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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-SEVENTH MEETING^{*/}

held at the Palais des Nations, Geneva,
on Monday, 23 July 1973, at 10.55 a.m.

Chairmen:

Mr. AMERASINGHE

Sri Lanka

Rapporteur:

Mr. VELLA

Malta

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^{*/} 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.

REPORTS ON THE WORK OF THE SUB-COMMITTEES AND WORKING GROUPS

Mr. ENGO (Cameroon), Chairman of Sub-Committee I, reviewed the work of his Sub-Committee, which was responsible for preparing draft treaty articles concerning the regime, including an international machinery, for the area beyond the limits of national jurisdiction. The Sub-Committee had not often met since the beginning of the session, because the delegations preferred on the whole the less formal and more flexible procedure of discussions within the Working Group. The Chairman of Sub-Committee I considered that, in view of the stage reached in the discussions on the issues before the Sub-Committee and the amount of time that was left, it was now imperative to take stock of the work done and that movement forward towards the adoption of an analytical text and not of a simple comparative document was the only desirable progress at the present stage.

In his opinion, the Sub-Committee should now change its method of work as time was pressing. At the Sub-Committee's meeting in the afternoon, he would submit proposals on the programme of work for the following four weeks. For the time being, the Sub-Committee was continuing its first reading on the second item on its agenda - the international machinery. At the next meeting of the Main Committee, he should be in a position to submit a fuller report on the programme and substance of the work of the Sub-Committee.

Mr. GALINDO POHL (El Salvador), Chairman of Sub-Committee II, made a progress report on the work of his Sub-Committee, which had met three times during the week to hear the oral presentation of many proposals by delegations. Those proposals would serve as a basis for the efforts of the Sub-Committee and its Working Group to achieve agreements which would enjoy wide support. Although some proposals differed considerably and it would be a hard task to narrow the gap between them, others were so close to one another that it should be possible to draw up common texts. In any case, their sponsors had started discussions for that purpose. In all, twenty-two proposals relevant to the work of the Sub-Committee had been submitted, and they would be examined, together with proposals made earlier, in the comparative table which the Secretariat was preparing.

The full Working Group had met three times under the chairmanship of Mr. Kedadi and had considered the following issues in detail: the continental shelf of islands, the delimitation of the territorial sea between opposite States, and the economic zone. The Group had considered the proposal by Australia and Norway (A/AC.138/SC.II/L.36) and had compared it with the proposal of Turkey (A/AC.138/SC.II/L.22). Several representatives had also raised the question of limits and had referred to the position adopted by various delegations. The meetings of the Working Group were marked by frank discussions, which had sometimes taken on a polemical turn when views expressed were clearly antithetical. He believed that when the Sub-Committee had before it the comparative table he had referred to, it would be in a better position during the coming week to continue the consideration of outstanding issues. He also hoped that many delegations would have successfully completed their consultations to reach wider agreement and to reduce considerably the number of variants; those consultations could parallel the meetings of the Working Group. There were still many variants and their formulation in clear terms would be one of the best results that the Sub-Committee could hope to achieve during the next two weeks in order to prepare the next stage of the negotiations.

Mr. van der ESSEN (Belgium), Chairman of Sub-Committee III, said that his Sub-Committee, which had held two plenary meetings to continue the general debate on the transfer of technology, would meet again next Friday to hear two speakers on that question. Delegations had submitted proposals concerning the pollution of the marine environment and scientific research. In addition to plenary meetings, Sub-Committee III had worked, in its Working Group II, on the preservation of the marine environment. It had considered questions of technical assistance to control pollution, a draft article on co-operation to unify scientific criteria for pollution control standards and, lastly, pollution surveillance and alarm procedures.

Working Group III on scientific research and the transfer of technology had held one meeting, for the purpose of fixing a time-limit for the submission of proposals so that the Secretariat could draw up a comparative table. The Working Group could begin its real work on the following day since its regular chairman had arrived in Geneva.

STATEMENTS CONCERNING THE CONFERENCE AND SOME EXAMPLES OF POLLUTION OF THE MARINE ENVIRONMENT

Mr. SANTA CRUZ (Chile) said that he would like to put forward some considerations in connexion with the outlook for the Conference on the Law of the Sea, to be held at Santiago, Chile, in April 1974. The international situation seemed to him most favourable for negotiations of that importance: political tensions were easing and at the same time economic relations were developing between States with different systems. After a quarter of a century of cold war, the world could discern fresh opportunities for better international co-operation. The future of the seas and oceans, which were the concern of the Committee, could well be the catalyst of that renewal of world co-operation. The use of oceans as a major means of communication, the preservation of the marine environment, and greater knowledge of that essential element of the biosphere were very important objectives. The work was at one and the same time of a legal, economic and political nature and, along with the protection of the environment, was one of the most promising tasks that the United Nations had recently undertaken. Indeed, on the success of that Conference would depend not only the future of the seas and oceans, but also that of the United Nations, which was being widely criticized today.

As the Conference on the Law of the Sea was to be held in Chile, he could already announce that his country, proud to have been chosen, had begun the necessary preparations to ensure that the organization of the Conference gave to its participants as much satisfaction as was expressed in connexion with the Third United Nations Conference on Trade and Development.

To bring such an international negotiation to a successful conclusion was a very important and urgent objective, as was recognized by the General Assembly at its twenty-seventh session when it took specific decisions on the date and place for the Conference. The session now being held at Geneva by the Committee on the Peaceful Uses of the Sea-Bed was designed to provide a background for the international negotiations to be held at Santiago. He considered that there was every reason to adhere to the time-table that had been adopted, both to avoid complications for the organizing country and to maintain the momentum of the negotiations.

It was obvious that to complete that task in keeping with the time-table, it would be necessary to work and negotiate with the same intensity during the weeks to come. The preparation of treaty articles should be coupled with a plan for an international political solution, to be accepted in principle as a basis for the final agreement. Such a plan would embody what might be called a "global arrangement" and might be formulated in a few fundamental articles, arrived at by consensus, which might serve as a basis for a series of other options for the Conference to choose from. At the present session, a real effort should therefore be made to achieve that fundamental agreement and reduce the number of options which the Conference would have before it, otherwise the Preparatory Committee would seem to have accomplished nothing.

It appeared that the main outlines of a solution had emerged during the last few weeks; wider jurisdiction for the coastal State, a régime for the sea-bed which had the character of the "common heritage of mankind", the regulated maintenance of the main freedoms of the high seas in the waters beyond the limits of national jurisdiction and consideration for the interests of States in a special position. His delegation had no doubt that the Committee would successively conclude its preparatory work. It was convinced that the delegations would speed up their negotiations and conduct them in greater depth, without considering it necessary to wait for a decision on voting procedure for the Conference.

His third comment related to the new situations and problems of which mankind had only just become aware and for which it was going to create that new law of the sea. Ecology was one of those new phenomena: the biosphere, man's habitat were threatened, and the United Nations had reflected that concern by holding the 1972 Conference on the Environment. The Committee could not remain indifferent to the threats to marine life and the ocean itself which had been described by such eminent figures as the explorers Heyerdahl and Cousteau. Although the struggle to preserve the marine environment might seem more urgent in the industrialized than in the developing regions of the world, it was nevertheless one that had to be waged the world over, as was clear from the following two cases.

On 21 July, France exploded an atomic bomb in the Pacific. Several countries, such as Japan, New Zealand, Australia, Ecuador, Peru and Chile felt threatened: they were anxious over their natural environment, their marine fauna and the safety of their inhabitants. Chile had sent a protest to the French Government, both to defend its endangered interests and to support the principles endorsed by the United Nations.

He also drew the attention of the Committee to an incident which had occurred on 9 June 1973 in the territorial waters of the Republic of Chile. A large tanker of 38,000 tons, the Napier, carrying 35,281 tons of crude oil, was wrecked near the Island of Guamblin. Flying the Liberian flag but belonging to a South African firm, the ship's operator was a United States national and it was insured by British companies, while its victims were Chileans. Following consultations with experts from IMCO, FAO and certain friendly governments, all necessary action was taken to try to limit the extent of the disaster. The experts having advised setting the ship on fire, that was done by the Chilean Air Force four days after the accident. Because of the inaccessibility of the area and the poor visibility, it had not yet been possible to determine the extent of the damage done to the marine fauna and flora. Oil slicks had, however, spread more than a hundred miles to the south of the shipwreck. No amount of compensation could ever make up for the damage done in those waters and along the coasts, which had never before been polluted. He had referred to the case of that tanker to demonstrate the universal nature of marine pollution as well as the magnitude of certain problems before the Committee, including: the need to give the coastal State appropriate powers in the matter, the problems raised by giant tankers, the safety of navigation in general, flags of convenience and the need to ascertain, in universally accepted agreements, on whose shoulders rested liability for damage. Such problems should be solved by the Conference and not specialized forums which possessed neither the legal competence nor the political representativeness necessary to deal with the matter.

He wished to end on an optimistic note. Although the agenda was a heavy one and the national interests involved were varied and complex, it seemed that the Committee was making progress towards a consensus, which was of major importance and which would in the weeks to come require the tireless and unstinted efforts of everyone.

Mr. SMALL (New Zealand) drew the Sub-Committee's attention to the nuclear tests that had taken place at Mururoa in the South Pacific. The French Government maintained that those tests presented no danger, but took care to hold them far away from France. There was no doubt that the matter came within the mandate of the Committee since it involved freedom of navigation, freedom to explore and exploit the resources of the sea and sea-bed, and pollution of the marine environment, while the Committee, by the terms of its mandate, was responsible for examining every important issue connected with the law of the sea.

The debates which had already taken place in the Committee clearly revealed the views of the vast majority of its members. In carrying out further tests, the French Government had blatantly ignored the expressed condemnations of nuclear testing. Every nuclear test in the atmosphere, whether by France or by China, constituted a rejection of the concern expressed by the international community, in international treaties, in resolutions of the General Assembly, by the specialized agencies and at the Stockholm Conference. The countries in the South Pacific region had made numerous protests. For its part, the Government of New Zealand had fully supported the General Assembly resolution on the immediate cessation of all nuclear weapons tests and had protested, during the current year, at tests carried out in various parts of the world.

In order to convey to world opinion and to the French Government the sense of frustration felt by the peoples, together with their sincere conviction that the explosion of such nuclear devices should cease, his Government had taken the unprecedented step of stationing a New Zealand naval vessel in the immediate neighbourhood of the test area. The action of the French Government not only ignored international opinion but was in total disregard of the terms of an order issued by the International Court of Justice - the judicial organ of the United Nations. The consequences of such an attitude on the part of a country which, in the past, had played a leading role in the development of international law, should disturb every Member of the United Nations, particularly the smaller nations that looked for greater acceptance of the rule of law.

His delegation was bound to express its most profound regret at the recent nuclear tests and hoped that France would yet pay heed to the political and legal opinions expressed against the nuclear tests carried out at Mururoa.

Mr. HARRY (Australia) said that, by reason of the Committee's duties in the field of the protection of the marine environment and of preparations for the Convention on the Law of the Sea, his delegation felt it imperative to raise the question of the nuclear weapons tests that had just taken place in the Pacific Ocean. In 1972, twelve countries, members of the Committee, had submitted a declaration of protest against such tests, which had been supported by other countries. The French Government had, however, disregarded world opinion manifested through the Committee and other international bodies. His delegation held the view that the continuation of nuclear weapons testing in the atmosphere, which conferred no benefit on mankind and presented hazards to the health and even the lives of present and future generations, must be a matter of concern to all governments which attached importance to the protection of the marine environment. His Government, of course, sought the cessation not only of the current tests in the Pacific Ocean but also of all such nuclear tests, by any country.

The application presented by Australia was still under consideration by the International Court of Justice and, in accordance with the Court's order, his Government wished to avoid aggravating or extending its dispute with France. It was its opinion, however, that the recent explosion showed an open disregard by the French Government for the rules of international law and the decisions of the International Court of Justice, which had requested it to avoid any nuclear test in the Pacific Ocean, until a decision had been reached on the substance of the application by Australia and New Zealand. It was to be hoped that the French Government would pay heed to the reactions to its latest tests and would desist from further explosions provoking fallout and risking contamination of the marine environment in the Pacific region.

Mr. NANDAN (Fiji) said that his delegation regretted that it had to reiterate its protests against the nuclear testing carried out by the French Government at Mururoa Atoll. The General Assembly had repeatedly called for the cessation of nuclear testing. The Committee and its members had considered the question on many occasions and had stressed the dangers of such tests, not only to mankind but also to the land, water and air environments. Similar views had been expressed at many conferences held under the auspices of the United Nations and its specialized agencies, and the United Nations Scientific Committee on the

Effects of Atomic Radiation had presented no less than six reports on the subject. On learning that the French Government intended to carry out further tests, his Government had applied to the International Court of Justice for permission to intervene in the cases brought before the Court by Australia and New Zealand. When the Court had made a restraining order requiring France to desist from such tests until their legality had been determined, his Government had hoped to enjoy at least a respite from contamination of its environment. The explosion just conducted by France had dashed those hopes, the more so since the cumulative effect of such explosions on the health of peoples was now known. If, as the French Government maintained, those tests did not have the effects attributed to them by many countries and their scientific advisers, why could it not wait until the subject had been impartially examined by the judicial organ of the United Nations? The answer was obvious. France knew that its contentions were wrong and that the fears expressed were well-founded. Consequently, his delegation appealed to the French Government to refrain from conducting any further explosions, at least until the legality of its actions had been passed upon by the International Court of Justice.

Mr. OGISO (Japan) recalled that he had already had occasion to express his anxiety on the subject of nuclear weapons testing in the atmosphere. The news had just arrived that the first blast in a series had taken place at Mururoa, despite the mounting opposition and increasing concern expressed by the whole world, and particularly by the States in the Pacific region. Nuclear tests, especially those conducted in the atmosphere, contaminated the environment by increasing the level of ionized radiation and were detrimental to the health of present and future generations. Since such tests also constituted a hazard for the marine environment, the living resources and the flora and fauna of the sea, it was legitimate for the Committee to take a grave view of the incident and to express its opposition to continued atmospheric nuclear testing in the Pacific region. It should also be remembered that the International Court of Justice had just made a restraining order. His delegation hoped that all States not parties to the Moscow Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, would renounce any further tests in the atmosphere and would become parties to the Treaty.

Mr. BEERSLEY (Canada) said it was with regret that his delegation felt itself compelled to take the floor to express the concern of the Canadian Government at the continuation of nuclear weapons testing in the atmosphere. There was no doubt that the issue came within the Committee's mandate concerning the preservation of the marine environment. All the work undertaken on the legal, political, social and economic levels would be in vain if it was not possible to arrest the process of degradation by man of an environment upon which he depended so much, namely the seas. The United Nations Scientific Committee on the Effects of Atomic Radiation had stated in 1969 that the debris from nuclear tests in the atmosphere was still the major radioactive contaminant of the environment. That finding had been confirmed by the report submitted by the same Committee in 1972.

He recalled the arguments put forward by the Canadian representative to the Disarmament Committee in 1973. Nuclear weapons tests could not be considered in isolation because their effects were cumulative. Each atmospheric test had to be seen in the light of the build-up of radioactivity. That was why it was no longer defensible for any nuclear Power to plead that its atmospheric tests were so small and infrequent that they presented no identifiable danger to human health or to the environment. No increase in the exposure of the world's population to radiation should be permitted unless it could be demonstrated that there was a corresponding benefit to mankind, such as was produced by nuclear power reactors or the use of radiation for medical purposes. The Canadian representative had said on that occasion that his country was most concerned that, despite the partial test ban, some countries continued to carry out such tests. The vast majority of States shared that concern, as shown by the numerous resolutions adopted by the United Nations General Assembly and other international bodies. In addition, the International Court of Justice, which had been seized of the issue, had directed as an interim measure that the nuclear Power which was party to the dispute should avoid nuclear tests causing the deposit of radioactive fall-out on the territory of the applicant States. For those reasons, his delegation had requested, before the Disarmament Committee, that the nuclear Powers which had previously carried out tests in the atmosphere should cease to do so and should accede to the Treaty.

His delegation was not singling out any country in particular. It had long been opposed to all forms of nuclear testing carried out in the atmosphere, in outer space or under water. It regretted that, ten years after the conclusion of

the Treaty banning such tests, some countries that had not become Parties to it should deem it necessary to continue nuclear testing in the atmosphere, since that was a matter of concern to all mankind.

Mr. BAKULA (Peru) said he wished to take the floor to condemn, on behalf of his delegation, the nuclear tests which had just taken place in the Pacific. There was no doubt that the Committee was competent to take up the question. Those tests were a negation of fundamental rights; they violated the rights of third parties, endangered marine species, which were one of man's most important resources, and were unquestionably a source of danger. When some of the Latin American countries had extended their jurisdiction to 200 miles from their shores for peaceful purposes, how many were the voices that had not been raised against a measure which was nevertheless indispensable? But those were the very States which were polluting the atmosphere and the waters covering the earth. Moreover, the increase in atomic weapons obviously militated against the efforts to ensure world peace. It was impossible to claim that the tests were not dangerous. He believed that his country, by extending its jurisdiction to 200 miles, had taken the right step since, in so doing, it had demonstrated that the seas were to be used for peaceful purposes and not for the benefit of just one State.

Mr. KAMIL (Indonesia) said that his country had been a co-sponsor of a number of resolutions designed to put an end to nuclear weapons tests whether in the atmosphere, on land or underground. For example, it had been one of the authors of a draft declaration in the Committee the year before, that no tests should be held if they might be instrumental in polluting the marine environment. His country reaffirmed its opposition to all nuclear weapons tests, whatever country carried them out.

Mr. LARSSON (Sweden) said that his country shared the concern expressed by a number of delegations with regard to the recent nuclear tests in the Pacific. Sweden had supported resolution 2934 A(XXVII) in which the General Assembly had requested all States to accede to the Moscow Treaty of 1963 and to refrain from carrying out nuclear weapons tests. Sweden was opposed to all such tests, even underground.

Mr. EVENSON (Norway) said that his Government was now considering the recent nuclear tests in the Pacific. Without prejudging the substance of the statement that would be adopted at the close of the discussion, he recalled that Norway had acceded to the 1963 treaty banning nuclear weapons tests, and he regretted that the obligations contained in the Treaty had not been accepted by all countries.

Mr. RANGANATHAN (India) said that in June 1973 the Heads of the Australian and Indian Governments, on the occasion of a visit by the Australian Prime Minister to India, had issued a joint communiqué in which they had reiterated their opposition to tests carried out in any environment and in particular to atmospheric testing, with special reference to United Nations and WHO resolutions on the effect of ionizing radiation. India was concerned about the peoples affected and hoped that the country which had recently carried out tests would desist from nuclear testing altogether.

Mr. TELLO (Mexico) regretted that nuclear testing was continuing despite the Moscow Treaty, and his regret was all the keener in that tests had recently been made in the Pacific by a country greatly admired by Mexico. Mexico was opposed to all types of testing, and believed that the international community should condemn them without exception if it was to enjoy real moral authority. His country appealed to the countries with nuclear weapons to put an end to all their testing.

Mr. TORRES (Colombia) said that just when negotiations were under way to strengthen international co-operation in the ocean area, tests such as those which had just been carried out in the Pacific represented a setback. It was an unfortunate act on the part of a nation which had always been proud of its spiritual values. Colombia shared the concern expressed on the subject by Australia, Canada, Chile, Fiji, Peru and other countries.

He also deplored the effects on the marine environment and on the Chilean fishing industry of the accident to the oil tanker "Napier" off the Chilean coast to which the Chilean representative had referred.

Mr. TUEMAN (Liberia) hoped that the French Government would take into account the numerous protests against the tests it had just carried out and would refrain from any more testing.

The wreck of the "Napier" illustrated the dangers of marine pollution, which was a matter of concern to the whole world and to Liberia in particular. The facts of the accident were not yet fully known, but his country wished to state that it would not turn a blind eye to cases of pollution caused by vessels flying its flag but would, on the contrary, ensure that they observed the relevant regulations.

Mr. RAMIREZ (Ecuador) associated himself with the condemnation by Chile, Peru, Australia, New Zealand, Canada, Fiji and other delegations of the tests carried out in the South Pacific. He could not see what advantages the international community stood to gain from tests of that kind; on the contrary, they were a serious threat to the environment and to man himself.

He wished to express his country's sympathy for Chile as a result of the wreck of the "Napier", which had polluted its coastal area.

Mr. HUSSAAN (Pakistan) urged the Governments of the nuclear Powers and the would-be nuclear Powers to refrain from carrying out tests that were harmful to the environment. Such tests constituted a violation of the General Assembly resolutions on the subject.

Mr. MANANSALA (Philippines) associated himself with the delegations which had condemned the recent tests in the Pacific.

Mr. CHAO (Singapore) thought that at a time when peace was the main aim of the international community's efforts, nuclear weapons tests obstructed those efforts. All forms of nuclear testing should be banned.

Mr. SANTA CRUZ (Chile) thanked the representatives of Colombia and Ecuador for the sympathy they had expressed in relation to the tragedy of the "Napier". The Liberian representative, who had also referred to it, had said that his country would ensure that vessels flying its flag did not violate the relevant regulations. While thanking him for his words, he wished to clarify one point. Contrary to what the Liberian representative had said, Chile knew the circumstances in which the accident had taken place and had just made a detailed report on them. What it did not know were the causes of that strange accident. It appeared that the tanker, while less than 50 miles off the Chilean coast, had been navigating without radar. Accordingly, it might be presumed that there had been either negligence or an error of navigation. However, that might be, Chile did not attribute the responsibility for the accident to Liberia, as under the terms of the agreements and conventions in force, the responsibility fell on the shipowners, who were South African.

Mr. JEANNEL (France) said he did not wish to become involved in a controversy over the French nuclear tests in the Pacific, since it would delay the work of the Committee which had no time to lose if it wished to make good progress with its preparatory work so as to ensure the success of the Santiago Conference. However, he felt he should reply to certain speakers to give the true facts of the case under discussion.

First of all, the Sea-Bed Committee had no competence in the present case unless there was a threat to the environment, and no evidence was forthcoming to that effect. In a recent White Paper France had demonstrated, with the support of figures, that its tests could not be a source of radioactive pollution. He pointed out in that respect that the level of radioactivity in the world had dropped since 1963.

It had also been said that France disregarded the concern shared by the majority of States. France could take account only of anxieties that were well-founded and, in the present case, he would repeat that there was no evidence that they were. Some delegations had referred, in vague terms, to the law of the sea. In that connexion, France's position had been the same as that of the Governments of the region in the past and in particular of the New Zealand Government.

Allusion had also been made to the position recently taken by the International Court of Justice. For legal reasons, set forth in the French White Paper, the Court had no jurisdiction whatsoever in the matter. He added that the Court's position was based on Article 41 of its Statute and therefore had no binding force.

He expressed his country's sympathy with Chile as a result of the accident that had occurred to a tanker off its shores. France was actively engaged, in IMCO and elsewhere, in seeking a solution to such problems. It would shortly inform Chile of the contribution which it intended to make in that respect.

Mr. SHEN (China) noted that reference had been made to the nuclear tests made by China. China's position in that respect was already known. It was in favour of the banning and total destruction of all nuclear weapons. For the immediate future, however, the threat held out by the super-Powers constrained China to equip itself with nuclear weapons in self-defence. It had therefore proceeded to make a limited number of tests on its territory, taking all the necessary precautions to ensure that the Chinese people and the neighbouring populations would not be affected. He recalled that his Government had stated that China would never be the first to use nuclear weapons.

Mr. SMALL (New Zealand) said that his delegation could not accept the reply by the representative of France. He pointed out that the French representative had referred to the matter which was still pending before the International Court of Justice.

The CHAIRMAN, referring to the accident mentioned by the Chilean representative and its consequences, asked him to convey the Committee's sympathy to his country.

The meeting rose at 1 p.m.