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

### REPORT OF SUB-COMMITTEE III

#### I. HISTORICAL BACKGROUND

##### A. Work of the Sub-Committee in 1971

1. On 12 March 1971, at its 45th meeting, the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction decided to set up three sub-committees of the whole. At that meeting, the Chairman of the Committee read the agreement on the organization of work which provided for the establishment of the three sub-committees and allocated to them subjects and functions in accordance with the mandate of the Committee as defined in General Assembly resolution 2750 C (XXV) of 17 December 1970.

2. Under the terms of this agreement, the following subjects and functions were allocated to Sub-Committee III:

"To deal with the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research and to prepare draft treaty articles thereon."

3. The allocation of subjects and functions to the sub-committee, as provided for in the agreement on the organization of work was based on the following understanding:

"Treatment and allocation of all outstanding subjects including inter alia, (1) the precise definition of the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and (2) peaceful uses of that area shall be left for determination by the Committee. It is understood that the Sub-Committees, in connexion with the matters allocated to them, may consider the precise definition of the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. It is clearly understood that the matter of recommendations concerning the precise definition of the area is to be regarded as a controversial issue on which the Committee would pronounce. The Committee shall also decide on the question of priority of particular subjects, including the international

régime, the international machinery and the economic implications of exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, proceeding from resolution 2750 (XXV) and the relevant explanations made on behalf of its co-sponsors."

4. Being a sub-committee of the whole, Sub-Committee III was composed of the States members of the Committee. Other States Members of the United Nations which accepted the invitation to participate as observers in the Committee's proceedings, as well as representatives of certain international organizations, also attended the meetings.

5. During 1971, Sub-Committee III held fourteen meetings in Geneva. The 1st and 2nd meetings were held in March and the 3rd to 14th in July and August.

6. At the 1st meeting, on 12 March, the Sub-Committee elected the Chairman, the two Vice-Chairmen and the Rapporteur, as follows:

<u>Chairman:</u>	Mr. M. Alfred VAN DER ESSEN (Belgium)
<u>Vice-Chairmen:</u>	Mr. Mebratu GEBRE KIDAN (Ethiopia) Mr. Augusto ESPINOSA VALDERRAMA (Colombia)
<u>Rapporteur:</u>	Mr. Takeo IGUCHI (Japan)

B. Work of the Sub-Committee in 1972

7. Sub-Committee III continued in 1972 the work which the Committee entrusted to it under the terms of the agreement reached on the organization of work, of 12 March 1971.

8. During 1972, Sub-Committee III held two sessions. The first took place in New York from 28 February to 31 March and consisted of 5 meetings (15th through 19th). The second session was held in Geneva from 17 July to 18 August 1972 and consisted of 13 meetings (20th through 32nd).

9. Being a sub-committee of the whole, Sub-Committee III was composed of the States members of the Committee. The five States (China, Fiji, Finland, Nicaragua and Zambia) which joined the Committee pursuant to General Assembly resolution 2881 (XXVI) of 21 December 1971, also participated in the work of the Sub-Committee from the beginning of the March session.

10. Part of the March session was devoted to the consideration of the programme of work on the basis of a proposal by Canada, which as revised and amended in the course of the Sub-Committee's work was finally adopted as document A/AC.138/SC.III/L.14

at the 19th meeting on 29 March 1972. The programme of work contained five main headings as follows:

- A. Preservation of the marine environment (including the sea-bed)
- B. Elimination and prevention of pollution of the marine environment (including the sea-bed)
- C. Scientific research concerning the marine environment (including the sea-bed)
- D. Development and transfer of technology
- E. Other matters.

The programme made provision for general debate as well as for the formulation of legal principles and draft treaty articles. It also envisaged co-ordination with related efforts in other fora within which Sub-Committee III would be able to receive appropriate support from and make contributions to the FAO, the United Nations Conference on the Human Environment, IMCO, IOC (UNESCO), as well as with other specialized agencies or intergovernmental bodies or conferences which are also concerned with matters within the purview of the Sub-Committee. Also, it was understood that the programme was subject to change and the order of the items in the programme did not establish the order of priority for consideration in the Sub-Committee.

11. As part of the process of co-ordination and communication, the Sub-Committee agreed to a suggestion by Australia that the Chairman should communicate the results of discussions at the March session of 1972 to the United Nations Conference on the Human Environment held in Stockholm in June 1972. Accordingly, the Chairman, Mr. van der Essen, addressed a letter, outlining the discussions in Sub-Committee III as reflected in the summary records, to the Chairman of the Committee, Mr. H.S. Amerasinghe, who in turn transmitted it with the Committee's consent, together with the summary record of the March session which contained a number of valuable suggestions on principles, for adoption by the Conference.

12. The discussions in the Sub-Committee covered the preservation of the marine environment, including the prevention of pollution, scientific research and transfer of technology. The general discussion on marine pollution was concluded and the Sub-Committee decided, at its 23rd meeting, on 28 July 1972, to set up a working group on marine pollution based on the same formula as the working group on the régime in Sub-Committee I, the membership of which would for the most part be designated by the various regional groups, on the understanding that any member of Sub-Committee III could participate in the group's discussions.

13. The Working Group, which was named Working Group 2,<sup>1/</sup> held two meetings during the summer session of 1972 at which it elected its Chairman, Mr. J.L. Vallarta of Mexico. Its terms of reference are to draft texts leading to the formulation of draft treaty articles on the preservation of the marine environment and the prevention of marine pollution. The Working Group invited the members of the Sub-Committee to submit, at their discretion, written observations, including in particular, draft treaty articles, on the question of the preservation of the marine environment and the prevention of pollution for the use of the Working Group.

C. Work of the Sub-Committee in 1973

14. During 1973 Sub-Committee III held two sessions, one during the spring in New York and the second during the summer in Geneva. A total of 17 meetings were held.

15. The Bureau remained the same for the spring session in 1973, but during the summer session Mr. Espinosa Valderrama was replaced by Mr. Zuleta Torres of Colombia.

16. During the spring session the Sub-Committee continued the general debate on the subject of scientific research. The general debate was concluded towards the end of the session and the Sub-Committee decided to establish Working Group 3 under the Chairmanship of Mr. A. Olszowka of Poland to prepare draft treaty articles on scientific research and the transfer of technology.<sup>2/</sup> During the summer session the Sub-Committee had a general debate on the last subject within its terms of reference, namely, transfer of technology.

17. During 1973, Sub-Committee III heard statements from the observers of IMCO, UNEP, IAEA and IOC.

18. A list of documents submitted to the Sub-Committee for the years 1971-1973 is in Annex 1.

19. A list of statements made in the Sub-Committee for the years 1971-1973 is in Annex 2.

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<sup>1/</sup> The membership of Working Group 2, which was open-ended, was as follows: Algeria, Brazil, Bulgaria, Canada, Ecuador, India, Indonesia, Iran, Ivory Coast, Japan, Kenya, Liberia, Madagascar, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Peru, Philippines, Romania, Spain, Somalia, Sudan, Sweden, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela. There was one vacancy in the Asian group.

<sup>2/</sup> The membership of Working Group 3, which was open-ended, was as follows: Algeria, Argentina, Brazil, Cameroon, Canada, Colombia, Egypt, Finland, France, Hungary, India, Indonesia, Italy, Japan, Kenya, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Poland, Senegal, Sierra Leone, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, the United States of America and Venezuela. There were two vacancies in the Asian group.

## II. Summary of General Debates

### A. General debate on scientific research

20. It was suggested that marine scientific research be described as the systematic study, investigation or experimental work to acquire knowledge of the natural processes and phenomena occurring in ocean space. It was said to embrace a multitude of related scientific activities or disciplines and to cover inter alia the study of marine space and its changes, of matter and their circulation in marine space, the amount and flow of energy, of marine life and phenomena at the boundaries of marine space. It could be conducted from land, from the atmosphere or outer space or in ocean space itself. The view was expressed, however, that the Sub-Committee was concerned only with scientific research conducted in the marine environment. It was pointed out that scientific research means any fundamental or applied research and related experimental works which does not aim directly at the industrial exploitation and which is necessary for the peaceful activities of States.

21. It was stated that the central preoccupation of the international community was the orderly development and rational exploitation of marine resources as well as the preservation of the marine environment and that the achievement of these general purposes, on a global scale, was dependent on the progress of marine scientific research. It was considered impossible to visualize either effective control of ocean pollution or effective management of fisheries, either national or international, without intensive and co-operative scientific research. In short, scientific research was viewed as the prerequisite for the rational and intensive utilization of ocean space.

22. Doubts were expressed as to the usefulness in this context of the distinction between "fundamental"/"pure" scientific research and "applied research" or "research aimed at commercial exploitation". It was argued that what might appear basic and fundamental research in the eyes of one scientist would be research aimed at the exploitation of marine resources to another. It was pointed out that certain national interests relating to security and commercial matters were involved in scientific research. There was a view that the concept of "pure science" was theoretical and a fallacy in the light of international political and socio-economic realities. On the other hand, an opinion was expressed that it was possible to identify pure scientific research and investigation with non-commercial and non-industrial aims. The soundness of another distinction often made, between research for peaceful purposes and military research, was also the subject of doubt among some members of the Sub-Committee. It was asserted that in 90 per cent of the cases no meaningful distinction could be made.

23. It was said that scientific research should not hamper the normal utilization of the sea such as freedom of navigation and of fishing, nor should it have repercussions which would contravene the principle of the preservation of the marine environment.

24. It was stated that some countries recognized the need to formulate rules as well as general conditions and guidelines to govern the conduct of marine scientific research. It was pointed out that such rules were necessary to reconcile the conflicting views of those who wanted marine scientific research to be free and unburdened by restrictive measures and the views of those who wished to have the marine environment protected from possible abuse.

25. The attention of the Sub-Committee was directed to the basic drafting question of whether these rules should be formulated as elements of a separate treaty on marine scientific research or whether articles on the subject should be included as parts in a more general treaty or treaties that would result from the third United Nations Conference on the Law of the Sea. The suggestion was made that it might be easier to start with a set of articles that could be included in a treaty or treaties of a general character.

26. In accordance with these views, it was not compatible with existing international realities that scientific research should proceed without fully protecting the legitimate rights and interests in the oceans both of mankind as a whole and of individual States. The protection of these legitimate rights and interests through the formulation of adequate international rules and regulations was the task confronting the Sub-Committee and the Working Group on Scientific Research and Transfer of Technology.

27. In accordance with one school of thought, the expression "freedom of scientific research" was not to be interpreted as one of the freedoms of the high seas and should preferably be replaced by the term "promotion and development of scientific research". It was pointed out that it was untenable under this approach to consider such freedom as "a recognized principle of international law" or as "one of the freedoms of the seas and oceans generally accepted by international law".

28. Another view held that freedom to conduct scientific research was one of the universally recognized freedoms of the high seas and represents the common principle of customary international law.

29. Another view held that while there was freedom of scientific research and that this freedom should be protected, it should also be subject to appropriate regulations so that it takes into account the rights and interests of other States and conforms with the basic provisions established to protect the marine environment.

30. A further view was that it was essential for the new rules to make allowance for the differences in the various rights and interests requiring different régimes in the areas or zones within and beyond national jurisdiction. In areas within the jurisdiction of another State, the latter's consent must be obtained; in areas beyond the limits of national jurisdiction, research should comply with the regulations laid down under the international régime to be established. However, it was also expressed that the term "zones of national jurisdiction" was not yet adopted and defined.

31. Still another opinion envisaged the principles of respect for the sovereignty and equality of all States, as forming the basis for a reasonable solution to the question of international scientific research on the seas, and held that in the territorial sea of a coastal State and on the continental shelf and sub-soil thereof, foreign marine scientific research was subject not only to the coastal State's approval, but also to its appropriate control.

32. According to one view, the coastal State has the right to regulate and control marine scientific research in areas under its jurisdiction and to ensure the protection of its vital interests in this regard, as well as the duty to promote such research and

act as the custodian of the international community's interest in the development of scientific knowledge concerning the marine environment as a whole. With regard to areas beyond the limits of national jurisdiction, this same view emphasized that freedom of marine scientific research was entitled to some form or degree of recognition and protection only to the extent that the results, data or information so obtained were made genuinely available to all States and contributed to the growth of scientific knowledge in the interests of the international community as a whole.

33. According to another view, every State would have the right to undertake both "fundamental marine scientific research" and "marine scientific research aimed at the exploitation of resources" on the high seas, while general marine scientific research, within the limits of the territorial sea, would be conducted only with the consent of the coastal State concerned. The principles established in Article 5, paragraph 8 of the 1958 Convention on the Continental Shelf should be maintained in any future convention regarding general non-commercial research into the characteristics of the continental shelf or economic zone. The same view held that the coastal State should be required in the general interest to cut bureaucratic red tape to a minimum in matters concerning requests by foreign States wishing to undertake research in the jurisdictional zones of the coastal State. Thus, time limits should be established for the submission of requests to undertake research as well as for the reply of the coastal State.

34. The view was also expressed that the Sub-Committee could consider a comprehensive legal approach which would be capable of resolving any possible conflict between unfettered sovereignty of the coastal State within its national jurisdiction and laissez faire freedom beyond national jurisdiction. It was advocated that scientific research in the ocean should be considered as a public interest of the international community. As such, it was pointed out that it would be endowed with special protection throughout ocean space, subject only to essential safeguards to protect truly vital interest of coastal States, as well as to non-discriminatory international regulations to minimize the possibility of abuses and to ensure equitable benefits to all members of the international community. This outlook called for the establishment of comprehensive international institutions for ocean space to regulate scientific research in a non-discriminatory manner and assist less scientifically advanced countries. According to this opinion, an international register would be maintained within the framework of the institutions to indicate who was entitled to undertake scientific research, even in some areas under national jurisdiction. States, institutions or persons in the register would assume legal responsibility for damages caused by them to the environment or to the legitimate rights and interests of States and their names could be removed from the register if they abuse the privileges which they enjoy.

35. As to the régime that should prevail in the zone under the sovereignty and jurisdiction of the coastal State, views were expressed to the effect that scientific research could be carried out by the coastal State itself or by other States with the former's consent. This requirement would apply to such areas as internal waters, territorial sea, continental shelf and the subsoil thereof and zones of specific economic jurisdiction, like fishing zones or the patrimonial sea, adjacent to the territorial sea. In accordance with these views, States, international organizations and physical or juridical persons wishing to carry out marine scientific research

within such areas must obtain the prior consent of the coastal State and strictly observe its relevant laws and regulations. It was suggested that these States, international organizations and physical or juridical persons should specify, inter alia, the objectives and tasks of their research, the means to be used, the scientific staff to be employed, the zones in which the activities are to be conducted and the dates proposed; and they shall undertake to transmit to the coastal State the primary data and results of investigation and any samples obtained. The additional view was expressed that, with regard to research in areas beyond the territorial sea, consent should be based on certain fundamental principles as embodied in the future Convention. Prior consent of the coastal State was considered of crucial importance in view of the difficulties in making a precise distinction between pure scientific research and exploration for economic and even military purposes.

36. In accordance with this opinion, the coastal State should also be entitled to take part on an equal footing or be represented if it so decides in the scientific research carried out by other countries within areas under its sovereignty and jurisdiction. The coastal State had the right to ensure for itself an equal share in the knowledge about areas under its sovereignty and jurisdiction. Thus it should be entitled to receive and use data and samples and the results should be reported to it with a minimum of delay. It was held that publication of such results should in no way be prejudicial to the interests of the coastal State and should be subject to its prior consent. It was further suggested that research activities in these areas should be conducted in conformity with the conditions laid down in the relevant authorization of the coastal State and that these conditions should not be altered by the persons conducting the investigation, except with the express consent of the coastal State. Scientific research activities should be so conducted that they do not harm the marine resources and do not interfere with or obstruct their exploitation, navigation or existing services and installations. It was also held that the results of such research were the property of the coastal State and that publication of the results should in no way be prejudicial to the interests of the coastal State and should be subject to its prior consent.

37. Another view was that the participation of coastal States should be facilitated and encouraged in the areas adjacent to the areas within national jurisdiction because of the relationships between the two areas. In these cases advance information of research plans should be given to the nearest coastal States.

38. It was pointed out that in practice some coastal States permitted the conduct of marine scientific research within their jurisdiction when they received applications from other States for their prior consent. This practice, it was also pointed out, had worked well in the past and could therefore continue in the future.

39. It was suggested that it should be possible to establish a workable system of safeguards governing scientific research projects in areas within national jurisdiction, in a manner consistent with the basic principle of full international co-operation and the need to accommodate national rights and interests, particularly the scientific priorities of the coastal State.

40. It was pointed out that the variety of areas and jurisdictions, the conflicting claims related thereto and the separate administrative practices of coastal States on the conduct of research in areas within their jurisdiction, created uncertainties,



increased the costs and had an inhibiting effect on the planning and conduct of marine scientific research which was highly detrimental to the advance of knowledge concerning the marine environment and hence might delay the national development of marine space for the benefit of mankind.

41. To create a régime which permitted the maximum accumulation of knowledge for the benefit of mankind, while also protecting the legitimate economic interests of coastal jurisdictional areas beyond the territorial sea of a State, views were expressed that coastal State rights could be protected through a series of obligations rather than following the consent régime of the Continental Shelf Convention. The obligation would include such requirements as: advance notification to the coastal State; meaningful participation by the coastal State in the research directly or through an international organization of its choosing; sharing of all data and samples with the coastal State; assistance directly or through an international organization to the coastal State in interpreting the data and samples; flag State certification that the research is being conducted by a qualified scientific research institution; publication of significant research results in an open readily available scientific publication; and required compliance with all applicable international environmental standards. In the territorial sea, coastal States should have the right to approve or reject the conduct of scientific research.

42. With regard to the sea-bed beyond national jurisdiction, it was stated that scientific research should be conducted exclusively for peaceful purposes pursuant to the terms of General Assembly resolution 2749 (XXV) of 17 December 1970. Thus, it should be subject to international regulations with a view to benefiting mankind as a whole. Concerted programmes of international marine scientific research should be worked out jointly provided that they guarantee the equality of all States, large and small.

43. More particularly, the view was held that scientific research carried out in the international sea area should be subject to regulation and protection by the international machinery to be established.

44. Another view was that, to promote co-operative programmes it would be necessary to recognize the freedom of States to carry out scientific research in areas beyond the limits of sovereignty and national jurisdiction provided such research met certain requirements, such as advance notification to the international authority, prompt dissemination of results and training of experts from the developing countries. It was added that the international regulations governing scientific research in areas beyond the limits of sovereignty and national jurisdiction should be such that the developing countries do not become dependent on the developed countries for their marine research technology.

45. In reference to the status of the international sea area, there were views to the effect that the results of scientific research should be regarded as part of the common heritage of mankind and should therefore be of benefit to all States whatever their level of development. For this purpose, developing States should be able to undertake or participate in scientific research projects as well as to have access to the results thereof. These results ought to be globally disseminated and such dissemination should be institutionalized by requiring, for example, that data be

reported to an appropriate international organization. Marine scientific research efforts should be co-ordinated, duplication avoided and available resources used in the most effective manner.

46. A view was expressed that there is a régime of freedom of research in the area beyond national jurisdiction and that this régime had produced results of great benefit and had caused no harm to mankind as a whole. According to this view there was no need for the control or regulation of scientific research in this area, subject only to the need to protect the marine environment by, for example, regulating research drilling.

47. It was generally agreed that marine scientific research should not form the legal basis for any claims of exploitation rights or any other rights in areas beyond the limits of national jurisdiction.

48. It was pointed out that if the goals and benefits of marine scientific research were to be realized, the participation of all States, particularly developing countries, in such research must be encouraged and ensured. Scientific research was the key to the development of the riches in the oceans and had disclosed resources lying beyond the limits of national jurisdiction. It was also suggested that the principal goals of scientific research should include provision of basic data for the prevention of marine pollution. Efficient scientific research would indicate how the marine environment could be protected against pollution, what environmental changes were occurring and where the mineral and living resources of the oceans could be found. In order to eliminate, reduce or limit marine pollution, coastal States must be able to regulate the areas within their jurisdiction without being hampered by technological inexperience. On the other hand, doubts were raised as to the meaning of the term "areas within their jurisdiction" since these areas are not yet universally accepted.

49. Attention was called to limitations in the capacity of developing countries either to partake in the development and fruits of the common heritage of mankind or to fully meet their international responsibilities concerning the preservation of the marine environment.

50. As to the manner of enhancing the capacity of developing countries in scientific research, the idea was expressed that for international co-operation to be really meaningful, national or regional efforts would have to be supplemented by assistance from technologically advanced countries and appropriate international organizations. In accordance with this view, assistance to developing countries at their request should relate to items such as financial resources, personnel training, establishment of research centres and dissemination of scientific data. It was pointed out that such assistance to developing countries could be organized on the basis of bilateral agreements.

51. In support of the need for the dissemination of scientific research data, it was argued that marine scientific research was, or should be, essentially an international co-operative activity, the results of which should be part of the common heritage of mankind and consequently available to all of the international scientific community. On the other hand, the view was expressed that even if the concept of the common heritage of mankind was not supported by all, scientific knowledge belonged to all mankind. The interdependence of nations having been increased by advancing technology,

all States had the responsibility to develop and institutionalize international co-operation in all fields, including scientific research and the exchange and dissemination of information.

52. It was suggested, therefore, that the Sea-bed Committee might ask the General Assembly to request the specialized agencies to organize and promote with increasing effectiveness the training of personnel from developing countries in marine technology. A further suggestion was made for the formation of an agency under the supervision of the sea-bed authority which could pool the necessary finance and facilities (e.g. research ships, equipment and highly trained personnel) required and co-ordinate the research programme and adequate dissemination of results. It was also suggested that the creation of a comprehensive institution for ocean space might prove particularly effective in this connexion. Nevertheless, another view was expressed that it was not necessary to establish a new agency to deal with oceanographic research since such activities had been carried out by existing international institutions.

53. It was also suggested that competent international organizations and technically advanced countries should assist the developing countries to improve the capability of technical personnel to participate in scientific expeditions and to utilize the results of research by such means as the provision of special training programmes for specialists and the establishment of research centres in the countries concerned. Under this approach, scientific research and development and transfer of technology were complementary and such approach would greatly contribute towards the utilization of scientific research data by the recipient developing countries and the closing of the gap between scientifically advanced and developing countries.

54. It was added that international co-operation must be based on the principles of mutual respect for sovereignty, equality and mutual benefit and on the right to conduct scientific research, and must be agreed through bilateral or multilateral consultations. The co-operative effort should be so organized as to enable the developing countries to train their own scientists and technicians with a view to the best utilization of available resources through effective co-ordination and the avoidance of duplication in marine scientific research.

55. The view was also expressed that assistance to developing countries as well as gathering, processing and disseminating scientific data should be part of any draft treaty articles relating to scientific research in the ocean.

#### B. General debate on transfer of technology

56. It was pointed out that, with reference to the subject of transfer of technology, three main points had to be considered. Firstly, a study should be undertaken with a view to devising an international set of rules governing technical assistance and transfer of technology. Secondly, States and other bodies involved in scientific research should support parallel programmes of technical assistance, including the transfer of technology, aimed at the countries of the zone or region in which the research programmes were to be carried out. And thirdly, all programmes of scientific research, technical assistance and transfer of technology should be co-ordinated and guided by a technical and scientific body, functioning under the International Authority.

57. The view was expressed that only a few of the most developed countries benefit from the application of technology to the exploration and exploitation of the sea-bed, and this did not improve the conditions in developing countries. It was stated, therefore, that there was a need to provide for the establishment of international centres to give information on technological markets and such centres could help reduce the total cost of transferring technology which, it was stated, represented one of the major obstacles to development programmes. It was important that transfer of technology should be carried out more efficiently and be put to better use if institutions were to be set up in developing countries so as to analyse the various aspects regarding the process of transfer of technology. The view was also expressed that the international community had a responsibility to ensure that benefits derived from the exploitation of marine resources contributed effectively towards the narrowing of the gap that separated some States from others.

58. It was said that just and equitable rules should be applied to a broad programme for the transfer of technology, as already agreed upon by the United Nations General Assembly in 1970, when it adopted its Strategy for the Second Development Decade. Another suggestion was that the forthcoming Law of the Sea Conference could be provided with a study which would enable it to establish the main objectives of the transfer of technology.

59. It was further said that experience had shown the transfer of technology on a commercial basis was not in keeping either with the principles on which marine scientific research could be based or with the general principles of international development policy. Therefore efforts had to be made to establish new relations among States with regard to the market for technology in general and with particular regard to the sea and its resources, and this could only be achieved with the setting up of a new legal régime and machinery which could provide opportunities to achieve this aim.

60. Another view expressed was that many States supported the proposal that assistance should be given to developing countries to acquire the knowledge of technology regarding the oceans but modern oceanographic research was extremely costly and complicated and frequently required funds and resources which were beyond the means of moderately developed States, and it was therefore desirable that a considerable number of States should participate in such programmes to help provide such technology to the less developed States. It was further stated that participation in scientific expeditions was only one of the measures that could help to strengthen the capabilities of developing countries in the area of scientific research and therefore there was need for much work to be done on such matters as the implementation of joint programmes, the transfer of scientific and technical information, joint action to assist the developing countries in establishing scientific research centres, and the setting up of machinery for transferring patented know-how.

61. It was stated that it was essential that the subject of transfer of technology should not be neglected in the preparatory work for the Conference on the Law of the Sea, and this was because developing States (which were virtually dependent on the ocean) were aware of the fact that scientific and technological know-how was the basis of the economic prosperity and if deprived of it such States were doomed to dependence and under-development with all the resultant economic and social consequences.

62. It was suggested that due to lack of such technological and financial help from developed States, developing countries may not be able to maintain strict international standards for the prevention of marine pollution unless they stop development activities. However, such an alternative was not feasible due to the need of such countries to better the living standards of their populations.

63. It was pointed out that the sea, with the immense potential resources to be found in its waters, its bed and its subsoil, offered the under-developed States a genuine opportunity of improving their condition, but they had to acquire the necessary technology, especially through transfers. Three major aspects of such transfers to developing countries were pointed out and these were: (i) utilization of coastal resources; (ii) exploitation of fishing resources of the adjacent areas; and (iii) exploration and exploitation of mineral resources.

64. The view was expressed that the transfer of technology and scientific knowledge to the developing countries would include: participation of scientists from developing countries in scientific expeditions; implementation of joint programmes; transfer of scientific and technical information; joint action to assist in establishing scientific research centres; and the transfer of patented technology. It was further stated that this question was directly related to the principle of freedom of scientific research on the high seas, for unless that principle was upheld there could be no real international co-operation in the study of the oceans.

65. Another view expressed was that the transfer of technical knowledge necessary to profit from scientific research was a two-stage process. In the first stage, developing countries should receive assistance in interpreting data about marine areas of concern to them in a manner favourable to their interests. In the second stage, means would be devised to enable countries not only to interpret the data for themselves but also to engage in scientific research in the marine environment. To achieve this, it was pointed out, a mechanism should be established within appropriate international organizations whereby coastal States could seek assistance in interpreting data and samples obtained from scientific research conducted in the areas off the States which exercise jurisdiction over the area's sea-bed resources and fisheries. In such a case the State would have the right to participate or be represented in the research and to have access to the data and samples obtained. It was also stated that with respect to the interpretation of data the coastal State should be in a position to receive assistance from an international or regional organization participating in scientific research on its behalf and the coastal State could thus determine its priorities for the benefit of the scientists taking part in the project on its behalf and could then obtain assistance from the organization to analyse the data.

66. On the other hand, it was pointed out that not all scientific research projects generated data with immediate relevance to the coastal State and that data might emerge in a form which could not be used for more than one purpose, and as such the assistance of the proposed international or regional organization would be helpful in determining the immediate relevance of the data for the coastal State.

67. Another view expressed was that the development of training and education were the main means of achieving the transfer of technology and it was also important to provide equipment for such training. Furthermore, the transfer of technology should

be viewed in the context of a global strategy and medium and long-term plans should be worked out providing in particular for the necessary technical assistance and the services of experts. It was stated that Sub-Committee III, to enable it to do useful work, should only deal with the technology of scientific research and should not involve itself in industrial and commercial technology which raises very sensitive problems regarding patents because in most cases those patents were the property of private companies over which Governments had no or little control, and for the time being there are few instruments of oceanographic research protected by patents. Another problem, it was pointed out, was how treaty articles on the transfer of technology would be worked out in a comprehensive convention. The only solution possible was to formulate general provisions on the need to foster the transfer of scientific research technology.

68. A view was expressed that guidance from the Sub-Committee was required since the term technology had not yet been defined nor had it yet been agreed what type of technology was to be transferred and in particular whether the transfer of technology which was being discussed by the Sub-Committee concerned exclusively scientific research or included also industrial processes. Until this question was resolved it would be difficult to discuss meaningfully the problem of the transfer of technology.

### III. Reports of Working Groups

#### A. Report of Working Group 2

69. Below are two notes with Annexes from the Chairman of Working Group 2 (A/AC.138/SC.III/L.39, A/AC.138/SC.III/L.52, and L.52/Add.1) reflecting the work achieved in the Working Group. The first note deals with work done in the working group during the March/April session, and the second note concerns the period during the July/August session.

- (1) Note by the Chairman of Working Group 2 addressed to the Chairman of Sub-Committee III (A/AC.138/SC.III/L.39 of 6 April 1973)

"I have the honour to inform you that at the current session the Working Group on Marine Pollution (Working Group 2 of Sub-Committee III) held 15 meetings, from 14 March to 5 April 1973.

In accordance with its terms of reference, the Working Group began discussion of the four proposals on preservation of the marine environment, including the prevention of marine pollution, formally submitted to Sub-Committee III at the current session (documents A/AC.138/SC.III/L.27, 28, 32 and 33). The discussion covered the following subjects contained in those proposals:

General obligation to preserve and protect the marine environment;

General obligation of States to adopt measures to prevent pollution of the marine environment, irrespective of the source of pollution;

Obligation of States to prevent damage from marine pollution;

Particular obligations of States to adopt specific measures in connexion with certain sources of marine pollution, and the relation between such measures and generally accepted international standards;

International co-operation and technical assistance.

The Working Group also considered the right of States to exploit their own resources in conformity with the obligation to preserve and protect the marine environment, and other relevant subjects contained in the proposals under discussion.

In the light of the discussion of the above-mentioned subjects, the Working Group authorized me, as Chairman, to convene informal consultations between the sponsors of the proposals and other delegations, with a view to the drafting of joint working papers for subsequent consideration by the Working Group. These consultations were open to participation by all delegations.

In the course of 12 meetings, from 19 March to 3 April 1973, the informal consultations produced a number of working papers, the texts of which are annexed to this note for information. These texts were drafted on the basis of the above-mentioned proposals and of comments and suggestions by delegations in the Working Group.

At the meeting of 4 April 1973, the Working Group took note of the texts drafted in the course of the informal consultations and decided to consider and discuss them at the next session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor. Towards the end of the current session, the Working Group began a preliminary discussion of some working papers on standards for the control of pollution from ships (documents A/AC.138/SC.III/L.36 and 37).

The Working Group authorized me to inform you and Sub-Committee III, by means of a note, of the progress achieved by Working Group 2 in carrying out its mandate."



Annex

Texts contained in the informal Working Papers prepared for Working Group 2 by the informal consultations among authors of proposals submitted to Sub-Committee III and other delegations

WG.2/Paper No. 3 (Text of a Draft Article on Basic Obligations)

States have the obligation to protect and preserve the marine environment, in accordance with the provisions of these articles. \*

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\* The reference to "the provisions of these articles" is intended to reflect the fact that the Working Group will wish to specify in subsequent articles the scope, qualifications and limitations of this general obligation. For example, the Working Group may wish to specify that nothing in these articles shall be deemed to impose a duty on a State to prevent pollution that only affects areas or resources under its jurisdiction.

II

WG.2/Paper No. 8/Add.2 (Result of discussion on Particular Obligations)

Text of a Draft Article

"1. States shall take all necessary measures to prevent pollution of the marine environment from any source, 1/ using for this purpose the best practicable means in accordance with their capabilities, 2/ individually or jointly, as appropriate. In particular, States shall take measures to ensure that activities under their jurisdiction or control 3/ do not cause damage 4/ to other States, 5/ including their environment, by pollution of the marine environment. 6/

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1/ It was understood that an elaboration of the meaning of marine pollution could be inserted in the above text after "from any source", if there was to be no special section or article on definitions, containing such an elaboration.

2/ A query was raised as to the meaning of "capabilities" in the above context and the suggestion made that further clarification was needed.

3/ Some delegations considered that "or control" should be retained while others felt it should be deleted. Some delegations thought that the meaning of "control" in this context should be clarified. It was stressed that the above sentence relates to a State's control over activities and not to areas of control.

4/ This use of the word is not intended to prejudice the question of liability.

5/ Some delegations were of the opinion that "other States" did not sufficiently indicate the aspect of damage to the international community e.g. to areas of the marine environment not under the jurisdiction of any States, and suggested that a more direct reference would be appropriate.

6/ The view was expressed that this last phrase might be unnecessary.

"2. The measures taken pursuant to these articles shall deal with all sources of pollution of the marine environment, whether land, marine, or any other sources, including rivers, estuaries, the atmosphere, pipelines, outfall structures, vessels, aircraft and sea-bed installations or devices. They shall include inter alia 7/:

(a) In respect of land-based sources of pollution of the marine environment, measures designed to minimize the release of toxic and harmful substances, especially persistent substances, into the marine environment, to the fullest possible extent;

(b) In respect of pollution from vessels, measures relating to the prevention of accidents, the safety of operations at sea, and intentional or other discharges, including measures relating to the design, equipment, operation and maintenance of vessels, especially of those vessels engaged in the carriage of hazardous substances whose release into the marine environment, either accidentally or through normal operation of the vessel, would cause pollution of the marine environment 8/; and

(c) In respect of installations or devices engaged in the exploration and exploitation of the natural resources of the sea-bed and subsoil and other installations or devices operating in the marine environment, measures for the prevention of accidents and the safety of operations at sea, and especially measures related to the design, equipment, operation and maintenance of **such** installations and devices.

"3. The measures taken pursuant to these articles shall 9/:

(a) In respect of land-based sources of pollution of the marine environment, take into account such international standards as may be elaborated;

(b) In respect of marine-based sources of pollution of the marine environment, conform to generally accepted international standards 10/.

"4. In taking measures to prevent pollution of the marine environment, States shall have due regard to the legitimate uses of the marine environment and shall refrain from unjustifiable interference with such uses."

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7/ Certain delegations noted that they would consult environmental experts regarding the balance and content of the specific enumerations in this paragraph.

8/ Some delegations considered that "pollution from aircraft" should be expressly mentioned in this sub-paragraph.

9/ The acceptance of this paragraph by some delegations was conditional upon satisfactory provision being made in subsequent articles concerning the rights of coastal States, the functions of international organizations - including the Authority - , or both.

10/ Some delegations reserved their position on the application of the international standards in respect of sources of pollution relating to the development and exploitation of the continental shelf and sea-bed, since international standards in this case are not yet in existence and a regional arrangement to cover such a case with due consideration to geographical and regional conditions might be more directly relevant. Other delegations noted that the establishment of international standards is fundamental but does not preclude the establishment of higher standards on individual or regional basis.

### III

#### WG.2/Paper No.9 (Result of discussion on Particular Obligations)

In taking measures to prevent marine pollution States shall guard against the effect of merely transferring damage or hazard from one area to another. \*

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\* It was understood that the order of this text in relation to the draft articles on the prevention and control of marine pollution was to be decided later.

### IV

#### WG.2/Paper No.7 (Result of discussion on first sentence, principle (a), A/AC.138/SC.III/L.27; and fourth preambular paragraph, A/AC.138/SC.III/L.28)

In the event that a provision dealing with States' rights to exploit their own resources pursuant to their environmental policies were to be included in the draft articles, the following wording is offered as a possible text.

"Nothing in this ..... shall derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its duty to protect and preserve the marine environment both in its own interests and in the interests of mankind as a whole." 1/

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1/ In discussing proposed measures for the prevention of marine pollution, it was thought necessary to include a provision reserving the rights of States to exploit their own resources pursuant to their environmental policies. Some delegations felt that such a provision should either be a draft article or part of an article, while others felt it would belong, more appropriately, in a preamble. Yet others reserved their position on this matter, some expressing the view that it was irrelevant to the concrete obligation of States to take measures to prevent marine pollution. It was also suggested by some delegations that such a provision should only relate to the exploitation of land-based resources.

(2) Note by the Chairman of Working Group 2 addressed to the Chairman of Sub-Committee III (A/AC.138/SC.III/L.52 of 15 August 1973)

"Further to my note of 6 April (A/AC.138/SC.III/L.39) on the progress of the Working Group on Marine Pollution (Working Group 2 of Sub-Committee III) at the March/April session, I have the honour to inform you that at the current session the Working Group held 13 meetings, from 4 July to 15 August 1973.

In accordance with its terms of reference, the Working Group continued to use as a basis for its work the proposals on preservation of the marine environment, including the prevention of marine pollution, submitted to Sub-Committee III. <sup>1/</sup> The discussion during the current session covered the following subjects contained in those proposals:

global and regional co-operation;  
technical assistance;  
monitoring;  
standards; and  
enforcement.

The Working Group began consideration of the last subject but due to the lack of time and to a procedural disagreement which arose as to how to reflect the different views expressed on this topic, it was not possible to draft texts for inclusion in Annex 1 to this note.

In addition to the above subjects, the Working Group began its consideration of the duty of States responsible to terminate activities violating the future convention and of the determination of discharge of obligations under the convention.

The informal consultations established by the Working Group at the March/April session were reconvened on 6 July and 21 meetings were held during this session. They were able to produce a number of texts on the above subjects, excluding the matter of enforcement as I have already indicated, and these texts are attached to this note as Annex 1. As before, the informal consultations were open to participation by all delegations.

It will be evident that the Working Group and its informal consultations were unable, due to lack of time, to consider in their entirety all the proposals submitted. Nor was it possible to review the texts prepared in informal consultations during the March/April session and the current session. Therefore, the Working Group took note of these texts and authorized me to inform you and Sub-Committee III of the results of its work. The Working Group wishes to submit the texts attached as Annex 1 as well as those contained in my earlier note (A/AC.138/SC.III/L.39) to the Sub-Committee for its information and action, as appropriate.

A proposal, which was submitted at the last meeting of the Working Group, is attached to this note as Annex 2. This proposal contains texts which are intended by the delegation of Brazil which presented them to provide alternatives to some of the texts contained in Annex 1 as well as in the Annex of A/AC.138/SC.III/L.39 as reproduced above. However, it was not possible for the Working Group or its informal consultations to consider these texts."

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<sup>1/</sup> A/AC.138/SC.III/L.27, 28, 32, 33, 36, 37 and 37/Add.1, 40, 41, 43, 46, 47, 48, 49 and 50. The Working Group also referred to the relevant proposals in A/AC.138/SC.II/L.28.

"Annex 1

WG.2 Papers No. 10 and No. 10/Add.1

"Global and Regional Co-operation

(a) States<sup>1/</sup> shall co-operate on a global basis and as appropriate on a regional basis, directly or through competent international organizations, global or regional, to formulate and elaborate treaties, rules, standards and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features.

OR

(a) States<sup>2/</sup> shall co-operate on a global basis and as appropriate on a regional basis, directly or through competent international organizations, global or regional, to formulate and elaborate treaties, rules, standards and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features and economic factors.

(b) A State which becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution shall immediately notify other States likely to be affected by such damage, as well as the competent international organizations.

(c) In the cases referred to in paragraph (b) above, States in the area affected, in accordance with their capabilities, and the competent international organizations, shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing damage.

(d) States shall co-operate directly or through competent international organizations for the purpose of promoting studies undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall actively support and contribute to international programmes to acquire knowledge for the assessment of pollutant sources, pathways, exposures, risks and remedies.

(e) In the light of the information and data so acquired, States shall co-operate directly or through competent international organizations in working out appropriate scientific criteria for the formulation and elaboration of rules and standards for the prevention of marine pollution."

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1/ 2/ The view was expressed that the word "States" should be followed by "whether Parties to this Convention or not." In this respect, some other delegations were of the opinion that only those States which are Parties to the Convention are bound by the obligations of this article and shall enjoy its rights.

WG.2 Paper No. 12

"Technical Assistance

1. States shall, directly or through competent international organizations:
  - (a) Promote programmes of scientific, educational, technical and other assistance to developing countries for the preservation of the marine environment and the prevention of marine pollution. Such assistance shall include, inter alia, the training of scientific and technical personnel and the facilitation of their participation in the international programmes referred to in paragraph [(d) of WG.2/Paper No. 10/Add.1], the supply of necessary equipment, advice and facilities for research, education and other programmes for the prevention of marine pollution or the minimization of its effects.
  - (b) Provide appropriate assistance, in particular to developing countries, for the minimization of the effects of major incidents which may cause serious pollution in the marine environment.
  - (c) For the purposes of paragraph (b), promote and develop contingency plans for responding to such major incidents and to requests for assistance in dealing with them.
2. Developing States shall, for purposes of the prevention of marine pollution or the minimization of its effects, be granted preference in:
  - (a) the allocation of appropriate funds and technical assistance facilities of international organizations, and
  - (b) the utilization of their specialized services."

WG.2 Paper No. 13

"Monitoring

1. States shall employ suitable systems of observation, measurement, evaluation and analysis to determine the risk or effect of pollution on the marine environment, especially pollution likely to arise from activities which they permit or in which they engage.
2. States shall disseminate, as soon as possible, the data and information obtained on the risks and effects of pollution on the marine environment to States likely to be affected and to the international organizations concerned, with a request to disseminate such data and information."

WG.2 Paper No. 11

A text dealing with the consideration of economic factors in determining whether States have discharged their obligations under this Convention in respect of land-based sources of marine pollution was considered essential by some delegations but inappropriate by others. The following is offered as a possible text:

"In determining whether a State has discharged its obligations under this Convention in respect to land-based sources of marine pollution, due regard must be paid to all relevant factors including in particular the economic and financial ability of a State to provide the resources necessary for the discharge of such obligations and the stage of economic development of the State."

WG.2 Paper No. 14

The following text was drafted with the intention that it would be given further consideration at a later date:

"In case of violations of the obligations under the present Convention resulting in pollution of the marine environment, the State responsible for these violations shall immediately take steps, to the extent practicable, to put an end to them and to the effects thereof."

WG.2 Paper No. 15

Standards

The following alternative texts have been grouped in sections under provisional headings for purposes of identification and comparison.

Section I. Standards for land-based sources of marine pollution<sup>1/</sup>

- A. "States shall individually establish national standards and, acting through the appropriate international and regional organizations <sup>2/</sup>, endeavour to establish and adopt international standards for prevention of pollution of the marine environment from land-based sources, taking into account available scientific evidence, other relevant factors and the work of competent international bodies."

OR

- B. "States shall take appropriate measures to prevent land-based marine pollution."

Section II. Standards for sea-bed sources of marine pollution<sup>3/</sup>

- A. "States, acting through the competent international organizations, shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the international sea-bed area."

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<sup>1/</sup> The view was expressed by some delegations that the issues dealt with by the texts in Sections I and II are already covered by paragraph (2) contained in WG.2/Paper No. 10 and in Article 2, paragraph 3 (a) of A/AC.138/1.39.

<sup>2/</sup> The view was expressed that States may individually adopt international standards without acting through the appropriate international and regional organizations.

<sup>3/</sup> See footnote 1.

OR

B. 1. "States, acting through the competent international organizations, shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the international sea-bed area."

2. "States shall establish national standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the sea-bed area over which they exercise sovereign rights 4/ for the purpose of exploring and exploiting the natural resources, and, acting through the appropriate international organizations, shall endeavour to establish minimum international standards for that area."

OR

C. "International standards for the prevention of pollution of the marine environment from the exploration and exploitation of sea-bed resources, and from the other activities referred to in Chapter ...., Article .... (e.g. offshore installations), shall be established by the Authority or IMCO, 5/ 6/ as appropriate. The Authority shall have primary responsibility for establishing, as soon as possible and to the extent they are not already in existence, such international standards with respect to sea-bed activities, in accordance with the procedures specified in Chapter ...., Article .... Coastal States may apply higher standards with respect to the activities referred to in Chapter .... Article .... (e.g. exploration and exploitation of sea-bed resources and offshore installations)."

OR

D. "The Authority established by Chapter .... of this Convention shall establish, as soon as possible, international standards for the prevention of pollution arising from activities in the marine environment. States shall ensure that activities in the marine environment under their jurisdiction comply with any such standards. States may also, acting directly or through appropriate international organizations, elaborate supplementary standards for the prevention of such pollutions." 7/

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4/ It was considered by some delegations that the words "sea-bed area over which they exercise sovereign rights" should be changed to "the continental shelf".

5/ Some delegations were of the opinion that the reference to IMCO in this text was inappropriate and unnecessary.

6/ The delegation sponsoring this article noted that while IMCO could not have competence to establish standards for sea-bed exploration and exploitation, it could usefully consider other issues, e.g., those affecting navigation in the vicinity of offshore economic installations.

7/ The view was expressed that since Section II dealt specifically with pollution from sea-bed exploration and exploitation, this more general text might properly belong elsewhere in the draft articles.



OR

- E. "States acting through (the international authority to be established under this Convention) shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the sea-bed. States shall apply these standards as provided for in (Article 2, paragraph 3 (b) of A/AC.138/SC.III/L.39). States may also act, directly or through appropriate regional organizations, to elaborate supplementary standards with respect to the prevention of such pollution."

OR

- F. "States acting, individually or through the competent international or regional organizations, shall establish and adopt, as soon as possible, standards with respect to pollution arising from the exploration and exploitation of the sea-bed area over which they exercise sovereign rights for the exploration and exploitation of sea-bed resources. Such standards shall in no case be lower than those agreed internationally."

Section III. Standards for vessel-source pollution<sup>8/</sup>

- A. "The Intergovernmental Maritime Consultative Organization shall have primary responsibility for establishing, as soon as possible and to the extent they are not in existence, international standards with respect to vessels." 9/ 10/ 11/

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8/ The view was expressed by some delegations that the texts in this Section were not necessary in the light of the contents of Article 5.4 (a) (WG.2/Paper No.10) but that if it should be decided to include a draft article along these lines, alternative text C was preferable. It was the additional view of some of these delegations, that if it should be agreed that these texts were unnecessary, the inclusion of the following article would be appropriate so as to give clearer expression to the reference in Article 5.4 (A) to the competent international organization or organizations: "The competent international organization or organizations referred to in Article 5.4 (a) should be .... in respect of vessel-source pollution."

9/ Delegations supporting this alternative expressed the view that the international standards should include special standards for special areas and problems, taking into account particular ecological circumstances. These delegations noted in addition that States may also, acting through regional agreements, establish supplementary or special standards applicable to the parties to such agreements.

10/ Some delegations reminded the Working Group that reference should be made to more than one international organization since IMCO was not the only authority dealing with vessel-source pollution. These delegations considered that the text was unnecessary, but if a draft article along these lines were to be included, it should be stated that the standards established internationally should be without prejudice to the coastal States' rights to establish their own standards.

11/ The view was expressed that the mention of any existing international organization in those draft articles was prejudicial to consideration of the question of the establishment of an international Authority taking place in another organ of the Committee.

OR

- B. "States, acting through the competent international organization [primarily IMCO] shall establish, as soon as possible and to the extent that they are not already in existence, international standards for the prevention of pollution from vessels. States shall ensure that vessels under their registration comply with such internationally-agreed standards relating to ship design, construction, equipment, operation, maintenance and other relevant factors." 12/ 13/ 14/ 15/

OR

- C. "States acting individually or through the competent international or regional organizations shall establish standards for the prevention of pollution from vessels." 16/

OR

- D. "States shall, acting through the competent international organizations, endeavour to negotiate conventions for the adoption of recommendatory international standards for the prevention of pollution from vessels. For the purpose of navigation through international waters or through waters under the jurisdiction of States, standards established by competent international organizations or by coastal States in the area under their sovereignty or jurisdiction shall not supersede those established by developing States for vessels under their flag. These standards shall take into consideration the special ecological, geographical and economic characteristics of those States." 17/ 18/

OR

- E. "Navigation shall conform to such general and non-discriminatory rules and standards with regard to the prevention of pollution as may be adopted by the Authority established under Chapter .... of this Convention or as are contained in widely ratified multilateral conventions. States shall ensure that vessels under their flag comply with such standards and rules. In the absence of relevant standards and rules adopted by the Authority or contained in widely ratified international conventions, the coastal State may enact reasonable, non-discriminatory regulations with regard to the abatement of pollution from

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12/ See footnote 9.

13/ See footnote 10.

14/ Some delegations preferred the inclusion of the phrase "or under their jurisdiction" in the second sentence, following the word "registration".

15/ See footnote 11.

16/ 17/ Some delegations expressed the view that national or regional standards, not established through the competent international organization, are binding only on the State or States which established them.

18/ Some delegations proposed that the phrase "in the area under their sovereignty or jurisdiction" be replaced by "for their territorial waters", and the words "through international waters" be replaced by "on the high seas".

vessels in the maritime area under its jurisdiction. In addition the coastal State may enact non-discriminatory regulations and rules supplementary to those adopted by the Authority or to those contained in widely ratified international conventions." 19/

OR

F. "The United Nations Environment Programme shall centralize and co-ordinate all information regarding all aspects of the protection and control of pollution to the marine environment. This body, with the assistance of competent organizations such as IMCO, Joint Group of Experts on the Scientific Aspects of Marine Pollution, etc., shall:

- (a) establish a system of monitoring, observation, measurement and evaluation of various aspects of marine pollution;
- (b) recommend international or regional measures to be adopted to protect the marine environment;
- (c) collect and disseminate marine pollution data, reports and other relevant information;
- (d) distribute marine pollution funds and other scientific and technical aid facilities to needy countries.
- (e) ..... " 20/

Section IV. Competence of individual States to establish and adopt standards 21/ 22/

A. "1. Nothing in this Convention may be interpreted as preventing a coastal State from taking such measures as may be necessary to meet the obligation under Article 1 within the limits of its national jurisdiction, including environmental protection zones (maximum limits to be determined) (a) pending the establishment and implementation of internationally agreed measures contemplated by this Convention, or (b) following the establishment or implementation of any internationally agreed measures if such measures fail to meet the objectives of this Convention or if other measures are necessary in the light of local geographical, economic and ecological characteristics.

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19/ Some delegations proposed that the phrase "in the maritime area under its jurisdiction" be replaced by "in its territorial waters".

20/ See footnote 11.

21/ The view was expressed by a number of delegations that while the proposals in this Section were put forward above as alternative draft articles, they were not parallel in substance.

22/ The view was expressed that questions relating to the establishment of new jurisdictional areas or economic zones had not been resolved and that they were, moreover, part of the mandate of Sub-Committee II and not of Sub-Committee III. It was considered, therefore, that these questions should not be raised in the present draft articles.

2. Measures taken in accordance with this article must remain within the strict limits of the objectives of this Convention and must not be discriminatory in their application, and must not unnecessarily or unreasonably restrict legitimate uses of the marine environment, including navigation.

3. In determining whether special measures taken in accordance with this article are reasonable, States shall take into account international rules, standards and procedures in force as a primary, though not necessarily conclusive, source of evidence." 23/ 24/ 25/ 26/ 27/

OR

B. "States shall adopt laws and regulations implementing international standards in respect of marine based sources of pollution of the marine environment or may adopt and implement higher standards:

(a) in the exercise of their rights in the [Coastal Sea-Bed Economic Area] with respect to the activities set forth in Chapter ...., Article .... of this Convention; 28/

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23/ The view was expressed that in respect of third flag-vessels a contracting State shall not impose measures, standards and regulations for vessel-source pollution regarding ship design, construction, equipment, manning and maintenance which are not in accordance with the measures, standards and regulations established by the competent international body.

24/ Some delegations considered that, if there were to be such an article, it should apply to territorial waters only and should provide that any rules and standards relating to the prevention of pollution of the marine environment adopted at national and international levels take account of the need to provide for and ensure on the high seas freedom of navigation and of fisheries, and the freedom to conduct research and other normal activities of States. Those delegations further considered that the references to "environmental protection zones" should be deleted since they could not support such a form of jurisdiction.

25/ In order to provide a clearer expression of the nature of coastal States' rights, some delegations considered that it might be appropriate to develop guidelines indicating the circumstances in which such rights could be exercised.

26/ The view was expressed that this draft article should have been completed by a provision containing a general principle to the effect that rules and regulations enacted by a coastal State should be subject to international judicial review in accordance with the provisions of this Convention.

27/ The view was expressed that a fourth paragraph should be added to this draft article stating that any measures adopted by a State in accordance with this article shall forthwith be communicated to the competent international organization which shall be given a reasonable time in which to request modifications to the measures, if it so decides. Those measures would not enter into force before that time period had elapsed.

28/ For the information of delegations, the referenced article would give to the coastal State rights to: (1) explore and exploit and authorize the exploration and exploitation of the natural resources of the sea-bed and subsoil; (2) authorize and regulate the construction, operation and use of offshore installations affecting its economic interests and drilling for purposes other than exploration and exploitation of resources; and (3) establish reasonable safety zones around such offshore installations.

- (b) for vessels entering their ports and offshore facilities; 29/
- (c) for their nationals, natural or juridical, and vessels registered in their territory or flying their flag. 30/ 31/

OR

- C. "1. Nothing in this Convention may be interpreted as preventing a (coastal) State from taking special measures within the limits of its national jurisdiction and/or sovereignty, in the light of local geographical, ecological and economic characteristics, for the prevention of marine pollution.
2. Measures taken in accordance with this Article must remain within the limits of the objectives of this Convention and must not be discriminatory in their application and must not unnecessarily or unreasonably restrict other legitimate uses of the marine environment, including navigation.
3. Measures adopted by a coastal State to protect its marine environment in areas under its jurisdiction and/or sovereignty shall not be incompatible with the standards established by developing States for vessels under their flag." 32/ 33/

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29/ With respect to paragraph (b), see footnote 23.

30/ The view was expressed that this draft article covered only some aspects of marine pollution and that it should apply to marine pollution generally in areas within national jurisdiction (to be determined by the Conference).

31/ Some delegations had doubts as to the inclusion of sub-paragraphs (a) and (b) of this text and considered that the draft article should apply to the competence of the flag-State and to the rights of coastal States, in connexion with their territorial waters, to establish standards taking international standards into account.

32/ See footnote 24.

33/ See footnote 23."

"Annex 2

ALTERNATIVE TEXTS TO DOCUMENT A/A.138/SC.III/L.39  
AND WORKING GROUP 2 PAPERS No. 10 TO 15

(presented by the delegation of Brazil)

(1) WG.2/Paper No. 3

Delete the note "The reference to ....."

(2) WG.2/Paper No. 8/Add.2

"1. States shall take all necessary measures to prevent pollution of the marine environment from any source, using for this purpose the best practicable means in accordance with their capabilities and their national environmental policies, individually or jointly, as appropriate. In particular, States shall take measures to ensure that activities under their jurisdiction or control do not cause significant damage to the marine environment of other States.

2. In taking measures to prevent pollution of the marine environment, States shall have due regard to the legitimate uses of the marine environment and shall refrain from unjustifiable interference with such uses."

(3) WG.2/Paper No. 7

(Omit the introductory note)

"Nothing in this Convention shall derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and programmes for economic development."

(4) WG.2/Paper No. 10 and No. 10/Add.1

"(b) A State which becomes aware of cases in which the marine environment is in imminent danger of being significantly damaged or has been significantly damaged by pollution shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

(d) States shall co-operate directly or through competent international organizations in the research of causes of marine pollution and in the exchange of information and data acquired about pollution of the marine environment, with a view to working out appropriate scientific criteria for the formulation and elaboration of rules and standards for the prevention of marine pollution."

(e) Delete.

(5) WG.2/Paper No. 15

"1. States, in areas under their sovereignty and national jurisdiction, shall employ suitable systems of observation, measurement, evaluation and analysis to determine the risk of pollution on the marine environment.

2. States shall disseminate the data and information obtained on the risks and effects of pollution on the marine environment to States they deem likely to be affected and to the international organizations concerned, with a request to disseminate such data and information."

6) WG.2/Paper No. 14

"In the case of violations of the obligations under the present Convention, resulting in significant pollution of the marine environment, the State responsible for these violations shall immediately take steps, to the extent practicable, to put an end to them and to the effects thereof."

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B. Report of Working Group 3

70. Below is a note with annex from the Chairman of Working Group 3 contained in document A/AC.138/SC.III/L.53 reflecting the work achieved in the Working Group. The Working Group, as already mentioned above, was established towards the end of the March/April session in New York. It began its substantive work towards the middle of the July/August session.

Note by the Chairman of Working Group 3 addressed to the Chairman of Sub-Committee III (A/AC.138/SC.III/L.53)

"I have the honour to inform you that the Working Group of Marine Scientific Research and Transfer of Technology (Working Group 3 of Sub-Committee III), established on 5 April 1973, in New York, held 10 meetings during the current session.

In accordance with its terms of reference, the Working Group discussed the proposals formally submitted to Sub-Committee III in documents A/AC.138/SC.III/L.18, 23, 31, 34, 1/ 42, 44 and 45. Its discussions covered the definition and objectives of marine scientific research, the conduct and promotion of marine scientific research, and the prerequisites for the conduct of such research. It was not possible for the Working Group to initiate consideration of the question of the transfer of technology.

At its first meeting during the current session, the Working Group decided to establish informal consultations which were open to participation by all delegations. These informal consultations produced a number of texts which are attached to this note. These texts were drafted on the basis of the above-mentioned proposals and of comments and suggestions by delegations in the Working Group.

Due to lack of time, it was not possible for the Working Group and its informal consultations to consider all the draft articles contained in the proposals submitted to Sub-Committee III. 1/ Also, there was no opportunity for the Working Group to review the texts attached to this note.

The Working Group, having taken note of the attached texts, authorized me to inform you and Sub-Committee III of the work it has achieved in carrying out its mandate."

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1/ The Working Group also referred to the relevant texts in A/AC.138/SC.II/L.28.



ANNEX

"WG.3/Paper No.4

"Definition and Objectives of Marine Scientific Research

Marine scientific research is any study and related experimental work, excluding industrial exploration and other activities aimed at the direct exploitation of marine resources, designed to increase mankind's scientific knowledge of the marine environment and conducted for peaceful purposes." 1/ 2/ 3/ (The informal drafting group had decided to postpone the drafting of any further text dealing with objectives.)

The following alternative texts were agreed without prejudice to their place in the order of the draft articles:

"Marine scientific research as such shall not form the legal basis for any claims of exploitation rights or any other rights in areas beyond the limits of national jurisdiction."

OR

"Marine scientific research as such shall not form the legal basis for any claim to any part of the marine environment<sup>4/</sup> or its resources."

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1/ The view was expressed by some delegations that this definition was acceptable provided that another article in the Convention recognizes the fact that scientific research may provide a basis for industrial and commercial advantage.

2/ Some delegations were of the opinion that an article on definitions was not necessary and that the articles to be drafted on the obligations of States would indirectly, but clearly, establish the meaning intended.

3/ Some delegations considered that it would be desirable to include a definition of the term "marine environment".

4/ The view was expressed that the reference to "any part of the marine environment" should not prejudice the rights of the coastal State within its area of national jurisdiction.

WG.3/Paper No.5

Conduct and promotion of marine scientific research

A. "1. Subject to the rights of coastal States [and of the International Authority] [OR] [and subject to the régime of the international sea-bed area] as provided for in this Convention, all States, irrespective of their geographical location, as well as appropriate international organizations, have the right [OR the right of freedom]<sup>1/</sup> to conduct marine scientific research and other research activities in the marine environment.

2. States shall promote co-operative marine scientific programmes taking into particular consideration the interests and needs of developing countries." 2/ 3/ 4/ 5/

OR

B. "Subject to the rights of coastal States, States whether coastal or landlocked shall co-operate in the promotion of scientific research and investigation in the marine environment, as provided for in this Convention, in an orderly and rational manner, taking into account the interests of the international community, particularly the interests and needs of developing countries." 6/ 7/ 8/

OR

C. "Scientific research in the sea being essential to an understanding of global environment, the preservation and enhancement of the sea and its rational and effective use, States shall promote and facilitate the development and conduct of all scientific research in the sea for the benefit of the international community. All States, irrespective of geographic location, as well as appropriate international organizations may engage in scientific research in the sea, recognizing the rights and interests of the international community and coastal States, particularly the interests and needs of developing countries, as provided for in this Convention."

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1/ Some delegations were opposed to the use of the words "or the right of freedom" in this text and considered them superfluous.

2/ A view was expressed that this draft article should have included a reference to physical and juridical persons as also having the right to conduct scientific research in the marine environment.

3/ Some delegations took the view that texts A and B are not alternatives but complementary.

4/ Some delegations expressed the view that texts A and B are not complementary but real alternatives.

5/ Some delegations expressed the view that it was premature to include the words "subject to the rights of coastal States" in the above texts since it may be prejudicial to the inherent rights of States.

6/ See footnote 3/.

7/ See footnote 4/.

8/ See footnote 5/.

OR

1. "Subject to the rights of coastal States, States, as well as the competent international organizations, may promote and conduct scientific research in the marine environment, taking into account all relevant factors, including the interests of the international community and particularly those of the developing countries, as provided for in this Convention." 9/

OR

1. "All States, irrespective of their geographical location, as well as international organizations, shall enjoy on a basis of equality and without any discrimination the right of freedom to conduct scientific research in the world ocean. 10/

"The term 'world ocean' as used in this Convention covers all ocean space, the sea-bed and the subsoil thereof, with the exception of internal and territorial waters and the bed and subsoil of the continental shelf."

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9/ See footnote 5/.

10/ See footnote 1/.

ANNEX I

INDEX OF PROPOSALS SUBMITTED TO SUB-COMMITTEE III  
FROM 1971 to 1973

I. PROPOSALS SUBMITTED IN 1971

Please see Annex V, page 246, in Doc. A/8421 (Report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction to the 26th session of the General Assembly.)

II PROPOSALS SUBMITTED IN 1972

Please see Documents annexed to Part IV, page 199, in Doc. A/8721 (Report of the Committee to the 27th session of the General Assembly.)

III PROPOSALS SUBMITTED IN 1973

1. Working paper on preservation of the marine environment, submitted by Australia (A/AC.138/SC.III/L.27).
2. Draft Articles for a comprehensive Marine Pollution Convention, submitted by Canada (A/AC.138/SC.III/L.28).
3. Draft Articles for a convention on scientific research in the world ocean, submitted by Bulgaria, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics (A/AC.138/SC.III/L.31).
4. Draft Articles for a Convention on general principles for the preservation of the marine environment, submitted by the Union of Soviet Socialist Republics (A/AC.138/SC.III/L.32).
5. Draft Articles for the preservation of the marine environment (including, inter alia, the prevention of pollution) submitted by Malta (A/AC.138/SC.III/L.33).
6. Draft Articles on scientific research, submitted by Malta (A/AC.138/SC.III/L.34).
7. Observations by the Government of the Netherlands in regard to questions concerning the preservation of the marine environment including the prevention of marine pollution (A/AC.138/SC.III/L.35).
8. Working paper submitted by the United States of America on competence to establish standards for the control of vessel source pollution (A/AC.138/SC.III/L.36).
9. Working paper on prevention of pollution from ships, submitted by Canada (A/AC.138/SC.III/L.37 and Add.1).

10. Draft Articles on the protection of the marine environment and the prevention of marine pollution, submitted by the United States of America (A/AC.138/SC.III/L.40).
11. Draft Articles on prevention and control of pollution in the marine environment, submitted by Kenya (A/AC.138/SC.III/L.41).
12. Working paper on marine scientific research, submitted by China (A/AC.138/SC.III/L.42).
13. Draft Articles on the protection of the marine environment against pollution, working paper submitted by Norway (A/AC.138/SC.III/L.43).
14. Draft Articles for a chapter on marine scientific research, submitted by the United States of America (A/AC.138/SC.III/L.44).
15. Working paper on scientific research within the zone subject to the sovereignty and jurisdiction of the coastal State, submitted by Brazil, Ecuador, El Salvador, Panama, Peru and Uruguay (A/AC.138/SC.III/L.45).
16. Draft Articles concerning the rights exercisable by coastal States for the purpose of preventing marine pollution, submitted by France (A/AC.138/SC.III/L.46).
17. Working paper on the preservation of the marine environment, submitted by Ecuador, El Salvador, Peru and Uruguay (A/AC.138/SC.III/L.47 and Corr.1).
18. Draft Articles on the enforcement of international provisions for the prevention of marine pollution from vessels, submitted by the Netherlands (A/AC.138/SC.III/L.48).
19. Proposal on enforcement measures by coastal States for the purpose of preventing marine pollution, submitted by Japan (A/AC.138/SC.III/L.49).
20. Proposal concerning obligations of the coastal State regarding scientific marine research, submitted by Italy (A/AC.138/SC.III/L.50).
21. Draft Articles on Responsibility and Liability, submitted by Trinidad and Tobago (A/AC.138/SC.III/L.54).
22. Draft Article on consent to conduct marine scientific research, submitted by the delegations of Algeria, Argentina, Brazil, China, El Salvador, Ethiopia, Egypt, Indonesia, Iran, Kenya, Pakistan, Peru, Philippines, Romania, Somalia, Trinidad and Tobago, Tunisia, United Republic of Tanzania and Yugoslavia (A/AC.138/SC.III/L.55).

ANNEX II

INDEX OF STATEMENTS MADE IN SUB-COMMITTEE III FROM 1971 TO 1973

Statements made in 1971

Please see index to Summary Records of Sub-Committee III, page 260, in document A/8421 (Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction to the 26th session of the General Assembly)

Statements made in 1972

Please see index to Summary Records of Sub-Committee III, page 249, in document A/8721 (Report of the Committee to the 27th session of the General Assembly)

Statements made in 1973

Meetings held from 7 March to 6 April 1973 (A/AC.138/SC.III/SR.33-39)

33rd meeting:

Statements by Chile, United Kingdom, Canada, United States of America, Australia, Union of Soviet Socialist Republics and Malta.

34th meeting:

Statements by the United Kingdom, Canada, Peru, Malta and Union of Soviet Socialist Republics.

35th meeting:

Statements by the Union of Soviet Socialist Republics and Ghana.

36th meeting:

Statements by the United States of America, Indonesia, Peru and Mexico.

37th meeting:

Statements by an observer for the Inter-Governmental Maritime Consultative Organization, Canada, United States of America, Finland, Iceland, Poland, Peru, Argentina.

38th meeting:

Statements by the Assistant Executive Director of the United Nations Environment Programme, Iran, Malta, Chile, Ukrainian Soviet Socialist Republic, Columbia, China, Union of Soviet Socialist Republics, United Kingdom, Canada, Brazil, Mexico, United States of America.

39th meeting:

Statements by Poland, Union of Soviet Socialist Republics, Malta, United Republic of Tanzania, Canada, Romania, Spain, Mexico, Greece, Trinidad and Tobago, Liberia, Argentina, United States of America, Colombia, Peru, Ghana, Venezuela.

Meetings held from 4 July to ..... 1973 (A/AC.138/SC.III/SR.40- )

40th meeting:

Statement by Malta.

41st meeting:

Statements by the United States of America, Kenya, Colombia, Yugoslavia, Union of Soviet Socialist Republics, Greece, Malta.

42nd meeting:

Statements by Mexico, Canada, United States of America, United Republic of Tanzania, France, Malta, Chile.

43rd meeting:

Statements by China, Norway, France, Peru, Brazil, Pakistan, Venezuela, Mexico, Poland, Chile, United Republic of Tanzania.

44th meeting:

Statements by Poland, Japan, Bulgaria, Chile, United Republic of Tanzania, Colombia, Spain, the observers of the International Atomic Energy Agency and the Inter-Governmental Oceanographic Commission, Peru, Colombia, Union of Soviet Socialist Republics.