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

SUB-COMMITTEE III

DRAFT REPORT OF THE SUB-COMMITTEE ON ITS WORK IN 1972

PART II

Scientific research

39. 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.

40. 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. The development of sound management practices would be important for commercial fishing as the world catch is approaching 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, including FAO.

41. It was pointed out that problems of marine pollution could not be solved by the development of international law alone, but necessitate 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. It was stressed that there should be co-ordination between the work of the Sub-Committee and that of other organizations concerned in order to avoid duplication.

42. 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.

43. 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 also considered 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 believed 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.

44. A number of fundamental questions were raised with respect to the principles underlying the draft treaty articles on scientific research. 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.

45. It was stated that freedom of scientific research is a recognized freedom of the high seas 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 it 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. 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 scientific research was in a kind of legal void and such provisions as do exist in the above Articles of the 1958 Conventions, are nonetheless insufficient and in need of further development.

46. For the purposes of elaborating on general principles, it was said that an attempt should be made to distinguish between fundamental 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. In this regard 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, although all scientific research and commercial prospecting would not necessarily be dealt with equally.

51. 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.

52. It was stated that the conduct of scientific research in areas under the sovereignty or jurisdiction of a coastal State should remain subject to that State's prior consent and regulatory measures. By virtue of those sovereign rights, 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. 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.

53. 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 System (ODAS) or the use of satellites should remain subject to the obligations and rights deriving from such control, including the requirement to obtain the prior consent of the coastal State for research in areas within national jurisdiction. On the other hand, it was said that, other than in the territorial sea and the continental shelf, there should be minimal restrictions on scientific research in other areas of limited national jurisdiction and that the Sub-Committee should consider what criteria might apply to research conducted in these areas.

54. With regard to zones where the coastal State exercised jurisdiction over fisheries, it was stated that the same exlusive right applied to scientific research on the living resources of the zone in question and that all information resulting from research should be made available to the authority managing these living resources. It was further stated that the coastal State should have the right to exercise control over all scientific investigations to be undertaken in the patrimonial sea or exclusive economic zone and that such research by non-coastal States should be permitted provided it complied with the requirements as established by the coastal State in relation to the exploitation of the resources of this zone.

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. In addition to notification and participation, there may be an obligation to report the results of such scientific research to international organizations upon request and that all research data would be made available to the coastal States even in its raw stage before processing.

56. It was suggested that the concept of access to 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. 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 and samples available to the public by means of the recognized published media. 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 suggested, however, 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. For example, on the basis of this principle, freedom to carry out scientific research beyond national jurisdiction might be made conditional on publication and dissemination of results. However, it was pointed out, that the problem of common heritage had not been finally resolved, 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 programmes 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. It was stated that while the IOC had made considerable progress in developing training programmes, greater effort was called for in increasing the number of training and research centres in developing countries. 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.

65. It was also pointed out 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 was 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

66. 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), annexed to this report, 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.