UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/84
16 August 1972

Original: ENGLISH

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

REPORT OF SUB-COMMITTEE III ON ITS WORK IN 1972

INTRODUCTION

1. Sub-Committee III of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction 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, which allocated to Sub-Committee III the following subjects and functions:

"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."

2. 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 during which the Sub-Committee held 13 meetings (20th through 32nd).

3. 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. The States Members of the United Nations which accepted the invitation to participate as observers[1/] in the Committee's proceedings also attended the meetings. The FAO, IAEA, IMCO, UNESCO and its International Oceanographic Commission, WMO, WHO and UNCTAD were also represented.

1/ Barbados, Bhutan, Burma, Cuba, Dominican Republic, Haiti, Honduras, Ireland, Israel, Jordan, Khmer Republic, Malawi, Mongolia, Oman, People's Democratic Republic of Yemen, Portugal, Saudi Arabia, South Africa, Syria.

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4. As in 1971 the Bureau of Sub-Committee III was composed as follows:

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

5. 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, which is annexed to this report (Annex I), contains 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 trasfer of technology

E. Other matters

The programme makes provision for general debate as well as for the formulation of legal principles and draft treaty articles. It also envisages co-ordination with related efforts in other forms within which Sub-Committee III would be enabled to ensure appropriate support on pertinent matters from the FAO, the Stockholm Conference on the Human Environment, IMCO, IOC, as well as with other Specialized Agencies or intergovernmental bodies or conferences which are also concerned with matters within the purview of this 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.

6. 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 to the Stockholm Conference on the Human Environment. 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 together with the summary record of the March session which contained a number of valuable suggestions on principles to be adopted at Stockholm to the Conference with the Committee's consent.

7. As part of the close co-operation called for in General Assembly resolution 2750 (C) (XXV), Sub-Committee III heard reports or received information concerning the relevant work of the following bodies and conferences: the second session of the Intergovernmental Working Group on Marine Pollution held in Ottawa and the United Nations Conference on the Human Environment, IMCO, IOC and the Preparatory Conference of Government Experts to formulate a Draft Convention on Legal Status of Ocean Data Acquisition Systems (ODAS) held under UNESCO-IOC auspices, FAO and the FAO Technical Conference on Marine Pollution and its Effect on Living Resources and Fishing (Rome, December 1970), and the Oslo Regional Conference on Ocean Dumping which adopted the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, signed at Oslo on 15 February 1972. Documents presented to the Sub-Committee during 1972 are as follows:

Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft. Signed at Oslo, Norway, on 15 February 1972.
(A/AC.138/SC.III/L.9)

Report on the Preparatory Work for the International Conference on Marine Pollution to be convened by IMCO in 1973.
(A/AC.138/SC.III/L.15)

Report by the Representative of the Department of Economic and Social Affairs at the 20th meeting of Sub-Committee III held on 20 July 1972 on actions taken at the United Nations Conference on the Human Environment regarding marine pollution and the preservation of the marine environment.
(A/AC.138/SC.III/L.16)

Decisions of the United Nations Conference on the Human Environment (5-16 June 1972) relating to the preservation of the marine environment and marine pollution.
(A/AC.138/SC.III/L.17)

Working Paper submitted by the Canadian Delegation: Principles on Marine Scientific Research.
(A/AC.138/SC.III/L.18)

Union of Soviet Socialist Republics: draft resolution on measures for preventing the pollution of the marine environment.
(A/AC.138/SC.III/L.19)

Peru: Proposed amendments to the definition of marine pollution and the general principles for assessment and control of marine pollution which are the subject of Recommendation 92 of the United Nations Conference on the Human Environment. (A/AC.138/SC.III/L.17, Recommendation 92, and A/CONF.48/8, para. 197) - (A/AC.138/SC.III/L.20)

Statement made by the representative of the Inter-Governmental Maritime Consultative Organization on the activities of the Organization pertaining to ships' routeing, traffic separation schemes, areas to be avoided by certain ships and related questions, at the 22nd meeting of Sub-Committee III held on 26 July 1972. (A/AC.138/SC.III/L.21)

Australia, Canada, Chile, Colombia, Fiji, Indonesia, Japan, Malaysia, New Zealand, Peru, Philippines, Singapore and Thailand: draft resolution. (A/AC.138/SC.III/L.22)

Working paper submitted by the People's Republic of Bulgaria, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics: Basic principles concerning international co-operation in marine scientific research. (A/AC.138/SC.III/L.23)

Draft resolution on Preliminary Measures to prevent and control Marine Pollution, submitted by Australia, Bulgaria, Canada, Greece, Iceland, Netherlands, Norway, Sweden, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics. (A/AC.138/SC.III/L.25)

8. The discussions in the Sub-Committee covered both the preservation of the marine environment, including the prevention of pollution, scientific research and transfer of technology. The general discussion on marine pollution was deemed to have 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 be designated by the various regional groups, on the understanding that any member of Sub-Committee III could participate in the group's discussions. A suggestion was made that the Sub-Committee should lay down as terms of reference for its working group the preparation of a list of specific topics to form the basis of concrete proposals concerning the draft articles, and that this list might include consideration of draft resolutions on the prevention of marine

pollution. The Working Group to be known as Working Group 2, [1] held two meetings at which it elected its Chairman, Mr. J.L. Vallarta of Mexico. Its terms of reference, as laid down, 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. These comments should be submitted as soon as possible, preferably before the end of the 27th session of the General Assembly, but in any event before 15 January 1973, assuming that the mandate of the Committee is continued by the General Assembly.

9. Views were expressed in the course of discussions with regard to some aspects of the Sub-Committee's terms of reference, such as the relationship and co-ordination with other interested organizations such as IMCO and IOC, and the definition of the scope and extent of the draft treaty articles which the Sub-Committee has to formulate and submit to the Conference on the Law of the Sea. Such issues raised and other related matters are set out below with reference to both the preservation of the marine environment, including the prevention of pollution, and scientific research.

Preservation of the marine evironment, including the prevention of marine pollution

10. It was generally expressed that the Sub-Committee had the responsibility to develop the general international legal framework and to draft legal principles to govern the protection of the marine environment. It was stressed that the development of such a legal framework should be based on the 23 principles and the statement of objectives on marine pollution, drafted at Ottawa and adopted by the Conference on the Human Environment, and on the Declaration of the Human Environment. It was further stressed that the Sub-Committee should not attempt to draft technical regulations. It was said

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1/ The membership of the Working Group is as follows: Brazil, Bulgaria, Canada, Ecuador, India, Indonesia, Iran, Ivory Coast, Japan, Kenya, Liberia, Madagascar, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Peru, Philippines, Romania, Spain, Somalia, Sweden, Sudan, Trinidad and Tobago, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United States, Venezuela. There are two vacancies left, one in the African group and the other in the Asian group. These will be filled by the respective groups in due course.

that the Sub-Committee should also examine the three principles on marine pollution, also drafted at the Ottawa meeting, which were neither endorsed nor rejected by the Human Environment Conference but referred to the Conference on the Law of the Sea "for such action as may be appropriate". It was made clear that other proposals could be considered. It was understood that some governments who had not participated in the Stockholm Conference and who considered the Conference was not universally representative had reserved their right to determine their attitude at a later date to the documents and decisions of the Stockholm Conference, and that the participation of their delegations in the meetings of Sub-Committee III did not imply a change in their position.

11. It was also stated that the Sub-Committee should also be wary of assuming that the Sea-bed Committee had the right or duty to co-ordinate the activities of others, although that did not mean that the Sub-Committee should not consider the work being done in other fora. But it should not trespass on the detailed and often highly technical work being carried out elsewhere nor should it duplicate such work. It was important that the Sub-Committee should have due regard for the experience possessed by such organizations. It was stated that under its terms of reference the Sub-Committee was not empowered to make recommendations of any kind to other international bodies, but it might express views concerning the work of such bodies.

12. On the other hand, it was stated that the Committee had co-ordinating powers, since the law of the sea is a unity and that this unity should be ensured by the Conference on the Law of the Sea and its preparatory phase. It was said that although there was a need for co-operation and co-ordination between different bodies, that did not mean that the Sub-Committee should accept a subordinate or passive role and merely limit itself to examining the work being done by other organizations. The Sub-Committee had its own field of competence and an expressed mandate from the General Assembly to formulate legal principles and to draft treaty articles, and therefore, should not necessarily wait for suggestions or decisions from other bodies. It was pointed out that it was Sub-Committee III that had the sole competence to prepare general legal principles for the guidance of all other organizations engaged in this field. It was further expressed that other United Nations bodies dealing with the problems of the sea should be informed of the mandate of the Sea-bed Committee and Sub-Committee III and that it was for the General Assembly to clarify the situation.

13. It was generally agreed that the Sub-Committee would focus its attention on the basic legal principles which would form the basis for drafting treaty articles of a general nature. Where appropriate, the Sub-Committee would also consider more specific problems. It was suggested that the basic materials for the work of the Sub-Committee should be the Declaration of the Human Environment, the 23 Principles on marine pollution, and the statement of objectives, adopted at Stockholm, and referred to this Committee as well as the three principles drafted at Ottawa, referred to above, and the proposals made at the Sub-Committee meetings. It was suggested that special attention would be paid to ways in which these principles could best be developed within the broader concept of the law of the sea.

14. It was stated that since the Stockholm Declaration and general principles were not cast in the language of international treaties, although some of them reflected rules of international law, they needed to be supplemented by more specific provisions, and efforts were needed to define and elaborate rules and measures to give effect to these principles within the broader context of maritime law. The working group might consider whether there should be a single comprehensive convention or several conventions dealing with different aspects of the preservation of marine environment.

15. It was stressed that marine pollution could effectively be dealt with by a combination of global, regional and national rules and standards, with the global ones fixing the minimum provision to be made for the preservation of the marine environment, and the regional and national ones laying down particular and stricter provisions as may be required to deal with special situations prevailing in a region or a country. It was observed that broad guidelines would improve regional efforts and could also prevent the emergence of a series of piecemeal conventions. Proliferation of independent regional agreements could lead to difficulties in subsequent co-ordination.

16. It was expressed that the task of the Sub-Committee included examining the feasibility of drafting, for the 1973 Conference on the Law of the Sea, treaty articles of a general nature concerning pollution from all sources in ocean space as a whole so as to replace Articles 24 and 25 of the 1958 Geneva Convention on the High Seas. It was further pointed out that existing technical conventions, already concluded or under consideration, on various aspects of marine pollution or on pollution in specific regions of the world, could find their proper place within the framework of such general treaty articles. The Sub-Committee should also examine the feasibility of drafting treaty articles of a general nature concerning the conservation of the marine environment both

within and beyond national jurisdiction. It was suggested that in drafting general treaty articles on this subject the Sub-Committee should keep in mind existing relevant conventions and current and prospective work of the specialized agencies. Owing to the indivisibility of the marine environment, it was further suggested that the draft treaty articles should cover marine pollution in the territorial seas as well as in the high seas. However, it was stated that as far as the question of marine pollution within territorial seas and within the limits of national jurisdiction was concerned, it was up to the coastal States to take effective measures to preserve, in a practical way, the marine environment within such areas. The Committee could only suggest recommendations as regards these areas since they were under national sovereignty.

17. While the Stockholm Conference had recognized that the greater part of marine pollution came from activities on land, it was suggested that the Committee should primarily concentrate on the marine-based forms of pollution. Further suggestion was made that this Sub-Committee should concentrate its attention on pollution from vessels. It was, however, also felt that any set of rules and standards should be applied universally to control all sources of pollution regardless of their location, since ocean should be treated as an integrated whole. While many measures would be taken primarily at the national level on land-based pollution, it would be well to agree on very basic guidelines in order to reduce the lack of uniformity in national legislation. It was pointed out that the most pressing need was for universally applicable norms that would prevent pollution in areas beyond national jurisdiction. In this respect, it was expressed, however, that Sub-Committee I should resolve questions of pollution from exploration and exploitation of the sea-bed area since they could not be taken separately from other elements of the sea-bed régime.

18. It was observed that whatever the final nature of the articles to be drafted, proper weight must be given to the needs and interest of developing countries. It was suggested that appropriate provisions would need to be made for training and for technical and financial assistance to developing countries to enable these countries to comply with any future rules and standards in respect of the prevention and control of marine pollution. In this context, it was pointed out that the greater onus and burden for the task of preserving the environment must be placed on the industrially developed countries for they were the most responsible for creating pollution; it was important to recognize that future regulations for the prevention of pollution should not be applied with the same standards for all States and that it was essential that the developing countries should not be hindered in their quest for progress.

19. Principle 21 of the Declaration on the Human Environment should be considered the starting-point for work in developing a régime for the preservation of the marine environment since it presented the proper balance between coastal States' rights and obligations. Mutual accommodation must be found not only as between national interests but also between national interests and the interests of the international community.

20. It was expressed that the question whether a coastal State had the right of jurisdiction over a given area adjacent to its territorial sea, for purposes of preventing pollution damage within its territory, was an issue to be discussed at some length in the Sub-Committee. On the one hand it was felt that coastal States being the direct victims of marine pollution, had the full right to enforce necessary measures in areas within given limits, which are adjacent to their territorial seas, in order to prevent, control and eliminate any harm to such areas or their territory caused by pollution from outside these areas or their territory. It was also felt that coastal States had the right to demand compensation from polluters. On the other hand, it was pointed out that the partitioning of ocean space was incompatible with the basic legal framework envisaged in the principles to apply global standards and rules to every part of the sea. It was further suggested that the zonal approach was not effective and would produce a dichotomy in the mode of control and that the enforcement of individual and inevitably varied national legislation might produce confusion on the high seas. It was also argued that the flag State jurisdiction in enforcement was a kind of unilateral approach, and that the national jurisdiction of coastal States would not necessarily be incompatible with global standards.

21. It was suggested that the Sub-Committee recognize that the three principles on coastal State rights drafted at Ottawa raise very fundamental issues in maritime law. It was further suggested that the first of these principles represents a logical extension of the special interests of coastal States in the management of resources as recognized in the Statement of Objectives adopted at Stockholm and also the logical corrollary to the emphasis on obligations of coastal States found in most of the 23 Principles on marine pollution. It was urged that responsibilities must be balanced with the necessary rights and powers and that where there were no international standards, coastal States must be able to enforce their own reasonable standards, in the areas adjacent to their territorial seas. On the other hand, it was stated that vesting wide powers in coastal States would not promote a proper balance of interests among maritime, shipping and coastal States or prevent pollution of the open sea.

22. The concept of ocean space management set out in the Statement of Objectives, it was suggested, was essential not only to problems of marine pollution but also to such other aspects of the law of the sea such as fisheries and scientific research, and was therefore of importance to the Committee as a whole. It was suggested that a number of marine pollution principles could be regarded as existing duties under customary international law, e.g., Principles 1, 7 and 17. Principle 1 in its dual accommodation of national and community interests could be the basic approach of the Sub-Committee. It was considered that it was important to define more clearly the responsibilities of States to control pollution of the high seas, deriving from their own territories including their territorial sea, as well as their rights to prevent damage to coastal areas from marine pollution coming from outside their territorial waters. It was further suggested that this principle could be looked at from the point of view of the liability of a State for damage caused by individuals within its jurisdiction or under its control, and that such a duty could include preventing individuals from causing damage.

23. The point was raised that this question of liability, the subject also of Principle 22 of the Declaration, involved consideration of the theory of the created risk. It was pointed out that since damage can be caused accidentally, consideration should be given to the requirement of compulsory insurance for uses of the ocean which were sufficiently dangerous to warrant applying the theory of the created risk, and that since insurance systems varied this question should be studied in greater detail. Principle 18 on marine pollution, adopted at Stockholm, should be studied in this context.

24. It was felt that the 1969 international convention on civil liability for oil pollution damage and the 1971 supplementary convention could serve as the starting-point for further development of rules of law in the area of liability and compensation. It was also suggested that the formulation contained in General Assembly resolution 2749 might be a guide but that some system of no-fault insurance compensation would have to be investigated in connexion with claims for civil liability.

25. It was stated that Principle 6 was simply a first approach to the problem of elaborating special provisions to meet the needs of developing countries and that the Sub-Committee would have to go further in elaborating this principle.

26. It was suggested that Principle 7 required further careful elaboration in order to devise means of fixing responsibility with States or international organizations for any damage they may cause and that there would be serious substantive implications. It was felt that this principle also recognized the duty to pay compensation for damage to the victims.

27. It was felt that Principle 13 made several points, particularly the need for national and regional measures to be consistent with global measures and that this same consistency should also be applied to the draft articles on ocean dumping. It was suggested, therefore, that greater attention be paid to the draft articles and annexes on ocean dumping since, in many instances, disposal of wastes on land was a far safer procedure. The need to avoid transferring pollution from one area of the environment to another, as expressed in this principle, was considered to be particularly relevant in this respect.

28. It was proposed that the measures adopted for the international sea-bed area and with special reference to Principle 19, should represent the minimum measures to be adopted by States in areas within their jurisdiction.

29. It was pointed out that principle 21 was in accordance with the Declaration of Santo Domingo (A/AC.138/80) which recognizes the right of coastal States to take measures to avoid pollution of the patrimonial sea, and the conclusions of the African Seminar of Yaoundé (A/AC.138/79) which contains similar provisions. It was also noted that this principle does not prejudice the rights of a coastal State to protect its territory from damage from activities by other States in adjacent areas.

30. On the subject of ocean dumping, it was felt, on the one hand, that urgent action would be most welcome since there was a need to control this activity of industrialized States. Such early action, as the proposed conference in London in November 1972, to draft a specialized international convention, was not thought to prejudice the later development of a more comprehensive body of maritime law nor the position of any State, as regards the development of such law. It was considered that many other such specialized conventions, existing or yet to be negotiated, would also in time be fitted into the wider body of the law of the sea. It was pointed out that the amount of pollutants entering the oceans increases every year, and that if this continues unchecked it could threaten the productivity of the world's oceans and the well-being of all mankind. It was further pointed out that direct dumping is usually carried out on the high seas and is largely uncontrolled. It was for this reason among others that urgent action was needed.

31. On the other hand it was observed that it was absolutely essential that the question of marine pollution should be studied in a consistent, comprehensive and co-ordinated manner, so as to avoid the adoption of different provisions by different bodies or even by different governments. It was stressed that all future undertakings should take place within the framework of basic, universally accepted principles and with

due regard to the rights of all States. Furthermore, fragmentation of problems pertaining to the law of the sea could lead to great confusion and therefore the Convention should be given its final form only within the context of the Law of the Sea Conference. In direct reference to the proposed London Conference, it was pointed out that the preparatory meetings, held in Reykjavik and London, were insufficiently representative especially of States from the developing world, and that these meetings were held outside the United Nations system and without proper regard for opinions expressed in the Sub-Committee by some of these States. However, it was also pointed out that several developing States did attend the preparatory meetings and that all States had been informed that they were to be held. The United Nations will also be kept fully informed of the organization of the proposed London conference.

32. Regarding the draft Articles and Annexes, contained in document A/CONF.48/8/Add.1, it was observed that they could provide a basis for the development of an effective convention. It was pointed out that all questions of jurisdiction had been left to the Law of the Sea Conference to decide. It was stated also that the Articles would be enforceable by coastal States not only against ships under their jurisdiction but also against ships in areas under their jurisdiction. It was suggested that this departure from the flag-State type of convention could be extremely important from an environmental point of view.

33. However, it was pointed out, that the Articles failed to distinguish between developed and developing countries in terms of their relative capacity to pollute the ocean. It was feared thereby that an unfair burden would be imposed on developing countries in the event of such a convention coming into force. It was pointed out that an international convention to control dumping must, in the first place, avoid authorizing present practices of dumping by industrialized countries, a possibility which has been protested by a large majority of States already. The principle of the common heritage of mankind was thought to give some legal grounds for arguing that dumping on the sea-bed would be in violation of international law.

34. The point was made that the prohibition of dumping must constitute the basis of the Convention and therefore exemption to this prohibition must be very carefully worked out. Attention was therefore drawn to the exemption contained in footnote (a) to Annex I because knowledge of sea water effects on containers is inadequate, and to the exemption contained in draft Article V which was thought to need some clarification.

It was suggested that the human lives to be safeguarded in this draft article should be those aboard ships, platforms and aircraft. The opinion was also stated that the paragraph within square brackets in draft Article IX (d) was unacceptable since sovereign immunity would not negate the duties of ships and aircraft. It was proposed also that highly radioactive wastes and biological and chemical weapon parts should be included in Annex I, and the present brackets removed. With reference to Annex III, it was proposed that dumping be prohibited within marine areas under national jurisdiction. The Working Group, referred to in paragraph 8 above was asked to examine the draft Articles and Annexes in accordance with the decision made by the Human Environment Conference to refer these texts to the Sea-bed Committee for information and comment.

35. The representative of IMCO reported that substantial progress had been made at recent meetings of IMCO's sub-committees concerned in the preparation of a draft text of the convention or conventions to be submitted to the IMCO Conference on Marine Pollution. Preparatory work has been directed towards the improvement and the requirements of the 1954 Oil Pollution Convention, as amended in 1962, 1969 and 1971, including the extension of the Convention requirements to cover hazardous and noxious substances other than oil. Not included in the draft convention are activities relating to the sea-bed mineral exploration and exploitation and ocean dumping. It was also pointed out that the 1973 IMCO Conference would be called upon to consider extending the 1969 Intervention Convention. The new instrument now being drafted would give coastal States the right to intervene or to take preventive action to safeguard their coasts from pollution following accidents involving substances other than oil.

36. It was urged that strong support be given to IMCO's work on vessel pollution since the Law of the Sea Conference could not hope to deal with all complex problems of marine pollution and should therefore try to supplement and support other existing efforts, and that all countries that have not done so, adhere to or ratify the various IMCO conventions and endorse the extension of the liability and compensation concepts to cover noxious and hazardous substances other than oil. It was felt that greater consideration should be given to coastal States concerns and proposals, while maintaining throughout a careful balance between the interests, rights and obligations among maritime, shipping and coastal States.

37. It was suggested that all new commercial tankers should carry an International Tanker Construction (Pollution Prevention) Certificate and that this proposal should be included in the 1973 Convention. It was further suggested that refusal of entry to those not possessing this certificate should be made mandatory for non-compliance. The whole subject of pollution prevention was thought to be an important one for the Sub-Committee since it has to deal with the overall problem of marine pollution.

38. It was also felt, however, that IMCO was only a technical body and the 1973 IMCO Convention would have to be subsequently considered by the Law of the Sea Conference, and, if necessary, be revised in the light of the wider body of maritime law. It was stated that since the Sub-Committee had the exclusive competence in legal and political aspects, all relevant technical documents and instruments should be transmitted to it to provide the basis for preparing draft treaty articles. In this respect it was pointed out that IMCO, as a technical body, could only deal with marine pollution in terms of its relationship to navigational safety. It was also suggested, however, that the respective tasks of IMCO and the Law of the Sea Conference were sufficiently clear-cut; the Law of the Sea Conference would develop treaty Articles establishing basic policies while IMCO would provide technical expertise and detailed regulations and would elaborate multilateral agreements within its sphere of competence.

39. It was proposed that IMCO consider broadening certain concepts such as "maritime casualty" so as to expand the criteria of the 1969 Intervention Convention governing instances in which States can act. The Sub-Committee was also informed on the subject of traffic separation schemes and it was suggested that the Law of the Sea Conference should include the requirement in its treaty that all ships proceeding through areas to which international traffic separation schemes apply should be required to follow those schemes in accordance with rules and procedures established by IMCO. It was stated that the treaty should include strict liability for all vessels for accidents caused by deviation from such schemes. The representative of IMCO pointed out that while those schemes are presently recommendations, their adoption by all States was an urgent matter. The Sub-Committee agreed that this subject should also be brought to the attention of Sub-Committee II since it is relevant to straits and areas near straits.

40. It was pointed out that problems of marine pollution could not be solved by the development of international law alone, but necessitated active co-operation among States and international organizations in scientific and technical fields. As pointed out, broad international co-operation was essential if there was to be a comprehensive understanding of what was involved in the prevention of marine pollution on a world-wide basis. It was stressed that there should be co-ordination between the work of the Sub-Committee and that of other bodies concerned in order to avoid duplication.

Scientific research

41. The need for close relationship was stressed between the principles governing scientific research and those governing preservation of the marine environment. Solution of problems in marine pollution was obviously closely connected with the

results of scientific research so that measures adopted to ensure the joint responsibility of States for the preservation of the marine environment should also promote co-operation and transfer of technology in scientific research.

42. It was pointed out that marine scientific research contributed to environmental forecasting, prevention of marine pollution, and the development, conservation and management of marine living resources and the development of the science of the earth as a whole as well as other associated sciences. The development of sound management practices would be important for commercial fishing as the world catch approaches the maximum sustainable yield, and it was suggested that greater knowledge of the methodology of classifying marine living resources would provide important background in preparing draft treaty articles. It was said that the Sub-Committee should therefore be given supplementary technical information by the specialized agencies, particularly FAO.

43. It was noted that in Recommendation 87 of the Action Plan the Human Environment Conference had stressed the importance of research and monitoring at both national and international levels, and that it would be necessary to work out a co-ordinated bilateral, regional and global approach as a basis for mutual assistance in data acquisition and exchange of information.

44. It was said that there was a need to formulate general principles governing oceanic research which, while acknowledging the unity of the marine environment, must not ignore the diversity of the régimes existing in different marine areas. It was suggested that the development of science and technology had posed new and serious problems for the law of the sea in general, and had placed considerable importance on the nature of the articles to be drafted on scientific research. Part of the discussion in the Sub-Committee on the subject of scientific research was based on the proposed principles by the delegation of Canada in document A/AC.138/SC.III/L.18 and by the delegations of Bulgaria, the Ukrainian SSR and the USSR in document A/AC.138/SC.III/L.23. both of which documents are annexed to this report. (See Annexes II and III). It was stated that legal principles on scientific research, its definition and characteristics should be prepared by the Sub-Committee and that treaty articles should be drafted thereon, in accordance with the Programme of Work (Annex I). It was also stated that

it was important to ensure the necessary unity of matters relating to the Law of the Sea Conference and its preparatory phase and it was therefore considered that the Sub-Committee as with the question of the marine environment, should have a co-ordinating role also in respect of scientific research in the oceans.

45. It was stated that freedom of scientific research is a recognized freedom of the high seas, confirmed by long practice, and that the language of the Continental Shelf Convention of 1958 on Scientific Research remains satisfactory if implemented in the spirit intended. On the other hand, it was stated that the freedoms of the high seas included no such freedom as that relating to scientific research and that such freedom could in no way be implied by the language of Article 2 of the High Seas Convention or that of the travaux préparatoires of the draft of the International Law Commission. However, it was also observed that freedom of scientific research was mentioned in this document of the International Law Commission. A further statement was made that freedom of scientific research was not mentioned expressly in Article 2 of the Convention on the High Seas and that the existence of such freedom had been recognized on the basis of the interpretation of such Articles, where they refer in general terms to other freedoms of the high seas and which were recognized by the general principles of international law. At the same time, it was observed that, with the sole exception of the continental shelf, scientific research was in a kind of legal void since international law has not kept pace with the expanding scientific research of the oceans.

46. For the purposes of elaborating on general principles, it was said that an attempt should be made to distinguish between fundamental oceanographic research or bona fide scientific research and the more practical applied aspects particularly as they relate to commercial exploitation and military uses. It was said that the following criteria characterize open or bona fide research: it would be intended for the benefit of all mankind and would involve open participation in planning of programmes, prompt availability and publication of results; it would be conducted so as not to cause significant harm to the environment; it would not include the taking of resources in commercial quantities; nor would it confer any rights for commercial exploration or exploitation of resources.

47. It was noted that there is a general agreement on certain fundamental principles applicable to certain areas as in the example of General Assembly resolution 2749 (XXV), Principle 10 which applies to the sea-bed beyond national jurisdiction. In view of this same Principle, and the possibility that information resulting from scientific research is made available to the public, it was suggested that there was little merit in drawing a line between pure research and research more closely identified with commercial prospecting since the end results might be to restrict research to the detriment of the international community. It was also suggested that, in any event, it would be extremely difficult to make such distinctions since it was felt that most scientific information could in reality be used for commercial or military purposes. It was stated that the real distinction should be drawn between oceanic research, whatever its aim or however it might be carried out, on the one hand, and the exploration of marine resources on the other.

48. The point was made that a seismic survey of the sea-bed provides basic data regarding the possibility of finding resources but far larger-scale operations are needed for commercial prospecting. For example, before an oil company decides to make large investments for exploiting oil, it had to have much more detailed information than could be provided by scientific research.

49. It was pointed out that it would be necessary to formulate a definition enunciating the nature, characteristics and fundamental objectives of marine scientific research. This definition should take into account and be consistent with the aspirations of developing countries. It was stated that relevant scientific research should be carried out in developing countries in order to facilitate the socio-economic development of these countries.

50. It was also proposed that the Sub-Committee should work with the broad and comprehensive definition of marine scientific research (as contained in document A/AC.138/SC.III/18), without attempting to differentiate between the purposes and motives for which it may be conducted. It was suggested that it would then follow that coastal States would have the right to regulate all activities carried out in areas within their jurisdiction and although all scientific research and commercial prospecting would not necessarily be dealt with equally. On the one hand, the view was expressed that the refusal of coastal States to give consent to scientific research ought not to be arbitrary, and on the other hand, that the coastal State, in exercise of its sovereignty, may withhold consent without giving reasons.

51. It was stated that it is vitally important to every nation whether coastal or land-locked, developed or developing, that knowledge of the marine environment be improved and increased. It was suggested that this quest for knowledge is not only a necessity, but that, in the area beyond the territorial sea, it is also a right which should not be diminished or abridged by the restrictive actions of States, coastal or otherwise, except as recognized by international law. It was also suggested that research should be encouraged and facilitated to increase the benefits to be shared by all mankind and that it would therefore be in the common interest to accept rules that establish maximum freedom to conduct scientific research in the oceans. On the other hand, it was stated that scientific research should be regulated in the area beyond national jurisdiction.

52. It was stated that the legal régime in question would govern research according to different marine areas and that marine research activities would not constitute legal grounds for any claim to the oceans or their resources beyond the limits of national jurisdiction. It was proposed, therefore, that the Sub-Committee should define more precisely the limits of the freedom of marine research in relation to the legitimate interests of the coastal States on one hand and to the new régime for the area of the sea-bed beyond national jurisdiction on the other.

53. It was stated that the conduct of scientific research in areas under the sovereignty of a coastal State should remain subject to that State's prior consent and regulatory measures. By virtue of that sovereignty, it was asserted that the coastal State had an exclusive right in respect of all kinds of marine scientific research carried out in its territorial sea and internal waters. This would entail that scientific research could only be conducted within those areas with the consent of the coastal State and in accordance with its laws and regulations. It was observed also that the right of innocent passage through these waters could not be interpreted so as to include or imply the rights for others to carry out freely scientific research. It was pointed out that neither the Sub-Committee nor any other international body has the powers to formulate rules or guidelines for the conduct of activities in areas under the sovereignty of any State. On the other hand, it was hoped that the coastal State would consider the conduct of such activities within its territorial sea in accordance with generally acceptable guidelines on, inter alia, notice, participation, access to samples and data, and publications.

54. It was stated that the control of a coastal State over its jurisdictional zones was considered to be applicable to scientific research per se, independently of the particular means employed in the collection of data. Accordingly, the deployment of the Ocean Data Acquisition Systems (ODAS) or the use of satellites should be subject to control, including the requirement to obtain the prior consent of the coastal State for research in areas within national jurisdiction. With regard to zones beyond the territorial sea, where the coastal State exercises exclusive jurisdiction, it was stated that the coastal State has a right to control scientific research. It was further stated that all data, samples and conclusions resulting from research should be made available to the coastal State. It was further stated that research by States other than the coastal State should be permitted provided it complied with the requirements as established by the coastal State. On the other hand, it was said that there should be minimal restrictions on scientific research in areas of limited national jurisdiction and that the Sub-Committee should consider what criteria might apply to research conducted in these areas.

55. It was observed that there was a need to clarify the scope of Article 5, paragraph 8, of the 1958 Convention on the Continental Shelf and that a notification procedure should be worked out for specific forms of scientific research so as to keep coastal States fully informed of those activities on their continental shelves as well as to enable them to participate or be represented. In addition to notification and participation, there should be an obligation to report the results of such scientific research to international organizations upon request and that all research data should be made available to the coastal States even in its raw stage before processing.

56. It was suggested that knowledge and information from scientific research forms part of the common heritage of mankind and that this presupposes both the publications of major research programmes and the results thereof. On the other hand, it was stated that the concept of common heritage should not be introduced in this context. With reference to programmes, publication was said to mean the description of its nature and objectives, the area to be studied and the techniques to be employed. Such publication could be accomplished by transmitting information to States either directly or through international channels. With regard to results, it was said that the word "publication" should be understood as the rendering of data available to the public by

means of the recognized published media and the provision of access to samples. It was also pointed out that publication requirements should not become so onerous as to discourage the undertaking of marine scientific research. It was pointed out that this procedure could be followed without prejudice to a wider publicity and dissemination of complete results when this is possible without too great a cost. On the other hand, it was stated that scientific research of a proprietary or military nature should, in appropriate cases, be exempt from the principle of open access to all.

57. It was believed that international rules to facilitate research undertaken within areas of national jurisdiction, including the requirement that a coastal State reply promptly to requests to conduct scientific investigations, would greatly reduce any unnecessarily long delays. It was further suggested that consideration might be given to appropriate conciliation procedures which might help avoid disputes. The view was expressed that, in the interest of international co-operation, States should, within the framework of their national law and regulations, facilitate the entry into their ports of ships conducting marine scientific research by simplifying the relevant procedure.

58. It was stated that freedom of research should be protected and only restricted if such freedom is not exercised with reasonable regard to the interests of other States and does not respect the basic rules designed to protect the environment against pollution arising from activities on the sea-bed. It was stated, however, that no such freedom existed. It was also suggested, that the Sub-Committee study closely what type of international scheme would be suited to the promotion of exchange and dissemination of scientific knowledge and information. It was pointed out in this respect that legal obligations placed on the scientific community should not be too stringent with regard to open and rapid publication of results. The view was expressed that adequate arrangements were already provided by existing intergovernmental organizations and independent scientific organizations such as the International Council of Scientific Unions and that the future international machinery should look to the IOC for advice on all questions related to scientific research.

59. It was suggested that in approaching the principles to govern scientific research beyond national jurisdiction, the Sub-Committee should develop the declaration in Principle 1 of the Working Paper submitted by the Canadian delegation (A/AC.138/SC.II/L.18) that the knowledge resulting from marine scientific research was part of the common heritage of all mankind. On the basis of this principle, it was stated, freedom to carry out scientific research beyond national jurisdiction would be facilitated by publication and dissemination of results. However, it was pointed out, that the concept of common heritage had not been finally defined and that mechanical transferring of this notion to the science area is not feasible.

60. It was stated that an international authority, in which all States should be adequately represented, would be the appropriate forum for the formulation of global policies concerning scientific research in the oceans in accordance with the legal principles and treaty articles to be prepared. At the same time, it was considered that all scientific research in areas beyond limited national jurisdiction should continue to be carried out without interference except in cases such as deep sea drilling which may entail significant harm to the marine environment and should therefore be subject to international standards. Since the Sea-bed Treaty is expected to include rules concerning scientific research, it was noted that the Sub-Committee should be ready to assist Sub-Committee I in the preparation of pertinent rules to be included in the régime.

61. It was stated however that a number of practical difficulties would arise should the functions of the future international authority include the supervision of research programmes. It would be impractical, for example, to consider indiscriminate international deposition of marine data since many are experimental observations as recognized in the latest edition of the IOC Manual on Intergovernmental Oceanographic Data Exchange. Moreover, data exchange systems are very expensive and require highly qualified staff. For this reason, it was suggested that existing agencies should continue to be regarded as the competent United Nations bodies for ensuring that research results are available to all.

62. The opinion was expressed that the Sub-Committee might usefully turn for guidance to IOC Resolution VI-13 adopted in 1969 entitled "Promoting fundamental scientific research", which sets out principles to facilitate procedures in obtaining the consent of a coastal State with particular reference to developing countries. It was therefore proposed that such procedures should be made simple and effective and that the IOC might act as a go-between for scientists in helping them to obtain such consent as stated in resolution VI-13.

63. In connexion with the work of IOC it was noted that recent steps have been taken to improve the constitutional, financial and operational basis of the Commission. The representative of IOC discussed these developments in his statement to the Sub-Committee as well as some of the specific activities of the IOC including the Global Investigation of Pollution in the Marine Environment, the Integrated Global Ocean Stations System, the Ocean Data Acquisition System and the Commission's efforts to develop training, education and assistance programme and information services. The Sub-Committee's work, it was observed, was of particular relevance

to the preparation of the ODAS Convention. It was noted that the preparatory conference of governmental experts to formulate a draft convention on the legal status of ODAS (January/February 1972) had decided to delay further action on this draft since the legal aspects of scientific research should be decided in the Sea-bed Committee.

64. The view was expressed that scientific research was both a vitally important and an eminently international activity. It was emphasized that it was necessary to promote scientific research while at the same time ensuring that abuses were avoided; that all countries are enabled to participate actively in it and that the fruits of scientific research, which are part of the common heritage of mankind, are made available to all without discrimination. It was stated also that regulation of scientific research should be undertaken by future international institutions on the basis of principles laid down in a treaty generally agreed upon and that States in their regulation of scientific research in ocean space within their jurisdiction should observe the spirit of the norms elaborated at the international level. It was urged that future international institutions should also take far more effective action than present intergovernmental institutions in the dissemination of the results of scientific research, in the training of scientists from poor countries and in the establishment of modern marine research facilities therein.

65. Greater effort was called for in increasing the number of training and research centres in developing countries and in elaborating training programmes; in the latter connexion, the IOC would have a considerable role to play. It was stressed, in this respect, that all questions relating to scientific research and free and open access to the results of such research were in fact meaningless for the developing countries unless and until they had the trained personnel and technological capacity to participate in scientific research and utilize the information made available to them. It was recalled that a suggestion had already been made for the establishment of a group of experts under the auspices of the United Nations to give advice on the assessment of research results to those countries which lacked the necessary skills. It was further observed that some such provision as well as others must be made for strengthening the scientific and technical capacities of developing countries to allow them to profit from research programmes particularly where they related to their own coastal resources. It was suggested therefore that the Sub-Committee should concern itself with the question of training in all aspects of marine research and should make appropriate provisions in the draft treaty articles on this subject.

66. It was stated that there was a willingness, in principle, to commit funds to support multilateral efforts in all appropriate international agencies with the view towards creating and enlarging the ability of developing States to interpret and use scientific data for their economic benefit and purposes, to augment their expertise in the field of marine science research, and to have available scientific research equipment including the capability to maintain and to use it It was emphasized that such a commitment would be in addition to efforts by the international sea-bed authority once it is established and gains the financial capacity to devote funds to the same purpose. It was further suggested that there was also a willingness to take active part in programmes of mutual assistance as well as to receive in laboratories and on board vessels scientists and researchers from developing countries.

Draft Resolution on Nuclear Weapon Tests in the Pacific

67. The delegations of Australia, Canada, Chile, Colombia, Fiji, Indonesia, Japan, Malaysia, New Zealand, Peru, Philippines, Singapore and Thailand submitted on 31 July 1972 a draft resolution A/AC.138/SC.III/L.22 (Annex IV), which declared that no further nuclear weapon tests likely to contribute to the contamination of the marine environment should be carried out. It also requested the Chairman of Sub-Committee III to forward the resolution to the Secretary-General of the United Nations for referral to the appropriate United Nations bodies, including the Conference of the Committee on Disarmament.

68. Several of the Pacific and Asian countries sponsoring the draft resolution spoke to support it and to express a common concern about the testing of nuclear weapons likely to cause damage to the marine environment and to its living resources. Reference was made to Principle 26 of the Stockholm Declaration on the Human Environment, to the resolution on nuclear testing submitted by New Zealand and Peru at Stockholm and adopted by the Conference by a large majority, to the joint appeal on nuclear testing presented to the Conference by nine Pacific countries, and to the Partial Nuclear Test-Ban Treaty.

69. A number of the co-sponsors, having made it plain that they were opposed to the testing of nuclear weapons in any environment, laid special emphasis on the atmospheric testing of nuclear weapons being undertaken by France in the South Pacific. It was stated that these tests presented a potential health hazard to the peoples of the South Pacific without any compensating benefit. They also resulted in further contamination of the marine environment and were capable of threatening its living resources which were a vital element in the subsistence and economy of the Pacific Islands.

70. Mention was made of the fact that opposition to the nuclear testing in the South Pacific had been voiced in statements issued by the Pacific Island Producers Association, the Prime Ministers of New Zealand and Australia, the Foreign Ministers of the Andean group of countries, the Anzus Council, the Foreign Ministers of Australia and New Zealand and the Foreign Ministers of the ASEAN countries. These reflected a spontaneous upsurge of opposition to the tests on the part of the peoples of the region.

71. The French delegation stated that no country had ever conducted nuclear tests under such strict conditions as France, with regard to both the prevention and the monitoring of side effects. The monitoring had been done with great care, using highly sensitive instruments, and had established that the French tests had not caused any appreciable pollution of the sea. The findings to that effect were recorded in reports submitted regularly to the United Nations Scientific Committee on the Effects of Atomic Radiation, which had not so far had any comment to make on them.

72. As against those findings of a scientific nature the Sub-Committee had heard nothing but unscientific assertions that the French tests might possibly have some effect on the environment. Since no pollution of the sea had been established, it could thus be stated that the Committee was not competent to adopt a resolution of the kind in question.

73. The representative of France added that the Sea-Bed Committee's terms of reference gave it a specific task, namely, to prepare for a conference on the law of the sea and to draw up draft texts for that purpose. They made no reference whatever to the adoption of resolutions of a general nature, even in the event that the Committee were competent ratione materiae, which was not the case.

74. The submission of such texts could only delay the Committee's work still further, just when it was entering upon its constructive phase. For those reasons the French delegation was obliged to oppose the resolution in question.

75. The representative of the People's Republic of China declared that China had consistently stood for complete prohibition and thorough destruction of nuclear weapons and that, before this objective was materialized, to appeal for the prohibition of nuclear tests would be precisely advantageous to the consolidation of the monopoly of nuclear powers over nuclear weapons. He pointed out that China developed nuclear weapons entirely for the purposes of defence, that very few nuclear tests had been conducted, which had taken place in the airspace over inland areas within its own

territory with the adoption of every possible measure to avoid bringing nuclear contamination to its people and the people of other countries and that, therefore, no harm had been caused so far.

76. Both the delegations of France and the People's Republic of China objected to the adoption of this resolution and a consensus could not be reached in the Sub-Committee on its adoption.

Draft Resolution on Preliminary Measures to Prevent and to Control Marine Pollution

77. A draft resolution concerning measures for preventing the pollution of the marine environment was presented by the USSR (A/AC.138/SC.III/L.19). On the basis of this document and the draft resolution submitted by Canada and Norway last year (A/AC.138/SC.III/L.5 and Add.1), a compromise text dealing with preliminary measures to prevent marine pollution contained in document A/AC.138/SC.III/L.25 was submitted by Australia, Bulgaria, Canada, Greece, Iceland, Netherlands, Norway, Sweden, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics. This compromise text and the amendments thereto submitted by Kenya, Peru, United Kingdom, United Republic of Tanzania and the United States of America are annexed to the present report (Annex V). One delegation stated that the Sub-Committee had no competence to adopt resolutions on marine pollution.

LIST OF ANNEXES