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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 THIRD MEETING*/

held at the Palais des Nations, Geneva,
on Friday, 24 August 1973, at 11.15 a.m.

<u>Chairman:</u>	Mr. AMERASINGHE	Sri Lanka
<u>Rapporteur:</u>	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.

CONSIDERATION OF THE REPORT OF SUB-COMMITTEE II (A/AC 138/95)

Mr. ABDEL HAMID (Egypt), Rapporteur of Sub-Committee II, presented the report of the Sub-Committee, which, he said, had adopted it unanimously. He outlined the contents of the eight annexes that would be appended to the Sub-Committee's report.

Mr. YANKOV (Bulgaria) and Mr. LAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that paragraph 69 did not adequately summarize the statement referred to in the paragraph. The words "over the water column and its resources" should be inserted before the words "beyond 12 nautical miles".

Mr. ABDEL-HAMID (Egypt), Rapporteur of Sub-Committee II, accepted that modification.

The report of Sub-Committee II, as revised, was adopted as an annex to the Committee's report.

The CHAIRMAN, speaking on behalf of the Committee, thanked the officers and secretariat of Sub-Committee II on the skilful way in which they had discharged their complex and difficult task.

ADOPTION OF THE REPORT OF THE COMMITTEE (A/AC.138/L.14)

Mr. VELLA (Malta), Rapporteur, read out some corrections to the draft report. On page 1, the figure "1." after the heading "Historical Background", should be deleted. The word "However" should be deleted from the third sentence of the third paragraph on page 3. On page 4, the number of the General Assembly resolution cited in the fourth line should be 2574 C (XXIV) and the word "had" should be inserted after "General Assembly" in the first line of the second paragraph. The third paragraph on page 5 should begin with the words "In paragraph 3 of the same resolution". In the third line from the bottom of page 6 the words "referred to in paragraph 1 above" should be deleted. Footnote 12/ on page 10 should be replaced by the words "Official Records of the Twenty-Sixth Session of the General Assembly, Supplement No.21 (A/8421, annex II, 1)". A new seventh paragraph should be inserted on page 14, reading "At the 94th meeting, on 2 July, the Committee heard a statement on behalf of the Secretary-General by Mr. V. Winspeare-Guicciardi, Director-General of the Office of the United Nations at Geneva".

Finally, two new paragraphs should be added at the end of the report on page 16, reading as follows:

"At its 101st, 102nd and 103rd meetings, on 22, 23 and 24 August 1973, the Committee adopted the reports of Sub-Committees I, II and III and decided to annex them to the present report (Annexes). The reports of the

Sub-Committees contain, whether in annexes or in the body of the report, the texts which have been submitted to or prepared in these Sub-Committees and in their Working Groups.

Recommendations

The Committee has noted that the General Assembly requested it, in operative paragraph 2 of resolution 3029 A (XXVII), to submit its report with recommendations. Various questions were considered by the Committee in this connexion, including the question of the adequacy of the preparatory work. It was evident, however, that these questions were the subject of differing views and members of the Committee considered that assessment of the preparatory work should in the circumstances be left to the General Assembly".

Mr. CHADHA (India), referring to the new penultimate paragraph of the draft report, said that the opening words erroneously implied that the reports of Sub-Committees I, II and III had been adopted at the 101st, 102nd and 103rd meetings, respectively. He therefore suggested that the words "the reports of Sub-Committees I, II and III" should be replaced by "the reports of its Sub-Committees".

Mr. VELLA (Malta), Rapporteur, agreed to that amendment.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation had some misgivings as to the reliability and accuracy of the historical background in the first part of the draft report. For example, the third paragraph on page 3 referred to a consensus on a draft Declaration of Principles governing the sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of national jurisdiction, whereas a number of delegations had subsequently abstained in the General Assembly vote on that draft. He proposed that the last sentence of that paragraph should be amended to read "It was subsequently adopted by votes in favour, none against, with abstentions, as General Assembly resolution 2749 (XXV)".

He wished it to be recorded, however, that the USSR delegation had not expressed approval of the passages of the report describing the adoption of the Declaration.

The CHAIRMAN suggested that the penultimate sentence of the paragraph in question should begin with the words "The largest measure of agreement was, however, achieved ...".

Mr. VELLA (Malta), Rapporteur, accepted those amendments.

Mr. HARRY (Australia), referring to the fifth paragraph on page 14, pointed out that while many countries had followed the Committee's proceedings closely as observers, there were additional countries which would take a significant part in the work of the Conference. For example, the Federal Republic of Germany and the German Democratic Republic, which would undoubtedly soon become Members of the United Nations, would be in a position to make important contributions.

While his delegation looked forward to hearing the constructive ideas of all those countries at the Conference itself, it considered it important that their ideas should be available as soon as possible, so that when the Conference opened at Santiago all participants would be aware of the basic positions of other countries and could thus get down to negotiations without delay.

Although some non-members of the Committee had given their views on various aspects of its work in the General Assembly or in other contexts, it would be desirable for the General Assembly to take certain practical steps to facilitate the absorption of a wider circle of views and interests into the documentation to be submitted to the Conference. Thus, in issuing invitations to the Conference, the Assembly could invite States which had not been members of the Committee to submit in writing to the Secretary-General general views on the list of subjects and issues, or specific proposals for draft articles of the Convention. A time-limit might be indicated within which the Secretariat would be able to have those documents translated and reproduced. Acceptance of such an invitation would of course not debar any State from making its views known orally at the Conference or from submitting the proposals at that time, but the submission of views and proposals in writing might enable delegations to confine their general statements at Santiago to matters requiring oral presentation and to avoid repetition on views and proposals already recorded and circulated.

Something could also be done to help new participants to absorb the documentation of the Committee. His delegation had already stressed in Sub-Committee II the importance of submitting documents in a form which would make it easy for all participants in the Conference to understand thoroughly the political reality underlying the views and interests revealed by the Committee's work. It was to be hoped that adequate indexing would enable even those who had not attended the Committee's meetings to ascertain quickly the attitude of any country on any item.

A number of delegations had unofficially expressed interest in the Australian proposal. He was not suggesting that a formal recommendation should be made in the Committee's report, but his delegation intended to submit a proposal in the First Committee of the General Assembly, in connexion with invitations to the Conference, if further informal consultations showed that such a step would be appropriate.

Mr. SHEN Wei-liang (China), referring to the same paragraph on page 14, said that his delegation objected to the inclusion of the Khmer Republic in the list of observers. China considered that the Royal Government of National Union of Cambodia was the only legal government of that country and that the Lon clique had no right to represent Cambodia in the Committee.

Mr. ZEGERS (Chile) said that Sub-Committee I had been informed in March by the representative of the Secretary-General that a comprehensive report on recent developments relating to sea-bed mineral resources would be submitted in good time for the Conference on the Law of the Sea. Mention should be made of that fact at the end of the second paragraph on page 15 of the draft report.

The CHAIRMAN suggested that the new sentence might read: "The Secretary-General's representative stated that a complete report on the subject-matter of the resolution would be submitted in advance of the first substantive session of the Conference in Santiago."

The Chilean amendment, as drafted by the Chairman, was adopted.

Mr. MIRCEA (Romania) said that it would be more fitting to transfer the list of countries that were members of the enlarged Committee from footnote 11, on page 6, to the body of the report particularly as that had been done in the case of the list of observers on page 14. The same should be done in the case of the countries enumerated in footnote 14, on page 11.

It would be preferable to delete the words "Member States" in the opening sentence of the paragraph on page 14 listing the countries which had participated in the work of the Committee as observers. In connexion with that list, which included the Khmer Republic, he stated that the only lawful representatives of Cambodia were those appointed by the Royal Government of National Union.

The CHAIRMAN said that as the Committee was not concerned with problems of recognition he hoped members would not feel constrained to state their position regarding Cambodia. The Romanian representative's statement would of course appear in the summary record.

Mr. MIRCEA (Romania) observed that it was normal practice for a delegation to state its position regarding the representation of another State.

Mr. BOTHE (Yugoslavia) said that his Government's attitude to the Khmer Republic was well known and accordingly he fully associated himself with the statements made by the representatives of China and Romania.

Mr. GAUCI (Malta) said that he had a suggestion to make for inclusion in the report.

The CHAIRMAN said that if the suggestion encountered no opposition it could be incorporated in the report. Otherwise, the Maltese delegation would have to submit it to the First Committee of the General Assembly.

Mr. GAUCI (Malta) said that his delegation had stated in Sub-Committee II that certain advanced technological projects already in use and others likely to be operative in the foreseeable future might have manifold repercussions on the uses of, and activities in, the marine environment that were difficult to evaluate. In particular, he had in mind modern technology relating to the construction of underwater and floating installations, the construction of artificial islands and underwater oil storage tanks, underwater habitats, the use of fish-processing ships and of liquefied natural gas carriers, and other modern developments in marine capability.

It would be difficult for all delegations to propose or consider appropriate draft articles applicable to those uses unless their full technological implications and potential repercussions were better understood. Accordingly, the Secretariat might be requested to secure the services of a panel of independent experts, about four or five, who would be asked to prepare a short report on the foreseeable implications, say within the next five years, of technological advances. The panel's report need not contain any recommendations.

He was aware that his suggestion had financial implications but believed that such a report would be essential to governments for the better assessment of the legal requirements necessitated by such technological advances.

The CHAIRMAN said that a statement on the financial implications of the suggestion would have to be submitted by the Secretariat to the General Assembly. He had been informed that there would be little difficulty in finding experts for such a panel.

Mr. ROMANOV (Union of Soviet Socialist Republics) raised an objection to discussion of the Maltese suggestion because it was the practice not to entertain fresh proposals during the consideration of draft reports.

The CHAIRMAN ruled that in view of the objection there could be no further discussion of the Maltese suggestion. It would have to be presented to the First Committee of the General Assembly.

Mr. KALONJI TSHIKALA (Zaire) asked that the correct name of his country namely "Zaire" be inserted in annex II (page 3) of the report of Sub-Committee I (A/AC.138/94) instead of the "Democratic Republic of the Congo", which was mentioned as having taken part in the general debate at the 19th meeting.

The CHAIRMAN stated that that correction would be made.

The draft report (A/AC.138/L.14), as revised and amended, was adopted.

CLOSURE OF THE SESSION

Mr. CASTANEDA (Mexico) said that he wished to make some comments on the progress that had been made and on a possible future course of action. Naturally, the results of the session could not be assessed without taking into account what had been achieved during the past three years. A new juridical and most promising concept, that of the economic zone, had been to a great extent developed in the course of the Committee's discussions and was certainly the most important positive advance. His delegation had felt some optimism at the March session, in New York, because a basis seemed to exist for a broad measure of agreement from which a future law of the sea could be evolved but the present session had proved disappointing because of the failure to consolidate differing views into a genuine agreement.

It had already been stated by a number of delegations that, although various groups of States had made considerable concessions, those had not evoked a ready willingness to negotiate on the part of other groups. Even the group to which his own delegation belonged, which favoured an economic zone of up to 200 miles linked with a narrow territorial sea, had not done its best to produce a broadly representative consensus.

During the gradual process of creating international rules and standards there was always a phase when individual countries made proposals which were followed by negotiations. The present session had been the occasion for the presentation of proposals. At the outset there had only been a few on the economic zone and now there were some 20. Unfortunately the sponsors had not shown any readiness to withdraw

their own proposals or amalgamate them with those of others and appeared to be leaving such negotiations to the next stage. Their manifest desire to maintain their own proposals seemed to be linked with a belief, which caused his delegation considerable concern, that universal rules of the law of the sea could only be established with the express agreement of every State and through the treaty-making process. Such a proposition was extremely dangerous and was not borne out by history. For example, no treaty existed establishing a twelve-mile limit for the territorial sea but that limit was now claimed by a large majority of countries by virtue of unilateral declarations. Much the same was gradually taking place in respect of the economic zone. Between 70 and 80 countries had enacted legislation or had made declarations about an economic zone by virtue of which it was no longer a mere proposal but had acquired a legal meaning.

The refusal to accept the creation of international rules or standards in any other manner than through a treaty was the more objectionable as it could ultimately enable any one country to frustrate the will of others. It was intolerable for some States to be able to exercise a veto in international legal matters and to defend a juridical status quo which many other States might find unacceptable.

The idea of an economic zone had been supported by a number of delegations, whose view could have been stated without any value judgment in the report of Sub-Committee II, yet there had been opposition even to that. Such an attitude did not bode well for eventually reaching a consensus. Until a few days previously, his delegation had been in favour of adhering to the timetable set for the Conference believing that a broad agreement would be achieved on the economic zone. That having proved impossible, the whole situation was changed and there was no really adequate basis for the Conference to work on. Therefore, additional time for preparatory work might be needed although it was unlikely that the Committee itself could do anything useful or make much further progress. Its structure and composition would have to be changed and delegations would have to modify their attitude.

His delegation believed that the Conference should consist of three stages. The first should deal with organization and procedure and might take place beginning in the last week of November 1973 for three weeks. The second should be for preliminary negotiations and might take place in the spring of 1974 for about four weeks. The precise date should be co-ordinated with the meeting of the Group of 77 at Nairobi.

The second stage should involve the participation of all members of the Conference, so that countries that had not hitherto participated could express their points of view in a general debate. The question of the economic zone could be discussed at that stage. The third stage might take place in the summer of 1974, when the work of drafting articles could begin. However, in order that the Conference should have an adequate basis on which to work during the summer of 1974, there was need for a smaller body to undertake the task of detailed negotiation and drafting, for which task a body consisting of 90 countries was probably too large.

In any event, he felt that his delegation's proposal should be discussed in New York and the possible need recognized to postpone the last stage of drafting the texts for Santiago. It might be, for instance, that that work should take place in August rather than in June. In conclusion, he said that the opinions and the feelings of disappointment he had expressed, together with the proposal that he had made, had been made on behalf of his own delegation only and did not represent the considered view of any regional grouping.

The CHAIRMAN suggested that the Mexican proposal should be discussed in New York rather than at the present session of the Committee.

Mr. BEESLEY (Canada) said that the Mexican statement was of great importance and contained a most constructive approach. It should be given detailed consideration by members of the Committee. He agreed with the view that international standards evolved from State practice and that there was a need for a broadly agreed framework for the Conference on the Law of the Sea.

In his delegation's view, the Committee had made progress during its present session. Even if treaty articles had not emerged, alternative texts had been produced which had made the position of all delegations much clearer than they had been before. It should be remembered that the Committee could not codify and develop international law in the same way as a tightly knit group like the International Law Commission. Nor was it a plenipotentiary conference. The trend of its work was more towards progressive development of the law rather than codification, although both aspects were involved in its work.

The general trend was to move away from the traditional features of the law of the sea - State sovereignty and the freedom of the high seas - towards the creation of a law of nations that would embrace two new concepts - the common heritage of mankind and the economic zone. The latter's principles were a long way from the traditional laissez-faire approach and the concept of the common heritage of mankind was the very antithesis of State sovereignty. As the oceans were put to new uses, new problems emerged and new approaches became necessary. Even if it were wholly successful, the Third United Nations Conference on the Law of the Sea could not be expected to be valid for all time. Consequently, it was right that most of the draft articles should reflect the need for new approaches. Nevertheless, there was no need to drop entirely all the traditional concepts, many of which were capable of adaptation.

It was clear that no delegation was ready for final negotiations. That stage would not come until the Conference began at Santiago. In the meantime, delegations had made their positions clear on the various issues, and it could therefore be said that preparation for the Conference had been at least partially completed. The success of the Conference would, of course, depend upon the necessary political will of Governments and would require not only trade-offs but also an element of sacrifice from each delegation's most desirable position. Consequently, his delegation was against any immediate decisions on the timing of the Conference.

His delegation was also against the policy of confrontation or voting as a means of achieving results, since a third of the membership of the Conference would be able to block any major issue. There were, of course, large majorities in favour of the concept of the common heritage of mankind and the economic zone, but there were related issues still to be resolved if those two concepts were to become part of international law. He quite agreed with the representative of Mexico that no single country should be allowed to exercise a veto on decisions of the Conference as a whole.

While accepting that there might perhaps be a need to consider postponing the Conference, his delegation would greatly regret such a postponement.

He agreed with the Mexican proposal that efforts should continue to be made during the General Assembly, at a procedural session of the Conference, to develop the framework for the Conference, taking into account the concepts of the common heritage of mankind and the economic zone.

Mr. TUNCEL (Turkey) felt that, on a broad interpretation of the Committee's mandate from the General Assembly, its results gave cause for satisfaction. Delegations had submitted alternative texts, which Governments could now study - texts which would form the basis of future work.

The Committee had successfully brought to a conclusion the first phase of the preparatory work of the Conference on the Law of the Sea. Future work would consist of several phases, and without wishing to prejudge the future, he suspected that there were still a few years of tenacious effort required.

His delegation did not see any reason to change the timetable but felt that that question should be dealt with by the General Assembly.

With regard to the Mexican proposal, he expressed the view that the requirements of all States were not properly taken into account. It was unrealistic to think that legal norms could be prepared on the basis of a majority vote, as the representative of Mexico had suggested. The notion that legal norms that might at first be unacceptable to some States would after a period of use receive general ratification was most hazardous, and it was essential to respect the principle of universality. Consequently, he urged the Committee to eschew numerical majorities and to endeavour to obtain a representative majority. It was essential that negotiations should be given pride of place in any future work and in rules of procedure and that they should be given time to bear fruit.

Mr. YANKOV (Bulgaria) said that his delegation was most anxious that the preparations for the Conference on the Law of the Sea should be adequate and had been alarmed by the inconsistency displayed by those delegations which supported the concept of the common heritage of mankind while claiming large areas of the ocean as their territorial seas. It feared that what might today be called an economic zone would, if the international community did not react, become a territorial sea tomorrow, and it deplored the excessive claims being made by geographically advantaged States at the expense of the international community.

He agreed with the representative of Canada that there was a need for delegations to make sacrifices from narrow national positions and not to set store by numerical majorities.

It would be a matter for great regret if the ocean should be divided up in much the same way as the earth's land surface had been divided up by the original colonial Powers. Colonialism had since collapsed and had been declared a crime by the international community, which should not now remain silent while the ocean's wealth was distributed on the basis of geo-political considerations that had no real justification.

After reminding the Committee of the various successes it had achieved since its establishment, he urged that a spirit of accommodation and compromise should now be displayed. The initial stage, consisting of the submission of draft articles, would pave the way to preliminary negotiations on the major issues. In the meantime, new concepts had emerged and new tenets had been elaborated. The Conference had an enormous task before it, and there would be no progressive development or codification of the law of the sea unless adequate preparations were made. One pre-requisite for progress was, of course, a genuine political understanding between delegations. He pointed out, however, that well conceived and well drafted proposals would facilitate political negotiations, whereas proposals and draft articles that were not technically mature would make no contribution to significant political negotiations. Consequently, there was a need for serious legal and technical work on many of the draft articles, so as to ensure that they were capable of forming a basis of negotiations. To perform such work, it might be necessary to establish a small group of expert jurists.

His delegation was firmly against any unreasonable procrastination, since unilateral action by some States might have an adverse effect on the process of treaty negotiation. It wanted to hold the Conference as soon as possible and hoped that adequate preparation would ensure that it was meaningful.

He did not rule out the continued existence of the Committee as a means of moving closer to a treaty on the law of the sea and reiterated his delegation's view that despite the disadvantage of being slow, the consensus system provided the most reliable basis for future negotiations. It was essential that the principle of common agreement should be maintained, since it was the only effective basis for universality of acceptance.

The CHAIRMAN said that as there were still many delegations that wished to make closing statements, he would adjourn the meeting to 3 p.m. that afternoon.

The meeting rose at 1.25 p.m.