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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 NINETY-SIXTH MEETING<sup>\*/</sup>

held at the Palais des Nations, Geneva,  
on Monday, 16 July 1973, at 11.15 a.m.

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

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<sup>\*/</sup> 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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## REPORTS ON THE PROGRESS OF THE WORK OF THE SUB-COMMITTEES (continued)

The CHAIRMAN invited the Chairmen of the Sub-committees to submit their reports.

Mr. ENGO (Cameroon), Chairman of Sub-committee I, said that on 9 July 1973 the Sub-committee had held its seventieth meeting in the course of which the Chairman of the Working Group, Mr. Pinto, had submitted a detailed progress report. In the statement which he himself (Mr. Engo) had made at that meeting, he had outlined the proposals he intended to submit to the sub-committee regarding the work programme for the rest of the session. The Sub-committee had decided that his statement, together with the report of the Chairman of the Working Group should be reproduced in extenso in the summary record (A/AC.138/SC.I/SR.70).

From Mr. Pinto's last report it was clear that the questions which arose could be divided in two categories. The first covered those on which there were no wide divergences of view as to substance. Even regarding generally accepted principles, however, differing opinions had been expressed and various proposals submitted. It was clear from the discussions that all the aspects of the Sub-committee's work were closely linked and could not be separated.

The second category covered those questions on which no common ground had been found as regards the substance. The Working Group had continued its study of the problem of the international machinery. It was evident that the question of the relationships between the various bodies proposed raised fundamental problems. In his opinion capital decisions on questions of that kind would have to be taken at the appropriate time at the political level. One would need to be very optimistic to hope for a solution at committee level. It was the delegations representing the various communities of interest that had to decide when such decisions should be taken.

In the statement he had made to the Sub-committee, he had suggested a method which might be applied to those two broad categories of questions. It must not be forgotten that the Committee was a "preparatory" committee, in other words, that its basic task was to put before the Conference the various trends of opinion throughout the world regarding all the important problems relating to the law of the sea. The Committee must therefore describe the present situation as clearly as possible.

He had therefore advised the members of the Sub-committee to settle the fundamental problems from a general standpoint and to express their views frankly. He had also requested them to work out procedures for preparing draft articles. They

should try to reach a consensus on the articles on which most delegations were agreed in principle. With regard to the other articles they should submit various drafts expressing as far as possible the different views, but should only adopt that method as a last resort. Footnotes and square brackets should be used sparingly.

The question of the reports of the various sub-committees and the report of the plenary Committee to be submitted to the General Assembly, and perhaps to the Conference on the Law of the Sea, should be considered very seriously. The officers of Sub-Committee I would continue their consultations on the question and he would refrain from comment for the time being. At the plenary Committee level, however, it should be remembered that the questions assigned to the various sub-committees were interdependent. It might be useful to set up a body to facilitate discussion between the various officers on questions of interest to the three Sub-committees.

Mr. GALINDO POHL (El Salvador), Chairman of Sub-committee II, said that the Working Group of the whole of Sub-committee II had held six meetings in the past week, during which it had considered the question of the continental shelf in connexion with the economic zone and preferential rights. Particular importance had been attached to the study of the criteria for delimiting the continental shelf. The criterion of exploitability seemed difficult to apply in the current state of technology and should be replaced by something more precise. Distance and depth had found considerable support as possible criteria. Proposals had been made for the establishment of an intermediate zone under trusteeship.

The Working Group had considered the following questions: régime of the economic zone and subjacent waters, scope of the 1958 Convention on the Continental Shelf, degree to which the sovereign rights of States would extend to the part of the continental shelf beyond the 200 mile limit, and harmonization of interests. On 13 July, the Working Group had decided to make a detailed study of a number of questions relating to the delimitation of continental shelves, particularly the continental shelf of islands.

16 July was the final date for the submission of proposals which would be examined with the help of a comparative table drawn up by the Secretariat. Nine proposals had been submitted. Some were new, others merely revisions of earlier proposals. The Sub-committee would meet as often as necessary to allow delegations to introduce and explain their proposals.

The officers of the Sub-committee were due to meet on 17 July to examine questions of the organization of work. The geographical groups had announced their intention of holding consultations to draw up joint texts to facilitate discussion.

Mr. van der ESSEN (Belgium), Chairman of Sub-committee III, said that the Sub-committee had held only one meeting, to fix the closing date for the names of speakers for the last part of the work programme which had been adopted more than a year ago. That last part concerned transfers of technology. Ten speakers had already put their names down for the two meetings to be held during the current week, and that should bring the general debate in Sub-committee III to an end.

Meanwhile the Working Group on pollution and the environment was continuing its work under the chairmanship of Mr. Vallarta, representative of Mexico. It was mainly studying the question of standards in pollution matters and trying to decide whether such standards should be international or national as well. The Working Group had held several meetings and smaller groups had also met.

Last spring Sub-committee III had set up a Working Group on scientific research under the chairmanship of Mr. Olszowka, representative of Poland who, however, was not due to arrive in Geneva till a few days later. As a meeting of the Working Group had been arranged for the following morning, he proposed, subject to the chairman's approval, taking the chair himself in order to settle the question of the submission of the necessary documents for the preparation of a comparative table on scientific research and the transfer of technology.

The CHAIRMAN said that the officers had just considered two questions, one of which had just been mentioned by the Chairman of Sub-committee I. The first question concerned the Committee's report; it had been decided that the report ought to be ready in time so that members of the General Assembly would have sufficient time to study it.

It had also been decided that the introduction to the report should be a background study of the Committee's work to date on the question of the law of the sea. Regarding the substance of the report, it had been pointed out that, since the Committee was a preparatory committee, its report should contain draft articles on which agreement had been reached. The points on which there were still differences

of opinion would be noted in the report with appropriate comments. As for the documentation and annexes, it had been noted that they should provide as much information as possible for those who had not taken part in the Committee's work, without being too voluminous.

At an early meeting, the rapporteurs of the plenary Committee and sub-committees would have to come to some agreement about the content and presentation of the report.

The International Hydrographic Organization had submitted a request to be allowed to attend meetings of the committees. If there were no objections, he would consider that was agreed.

It was so agreed.

GENERAL STATEMENTS (continued)

Mr. PARDO (Malta) said that the question of marine pollution and the protection of the marine environment came within the Committee's terms of reference and was among the questions on which draft articles had to be prepared. He therefore considered it desirable to draw the Committee's attention to the initiative taken by the United States at the last session of the Council of the Inter-Governmental Maritime Consultative Organization (IMCO). The United States representative had stated that it was necessary to develop methods for controlling the discharge of pollutants from ships as well as effective and dynamic international institutional arrangements to ensure such control. He had proposed that IMCO should be the international agency responsible for controlling ship-generated pollution and should establish a Marine Environment Protection Committee for the purpose, to develop, adopt and bring to the notice of Governments the new regulations relating to marine pollution applicable under the conventions for which IMCO was responsible. If there were no objections, the regulations would enter into force on the date notified by the Committee. The latter would be empowered to amend the regulations, by unanimous decision, without the consent of the contracting parties. It could also give technical and practical advice to Member States on pollution prevention methods and measures to be taken in case of pollution, consider the establishment of regional sub-committees and supervise the observance of IMCO conventions on marine pollution. To enable it to perform those new functions, IMCO would have

to increase its staff, and that would have budgetary implications. It had been suggested that an ad hoc committee should be asked to study the United States proposals and submit a report on them to the IMCO Conference on Marine Pollution, to be held in 1973. The United States proposals appeared to have been well received by all members of the IMCO Council, and one representative had expressed the view that they provided a good opportunity to review the status of the organization, which had so far been only consultative.

He shared the concern of the United States representative with regard to marine pollution, but was surprised that the United States should have made such a proposal, particularly to IMCO.

There was in fact no immediate danger to the marine environment but rather a progressive deterioration, the consequences of which would be felt only in one, two or three generations time. The pollution of the marine environment caused by the discharge of pollutants from ships might be about 10 per cent, but was certainly not more than 20 per cent, of global marine pollution. It was therefore inadmissible to concentrate attention on that particular factor of pollution, particularly since 80 per cent of the 20 per cent was caused by ships belonging to not more than a dozen countries. Finally, the serious cases of pollution were to be found in waters within the jurisdiction of heavily industrialized coastal States.

There was therefore no general emergency and the international community still had time to make a rational study of the best means of controlling marine pollution. Moreover, the industrialized countries which were mainly responsible for such pollution could confer and take the necessary measures without recourse to an intergovernmental organization.

What was lacking from the United States proposal was any provision for an action for damages by a coastal State against the flag State when a ship of the flag State polluted waters within the jurisdiction of the coastal State. The international community should similarly have the right to institute proceedings against a State whose ships polluted international waters.

Nor did the United States proposals take into account the question of assistance, in case of pollution by ships, to countries with only very limited resources and technical capacity. How could such countries observe the numerous regulations issued by a body of whose existence they were hardly aware? Moreover, the United States proposals dealt only with pollution caused by ships and sought to confer the responsibility for drafting regulations on a consultative organization which played a relatively unimportant role in the United Nations system.

His delegation considered that the problem of marine pollution should be viewed from an entirely different angle. It was prepared to place its trust not in regulations drawn up by a technical body but in the acceptance by the international community of new principles of international law. First, that a State was responsible for the damage from whatever source caused to the marine environment within the jurisdiction of another State or to the marine environment beyond its national jurisdiction by physical or legal persons under its jurisdiction or by ships flying its flag. Secondly, that the international community was competent to take action against a country which polluted, or permitted the pollution of, the marine environment beyond its national jurisdiction. In both cases, action should be taken not against those who had caused the pollution and who might be without financial resources, but against the State concerned. The tribunal responsible for judging such cases should be international and impartially constituted. Of course regulations were not without value and the establishment of general non-discriminatory regulations or guiding principles for the conduct of States would be useful for assessing cases of negligence in the matter of marine pollution.

With regard to the procedure favoured by the United States, he said that the proposals concerned had been submitted to the Council of an intergovernmental organization whose functions did not extend to pollution. There was no mention of pollution or preservation of the marine environment in the IMCO Convention. His delegation was not opposed to IMCO's continuing to be a forum for the discussion of the control of pollution by ships - even though the question was not actually within its competence - because that was a useful international service, but it was opposed to

any basic change in IMCO's functions introduced by what might look like backstairs methods. IMCO's Council and Assembly were not attended by pollution experts of member States but by representatives dealing with technical aspects of navigation. Only three or four developing countries were represented on the IMCO Council: while that might not prevent the organization from dealing effectively with the technical aspects of navigation, it hardly made it competent to deal with marine pollution on a world-wide basis, particularly when it came to enacting regulations that were binding on all States.

The IMCO Council or Assembly could not consider a basic change in the organization's functions without first proposing to its member States appropriate amendments to its Convention. If new functions were to be conferred on IMCO in the field of marine pollution control the appropriate procedure would be to submit a resolution to that effect to the United Nations General Assembly; the States members of IMCO would then be consulted and appropriate amendments to the IMCO Convention could then be formulated, discussed and finally adopted, first in the Economic and Social Council, the co-ordinating body of the United Nations system, and then in the General Assembly.

If that procedure were not followed, it could happen that a specialized agency might study and apply proposals outside its competence, without reference to the Economic and Social Council or the General Assembly. That would be a grave mistake both from the constitutional point of view - with regard to the organization itself - and from the point of view of co-ordination between United Nations bodies. Any one of them might seek to exceed its competence, but it would be the first time that a specialized agency had attempted to change the main purpose of its statutory functions.

Lastly, the United States proposals were to be submitted for adoption in October; that was too soon for the General Assembly to be able to take action. In those circumstances, the Seg-Bed Committee should adopt some procedure that would make it possible to study the United States proposals, both from the constitutional and the substantive points of view, before these were adopted.



The CHAIRMAN said that, under the terms of operative paragraph 8 of General Assembly resolution 3029 B (XXVII) IMCO had been invited to co-operate fully with the Secretary-General in the preparations for the Santiago Conference. For that purpose it would have to submit draft articles, including articles on marine pollution.

He felt that the Committee should avoid starting a discussion on the functions of IMCO.

Mr. AGUILAR (Venezuela), speaking on behalf of the Latin American group and his own country, congratulated the new State of the Bahamas on its accession to independence. It was appropriate that the Committee should welcome that event, for the Bahamas was a developing country which was largely dependent on the sea.

Mr. LEIFER (Austria), said that he wished to comment on the reports submitted to the Committee by the Under-Secretary-General for Legal Affairs.

He was pleased that the studies requested by the General Assembly in resolutions 3029 B and C (XXVII) had been presented in the form of a single report entitled "Economic significance, in terms of sea-bed mineral resources, of the various limits proposed for national jurisdiction" (A/AC.138/87). The presentation of the facts was thus more balanced and the consequences of the various solutions envisaged stood out more clearly. The criticism had been made by some representatives that the presentation of the facts could influence the outcome of the Committee's deliberations. Actually, without a report of that kind, the various countries would not have been on an equal footing. Some would not have had any means of obtaining the information given in the report, so that a service had therefore been rendered to them. Austria was one of the countries which had first proposed that the report should be prepared. It was glad that the report had been finished within the time-limit set and thanked the Secretariat officials responsible.

He also thanked the Secretariat for its report entitled "Sea-bed mineral resources: recent developments" (A/AC.138/90).

Mr. ZEGERS (Chile) said he thought that IMCO's activities mentioned by the representative of Malta raised a real problem. IMCO was contemplating the adoption of a convention on marine pollution in October. The adoption of a separate convention of that kind could very well restrict the scope of the Sea-bed Committee and also that of the Third United Nations Conference on the Law of the Sea. IMCO was

responsible for dealing with navigational safety, not with pollution. The question of the adoption of a convention by IMCO had not been put either to the Economic and Social Council, or to the General Assembly or to the Sea-bed Committee. What was more, IMCO was enlarging its terms of reference without enlarging its composition. Few developing countries were members.

Again, problems of marine pollution could hardly be discussed apart from the question of the rights and duties of coastal States. At the next meeting he intended to ask a question about the recent oil spillages in Chilean waters following an accident to a tanker, which had affected Chile's fisheries. It was important to work out a procedure for settling disputes arising out of situations of that kind.

In conclusion, he emphasized that IMCO must not adopt either final recommendations or a global convention in October.

Mr. STEVENSON (United States) said he agreed with the Chairman that the Committee should avoid any discussion of the functions of IMCO.

His delegation would enlarge on its draft articles on pollution in Sub-Committee (III) on Wednesday 18 July, and reply to a number of questions which had just been asked. For the moment he would confine himself to stating that his country's concern was to make the best use of the technical possibilities of the organizations in the United Nations system.

He would try to have the text of the United States proposals distributed to all the members of the Committee.

Mr. RATTRAY (Jamaica) said that his country wished to congratulate the newly independent State of the Bahamas to which it was linked by geography, language, culture and way of life. The Bahamas and Jamaica had similar problems concerning the resources of the sea, which he hoped the Conference would help to solve. Many of the problems now being studied by the Committee and which would later be taken up by the Conference, arose in the West Indies, which thus had an important part to play in the search for solutions. He hoped that the new legal regime to be worked out would be a factor of unity and would promote peace and development.

Mr. CHAO (Singapore) said that, as one of the sponsors of General Assembly resolution 3029(XVII) requesting the Secretary-General to prepare a comparative study of the size and economic importance of the international zone, his delegation noted with satisfaction that the study (A/AC.138/87) had just been distributed. He congratulated the Secretariat on its efforts in preparing the study. The authors of the resolution had fully realized the difficulties the Secretariat would meet in its task and had asked the Secretary-General to prepare the study on the basis of the information at his disposal; that was why the Secretariat had been reduced to speculation about certain little-known areas of the sea and had had to content itself with assessing the probable development of technology in the exploitation of the sea-bed.

From a first reading of the study, it seemed clear that the establishment of wide limits of national jurisdiction over the sea-bed would strike a crippling blow at that new international machinery which all would like to see created. He would confine himself to that preliminary remark for the time being; his delegation would be making a full statement at a later stage.

Mr. ARIAS-SCHREIBER (Peru) said he wished to thank the delegation of Malta for having called the Committee's attention to the new United States proposal on the control of marine pollution, and to support the views expressed by the delegations of Malta and Chile. His delegation believed that all delegations were fully entitled to express their views on that important matter, which fell within the terms of reference of the Preparatory Committee of the Conference on the Law of the Sea.

Mr. BEESLEY (Canada), speaking on the work of the Sub-Committees and Working Groups, said that his delegation welcomed the progress made in Committee III on marine pollution, and particularly the fact that fresh proposals were to be submitted; it merely hoped that those fresh proposals would not jeopardize the consensus already achieved but would help to maintain it. His delegation was concerned however that Sub-Committee III had not yet started serious work on the question of scientific research and had only broached the fundamental problem of the transfer of technology.

With regard to the United States proposal to the IMCO Council, to which the delegation of Malta had drawn attention, his delegation was awaiting with interest the explanations which the United States delegation was to give on that subject in Sub-Committee III. That proposal was a new element which fell within the competence of the Committee and which it should therefore consider. Indeed, it had already been suggested that the terms of reference of the machinery to be set up should be extended to cover both fishing and pollution.

The work of Sub-Committee II seemed to have reached the stage of negotiation on the highly controversial question of the limits of national jurisdiction. Certain trends were evident, notably in favour of distance as the fundamental criterion, although some delegations also favoured depth. The group in favour of distance as the criterion included both supporters of the two-hundred nautical-mile limit as well as countries which wanted account to be taken of the existing rights of States over the continental shelf beyond the two-hundred mile limit. At the other extreme were those who were opposed to any rights being recognized over the continental shelf beyond the two-hundred mile limit. Concrete proposals on the exploitation of the zone also varied widely and it was desirable that specific texts should be provided as a basis for discussion.

Sub-Committee I should now tackle the two fundamental questions which had been entrusted to it, namely, the creation of an authority with jurisdiction over the sea-bed and the ocean floor and the determination of the international zone beyond national jurisdiction.

With regard to the Secretary-General's study on the economic significance of the various limits proposed for national jurisdiction, his delegation reserved the right to submit its comments later and revert to the question of the Committee's terms of reference in good time for a discussion before the IMCO Conference in October.

Mr. NJENGA (Kenya) said he thought that the United States proposal concerning the control of marine pollution by ships should be considered by the Committee, for there could be serious consequences if a consultative organization which was not universally representative were authorized to enact legislation on questions of international concern. Kenya had very clear ideas about anti-pollution methods, but was not represented in IMCO.

Mr. HALL (Secretary of the Committee) called attention to three new documents which had been distributed to delegations. One was a study by the "Pacem in Maribus" Foundation, entitled "The Ocean Development Tax", which had been distributed in accordance with a request made by the Committee the previous year. The other two had been submitted by the delegations of the Netherlands and the United States respectively on the subject of the Secretary-General's study in document A/AC.138/487.

MESSAGE OF CONGRATULATIONS BY THE COMMITTEE ON THE OCCASION OF THE  
INDEPENDENCE OF THE BAHAMAS

Mr. CHAO (Singapore), Mr. ARIAS-SCHREIBER (Peru), Mr. BEESLEY (Canada), Mr. YANGO (Philippines) and Mr. NJENGA (Kenya), on behalf of their respective delegations, said they wished to congratulate the new State of the Bahamas on its accession to independence.

Sir Robert JACKLING (United Kingdom) said that he was glad to see such a warm welcome being given to the new State. He would be happy to support a suggestion for a message of congratulations from the Committee.

The CHAIRMAN suggested that he should send a message of congratulations from the Committee to the new State of the Bahamas. If there were no objections, he would take it that the Committee approved that suggestion.

It was so agreed.

The meeting rose at 1.00 p.m.