria were not satisfied and if the necessary preparatory work was not done, there could be no hope of achieving satisfactory results or of ensuring universal acceptance of the new rules. An unfortunate situation might develop in which no one knew what the law was, and that would not serve the interests of any State. That was why the Polish delegation believed that the preparatory work should continue.

The CHAIRMAN said that the questions raised by the representative of Poland had already been discussed at length. Opinion on the matter was deeply divided and it was now for the General Assembly to determine whether sufficient progress had been made in the preparatory work.

CONSIDERATION OF THE REPORT OF SUB-COMMITTEE III (A/AC.138/96)

The CHAIRMAN invited the Rapporteur of Sub-Committee III to introduce the Sub-Committee's report.

Mr. IGUCHI (Japan), Rapporteur of Sub-Committee III, said that the Sub-Committee's report contained three sections. First, a review of the work done between 1971 and 1973; secondly, a summary of the general debate on scientific research, in New York in April 1973, and on the transfer of technology, at Geneva in July-August 1973; and thirdly, a section divided into two parts: part A containing the report of Working Group 2, which dealt with marine pollution, containing two notes by its Chairman, one on the work done in March - April in New York, and the other on the work done at Geneva in July-August, both describing the progress achieved in the task of preparing draft articles; and part B, containing a note from Working Group 3, which dealtwith scientific research and the transfer of technology. There were two annexes at the end of the report of Sub-Committee III, one containing an index of the proposals submitted to the Sub-Committee from 1971 to 1973, and the other an index of the statements made in the Sub-Committee from 1971 to 1973. The two annexes would be brought up to date at the end of the session.

In addition, Sub-Committee III had proposed that a letter from the Chairman of the Sea-Bed Committee should be sent to the Secretary-General of the Intergovernmental Maritime Consultative Organization, for transmittal to the International Conference on Marine Pollution. The proposed letter read:

"The Committee on the Peaceful Uses of the Sea-bed and Ocean Floor Beyond the limits of National Jurisdiction, at the conclusion of its July/August 1973 session, has asked me to transmit to you, for the information of delegations attending the "International Conference on Marine Pollution", the attached document which reproduces relevant parts of certain Summary Records of the Main Committee and Sub-Committee III. The subjects dealt with by Sub-Committee III in some areas are related to those with which the Conference

will be concerned. Such areas include, inter alia, the setting of standards for the prevention of vessel-source pollution, enforcement of such standards and intervention following a maritime casualty involving a grave and imminent threat of pollution.

The Committee has noted Article 9.2 of the draft text of the proposed international convention on pollution from ships, 1973. While not questioning the mandate of the "International Conference on Marine Pollution", the Committee has asked me to inform you that the Conference on the Law of the Sea would not consider itself limited by any decisions taken on these matters by the Marine Pollution Conference.

The Committee would be grateful if this letter and its attachments could be reproduced and circulated as a conference document. Also I am sending for reference, with this letter, a copy of all documents of the 1973 session of the Committee concerning the protection of the marine environment."

Miss MARIANI (France) said that in her delegation's view the words "the setting of standards for the prevention of vessel-source pollution" should be deleted from the letter to IMCO. That was a matter outside the purview of the Conference on the Law of the Sea. Such standards should be set by IMCO.

Mr. SEYIFU (Ethiopia) expressed regret that paragraph 51 of the report had been amended at the request of some delegations. The words "available to all countries on the basis of equality." originally in the first sentence of the paragraph, had been replaced by "available to all of the international scientific community." That would be tantamount to forming an exclusive club and would be prejudicial to the interests of developing countries. He wished to have the original wording restored.

Mr. MBOTE (Kenya) said that there was no reason to reopen the debate on the report of Sub-Committee III. The points raised by the representatives of France and Ethiopia had been discussed and settled in the Sub-Committee.

The CHAIRMAN pointed out that the report had been adopted by Sub-Committee III and could not be amended by the plenary Committee. The remarks made by the representatives of France and Ethiopia would appear in the summary record.

Mr. BOSTANI (Brazil) pointed out that during Sub-Committee III's consideration of its draft report it had decided to delete the words "to recognize the freedom of States ..." in the second line of paragraph 44. The text should be corrected accordingly.

The CHAIRMAN said that the Secretariat would review the text.

Mr. BEESLEY (Canada) drew the Committee's attention to a working paper (A/AC.138/SC.III/L.56) which had been submitted by a number of delegations too late to be referred to in the report, and he requested that reference to the paper be made in the summary record of the meeting.

Mr. MOORE (United States of America) said that as he had not had an opportunity to examine the document, he reserved his delegation's right to submit working papers on the same question, on the understanding that they too would be mentioned in the summary records.

The CHAIRMAN suggested that the Committee should adopt the report of Sub-Committee III (A/AC.138/96), including the draft letter to IMCO. The report would form an annex to the report of the Committee.

It was so decided.

The meeting rose at 12.45 p.m.