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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

SUMMARY RECORDS OF THE THIRTY-THIRD TO THIRTY-NINTH MEETINGS

Held at Headquarters, New York,
from 7 March to 6 April 1973

Chairman:

Mr. Van der ESSEN

Belgium

Rapporteur:

Mr. IGUCHI

Japan

The list of representatives appears in documents A/AC.138/INF.8 and
Corr.1 and 2, A/AC.138/INF.8/Add.1 and Corr.1, A/AC.138/INF.8/Add.2 and
Corr.1 and A/AC.138/INF.8/Add.3.

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SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Held on Wednesday, 7 March 1973, at 11.20 a.m.

Chairman:

Mr. Van der ESSEN

Belgium

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ORGANIZATION OF WORK

The CHAIRMAN said that the Sub-Committee's terms of reference were to be found in paragraph 14 of document A/AC.138/L.13. The programme of work, as adopted by the Sub-Committee the previous year, was also to be found in that paragraph. During the previous year the Sub-Committee had completed the general debates on items A and B, Preservation of the marine environment (including the sea-bed) and Elimination and prevention of pollution of the marine environment (including the sea-bed), and had established Working Group 2, on marine pollution. It would seem, therefore, that it should now take up item C, Scientific research concerning the marine environment (including the sea-bed), on which some delegations had already made statements and on which two documents, one by the Canadian delegation (A/AC.138/SC.III/L.18) and the other by the delegations of Bulgaria, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (A/AC.138/SC.III/L.23), had been circulated (A/8721). As soon as a sufficient number of delegations was prepared to speak in the general debate on the item, meetings would be arranged. He suggested that at each meeting of the Sub-Committee, the chairman of Working Group 2 should make an oral progress report on the Group's work.

Mr. ZEGERS (Chile) said that the Chairman's suggestions were acceptable to his delegation. He suggested, however, that copies be made available of the draft Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter, prepared by the 1972 London Conference. It might be useful, too, if the representative of the United Kingdom were to give an account of the proceedings of the Conference. He suggested further that a representative of IMCO should be invited to report to the Sub-Committee about progress made by the Working Group which had been established to prepare for the International Conference on Marine Pollution to be convened by IMCO in the autumn.

Sir Roger JACKLING (United Kingdom) said that the text of the draft Convention mentioned by the Chilean representative had been handed to the Secretariat and would be circulated to the Committee shortly. As soon as it had been circulated his delegation would report to the main Committee, or to Sub-Committee III, on the proceedings of the Conference.

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Mr. BEESLEY (Canada) said that his delegation endorsed the Chairman's suggestions and associated itself with the requests made by the Chilean representative. In the interest of proper co-ordination of work, it was important that the Sub-Committee should know what other bodies were doing. It might also be useful if the Sub-Committee were to receive a report on the recent Washington Plenipotentiary Conference to conclude an International Convention on Trade in Certain Species of Wildlife, at which the question of the protection of marine wildlife had been discussed.

In conclusion, he said that his delegation would be submitting draft articles on marine pollution.

Mr. McKERNAN (United States of America) said that the Convention adopted by the Washington Conference would be available in a week or two.

Mr. HARRY (Australia) said that in response to the request made by Working Group 2 at the previous session, his delegation had prepared a short paper setting out some suggested principles, with brief commentaries, for discussion by the Working Group. The paper was currently being reproduced and translated into all working languages. He suggested that rather than waiting until it was available he should inform members about its contents at the current meeting. In that way the paper could, when ready, be passed directly to the Working Group for consideration.

It was so agreed.

Mr. HARRY (Australia) said that he did not propose to go into the substance of the principles suggested in the paper. He wished merely to say that in preparing them his delegation had paid special attention to principles 7, 21 and 22 of the Declaration of the United Nations Conference, on the Human Environment and to recommendation 92 of the Action Plan for the Human Environment adopted at Stockholm in June 1972. The suggested principles had been drafted on the assumption that the central issue for decision was the nature and extent of the legal rights and obligations of States, particularly coastal States, in relation to the Preservation of the marine environment.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that his delegation endorsed the programme of work suggested by the Chairman. A general

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(Mr. Metalnikov, USSR)

debate on the subject of scientific research would, of course, be useful. It might be advisable, however, to establish a working group to deal with the documents already available on the subject.

The CHAIRMAN, referring to the requests made by the representatives of Chile and Canada, said that the text of the draft Convention prepared by the 1972 London Conference would be circulated shortly. The Secretariat would also try to arrange for a representative of IMCO to address the Sub-Committee on the preparatory work being done for the International Conference on Marine Pollution.

Referring to the comments made by the representative of the Soviet Union, he said that when the general debate on scientific research was drawing to a close, members might consider the possibility of establishing a working group on the subject.

Mr. PARDO (Malta) suggested that the draft Convention on Legal Status of Ocean Data Acquisition Systems should be made available to the Sub-Committee.

The CHAIRMAN said that the Secretariat would arrange for the draft Convention to be circulated.

The meeting rose at 11.50 a.m.

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held on Wednesday, 14 March 1973, at 11.5 a.m.

Chairman:

Mr. Van der ESSEN

Belgium

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GENERAL DEBATE (A/AC.138/SC.III/L.27-29)

Sir Roger JACKLING (United Kingdom) said that his delegation wished to report on the Intergovernmental Conference held in London from 30 October to 13 November 1972, which had led to the adoption of the text of a Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (A/AC.138/SC.III/L.29). The Conference had been the result of an initiative taken in February 1971 by the Preparatory Committee for the United Nations Conference on the Human Environment, and a draft Convention had been worked out at a series of meetings in Ottawa, Reykjavik and London. At the Stockholm Conference itself, the then British Secretary of State for the Environment had issued a general invitation, endorsed by the Conference in recommendation 86, to a meeting in London for the express purpose of completing the Convention and having it open for signature before the end of 1972. Representatives of some 80 countries, together with observers from 12 others and 9 international organizations, including the United Nations, had attended the Conference, at the end of which representatives of 57 nations had signed the Final Act. The Final Act had not been signed by all the States which had attended, but in many cases that had been due to the absence of the representatives with the necessary powers - the Conference having lasted longer than originally planned - rather than to any disagreement with the outcome of the Conference. The Convention had been opened for signature on 29 December 1972 in the capitals of the four depository States, Mexico, the USSR, the United Kingdom and the United States.

The Conference had worked entirely by consensus; no votes had been taken and, in consequence, the negotiations had at times been protracted, but the final result had not been challenged by any delegation. The main difficulties of the meeting had centred upon subjects peripheral to the Convention on dumping itself but of direct concern to the Sea-Bed Committee, including the problems of jurisdiction to which the representatives of Canada and Chile had already alluded. All the participants at the Conference had agreed, however, on the need to find neutral formulations, which should not prejudice the deliberations of the Sea-Bed Committee. An article (article XIII) had therefore been included which expressly reserved all positions as far as the Conference on the Law of the Sea was concerned. The reaching of a compromise formula acceptable to all parties said much for the

(Sir Roger Jackling, United Kingdom)

genuine desire of the States represented at the Conference to do something positive about pollution. Dumping accounted for only a small proportion of total pollution, but there were growing signs that the nations of the world wished to take effective steps to control all forms of marine pollution.

The preambular paragraphs of the Convention emphasized the vital importance of the sea and its organisms to all mankind, and the urgent need for international action to control dumping; they also called for an early discussion of measures to control other sources of marine pollution and encouraged States to enter into regional agreements supplementary to the Convention.

Article I contained a major general undertaking to control all sources of marine pollution, followed by a specific pledge to prevent the dumping of wastes liable to endanger human health, marine life, amenities or other legitimate uses of the sea. Article III defined dumping, and article IV specified that nothing might be dumped at sea without a permit. Wastes were divided into three categories. The first category - the black list - in annex I to the Convention, contained the most hazardous substances, such as organohalogen, pesticides, mercury, cadmium, high-level radioactive wastes, agents of chemical and biological warfare, oil and persistent plastics, which could not be dumped at all except in situations of genuine emergency where human life or the safety of a vessel was threatened, or most exceptionally, when it would be even more dangerous to try to dispose of them on land. Substances such as arsenic, lead, copper, zinc, cyanides and fluorides, which were less hazardous but required special care, were listed in annex II - the grey list - which also included containers, scrap metal and other bulky wastes liable to hinder fishing or navigation. Substances not indicated on those two lists needed only a general permit, but a thorough check on the nature of the waste, the characteristics of the dumping site and the methods and possible effects of dumping would be required, as indicated in annex III.

The individual Contracting Parties would be responsible for enforcement, and under article VI each must designate an appropriate authority to issue permits and keep records of the nature, quantity and manner of dumping, and to monitor the condition of the seas where dumping took place. Under article VII, all Contracting Parties would be required to apply the Convention to all vessels and aircraft either registered in their territory or loading in their territory wastes which were to be dumped, or which were under their jurisdiction and were believed to be engaged

(Sir Roger Jackling, United Kingdom)

in dumping. There was thus a threefold basis for control, of which the second element, the control of loading at the quayside, was probably the most important. Parties were required to prevent and punish conduct contravening the Convention in their territory. Although warships and military aircraft were exempt from the provisions of the Convention, the Contracting Parties agreed to ensure that they should act in a manner consistent with its objects.

The Convention contained a number of forward-looking provisions concerning co-operation between the Contracting Parties and the co-ordination of their efforts with those of the appropriate international organizations and agencies. Article II provided that the Parties should harmonize their policies and introduce both individual and collective measures to prevent pollution by dumping; article VIII encouraged the creation of regional agreements to supplement the Convention; article IX encouraged Contracting Parties to offer each other scientific and technical assistance and article XII stressed the need for international co-operation within specialized agencies to deal with shipping operations, oil and radioactive wastes, hazardous cargoes, and other matters outside the scope of the Convention.

The Contracting Parties would develop procedures for settling disputes arising over liability for damage caused by dumping and the interpretation of the Convention (articles X and XI). They would meet regularly and decide policy, procedures and any modifications which might be required for the Convention or its annexes. An organization to handle secretariat work and prepare meetings, and to act as a monitoring organ by receiving notifications and records of dumping, would be nominated.

The Convention would be open for accession by any State after the end of 1973, and 28 countries which had attended the Conference had signed it. So far, none had yet ratified it, but that was not surprising in view of the extensive national legislation likely to be required by many States in order to implement its provisions.

The United Kingdom had not yet introduced legislation to permit ratification of the Convention, but hoped to do so as soon as Parliamentary time permitted. In the meantime, the British Ministry of Agriculture, Fisheries and Food was operating a voluntary scheme which already provided effective control over dumping.

In conclusion, he wished to mention that the United Kingdom had certain special duties laid upon it under the Convention. Pending the designation of the organization, its functions would be performed by the United Kingdom Government

(Sir Roger Jackling, United Kingdom)

which would also be responsible for convening the first Consultative Meeting. His Government welcomed those responsibilities, and was gratified that its undertaking to the Stockholm Conference had been fulfilled so successfully. Governments had now agreed to do something positive on a world-wide basis about an aspect of marine pollution which so far had been dealt with only in regional agreements. The Convention had established a springboard for future action on wider issues affecting marine pollution, and the Conference had been an effective demonstration of what international co-operation in the campaign against pollution could achieve.

Mr. BEESLEY (Canada) said that his delegation wished to introduce a set of draft articles for a comprehensive marine pollution convention (A/AC.138/SC.III/L.28). Canada's enduring concern for the protection of the environment had been marked, inter alia, by the conclusion of the first Boundary Waters Treaty in 1909, the establishment of the International Joint Commission, the Trail Smelter case and Gut Dam case. In addition, Canada had pressed strongly for the conclusion of the partial nuclear test ban treaty and the Treaty on the Non-proliferation of Nuclear Weapons since it regarded them as important environmental measures. For similar reasons, Canada continued to protest against nuclear tests and the manufacture of weapons of mass destruction. In 1970, Canada had passed the Arctic Waters Pollution Prevention Act. At that time, Prime Minister Trudeau had said that Canada would be acting multilaterally as well as nationally to develop international law for the protection of the environment. Canada had participated in the preparatory work for the Stockholm Conference, in the Conference itself, in IMCO and in the London Conference on dumping as well as in other forums. It had tried to establish three basic principles: the duty of States not to damage the environment of another State or areas beyond its national jurisdiction, the duty to compensate such damage, and the duty to consult and give notice before taking action that might have a harmful effect on other States. Those principles had been reflected and endorsed in the decisions of the Stockholm Conference, the London Conference on dumping and the twenty-seventh session of the General Assembly, and the time had now come to translate them into binding treaty obligations.

As indicated in the introductory note, the preliminary draft articles were being submitted for discussion purposes only and did not necessarily reflect the final or definitive views of his Government. The document did however reflect

(Mr. Beesley, Canada)

the experience Canada had accumulated since it had begun to take a series of new initiatives for the preservation and protection of the marine environment some four years previously. It also reflected and built upon such important international developments as the Stockholm Conference on the Human Environment, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, the series of conventions or draft conventions negotiated or under discussion in IMCO, as well as other instruments or principles of conventional or customary international law. Finally, it took account of certain broad trends emerging from the work of the Sea-Bed Committee itself.

The draft was based on a comprehensive approach to the problem of marine pollution and attempted to establish a framework which would lay down the fundamental obligations of States to protect and preserve the marine environment through the prevention of marine pollution by the implementation of proper control measures based on internationally agreed rules and standards. The framework would affirm a general commitment to the elaboration of further national and international measures, and would lay down uniform rules for dealing with certain problems arising in connexion with such national and international measures, for instance, enforcement jurisdiction, compensation for damage, and settlement of disputes.

Furthermore, the draft articles as a whole sought to lay the groundwork for an accommodation between the interests of coastal and flag States on the one hand, and the international community on the other. They did not reflect a purely national position on the part of the Canadian Government, they did not simply emphasize coastal jurisdiction at the expense and exclusion of flag State jurisdiction, and they did not call for the establishment of a super-agency which would take over the responsibilities of States for the preservation and protection of the marine environment. They did, however, call for a departure from old laissez-faire concepts and recognized the need to regulate the uses of the sea on the basis of functional management concepts founded on scientific principles rather than the principle of creeping jurisdiction or the principle of floating sovereignty. Furthermore, they contained provisions to guard against the abuse of rights or

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powers exercised by States and to settle any disputes that might arise. The draft articles had been submitted without prejudice to the question of whether they might form part of the broader treaty on the law of the sea as a whole or whether they would constitute an independent instrument.

Although it might not be strictly essential to provide a preamble for a draft comprehensive treaty on marine pollution, his delegation considered it useful to do so in order to set the background for the operative part and to provide an indication of the scope and nature of the problems and objectives. It hoped that the preambular paragraphs would not give rise to any extensive discussion. The first three preambular paragraphs were based on the Statement of Objectives concerning the Marine Environment endorsed by the Stockholm Conference. They recognized the special interests of coastal States with regard to the management of coastal area resources. They recognized that there were limits to the assimilative and regenerative capacities of the sea, and stated that it was necessary to apply management concepts to the marine environment, marine resources and the prevention of marine pollution. The fourth preambular paragraph was based on principle 21 of the Stockholm Declaration on the Human Environment. The fifth preambular paragraph was based on principles 3 and 17 of the Principles of the Marine Environment endorsed by the Stockholm Conference and also reflected the approach adopted in the recently negotiated Convention on dumping. The sixth preambular paragraph reflected principles 2 and 5 of the Principles on the Marine Environment endorsed at Stockholm. In effect, it spelled out the basic objective of the Canadian draft articles and emphasized the need for further agreements on the preservation and protection of the marine environment in order to ensure a comprehensive approach to the problem.

Article I was based on principle 1 of the Stockholm Principles on the Marine Environment. All the other provisions in the draft flowed from that basic obligation of States to protect and preserve the marine environment, which might seem so self-evident as to require no articulation. However, the article represented a clear departure from the traditional laissez-faire régime which had prevailed for so long in the law of the sea and embodied the very essence of the custodianship

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(Mr. Beesley, Canada)

concept defined by Canada and other countries. No treaty position laid down that basic obligation in such general and comprehensive terms, and the importance of pledging States to such a general treaty obligation could not be overemphasized. It would provide the binding element or organic link-up between comprehensive treaties and other treaties or national measures dealing with particular aspects of marine pollution and it would help to establish a general commitment to the elaboration of and adherence to such particular treaties. Furthermore, it would provide a new and environmentally-oriented basis for the work of the specialized agencies such as IMCO which so far had not generally succeeded in developing truly effective régimes for the prevention of marine pollution. Finally, it represented the highest common denominator for an accommodation of the various issues arising in connexion with efforts to prevent marine pollution by stating the overriding objective on which the international community agreed and by laying down the supreme guideline with which to judge the effectiveness and appropriateness of environmental protection measures.

Article II, paragraph 1 set out the obligation of States to take measures either individually or jointly to prevent pollution of the marine environment in accordance with their basic obligation to preserve and protect that environment. It reflected principle 7 of the Stockholm Declaration on the Human Environment as well as the definition of marine pollution adopted by the Joint Group of Experts on the Scientific Aspects of Marine Pollution. It also set out the obligation of States to avoid damaging the environment of other States, in keeping with principle 1 of the Stockholm Declaration and the analagous rule established by the Trail Smelter case and the Corfu Channel case. It illustrated some of the measures States should take to prevent marine pollution and in so doing reflected principle 6 of the Stockholm Declaration as well as Stockholm recommendation 71, the Edinburgh principles elaborated by the Institute of International Law in 1969, the General Assembly's Declaration of Principles on the Sea-Bed, and various IMCO resolutions. The provisions of the paragraph were fundamental to a comprehensive approach to the problem of the marine environment.

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Article II, paragraph 2, was based on Stockholm recommendations 72 and 92 (b) and provided that measures taken by States for the preservation of the marine environment should be based on or take into account relevant international conventions and the relevant principles and standards proposed by competent international organizations. Its purpose was to ensure appropriate harmonization between national and international measures, to ensure that, even if States were not parties to a particular convention, they should at least take its provisions into account and, lastly, to guard against abuse of powers by individual States.

Article III, which set out the duty of States to co-operate in the development of internationally agreed measures for the prevention of marine pollution, was based on Stockholm recommendation 92 (b) and reflected principles 8 and 9 of the Stockholm Principles on the Marine Environment. Together with article II, paragraph 2, it stressed the overriding importance of developing internationally agreed rules and standards without which no accommodation could be reached on the broad range of issues on the law of the sea and on the rights and interests of both coastal and flag States, for much of the opposition to coastal environmental measures stemmed from fears that they would result in unco-ordinated measures by different States.

Article IV, paragraph 1, recognized that States must retain the right to take measures within the limits of their national jurisdiction, including environmental protection of zones, where internationally agreed measures were either non-existent or ineffective, or where other measures were necessary in the light of local geographical and ecological characteristics. The need to allow for that kind of limited freedom of individual State action had been recognized in the Edinburgh principles of The Institute of International Law and in principles 11 and 12 of the Stockholm Principles on the Marine Environment. Article IV, paragraph 2, was intended to ensure that national action of the kind outlined in paragraph 1 was non-discriminatory and genuinely designed to preserve the marine environment. It also provided a further safeguard against arbitrary national action.

Article V provided for international co-operation and technical assistance in the acquisition of knowledge concerning marine pollution problems and was based on Stockholm recommendation 73 and principle 6 of the Stockholm Principles on the Marine Environment.

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Article VI, paragraph 1, reflected principle 20 of the Stockholm Declaration, Stockholm recommendation 87, and Stockholm principles 15 and 16 of the Stockholm Principles on the Marine Environment. The requirement that States should conduct such surveys and investigations - in a manner "consistent with the rights of other States" - and establish such monitoring systems as might be necessary to determine the essentially harmful discharges into the marine environment, represented a particular application of scientific management concepts to the preservation of the marine environment. Article VI, paragraph 2, provided for the dissemination of data and information respecting activities relating to the release of substances into the marine environment and was related in some measure to the principle on the duty of notification which had originally been embodied in - and later dropped from - the draft Declaration on the Human Environment and which had been incorporated in the Convention on dumping. The purpose of such a paragraph was to ensure that States informed one another concerning the possible environmental impact of their actions and thus helping to ensure that appropriate measures were taken.

Article VII dealt with the complex problem of compensation for damage suffered as a result of pollution of the marine environment. The point was that compensation should be readily available and should be adequate to cover the damage suffered and article VII envisaged a variety of means for ensuring such compensation, ranging from international compensation funds or insurance schemes to private rights of action established under the laws of each State in accordance with internationally agreed obligations and, where necessary, direct compensation by the responsible State. Paragraph 1 dealt with damage suffered by one State as a result of marine pollution attributable to another State - and hence involving State liability - and provided that States should co-operate in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of related disputes. Although there already existed a considerable body of jurisprudence on the question what responsibility might or might not be attributable to a State, the area required further development owing, for instance, to the increase in ultra-hazardous activities likely to result in environmental damage. In that connexion articles XIII and XIV of the preliminary draft European Convention on the Protection of Fresh Waters against Pollution, prepared under the

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(Mr. Beesley, Canada)

auspices of the Council of Europe, provided an interesting example of the way in which the law might be developing. Paragraph 2, which dealt with damage suffered in areas in or under the jurisdiction of one State as a result of pollution of the marine environment which was not attributable to another State - and consequently did not involve State liability - obliged States to provide recourse with a view to ensuring equitable compensation for the victims of marine pollution caused by persons under their jurisdiction. The object was to ensure that foreign pollution victims had prompt access to equitable compensation through the courts of the State having jurisdiction over the polluter. Where such prompt access was not provided, the claim for damage became a matter to be dealt with directly between the Governments of the two States concerned. Finally, paragraph 3 dealt with damage caused in or to areas beyond the limits of national jurisdiction by pollution of the marine environment and provided that States should co-operate in the development of international law relating to any claims that might arise in those circumstances.

Article VIII provided that where pollution damage was caused beyond the limits of national jurisdiction, a State or group of States might request the termination or restriction of such activities and the restoration of the damaged environment and that any dispute arising in that connexion would be dealt with under the procedure envisaged in draft article XIII.

Article IX, which reflected article V of the dumping Convention, provided that States should notify each other of any imminent danger of marine pollution damage likely to affect them and should co-operate in minimizing such danger.

Article X, relating to enforcement jurisdiction, was vitally important for a comprehensive approach to the preservation of the marine environment, since jurisdictional conflicts had arisen with respect to virtually all international efforts to combat marine pollution and since no accommodation on the problem could be reached without an accommodation on the question of jurisdiction to enforce anti-pollution measures. The three paragraphs were based on the three principles on the rights of coastal States which had been considered at the Ottawa session of the Intergovernmental Working Group on Marine Pollution and which had been referred

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by the Stockholm Conference to IMCO and to the Sea-Bed Committee. They dealt respectively with enforcement of environmental preservation measures by the coastal State within the limits of its national jurisdiction, including environmental protection zones (in addition to that State's authority to promulgate national measures as envisaged in draft article IV); concurrent or shared responsibility of the flag State to enforce environmental preservation measures in areas under the jurisdiction of another State; and enforcement by flag States in respect of their vessels and aircraft beyond the limits of national jurisdiction and by the responsible State in respect of man-made structures or platforms beyond those same limits. It had always been the Canadian view that once agreement had been reached on the measures to be enforced, it would become easier to adopt a more flexible attitude on the choice of an enforcement authority. Just as the coastal State would have (under draft article IV) a residual authority to promulgate rules within the limits of its national jurisdiction, it would have a similar residual authority to enforce both the internationally agreed rules and any special national rules. That reflected the kind of accommodation whereby jurisdictional conflicts would be resolved by an approach somewhat analogous to the concept of universal jurisdiction which was accepted by all States with regard to slavery and piracy and would not constitute undue interference with the responsibility of flag States for their vessels.

Article XI provided for the right of a State to intervene in cases where it faced grave and imminent danger from pollution following upon a maritime incident in areas beyond the limits of national jurisdiction although any measure taken in that connexion should be proportionate to the threatened damage.

Article XII provided for the sovereign immunity of government vessels in accordance with the usual practice in maritime conventions while at the same time providing that they should act in a manner consistent with the object of the draft articles.

Finally, article XIII provided (mainly by way of an example) for the procedures to be followed for the settlement of disputes relating to the interpretation or application of the draft articles and was intended to provide the ultimate safeguard against abuse of powers by any State and to ensure that measures taken pursuant to the articles corresponded to the interest of the international community. It reflected one of the most fundamental elements of the custodianship concept advanced by his delegation and others. His delegation would be pleased to provide further clarification on the draft articles in the Working Group on Marine Pollution.

Mr. CACERES (Peru) recalled that his delegation had not attended the London Conference at which the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (A/AC.138/SC.III/L.29) had been drawn up, nor had it signed or acceded to that instrument. Although it sympathized with those States that were concerned at the increasing volume of contaminants being dumped in the sea and was aware of the urgency of the problem, it felt that, having upheld and succeeded in obtaining the adoption, by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, of a comprehensive approach to all matters relating to ocean space, it could not participate in any attempt to fragment that approach. The Convention on dumping did not - as might have been foreseen - take sufficient account of the rights of coastal States, particularly developing coastal States. Indeed, basically it reflected the viewpoint of the developed countries rather than the majority opinion of the international community and that, perhaps, explained why so few States had acceded to it. Consequently, the Sea-Bed Committee should merely take note of the Convention. It would be incongruous, to say the least, if the signatory States were to seek to have the Committee endorse or adopt the Convention. His delegation could not accept any kind of interference between the work accomplished at the London Conference and the preparatory work for the Conference on the Law of the Sea. Finally, it seemed that the logical way to proceed would be to establish general principles first and then proceed to the implementation of the technical aspects.

Mr. PARDO (Malta) said that his delegation had prepared draft articles on the preservation of the marine environment, including the prevention of pollution. The articles were based on the factual background to the problem of marine pollution and on what was being done to control that pollution. He would accordingly comment on that background, which was fundamental to an understanding of the draft articles.

There was widespread concern that the effect of man's activities on land, in the seas and in the atmosphere might produce such adverse effects on the marine environment as to jeopardize human health and sources of food over large areas of the planet. That concern had given rise to action by States at the national, regional and international level. In addition to action taken by States, either

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(Mr. Pardo, Malta)

by means of conventions or within the United Nations, much had been done in recent years on investigation of the scientific aspects of pollution both within the United Nations system and by international organizations of scientists and experts. A list of marine environment activities being conducted within the United Nations system was to be found in document CO-ORDINATION/R.979/Add.1. The most important international scientific organization outside the United Nations concerned with ocean pollution was the International Council of Scientific Unions.

The question was whether the approach followed so far by States and by organizations within the United Nations system was likely to reduce the danger of serious contamination of large areas of the marine environment as a result of the activities of man. The most significant sources of pollution of the marine environment were land-based. Yet, international conventions so far concluded dealt, almost exclusively, with the international discharge of oil transported by ship and the related questions of liability for the dumping in the ocean of certain types of deleterious substances. The significance of the conventions could be gauged from the fact that the hydrocarbons discharged from the exhaust pipes of automobiles were a far more significant source of marine pollution than the intentional discharge of hydrocarbons by ships and that the discharge into the sea of pesticides and toxic substances carried by rivers was a far more important source of ocean pollution than the dumping into the sea of such substances. Furthermore, the credibility of existing conventions was to some extent diminished by the fact that enforcement was left exclusively to the discretion of the flag State and that no impartial tribunal had been established to adjudicate claims for damages. Clearly, therefore, there was considerable scope for further international co-operation in the matter.

The activities of organizations within the United Nations system with regard to pollution were almost entirely directed towards scientific investigation. Scientific investigation was a prerequisite for the adoption of rational and effective measures of co-operation at the international level. Hence, ongoing activities within the United Nations system were both useful and necessary. Nevertheless, the effectiveness of such activities with regard to marine pollution were limited by a number of factors, including imperfect interagency programme

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(Mr. Pardo, Malta)

co-ordination, lack of funds and, in many cases, sectoral concerns and competence. Steps were being taken to deal with some of those deficiencies, but the fundamental question was whether the United Nations system as currently organized could be as effective as was required in the matter of marine pollution. A particularly serious constraint was that in many cases the role of United Nations agencies with regard to marine pollution was limited essentially to co-ordination of plans: implementation was entirely in the hands of participating Governments. Thus, if for any reason, a Government was unable to participate in a programme, implementation suffered. Also, the results of investigations undertaken within the United Nations system were discussed in technical forums not easily accessible to small countries and were not always brought to the attention of Governments in a comprehensible form.

In short, the factual situation with regard to marine pollution and its control could be described under seven points. Firstly, the sources of marine pollution were overwhelmingly land-based, but expanding activities in the marine environment were likely to contribute increasingly to ocean pollution. Secondly, serious marine pollution was largely confined to estuaries and coastal areas entirely within national jurisdiction; nevertheless, some enclosed and semi-enclosed seas were becoming increasingly contaminated, and in such cases regional agreements were necessary. Thirdly, there were indications that significant pollution was spreading to open oceans. Unless control action was taken at the international level, ocean pollution would become increasingly serious and endanger some uses of the sea, including the exploitation of its living resources. Fourthly, extensive marine pollution was contrary to the interests of all States and must therefore be discouraged. Fifthly, since the oceans constituted a complex of closely inter-linked systems, widespread marine pollution could be controlled only by the co-operative action of States, particularly coastal States. It should be noted in that connexion that activities within or by coastal States were responsible for perhaps 98 per cent of existing marine pollution and that activities within or by some 15 coastal States were responsible for approximately 75 per cent of existing marine pollution. Sixthly, action so far taken by States had been addressed only to comparatively marginal sources of ocean pollution. Lastly, the effectiveness

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(Mr. Pardo, Malta)

of scientific work undertaken within the United Nations system was limited by administrative, financial and organizational constraints, some of which were inherent in the system itself. It was clear that realistic and effective action must be taken to avert the threat marine pollution posed to the interests of all States. Such action could be based only on recognized principles of international law in so far as they related to marine pollution. It was certainly within the power of the Sea-Bed Committee to clarify those principles. Current international law was based on the postulate of the existence of a world system of independent States each of which was fully sovereign within the limits of its own jurisdiction. Hence, within its own jurisdiction, a State could act as it wished unless it had assumed an international obligation limiting its discretion. From the nature of contemporary international society it was possible to deduce the following general principles with regard to marine pollution. Firstly, a coastal State had the right to pollute the marine environment under its jurisdiction in accordance with perceived needs. That was a valuable right and would become increasingly valuable with the passage of time. Secondly, a coastal State had the right to prevent others from polluting the marine environment under its jurisdiction. Thirdly, a State did not have the right to pollute the marine environment outside national jurisdiction, since pollution by a State affected the interests of other States in their use and enjoyment of the marine environment beyond national jurisdiction. Fourthly, a State had the obligation not to pollute the marine environment under the jurisdiction of another State. Those general notions should be elaborated in the form of draft treaty articles of a general character which must take into account the fact that the nature of the biosphere often made it difficult to confine pollution from any source to the area under the jurisdiction of the originating State. Activities in the marine environment were likely to become an increasingly significant source of marine pollution. Hence, the obligation of States not to cause pollution outside their jurisdiction must be explicitly formulated and the obligation must be enforced by giving the international community, organized in appropriate institutions, a cause for action for damages when such pollution occurred.

In addition, the Committee should prepare draft treaty articles in respect of the following matters, taking into account the need for a comprehensive approach to ocean problems. Firstly, reasonable preventive measures to be taken by coastal

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(Mr. Pardo, Malta)

States in order to give practical effect to their general obligation not to contaminate the marine environment beyond their jurisdiction. Secondly, general criteria with regard to the conduct of activities in the marine environment. Thirdly, responsibility of States for damages caused by pollution of the marine environment. Fourthly, impartial arbitral and judicial arrangements to adjudicate disputes and assess damages caused by marine pollution. Fifthly, international institutional arrangements which would be necessary to: formulate internationally agreed standards and rules with regard to activities in the marine environment; monitor the marine environment and investigate the ecological effects of activities therein; co-ordinate international action in the event of ecological emergencies; and accelerate the effective transfer of technology to the technologically less-advanced countries in the matter of the control of marine pollution. Lastly, the Committee should prepare draft treaty articles on co-operation between national authorities and the international institutional arrangements.

Marine pollution was only one of the factors which might impair the marine environment. Among other factors were, first, technological capability to change the climate, water temperatures and the natural state of the marine environment and, secondly, the pressures put on the marine environment by recreational activities and tourism. Modifications of climates and sea temperatures were not pollution and were not necessarily harmful. They could, however, be extremely harmful and their effects could be disastrous. It was essential, therefore, that any use of technological capability likely to cause extensive change in the natural state of the marine environment outside national jurisdiction receive the consent of the international community organized in appropriate institutions. That was a matter of vital importance. The pressures caused by recreational activities and tourism were mostly in the coastal zone and entirely within national jurisdiction. Nevertheless, pressures were extending to the oceans. Greater leisure, improved standards of living and better means of communication enabled an increasing number of tourists to visit remote reefs and uninhabited or sparsely inhabited islands containing unique populations of birds, living creatures and marine flora and fauna. It was only natural that tourists should take away samples from the islands; sometimes they even introduced non-indigenous animals. In that connexion, the action taken by the Government of Ecuador to protect the unique characteristics of

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the Galapagos Islands was commendable. There were hundreds of reefs, islets and islands with unique bioorganisms, plants, birds, corals, shells, and so forth, which were for all practical purposes unadministered and unprotected. The Conference on the Law of the Sea would provide an opportunity to lay the foundations for an international system of marine and nature parks.

In conclusion, he said that his delegation hoped soon to be able to submit draft treaty articles on the matters to which he had referred. In the absence of any decision on the form of treaty or treaties to be prepared it had assumed that a comprehensive treaty on ocean space would be elaborated and had prepared draft articles on pollution and on the preservation of the marine environment with that end in view. However, it would be prepared to adapt the terminology used and the suggestions contained in its draft articles to the treaty format desired by the majority of the Committee.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that his delegation, together with those of Bulgaria, Poland and the Ukrainian Soviet Socialist Republic, had prepared draft articles for a convention on scientific research in the world seas. The text of the articles had been handed to the Secretariat for processing and translation into the working languages. As soon as it had been circulated to delegations, his delegation would comment on the articles. Furthermore, the delegations he had referred to had almost completed work on a draft convention on the preservation of the marine environment. As soon as the text was ready it would be submitted to the Secretariat for circulation to delegations.

The meeting rose at 1 p.m.

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SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held on Monday, 19 March 1973, at 3.35 p.m.

Chairman:

Mr. Van der ESSEN

Belgium

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SCIENTIFIC RESEARCH AND PRESERVATION OF THE MARINE ENVIRONMENT

Mr. METALNIKOV (Union of Soviet Socialist Republics), in introducing the draft articles for a convention on scientific research in the world ocean contained in document A/AC.138/SC.III/L.31, pointed to the considerable amount of research which had been carried out in the fields of marine biology, physical oceanography and marine geology during the last 25 years. The Soviet Union itself had a fleet of some 200 research vessels and a large number of oceanological and hydrophysical institutes. Among the major results of research into marine biology were the discovery of life at great depths, of the possibility of safely increasing the annual world catch of fish to 100 million tons from its present level of 70 million tons and of the existence of hitherto unknown food sources. Scientists were also studying the movement of nutrient substances in the sea, including the important phenomenon of upwelling. In the field of physical oceanography, studies were being made of temperature and salinity distribution, the occurrence of chemical elements, the movements of horizontal and vertical currents and their role in the spreading of pollution. High levels of pollution had been discovered in many parts of the ocean; but scientists were also investigating the degree to which the ocean could clean itself. Tide movements were being exploited to provide electricity, while study of the interaction between the ocean and the atmosphere had increased the reliability of weather forecasts. Marine geological research had led to the production of accurate bathymetric charts and the discovery of oil, gas, and metal-bearing cozes. Work by United States scientists had led to confirmation of the theory of continental drift and of the formation of the earth's crust in rift zones. Much valuable research was continuing into the natural formation in the sea-bed of ores, gases and oil and into the mineralization process resulting in the formation of nodules. Those advances had only been possible because scientists had been free to carry out their investigations, a point to which his delegation attached great importance.

Article 1, which defined scientific research, was linked with points 1.5, 13.1 and 22 of the list of subjects and issues (A/8721, para. 23). Article 2 fixed the scope of the proposed convention, in accordance with point 1.6 of the list of subjects and issues, and established the principle of freedom of scientific research as in principle 2 of document A/AC.138/SC.III/L.18. Article 4 corresponded to

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(Mr. Metalnikov, USSR)

point 13.3 and article 5 to point 14 of the list of items and issues. The draft articles as a whole reflected the problems which his delegation felt to be associated with scientific research in the world ocean.

Turning to document A/AC.138/SC.III/L.32, he said that the Soviet Union had submitted the draft articles in question because it considered the task of preserving the environment and ensuring the rational use of natural resources to be of exceptional importance. That concern had been demonstrated by a decision of the Supreme Soviet of the USSR and a subsequent decree issued by the Central Committee of the Communist Party and the Council of Ministers of the USSR concerning strengthened measures to protect the environment and improve the use of natural resources. Of the draft articles, article 2 reflected his delegation's approach to point 6.1 of the list of subjects and issues, while article 4 was connected with points 12, 14 and 15 of the same list. He hoped that both the documents he had introduced would be given due consideration by the Sub-Committee.

Mr. CLELAND (Ghana) said that his country's concern for the protection and preservation of the marine environment and the related question of scientific research could be traced to its geographical position as a coastal State. That position, which conferred certain rights and responsibilities, was enhanced by Ghana's sizable fishing industry which, according to FAO statistics, was the fourth largest in Africa and the second in importance in West Africa. Ghana also owned a large merchant marine fleet and thus assisted in fostering the growth of international trade through the swift transportation of goods. Finally, Ghana was engaged in off-shore oil exploration which seemed likely to lead to a commercial exploitation in the future. All those activities, and particularly the country's fishing industry, which depended on distant fishing beyond Ghana's territorial waters, dictated that national interest was best protected in global and regional arrangements which fostered and preserved the quality of the marine environment. In view of its need for a regional and global approach to marine matters, Ghana had participated in a number of international and regional conferences and was a party to relevant agreements.

The paramount consideration of the numerous marine conferences continued to be the rational and orderly exploitation of marine resources which, together with the preservation of the marine environment, was inextricably bound up with

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(Mr. Cleland, Ghana)

scientific research. Scientific research, including oceanography, had disclosed the unlimited resources lying beyond the limits of national jurisdiction and was therefore the basis for the development of the riches in the oceans which had come to be appreciated as the common heritage of all mankind.

While it was recognized that scientific research should be primarily promoted by all States, the situation of a number of developing countries imposed on them certain disabilities, such as inadequate resources both in terms of finance and trained manpower. Accordingly, the efforts of developing countries must be complemented by assistance at their request, channelled through the appropriate international organizations as well as through technically advanced countries. His delegation believed that the assistance should take the form of training of personnel from developing countries and establishment in those countries of research centres in order to facilitate their socio-economic development. Scientific research data should also be disseminated without restriction in order to enhance the capacity of the developing countries to discharge their responsibility with regard to the preservation of the marine environment.

The need for such assistance to developing countries was implicit in the Declaration of Principles in General Assembly resolution 2749 (XXV) and had also been recognized by the Stockholm Conference on the Human Environment. Furthermore, a recommendation of the Global Investigation of Pollution in the Marine Environment (GIPME) had urged the need for co-ordination of scientific efforts, training and education.

All those recommendations reinforced the thrust of his delegation's argument with respect to the vital need to extend scientific research assistance to developing countries whose international responsibility for the preservation of the marine environment was hampered by limited resources and by the question of national priorities. Preservation of the marine environment was a matter of urgent priority for many industrialized countries, while for developing countries it was acknowledged that a reasonable amount of pollution incidental to industrialization was necessary within the context of economic and social objectives, though it was fully recognized that they were obliged to ensure that other States were not thereby endangered.

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(Mr. Cleland, Ghana)

Efforts towards the pooling of resources had been initiated by developing countries and there was an awareness that mastery of sea-bed technology and scientific research could best be promoted through national and regional efforts. If, however, the envisaged international co-operation was to have any meaning, national and regional efforts would have to be supplemented by assistance from technologically advanced countries and from international organizations.

On the basis of the principle set forth in document A/AC.138/SC.III/L.18, that marine scientific research was part of the common heritage of mankind, freedom to carry out scientific research beyond national jurisdiction would be facilitated by the publication and dissemination of research results. His delegation believed that freedom of scientific research should be protected, but it should be restricted in those cases where it did not take into account the interests of other States or ignored the basic provisions established to protect the marine environment.

Advancing technology had increased the interdependence of nations, imposing on all States a responsibility to develop and institutionalize international co-operation in all fields, including scientific research and the exchange and dissemination of information.

In the past, a combination of overt and subtle pressures had caused large extractive and other concessions to be signed away to European colonizers at well below their market values. The minerals and other resources transferred to Europe had brought about improved living standards in European countries while causing the impoverishment of many developing countries. In those circumstances, the future of a number of colonized countries had been mortgaged. However, the present generation in those countries must not remain passive and be unwilling accomplices in allowing the common heritage of mankind to be exploited for the benefit of the technologically advanced countries only. The key to the riches of the sea-bed beyond the limits of national jurisdiction and to the preservation of the quality of the marine environment was scientific research data. The developing countries would insist that such scientific data should be globally disseminated to enable all countries, developed and developing, coastal and land-locked, to partake in the fruits of that common heritage.

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(Mr. Cleland, Ghana)

Accordingly, his delegation, as well as a number of other delegations of developing countries, would want to see provision made for technical assistance and the dissemination of scientific data in any draft treaty relating to scientific research.

In conclusion, his delegation wished to commend the Soviet delegation for its detailed and interesting statement and wished to assure that delegation that it would in due course comment on the very useful draft convention submitted in document A/AC.138/SC.III/L.31.

The meeting rose at 4.35 p.m.

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SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held on Thursday, 22 March 1973, at 3.30 p.m.

Chairman:

Mr. Van der ESSEN

Belgium

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SCIENTIFIC RESEARCH

The CHAIRMAN recalled that it had been informally agreed that the chairman of the working group to be established on scientific research would be a representative of the group of Eastern European States. That information had unfortunately been omitted from the record of the previous meeting.

Mr. ALBERS (United States of America) stated that one of the most valuable aspects of marine scientific research was the study of the ocean floor. Within the last two decades such study had greatly stimulated thinking about the origin of the continents and ocean basins and had extended man's understanding of the geological processes that created volcanic and seismic activity and caused variations in the composition of the earth's crust. The work had led to the formulation of the theory of global plate tectonics, according to which the earth's crust was divided into a mosaic of large plates, each of which was in motion.

It had long been known that volcanoes and mountains were not distributed randomly over the earth's surface but were mainly confined to narrow linear belts, within which most earthquakes also occurred. Those belts were evidence of mobility within the earth's crust along localized zones. That knowledge, coupled with new evidence from the sea floor, suggested that the areas of mobility were related to fractures dividing the earth's crust into seven main plates which carried the continents. In places the continental margin was coincident with a plate boundary, while in others it appeared to be static relative to the oceanic crust.

The phenomenon of place divergence was responsible for the formation of the mid-ocean mountains. As the plates moved apart, the rift along the crest of the mid-ocean ridge widened, but the gap was continually filled by new material from below. A dramatic example of that process was the present disastrous eruption of Helgafeil Mountain, Iceland.

The series of deep trenches and associated island arcs and linear mountain chains along the eastern, northern and western edges of the Pacific Ocean were strongly suggestive of the presence of buckling or compressive forces. It was thought that the South American and Asian continental plates were overriding the Pacific plate, which was apparently being thrust downward and reassimilated into subcrustal material by melting.

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(Mr. Albers, United States)

The boundaries of much of western North America, the Caribbean and Central America and segments of the Middle Eastern and Mediterranean earthquake belts clearly showed that the plates in those regions were sliding past each other rather than diverging or converging. Their motion was closely linked to the movement of the entire plate complex and was apparent from the same high incidence of earthquakes that characterized the other plate contacts.

The continental margins of eastern North and South America, western Europe and eastern and western Africa were inactive and static by comparison with the margins of the Pacific Ocean. The role of those static margins was not understood but it was believed that the margins of eastern North and South America and western Europe and Africa marked the original split caused when the Atlantic Ocean began to open up.

The theory of global plate tectonics provided a single framework for seemingly unrelated phenomena which might well be manifestations of a single world-wide geological process. Continued study of the sea floor would almost certainly be the primary source of knowledge about the processes that continually remoulded the earth's outer crust and would assist in elucidating the origin and history of mountain systems and related geological features on all the continents.

The practical implications of the plate tectonics concept were also highly important. Throughout the world, the zones of high seismic and volcanic activity were concentrated along the edges of crustal plates. Directly associated with earthquakes generated on the ocean floor were tsunamis, the great tidal waves that resulted from shifts in the crust beneath the sea. If man was to reduce the tremendous damage to life and property caused by earthquakes and tidal waves, he must be able to measure rates of crustal movement and to predict with some degree of accuracy when and where earthquakes, volcanic eruptions and tsunamis might occur. An understanding of global tectonic processes might also lead to a clearer insight into the origin and general distribution of mineral and hydrocarbon deposits both on land and beneath the sea.

Static continental margins were characterized by the presence of large basins filled with sedimentary rocks. It was not known why such basins were formed or

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(Mr. Albers, United States)

how they were related to the varying stages of tectonic evolution found on the earth's surface. The continental margins were the places most likely to provide such information, for it was there that geological processes were currently most active.

The global plate tectonics-hypothesis was, as yet, only a working model. The highly generalized tenets of the concept must now be studied in depth in order to establish its validity and the way in which the processes involved were related to the needs and concerns of mankind. The scope of the processes was global and it would require international scientific effort involving participants from all nations to understand them and apply the knowledge obtained. Three international research programmes had recently been initiated to that end, namely, the Joint Oceanic Institutions for Deep Earth Sampling (JOIDES), the International Decade of Ocean Exploration (IDOE) and the International Geodynamics Project.

By the end of 1972, the drilling vessel, the Glomar Challenger, used in the JOIDES programme, had completed 27 cruises and drilled 263 sites in the world's oceans. Two hundred and eighty-five scientists, of whom 87 had come from 20 countries outside the United States, had participated in those cruises. Results to date had been most revolutionary in their contribution both to the development of the global plate tectonics theory and to the determination of the geology and history of local areas. The United States would shortly set up an exhibition within the United Nations illustrating the main aims and purposes of the project. The exhibits would include one of the drill bits used in the programme, information on the international participation in the project and a complete set of technical reports.

Investigations under the IDOE programme were concentrated in the fields of environmental quality, environmental forecasting, living resources and sea-bed assessment. Sea-bed assessment involved the examination of the large-scale geophysical structures and sedimentary distributions of the major unsurveyed continental margins, of the dynamic processes of mid-ocean rift valleys and deep ocean trenches and of the geophysical and geochemical properties of the ocean floor. Participation in and support for the project had already come from countries in Latin America, Africa and Europe, while future plans included a possible co-operative programme in South-East Asia.

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(Mr. Albers, United States)

The International Geodynamics Project, which had been initiated by the International Council of Scientific Unions, involved participation by 45 countries and was based on the realization that the plate tectonics model was global in scope and that simultaneous study of critical areas throughout the world would achieve greater and more rapid progress than isolated individual efforts. The project would involve study of both vertical and horizontal plate movements and investigations into the dynamic history of the earth in water-covered areas and on dry land.

The study of the dynamics of the earth's crust involved two points of direct interest to the Sub-Committee. The first was related to the importance of the study of the ocean basins for knowledge of earth processes, hazards and resources. Much had been learned from geological studies on land about earth processes and history but it was none the less true that the new understanding of global crustal processes had come in large part from study of the ocean floor, which represented a natural domain of great importance in the development of man's knowledge about the earth on which he lived. The second point was that opportunities for scientific research should be freely open to all for the benefit of all. The wisdom of the doctrine of freedom of research that had generally prevailed to date was illustrated by the amount of the newly-acquired scientific knowledge to which he had referred. Important as such progress was, however, it was only a beginning and much hard work lay ahead. The Sub-Committee would need to plan for a régime that both encouraged and facilitated the research required.

Mr. SAANIN (Indonesia) said that, although Indonesia was not yet in a position to carry out scientific research in the world ocean, owing to the fact that it had a limited number of marine research vessels and attached top priority to oceanographic research within its own territory, it did not exclude itself from the international co-operation in the field of marine research on the high seas. It had actively participated in the Indian Ocean Expedition in the early 1960s and in the survey of the South China Sea and would play an active role in future international marine research whenever and wherever it was in a position to do so.

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(Mr. Saanin, Indonesia)

The efforts of the working group on scientific research to be established should be viewed in the light of the terms of reference of the main Committee. Accordingly, the scope of the scientific research in question should be limited to research to obtain knowledge on all aspects of natural processes and phenomena occurring in ocean space, on the sea-bed and in the subsoil thereof, beyond the limits of national jurisdiction. It should not include internal waters, territorial seas, zones where coastal States exercised specific jurisdiction of an economic nature, nor the continental shelf and the sea-bed and subsoil thereof.

In accordance with General Assembly resolution 2749 (XXV), scientific research in the area beyond national jurisdiction should be conducted exclusively for peaceful purposes. In his delegation's view, scientific research should be internationally regulated and carried out, bearing in mind that its objective was to benefit mankind as a whole. Regulations should be directed at the prevention of duplication, the co-ordination and synchronization of scientific research conducted by various States, and the most effective utilization of all available resources.

In view of the direct relationship between the phenomena and properties of areas of the high seas adjacent to areas under national jurisdiction, the participation of coastal States in scientific research in those areas should be facilitated and encouraged. At the very least, coastal States should be kept informed of plans to conduct research in areas of the seas adjacent to their jurisdictional waters.

The results of scientific research in the area beyond national jurisdiction should be regarded as the property of mankind and hence all States should have access to those results. In order to enable the developing countries to derive the greatest benefit from those results, developed countries should provide facilities for training and the transfer of technology.

Scientific research within areas under national jurisdiction could be carried out only by the State concerned or with its written consent; accordingly, the coastal State had the right to participate in the research and to obtain the results thereof. Lastly, scientific research should not hamper the normal utilization of the sea and should not have repercussions which were contrary to the principles of the preservation of the marine environment.

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Mr. VALDES ZAMUDIO (Peru) said that the information provided by the United States representative was most valuable. However, he had reservations regarding the emphasis which that representative had placed on the goal of complete freedom of scientific research in the ocean. That objective was based on the principle that knowledge was equivalent to power, which would mean that States having the means to conduct research would wield their power - in the sense of knowledge per se as well as political power - over States which were not in a position to carry out research. Accordingly, he agreed with the representative of Indonesia that coastal States must be able to participate in research in their jurisdictional waters on a basis of equality; furthermore the State conducting the research had the obligation to make its findings available to the coastal State within a reasonable period of time.

Mr. VALLARTA (Mexico), speaking as the Chairman of Working Group 2, and presenting a progress report on its deliberations, said that the Working Group had examined the formal proposals submitted in the Sub-Committee by the delegations of Australia, Canada, the Soviet Union and Malta.

Following a debate on the basic obligations of States to preserve the marine environment, the sponsors of formal proposals and other interested delegations had met informally and had agreed on a joint text regarding those obligations. The Working Group had taken note of that text; a number of delegations had stated that they could not agree to a statement of general obligations until the details thereof had been formulated.

It had been agreed that it would be better to leave the question of definitions aside for the time being and study the articles of the remaining proposals in order to ascertain exactly which terms were to be defined.

Lastly, the Working Group had begun consideration of specific measures which States should adopt to prevent pollution and preserve the marine environment.

The CHAIRMAN said that the list of speakers for the general debate would be closed at the end of the current meeting.

The meeting rose at 4.30 p.m.

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SUMMARY RECORD OF THE THIRTY-SEVENTH SESSION

Held on Thursday, 29 March 1973, at 3.25 p.m.

Chairman:

Mr. Van der ESSEN

Belgium

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MARINE POLLUTION

Mr. MENSAH (Observer for the Inter-Governmental Maritime Consultative Organization), describing the state of preparations for the International Conference on Marine Pollution to be convened by IMCO in October, said that work had now been completed on a draft international convention for the prevention of pollution from ships and on a draft instrument relating to intervention on the high seas in cases of marine pollution damage by substances other than oil. A limited number of copies of those documents in English and in French had been made available to the United Nations Secretariat. During the coming weeks complete sets of the documentation for the Conference would be circulated to all Governments of States invited to participate in the Conference, i.e., all Members of the United Nations or members of its specialized agencies and States Parties to the Statute of the International Court of Justice. Governments receiving the drafts were being invited to submit comments or suggestions regarding amendments or additions thereto to the IMCO secretariat, which would collate them and circulate them to other Governments for consideration prior to the Conference. All the relevant documentation would be available to the Sea-Bed Committee at its summer session.

The draft international convention for the prevention of pollution from ships consisted of formal treaty articles and five technical annexes containing regulations for preventing pollution of the sea by various categories of substances carried by ships.

The draft convention specifically stated that it did not apply to the dumping of substances into the sea within the scope of the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter prepared by the 1972 London Conference or to the release of harmful substances arising directly from the exploration and exploitation of the sea-bed and associated activities. That did not mean that the draft convention permitted or encouraged marine pollution in those areas; rather, the purpose of those provisions was to underline the fact that the IMCO draft was not intended to encroach on subjects within the competence of other bodies. Matters relating to the types of pollution to which he had just referred were properly within the purview of the Sea-Bed Committee and the Conference on the Law of the Sea, or of efforts undertaken as a follow-up to their work.

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(Mr. Mensah, Observer, IMCO)

He described the types of vessels to which the IMCO draft convention applied and said that the document provided that offences would be punishable under the laws of the flag State of the ship contravening the provisions of the convention or of the State within whose jurisdiction the offence occurred. The draft did not define the precise area within which a coastal State might exercise jurisdiction over foreign ships for purposes of enforcing the convention's provisions. Various alternatives had been suggested. It had been decided to leave the question open until the Conference, by which time, it was hoped, a conclusion or trends towards a conclusion would have emerged from the deliberations of the Sea-Bed Committee, providing a useful point of departure for a decision as to the appropriate expression which should be used to define the area. In any event, irrespective of the formula adopted, the nature and extent of the area could not be determined in the IMCO convention; that was a question for the Conference on the Law of the Sea to decide. Moreover, it was not necessary for the matter to be settled in order for the IMCO convention to enter into force or be applied effectively. Accordingly, all that would be decided at the IMCO Conference was whether the right of a coastal State to take measures of enforcement would be restricted to offences committed in its territorial sea or whether the right would extend to a wider area and, if so, what that area should be.

On the specific question of the convention's relation to the issues of the law of the sea, the draft expressly provided that nothing in the convention would prejudice the codification and development of the law of the sea by the Conference on the Law of the Sea pursuant to General Assembly resolution 2750 (XXV), or the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal-State and flag-State jurisdiction.

Two alternative proposals had been presented regarding the right of a contracting State to take enforcement action against a ship entering its ports in respect of contraventions of the convention. One proposal would limit the right of the port State to take action only in respect of contraventions which occurred in areas within its jurisdiction, thus in effect assimilating port-State jurisdiction with coastal-State jurisdiction. The other proposal was that a ship which violated the provisions of the convention outside the jurisdiction of any contracting State (including violations on the high seas) should be subject to enforcement action by

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(Mr. Mensah, Observer, IMCO)

any contracting State whose ports such a ship entered. The latter suggestion had not received majority support in the bodies which had prepared the draft; however, if a majority of Governments represented at the Conference so desired, it could be incorporated as a provision.

Under the draft convention, contracting States would agree on various measures of co-operation in the detection and enforcement of its provisions, using all appropriate and practical means of detection and environmental monitoring, adequate reporting procedures and accumulation of evidence. The draft also specifically provided that contracting States were entirely free to apply measures stricter than those laid down in the convention.

The purpose of the instrument relating to intervention on the high seas in cases of marine pollution by substances other than oil was to extend the provisions of the 1969 Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties to noxious and hazardous substances other than oil carried by ships. It established the right of coastal States to take measures on the high seas to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution following upon a maritime casualty which might reasonably be expected to result in major harmful consequences. Certain conditions governed the implementation of those measures.

The only major unresolved question in the draft related to the categories and numbers of substances. One group of countries considered that the substances covered should be specifically listed in the instrument, while another group favoured a more general formula which would enable new substances to be brought into the instrument's ambit without the need to amend the instrument itself. It was hoped that a compromise would be reached at the Conference.

The work of IMCO was complementary to the work of the Sub-Committee and the Sea-Bed Committee as a whole. He wished to emphasize that the two draft documents he had just described did not attempt to alter the general international law of the sea. Whether the general rules of international law regarding the extent of coastal-State and flag-State jurisdiction and related matters would be altered and, if so, to what extent was a matter which IMCO recognized to be the exclusive mandate of the Conference on the Law of the Sea. It was hoped that the final and successful conclusion of the latter Conference in respect of those general policy questions would make the application of the IMCO instruments easier and more effective and that IMCO's work in the area would provide some indication of the

(Mr. Mensah, Observer, IMCO)

type of regulatory activities which could be included in the "umbrella convention" on the preservation of the marine environment which the Sub-Committee and its Working Group had been considering.

Every effort would be made to ensure that the suggestions advanced in the Sea-Bed Committee were taken into account at the IMCO Conference, in order to ensure that it adopted instruments compatible with the objectives of the future convention on the law of the sea in so far as it dealt with the preservation of the marine environment. IMCO would continue to make available the results of its work and the benefits of the experience it had acquired over the years regarding the prevention of marine pollution by ships. He strongly urged wide participation by Governments in the IMCO Conference, in order to ensure that the Conference produced international instruments reflecting the collective will of the international community as a whole. It was also necessary for participating Governments to ensure that the views which their delegations presented at the Conference were fully co-ordinated with those they had expressed in the Sea-Bed Committee.

Mr. BEESLEY (Canada) commended the observer for IMCO for his lucid and helpful statement. His delegation agreed that wide participation in IMCO's work was essential if the outcome of the IMCO Conference was to complement the Sea-Bed Committee's work on the law of the sea, particularly with respect to marine pollution. He wished to know whether the proposals advanced in the Sub-Committee on Marine Pollution of IMCO's Maritime Safety Committee would be made available to the Sea-Bed Committee at its summer session. He had in mind in particular the Canadian and Australian proposals.

Mr. MENSAH (Observer for the Inter-Governmental Maritime Consultative Organization) said that all the proposals which had been advanced in connexion with the draft convention would be made available.

Mr. BEESLEY (Canada) said that, in view of the interrelationship between the work of IMCO and the Sea-Bed Committee regarding intentional discharge from ships and intervention on the high seas in cases of marine pollution, it would have been better if the results of IMCO's deliberations had been available at the current session of the Sea-Bed Committee.

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(Mr. Beesley, Canada)

His delegation considered that the two alternative proposals regarding enforcement in cases of intentional discharge of pollutants from ships were too narrow, both conceptually and in respect of the territory covered, and hoped that IMCO would arrive at a broader formulation at its October Conference. The Canadian delegation's proposal, which had been relegated to a foot-note in a working paper considered at the preparatory meetings for the IMCO Conference, would read as follows:

"Any Contracting State may cause proceedings to be taken when any ship to which the present Convention applies enters its ports or off-shore terminals, in respect of any violation by that ship, or its owner or master, of the requirements of the Convention, wherever the violation occurred, provided, however, that such proceedings are commenced no later than three years after the violation occurred. Whenever one Contracting State has commenced such proceedings, no other proceedings in respect of the same violation may be commenced by any other Contracting State except for the Administration of the ship or any State within whose territorial sea the violation occurred. A report of any such proceedings shall be sent to the Administration of the ship."

That provision was related to the basic concept of concurrent jurisdiction. His delegation believed that the convention should provide not only for flag-State jurisdiction, but also for concurrent port-State and coastal-State jurisdiction in cases of violations. A number of representatives at the preparatory meetings, including certain major maritime Powers, had expressed support for the concept of port-State jurisdiction. The Sea-Bed Committee should consider jurisdictional questions, with a view to making recommendations to IMCO.

Lastly, remarks made in Sub-Committees I and III of the Sea-Bed Committee regarding intervention on the high seas in cases of marine pollution should be taken into account by IMCO in order to ensure a co-ordinated approach.

Mr. McKERNAN (United States of America) said that his delegation had listened with interest to the statement made by the representative of IMCO. It had also carefully studied document A/AC.138/SC.III/L.30, which described IMCO's work in relation to the preservation of the marine environment. The progress made by IMCO in preparatory work for the 1973 International Conference on Marine Pollution was encouraging. Marine pollution knew no national boundaries. Hence, it was only by means of an international approach that it would be possible to

(Mr. McKernan, United States)

prevent deterioration of the marine environment while taking into account the diverse needs and interests of States. Moreover, the formulation of standards for the prevention of pollution by ships depended very much upon the technical expertise available from international organizations such as IMCO. His delegation commended IMCO for the important work it had done on the subject. Despite IMCO's good record, however, efforts must not be relaxed either in the Sea-Bed Committee or in other international organizations to bring marine pollution under effective control. His delegation therefore earnestly appealed for broad participation in the forthcoming International Conference on Marine Pollution. Such participation would facilitate progress towards the protection and preservation of the marine environment.

SCIENTIFIC RESEARCH (continued)

The CHAIRMAN said that the time was ripe to establish the proposed working group on scientific research, and suggested that it should be constituted on the same basis as the working groups of the plenary Committee. It would be an open-ended group, consisting of 33 members selected on the basis of equitable geographical distribution, and would determine its own methods of work.

If there was no objection, he would take it that the Sub-Committee endorsed his suggestion.

It was so decided.

Mr. HELA (Finland) said that sooner or later rules to govern marine scientific research would have to be formulated. Such rules were necessary in order to reconcile the conflicting viewpoints of those who wished to safeguard progress in marine scientific research against unnecessary application of restrictive measures of a local character and those who wished to protect the seas and, in particular, States' economic interests against misuse of marine scientific research and its applications.

A basic problem to be solved in drafting rules to govern marine scientific research was whether there should be a separate treaty on such research or whether articles on the subject should be included in various parts of the treaty or treaties that would result from the third United Nations Conference on the Law of the Sea. A separate treaty on marine scientific research would have to be

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(Mr. Hela, Finland)

complete; it might, therefore, be easier to start with a set of articles to be included in a general treaty or treaties.

The Committee had been established to study the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction. However, there seemed to be a trend towards expanding its work to cover other aspects of marine scientific research as well. It was necessary, therefore, that the scope and contents of marine scientific research should be defined. Such a definition might read:

"Marine scientific research is any study, whether purely fundamental or applied, intended to increase knowledge about the oceans and seas, including their boundaries, and embraces all related scientific activity. Marine scientific research thus covers the study of marine space and its changes, matter and its circulation in marine space, the amount and flow of energies of the oceans and seas, marine life, and phenomena at the boundaries of marine space.

"The objectives of marine scientific research include achievement of a level of understanding which allows accurate assessment and prediction of oceanic processes. Moreover, this understanding must provide the basis for development of a rational management policy which will, inter alia, ensure that the quality and resources of the marine environment are not impaired, and all this in the service of the welfare and progress both of mankind as a whole and of all nations as well, in the service of international equity and in the interests of peace and international co-operation among States."

Referring to the possibility of making a legally useful distinction between different types of marine research or marine scientific research, he said that it was possible to speak of (1) fundamental research; (2) applied research and related experimental work; (3) research aimed directly at commercial exploitation. In fact, however, it was difficult, if not impossible, to distinguish between fundamental and applied research, for what might appear basic and fundamental research in the eyes of one scientist would be research aimed at the exploitation of marine resources in the eyes of another. Similarly, it would be difficult to distinguish between research aimed directly at the exploitation of marine resources and research aimed indirectly at such exploitation. It might be possible, however, to use the term

(Mr. Hela, Finland)

"general marine scientific research" to describe all forms of bona fide marine scientific research for non-commercial purposes and the term "marine scientific research aimed at exploitation of marine resources" to describe other forms of marine scientific research. The introduction of such a definition could lead to the formulation of rules to the effect that every State had the right to undertake both types of marine scientific research on the high seas and that marine scientific research within the internationally established limits of the territorial sea should be conducted only with the consent of the coastal State concerned. The principle established in article 5, paragraph 3, of the 1958 Convention on the Continental Shelf should, of course, be maintained in any future convention regarding general non-commercial marine scientific research into the characteristics of the continental shelf. Obviously, such research could not be commenced until the consent of the coastal State concerned had been obtained. In the general interest, however, bureaucratic red tape should be cut to a minimum. Time-limits had been proposed for the submission of requests to undertake such research, but it seemed equally important to establish time-limits within which the coastal State concerned must give its reply. The scientific results of such research, if not published, would be made available to the coastal State. Should the forthcoming Conference on the Law of the Sea agree to establish economic zones, rules governing the conduct of marine scientific research within such zones would be necessary. The principle established in article 5, paragraph 3, of the 1958 Convention could provide the basis for the regulation of such research within an economic zone. Normally, a coastal State would be under no obligation to consent to research aimed at the exploitation of marine resources on its continental shelf or in its economic zone (if established). In any case, the coastal State should have the right to use samples and original data and the right to require that all results of such research should be made available to it.

Mr. ANDERSEN (Iceland) said his delegation firmly believed that increased international co-operation in marine scientific research was needed to cope with vast and complicated problems in all their aspects. Iceland, which was situated on the Mid-Atlantic Ridge, attached considerable importance to the increased understanding of the process of sea-floor spreading that had resulted from scientific research on the sea-bed in recent years. Icelandic volcanologists were contributing to that research.

(Mr. Andersen, Iceland)

For some time, Iceland had been participating in marine research expeditions in co-operation with many other countries and the International Council for the Exploration of the Sea. Those activities included research regarding the Atlantic Ridge Ocean Currents, the Atlanto-Scandia herring and the cod and haddock stocks. Such co-operative measures were of inestimable value and should be developed to the fullest possible extent.

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 certain national interests. Efforts had been made to distinguish scientific research from commercial prospecting; however, it was clear that certain national interests with regard to security and commercial matters were involved, and such considerations must be borne in mind.

The establishment of the working group on scientific research was opportune; its members should take into account the work already carried out by the International Oceanographic Commission and the valuable drafts which had already been submitted to the Sub-Committee.

Mr. Handler (United States of America) said that the National Academy of Sciences of the United States of America, of which he was President, had been founded in 1863 at the request of President Lincoln to provide the Government with objective advice on scientific and technical matters. It was through the Academy that the United States adhered to each of the international scientific unions and to the International Council of Scientific Unions. Academy committees also played a leading role in United States participation in such international co-operative ventures as the International Biological Programme, the International Geophysical Year, the International Decade of Oceanic Exploration and the Global Atmospheric Research Programme. The Academy arranged programmes for the exchange of scientists between the United States and other nations and engaged in a modest programme of technical assistance by co-operating with appropriate bodies in various countries. The present vitality of United States oceanography found its origins in a key report on the importance of oceanography submitted by the Academy to the Government in 1955.

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(Mr. Handler, United States)

He came before the Sub-Committee with two biases. Firstly, as a scientist he was committed to furthering the growth of scientific understanding, and thus looked with favour on all measures which would enhance the effectiveness of scientific pursuits anywhere in the world. Secondly, his own nation conducted an active oceanographic programme which he hoped would continued to flourish. Hence, his plea was for international arrangements which would facilitate, not impede, the conduct of science at sea by all scientists, regardless of nationality.

The study of the oceans was relatively new. Indeed, the centenary of the Challenger Expedition, which had been sponsored by the Royal Society of London and which was generally acknowledged as the beginning of modern oceanography, had been celebrated only in 1972. From that beginning, there was now a world-wide community of scientists working, individually and collectively, on understanding the ocean. They worked in many ways, but they were all dedicated to gathering greater understanding of the 70 per cent of the world which was ocean. Some of the discoveries of ocean science were simple and seemed self-evident. Others were complex and difficult to interpret. Some ocean discoveries had had important economic consequences; others might have applications as yet unanticipated. For example, the manganese nodules of the sea floor had been discovered by the Challenger Expedition, but their discovery had not resulted in immediate exploitation. Science did, indeed, contribute to technological and economic development, but the goal of science itself was to understand the world in which mankind lived. The number of marine scientists was growing, as was the number of countries with research vessels. At the time of the Challenger Expedition, fewer than 10 countries had had scientists actively studying the ocean. Now there were more than 30 nations associated with the Scientific Committee on Oceanic Research of the International Council of Scientific Unions and 73 nations were members of the Intergovernmental Oceanographic Commission. Although much ocean science was still based on the work of individual scientists or small groups working from a single research vessel, much of it was conducted on a co-ordinated, multiple-ship and multiple-nation basis. Regional programmes in such areas as the Baltic, the North Sea and the Mediterranean had existed for years. The first global international ocean study had been carried out as one of the major programmes of the 1958/59 International Geophysical Year, which had been followed by the

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(Mr. Handler, United States)

International Indian Ocean Expedition of 1960-1965. Since then, the number of internationally co-ordinated programmes had continued to grow, culminating in the International Decade of Ocean Exploration, a programme for the 1970s. The information and understanding so gained by the world's community of ocean scientists immediately became part of the commonwealth of mankind. It could not be in the common interest to limit such enterprise to the ocean depths when so much of what scientists were seeking to understand could only be learnt in the region of the continental shelves. Thus, the aim should be to ensure, through appropriate treaty agreement, that the realization of the commonly accepted goals of scientific research at sea was facilitated, not hindered.

The conflicting proposals for the revision of the law of the sea must be reconciled. The scientific community was deeply disturbed by the suggestion of some nations that scientific research at sea should be subjected to the exclusive control of a coastal State, not only in the confines of its territorial sea but also in maritime zones beyond. Presumably the purpose of such control would be to regulate the possibility of exploitation of off-shore living and non-living resources in the interest of the economic well being of the coastal State and to ensure that foreign research vessels did not obtain information previously unknown about nearby ocean areas. Some countries had argued in the Committee that the traditional freedom of science should be retained in all of the ocean beyond narrowly defined limits of national jurisdiction, while others had suggested that the proposed international machinery should regulate research in the entire area of its jurisdiction. Those conflicting interests could be as meaningfully classified by function as by nationality. As the uses of the oceans multiplied, interest groups were developing which cut across political boundaries. Fishing, oil and mining interests, conservationists and shipowners, as well as Governments, must be heard and accommodated in the search for the optimum benefit of mankind as a whole. The variety of competing interests indicated the difficulty of the task facing the Committee.

The links between basic research and economic payoff were complex and uncertain. There were some such links, however, and to that extent the fear that basic research might, if only accidentally, lead to exploitation was not groundless. Surely, however, the aim must be to ensure the equitable use of resources, not to minimize

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(Mr. Handler, United States)

the possibility of their discovery. Scientific oceanography was not a hunt for commercially valuable resources, and arrangements could be made whereby the nearest coastal State could be informed as and when any such resources were encountered. The equipment required for oceanographic research might provide another source of misunderstanding, for it might imply that oceanography was an activity to be pursued only by the richer nations. That was far from the truth. Much fine research would continue to be done by smaller vessels with simple equipment. The fears of non-scientists concerning the equipment used in oceanography could be shown to be groundless.

Thus, the attitudes of those who wished to regulate scientific activities at sea seemed to be influenced by the desire to protect potential resources and by the technical nature of oceanography. Yet restrictions on research in the oceans would not benefit mankind. The effort to understand the natural world was one of the noblest pursuits of the human mind. Free intellectual inquiry about the oceans should be encouraged, not only because of its importance to man's understanding of the world but because of its importance to the human spirit. Recent studies of the ocean bed had led to revolutionary concepts of the history of the earth, current studies of ocean circulation might lead to better understanding of climatic fluctuations, and many biologists were convinced that the clues to the puzzle of species development and differentiation were to be found in a study of oceanic life. Of course, the society which allocated some of its resources to the conduct of ocean science hoped that the knowledge obtained would contribute to more than just intellectual and spiritual growth, and some of the information of marine science might eventually become of economic significance. It could not be too strongly emphasized, however, that the primary purpose of marine geologists was to achieve a better understanding of the recent geological history of the earth. There was also the risk that close regulation of scientific oceanography would result in a stifling of scientific creativity. He hoped that the Sea-Bed Committee would not unduly attempt to minimize creativity by agreeing to unnecessary controls and regulations. Regulations would not, of course, mean the end of oceanography; research would continue, but the more it was subject to controls, the greater the danger that it would become second-class research.

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(Mr. Handler, United States)

The help of science was necessary to find and develop new resources and to improve the management of known resources. World-wide harvesting of the living resources of the sea continued to increase but would soon reach the "steady state", when men would no longer dare to increase catches for fear of depleting stocks. If the nations of the world, collectively, were to be successful in managing the living resources of the oceans, much more scientific knowledge about ecological relationships in the sea was required, and such knowledge could not be obtained by directed research alone. It was also vitally important that levels of ocean pollution should be closely monitored and that scientists should learn more about the level of stress that oceanic plants and animals could sustain. Such knowledge was critical to an understanding of the effects of ocean pollution on marine life and on man himself, and the establishment of artificial boundaries which prevented or impeded such studies could not be considered to be in the interests of humanity. Similarly, an adequate study of large-scale ocean-atmosphere interactions called for an observational programme that was truly global in scope, not one hampered by unwise restrictions.

The world could not afford any reduction in the quantity or quality of ocean research. It was reasonable to wonder whether the material benefits generated by science and technology were worth the cost. The fact was, however, that, even if science and technology had been important contributors to some of the world's troubles, only science and technology could provide acceptable solutions to them. Hence, there was a pressing need for all possible scientific understanding for the benefit of all. Scientists of all nations must work together to allay the fears of those who had been led to mistrust the purposes of unrestricted ocean science. In 1972 his Academy had proposed to other Academies of Science throughout the world that all should recognize the distinction between "open scientific research" and "limited commercial exploration". By "open research" the Academy had meant research intended for the benefit of all mankind and characterized by full publication of results. Such research was directed at improving understanding of the planet, not at searching the sea floor for exploitable resources. "Limited exploration" was exploration intended for the economic benefit of a limited group, as evidenced by restrictions on publication and on the availability of data and samples. The Academy had also recommended to other Academies that international arrangements should permit and encourage open research in the area of the territorial sea. It believed that the following provisos would adequately safeguard

(Mr. Handler, United States)

the interests of coastal States: the coastal State should be given reasonable notice of research, a period of 60 days normally being adequate; it should have the opportunity to participate or be represented in the research and should have access to all equipment, compartments and instruments aboard the research vessel; it should have the right to receive copies of all data on request, and the right of access, for study, to all samples which it was feasible to duplicate; it should be assured that significant research results would be published in the open scientific literature; and it should be assured that such scientific activities would present no hazard to the resources or uses of the sea or sea-bed.

Basic research could not flourish in a regulated environment, and it must flourish if the contribution of science to the benefit of mankind was to continue to be truly meaningful. Accordingly, the new régime which the Committee was engaged in constructing should impose no restrictions on basic research beyond the territorial seas. Admittedly, there was no foolproof system for differentiating between the two proposed categories of marine activity, and no set of definitions would be interpreted uniformly by all. Nevertheless, the community interest demanded that in that small degree nations should risk trusting each other. Although the results of science could have technological and economic consequences, there was a major difference between the amount and kind of information required to study oceanic phenomena for increased understanding and the amount and kind of information required by investigations which led to resource exploitation. Although the application of understanding to practical problems was more rapid now than it had been in the past, most of the applications that could be foreseen in the oceans were still far in the future. Thus, a coastal State would know whether any given research was being conducted for reasons of scientific inquiry or for commercial exploitation, and the provisos he had suggested would ensure that the national interests of the coastal State were safeguarded when open research was conducted in territorial waters.

In conclusion, he said that the small risk taken in the process of fostering trust among nations was less hazardous than that involved in institutionalizing unwise regulations. International co-operation must be the basis of man's use of the oceans.

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Mr. LUDWICZAK (Poland) stated that his delegation, as a sponsor of the draft articles for a convention on scientific research in the world ocean contained in document A/AC.138/SC.III/L.31, was convinced that the main purpose of the Sub-Committee's work was to create the most favourable possible conditions for further substantial progress in the field of oceanic research. Effective utilization of the ocean and its resources for the benefit of all mankind was not possible without new scientific knowledge. The results of marine research would benefit all States, whatever their level of development or location.

There were three main questions connected with the development of marine scientific research which were of significance to the work of the Sub-Committee. The first concerned the principle of the freedom of scientific research. That freedom was a prerequisite for the development of marine science and technology and for the full development of marine resources; it was implied in article 2 of the Geneva Convention on the High Seas and, with other generally recognized freedoms of the high seas, was one of the customary rules of international law binding upon all States. Article 2 of the draft articles confirmed that customary right with respect to States and suggested how international law should be developed with respect to international organizations. In accordance with the Statutes of the International Oceanographic Commission, scientific investigation of the oceans should take into account "all interests and rights of coastal countries concerning scientific research in the zones under their jurisdiction". Similarly, according to the wording of the Convention on the High Seas, freedom of scientific research in the world oceans should be exercised "with reasonable regard to the interests of other States in their exercise of the freedom of the high seas". The substance of those provisions had been incorporated into articles 10 and 11 of the set of draft articles and also into the second part of article 2, which delimited the areas where the principle of freedom of scientific research would apply. Thus, his delegation felt that freedom of marine scientific research should be governed by two basic principles: firstly, all States as well as international organizations should have an equal right to conduct scientific research in the seas and oceans; secondly, scientific research in territorial waters and on continental shelves could be conducted only with the consent of the coastal States.

(Mr. Ludwiczak, Poland)

The second question of importance concerned the need for international co-operation in the field of scientific research and the elaboration of the most appropriate legal and organizational framework for such co-operation. Draft article 4 provided some general guidelines for co-operation among States, but action would also be necessary at the national, regional and global levels. Much valuable oceanic research was already being carried out by governmental and non-governmental international organizations, and the Sub-Committee should be careful to avoid frustrating or destroying the existing arrangements in that respect.

Finally, his delegation recognized the difficulties faced by the developing countries in conducting marine scientific research and was fully aware of their tremendous need for assistance in that respect. Without the participation of the majority of States, including developing countries, in scientific research and exploration in the area and in the exploitation of its resources, the notion of the "common heritage of mankind" would be meaningless. His own country, for example, would welcome assistance which would enable it to participate more fully in marine scientific research, but at the same time it was ready to provide assistance to less advanced nations in fields such as fishing technology and some aspects of marine biology and ecology.

Mr. Wilfredo del CASTILLO (Peru) said that the practice currently followed by some coastal States of permitting scientific investigation, including the study of the resources of the sea-bed and the subsoil thereof, in areas within national jurisdiction subject to their prior permission could be continued. His delegation shared the view of other delegations that scientific research in areas outside national jurisdiction should be carried out for peaceful purposes and for the benefit of all mankind, taking into special consideration the interests and needs of the developing countries.

The principal goal of scientific and technological research should be to prevent, reduce and eliminate the effects of pollution in order to preserve the marine environment. Oceanographic studies, the development of disaster warning systems, sea farming, desalinization and the provision of energy supplies in arid zones were also of importance.

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(Mr. Wilfredo del Castillo, Peru)

Measures should be taken to ensure that due attention was given in any marine development activity requiring the application of technology to the possible effects on the environment. In addition, scientific research in areas beyond national jurisdiction should be so regulated that the developing countries did not become totally dependent on the developed countries for their technology. The natural resources of the ocean should be shared peacefully and equitably. He recognized that the resources of the ocean could constitute alternative sources of energy and minerals for the industrialized countries, but care should be taken to protect the interests of the developing countries, whose economies were based on primary products. The natural resources of the ocean were the common heritage of mankind, and the transfer of technology and information concerning those resources should be so organized as to enable the developing countries to train their own technicians with a view to effective co-ordination and the avoidance of duplication in marine scientific research.

The Sub-Committee should, as a matter of urgency, request the bodies responsible for the various aspects of marine scientific and technological research to prepare papers showing what had been achieved to date. Such information would be of great value to the future working group.

Mr. VALDEZ ZAMUDIO (Peru) said that, while the United States representative had attempted to set out the legitimate concerns of both coastal States and scientists with regard to marine research, it remained true that knowledge was power. Coastal States which did not have the capacity to acquire knowledge through scientific research therefore had a right to regulate such activities and to ensure for themselves an equal share in the knowledge produced. "Open research" could all too easily become applied research; coastal States feared, for example, that, if they had no control over such information, knowledge about the fish stocks in their waters could be applied in such a way as to cause irreparable depletion of that important natural resource. Peru had always welcomed foreign research vessels to its waters, but their activities had been subject to conditions laid down by his Government. That arrangement had worked well in the past and should, he felt, be continued.

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(Mr. Valdez Zamudio, Peru)

Following discussions within the group of Latin American States, he believed that the terms of reference of the proposed working group on scientific research should be expanded to cover the development and transfer of technology.

Mr. MOLTENI (Argentina) supported the suggestion made by the representative of Peru concerning the terms of reference of the working group. He recalled that the representative of Poland had stressed the close interrelationship which existed between scientific research and the transfer of technology to the developing countries. Agreement at the current stage on an expansion of the terms of reference of the working group would make it possible to avoid discussion of procedural items at the summer session and thus accelerate the work of the Sub-Committee.

The CHAIRMAN pointed out that the question of the transfer of technology was global in scope and was closely linked to other items on the Sub-Committee's programme of work besides the question of scientific research. The Sub-Committee had made provision for a general debate on the transfer of technology, and it would be premature to allocate the item to a particular working group until that debate had been completed.

He would be grateful if the Chairmen of the regional groups would inform him as soon as possible which States would comprise the basic membership of the proposed working group on scientific research. Arrangements could then be made for the working group to meet to elect its officers and consider its procedure.

The meeting rose at 5.55 p.m.

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SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held on Monday, 2 April 1973, at 3.25 p.m.

Chairman:

Mr. KIDAN

Ethiopia

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STATEMENT BY THE ASSISTANT EXECUTIVE DIRECTOR OF THE UNITED NATIONS ENVIRONMENT PROGRAMME

Mr. FROSCH (Assistant Executive Director of the United Nations Environment Programme), speaking on behalf of the Executive Director of the United Nations Environment Programme (UNEP), recalled that UNEP had been established by the General Assembly following the United Nations Conference on the Human Environment. UNEP had a Governing Council for Environmental Programmes consisting of 58 members which reported to the General Assembly through the Economic and Social Council. The Executive Director was elected by the General Assembly. The voluntary Environment Fund had a goal of \$100 million for the first five years. The Environmental Co-ordinating Board, under the chairmanship of the Executive Director, co-ordinated the environmental activities of the United Nations family. It was established under the auspices and within the framework of the Administrative Committee on Co-ordination and reported to the Governing Council.

In keeping with its interest in world-wide environmental problems, UNEP was concerned with the state of the oceans and with action to preserve and improve them. Its work was critically dependent on the deliberations of the Sub-Committee and the Sea-Bed Committee as a whole, which were preparing the legal framework within which that work would proceed. UNEP hoped that the experience which it would gain in time would be helpful to all bodies concerned with the oceans.

The Board was scheduled to meet for the first time on 9 April and the Governing Council would hold its first organizational meetings in June. Consultations had been held with organizations of the United Nations family and governmental and private experts regarding programmes which might be carried out pursuant to the Conference's recommendations. Programmes had been submitted to Governments, which would decide on the action to be taken and priorities.

Matters which UNEP planned to consider and which were related to the Sea-Bed Committee's work included the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter, the work of IMCO on the prevention of pollution from ships and the discussions which were beginning in Europe on ocean dumping. UNEP also attached importance to the monitoring and assessment of marine pollutants

(Mr. Frosch)

within the framework of Earthwatch and the registry of toxic substances established by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). It would work with the Intergovernmental Oceanographic Commission and the World Meteorological Organization to incorporate pollution monitoring in the Integrated Global Ocean Station System (IGOSS), and would play a role in other monitoring programmes.

Attention would also be paid to the assessment of conditions in parts of the oceans where there was evidence of current or prospective pollution, particularly enclosed and semi-enclosed seas, in co-operation with the Governments and United Nations bodies concerned.

Attention would also be focused on land-based sources of pollution, particularly rivers, and UNEP looked forward to helping in the assessment, monitoring and control of such sources within the limits of international law and national sovereignty. Other areas of concern included the status of marine mammals, endangered species of fish, genetic resources of fish, and the problems occasioned by the introduction of exotic species, either inadvertently or for purposes of mariculture.

SCIENTIFIC RESEARCH (concluded)

Mr. SADEGHI (Iran) said scientific research could become an important issue at the third Law of the Sea Conference. 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.

For scientific research purposes, the international area should be treated as the common heritage of mankind: it should serve and meet the needs of all countries. If it was agreed that the wealth of the oceans should be shared by all, knowledge pertaining to the oceans should be equally shared, and was indeed part of the wealth of the oceans. Unfortunately, knowledge of the ocean floor was totally inadequate; considerable resources in the form of research ships, equipment and highly trained personnel were required. That need could be met by the formation of an agency which could be called the Concerted International Marine Research Organization and which could pool the necessary finance and

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(Mr. Sadeghi, Iran)

facilities required. Such a body could also provide international co-operation and co-ordinate the dissemination of results. It would not necessarily have to be an independent body but could act as an agency under the supervision of the sea-bed authority. The assistance and expertise of leading industrial countries would be required; the developing countries should be encouraged to participate freely in the organization's activities.

Scientific research in areas within national jurisdiction could be conducted only with the consent of, and in a manner relevant to the needs of, the coastal State concerned. Results should, therefore, be reported to the State with a minimum of delay. It was an unfortunate fact that the developing countries did not have the expertise, finance or facilities to conduct such research. Nevertheless, if it was hoped to eliminate or reduce and limit marine pollution, coastal States must regulate the areas within their jurisdiction without being hampered by technological inexperience. It might be wise, therefore, for the Sea-Bed Committee to ask the General Assembly to request the specialized agencies to organize and promote the training of personnel from developing countries in marine technology. The United Nations might well establish an institute devoted exclusively to research in marine technology, the prediction of hazards and the provision of intensive training courses, thus avoiding the recent plethora of technological irresponsibility. The difficulties facing the developing countries could also be alleviated by establishing regional research centres. It was important for the developed countries to co-operate with the developing countries and with each other on the conduct of scientific research.

The Committee could profit greatly from the experience, expertise and resources of the International Hydrographic Organization (IHO). IHO's knowledge and the Intergovernmental Oceanographic Commission's (IOC) technical information were important for the formulation of legal principles for scientific research. There were a number of such principles that should be observed: all States should have the right to undertake scientific research; scientific research must be conducted solely for peaceful purposes; the participation of developing countries in scientific research must be affirmed and encouraged; the results of scientific research must be reported to an international organization and be disseminated appropriately; scientific research beyond the limits of national jurisdiction

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must be regulated and supervised by an appropriate agency; no scientific research in areas within national jurisdiction could take place without the prior authorization of the coastal State; and the results of scientific research within areas of national jurisdiction must be reported to the coastal State concerned with a minimum of delay.

His delegation agreed wholeheartedly that any knowledge from scientific research was the common heritage of mankind, as asserted in the Canadian working paper (A/AC.138/SC.III/L.18), which was a valuable basis for the formulation of legal principles. Most of the principles contained therein accorded with his delegation's views, particularly principles 8, 9, 10, 11 and 12. Article 1 of the Maltese proposals contained an appropriate, precise and concise scientific definition of scientific research. Article 2 of the Soviet and Maltese proposals accorded with his delegation's view that scientific research should be subject to regulation by an international institution. He supported the stipulation in article 12 of the Soviet proposal that scientific research in territorial waters and on the continental shelf should only be conducted with the consent of the coastal State.

Mr. PARDO (Malta) said that for the purposes of the Sub-Committee's terms of reference, scientific research meant any systematic investigation of any aspect of ocean space and of its living and non-living resources conducted in accordance with generally accepted scientific rules, the primary purpose of which was the acquisition of knowledge. It involved a multitude of disciplines and could be conducted from land, the atmosphere, outer space or in ocean space itself. The Sub-Committee was concerned only with scientific research of the marine environment conducted in ocean space. A variety of means could be used for such research.

Following a brief description of the history of scientific research in ocean space, he said that it had begun and flourished during a period of maximum freedom of the seas, when territorial waters generally had been only three miles wide and the concepts of the continental shelf and of maritime zones under coastal-State control other than territorial waters had not existed. The multiplication and expansion of maritime zones under coastal-State jurisdiction and the introduction into law of the sea of the concept of the continental shelf were increasingly

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restricting the geographical area in which scientific research could be conducted without the need to obtain the consent of one or more coastal States. Scientific research was also increasingly constrained by the different policies followed by States in conceding access to maritime areas under their jurisdiction or control and by a variety of uncertainties with which marine scientists must contend in planning research. Those uncertainties related to the maritime areas over which different coastal States claimed or exercised different types of maritime jurisdiction, the types of research subject to control by the coastal State in each of the maritime areas over which jurisdiction was claimed, and the changing bureaucratic practices of coastal States with regard to the time required to obtain permission for research, and the conditions to which such permission was subject.

The situation was further compounded by a number of factors. Firstly, the law of the sea distinguished between research which concerned the high seas and research which concerned the continental shelf, while most research vessels must necessarily be equipped to conduct research both on the sea-bed and in the superjacent waters. Secondly, some States did not recognize the maritime claims of other States, thus preventing the nationals of the former from requesting permission to undertake research in maritime areas claimed by the latter, since that would concede the validity of the claim. Thirdly, the apparent contradiction between articles 5 (1) and 5 (8) of the 1958 Convention on the Continental Shelf and the dubious distinction made therein between "fundamental" or "pure" research and other types of research created confusion. Those factors undoubtedly had an inhibiting effect on the conduct of scientific research in ocean space and had increased its cost. Ocean scientists estimated that, if scientific research was restricted within a 12-mile zone adjacent to the coasts of continents or islands, some 80 per cent of contemporary marine research could still be undertaken; if, however, those restrictions were generally extended over a zone as wide as a few hundred miles from the coast, more than half of all contemporary ocean research could become virtually impossible.

Restrictions on research had generally been motivated by considerations related to protection of the marine environment, security and resource exploitation, while

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the requirement of coastal-State permission was related to the sovereignty or sovereign rights which existing international law permitted a coastal State to assert in ocean space. The fear that scientific research would significantly harm the marine environment had been much exaggerated and could not be entertained as a serious reason for imposing restrictions on research. However, in view of the numerous breaches of coastal-State security under the guise of scientific research and of instances where scientific data obtained by commercial companies had been used to the detriment of coastal States in commercial negotiations, it was entirely unrealistic to expect a coastal State to permit uncontrolled scientific research by foreigners in maritime areas subject to its jurisdiction.

The dilemma presented, on the one hand, by increasing restrictions in ever-wider areas of ocean space and, on the other hand, by need of scientists for relatively unhampered access to the area was being resolved on a temporary basis by the expedient of bargaining. However, bargaining was not a solution. Increasingly, scientific priorities were being distorted in order to adjust them to coastal-State requirements. Even in the best of cases, scientific access to the ever-wider maritime areas under coastal-State jurisdiction remained precarious and subject to the goodwill of the coastal States concerned.

There was no way to resolve the dilemma on a long-term basis in the context of the existing law of the sea. If scientific research in ocean space was subject only to the direction and priorities of the State or institution conducting the research it might be abused to the detriment of the coastal State, which would naturally seek to protect its own interests, if necessary by extending its own national jurisdiction for that purpose. Such action would in turn hamper and might eventually cripple scientific research in the oceans.

Accordingly, it was necessary to examine the benefits and costs to the international community and to coastal States of restrictions on the conduct of such research. The benefits of such restrictions were confined almost exclusively to coastal States and consisted entirely in the possibility of preventing injury to the coastal State's security and economic interests. Those benefits were balanced by the cost of restrictions both to the international community and to the coastal State. Quite apart from the interest of mankind in the advancement of

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knowledge of the planet and of the processes and systems determining the human environment, it was 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. The manganese nodules of the deep sea-bed, the metalliferous brines of the Red Sea, and the off-shore petroleum deposits that were enriching so many nations had been discovered through scientific research. In short, scientific research was the prerequisite for the rational and intensive utilization of ocean space, whether for the benefit of the coastal State or for that of mankind. It was in the nature of marine research that the causes of the phenomena in the marine environment were often to be sought in areas far from the maritime areas under the jurisdiction of the coastal State likely to be the main beneficiary of such research. In view of the interconnexion between the oceans and their biosystems, restrictions on scientific research imposed by one coastal State could prevent or delay the solution of very practical problems of concern to another State.

Although it was vital for the international community that marine scientists should have access to the near totality of the marine environment with the minimum of restrictions, the interests of coastal States could not be ignored. Those interests might appear contradictory. On the one hand, coastal States had an interest in keeping abreast of scientific developments in the marine environment as a whole and thus were interested in open publication and full exchange of information; on the other hand, coastal States, particularly those with little research capability, legitimately wished to be made aware, with a certain measure of priority, of knowledge acquired through scientific research in maritime areas under their jurisdiction and also to be assured that such knowledge was not divulged or used in a manner that might harm their legitimate interests. The requirement of open publication mentioned in article 5 (1) of the Convention on the Continental Shelf met only one of those contradictory requirements and was irrelevant to the other.

What was required was a new comprehensive conceptual legal approach to ocean space problems which rejected both the unfettered sovereignty of the coastal State within its national maritime jurisdiction and laissez-faire freedom beyond national

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jurisdiction. In accordance with that new approach, which his delegation had long advocated, scientific research in ocean space could be considered a public interest of the international community enjoying special protection throughout ocean space, whether within or outside national jurisdiction, and subject only to essential safeguards to protect truly vital interests of coastal States in marine areas under their national jurisdiction. It would also be subject to non-discriminatory international regulations to minimize, so far as reasonably feasible, the possibility of abuses and to ensure equitable and visible benefits to all members of the international community. Scientific research would thus be expected to serve a social purpose for mankind somewhat more precise than the abstract notion of science and somewhat wider than the interest of the particular State or institution conducting the research.

That was the concept underlying the draft articles on scientific research submitted by his delegation in document A/AC.138/SC.III/L.34. Those articles, which his delegation recognized were not complete, called for the establishment of comprehensive international institutions having, inter alia, the specific duty to promote scientific research and actively to assist less scientifically advanced countries. The institutions would also have the power to regulate scientific research in a non-discriminatory manner and to counteract abuses. That could be achieved most easily and realistically through the establishment of an international register within the framework of the proposed institutions. States and their organs, intergovernmental organizations and recognized scientific institutes and organizations wishing to conduct scientific research in ocean space would be entered at their request, in the register without any formality. Physical persons and entities other than those mentioned would be required to meet such qualifications as might be required by the institutions before being included in the register. Inscription therein would be recognized by the international community as prima facie evidence of competence and good faith with regard to the conduct of scientific research in ocean space and consequently would entitle the

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person or entity registered to conduct scientific research under non-discriminatory international regulation also within broad areas of ocean space subject to some form of national jurisdiction. The person or entity registered would be legally responsible for damages to the environment or to the legitimate rights and interests of States: that was an overdue provision intended to provide a remedy for occasional abuses. In the case of justified complaints, the institutions would have the power to remove a person or entity from the register; that sanction was likely to deter most abuses feared by coastal States. His delegation would comment in detail on the draft articles in document A/AC.138/SC.III/L.34 at the summer session.

He wished to dispel a few fairly widespread misconceptions. Attempts had been made - primarily by lawyers - to distinguish, for the purposes of regulation, between "pure" or "fundamental" research and other types of research, and unfortunately articles 5 (1) and 5 (8) of the Convention on the Continental Shelf lent some respectability to that distinction. Some considered "pure" and "fundamental" scientific research as synonymous terms, while others distinguished between the two. It had been stated that the term "fundamental" research referred to research concerned exclusively with the basic natural processes and physical and biological phenomena occurring in ocean space and that the term "pure" research referred to research of a theoretical nature with no practical application. It had been asserted that, because of their nature, both pure and fundamental research could enjoy a greater degree of freedom than other types. However, scientists were virtually unanimous in agreeing that those distinctions were highly dubious. The remarks by the representative of Finland at the preceding meeting and the statement by the United States representative at the 36th meeting illustrated the dubiousness of such distinctions.

Another doubtful distinction often made was between research for peaceful purposes and military research. Much scientific research for purely peaceful purposes was conducted by the navies of nearly all Powers and much research of military importance was carried out by the most unimpeachable scientific institutions.

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No doubt examples could be given of research in ocean space which was clearly of a military nature; however, in at least 90 per cent of the cases no meaningful distinction could be made. That did not mean that his delegation wished to see the words "for peaceful purposes" omitted from any definition of scientific research enjoying the special protection of the international community.

A third misconception was the belief that the best way to promote unhampered scientific research in the broadest possible area of ocean space was to adhere firmly to the existing law of the sea. Whatever the results of the forthcoming Conference on the Law of the Sea, it could be predicted with certainty that the law of the sea as it was now known would cease to exist. To tie the cause of scientific research to a law of the sea whose days were clearly numbered did no service to science.

Mr. REPETTO (Chile) said that his delegation had listened carefully to the interesting statements made by various delegations. Chile was deeply interested in scientific research in the ocean and had carried out scientific studies both on its own and in co-operation with other countries by assigning Chilean scientists to foreign oceanographic vessels. As a developing country it shared the general concerns of the developing countries on the subject. Scientific research was essentially an international activity, consequently its results should be the common heritage of mankind and available on a basis of equality to all peoples. It should also be an international co-operative effort.

The term "freedom of scientific research" should not be interpreted as one of the freedoms of the high seas. Indeed, to make that clear the term "promotion and development of scientific research" would be preferable. It should be possible without prejudice to co-operative programmes, to recognize the freedom of States to carry out scientific research in areas beyond the limits of national jurisdiction provided they fulfilled certain requirements, namely, advance notification, prompt dissemination of the results of their investigations and training of experts from the developing countries. The first two conditions would ensure that the data obtained reached the country concerned, and the last was particularly important because it would be of little use for a country to receive

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information if it lacked the technical personnel capable of utilizing it. His delegation therefore supported the suggestion made by several delegations that the competent international organizations and technically advanced countries should assist the developing countries by such means as the provision of special training programmes for specialists, the establishment of research centres in the countries concerned and the promotion of participation in scientific expeditions of specialists from the developing countries.

His delegation felt that in view of the difficulty of making a distinction between scientific research proper and economic exploration and even military intelligence, it was essential that a coastal State should give its consent for, and participate on an equal footing in, scientific research in areas within its national jurisdiction - the territorial sea, continental shelf and economic zone. His delegation agreed that a distinction should be made between maritime zones and that different régimes should apply in different zones. A coastal State should have jurisdiction in its own maritime zone to control, encourage and participate in scientific research and indeed Chile exercised control over maritime research up to a distance of 200 miles from its coast.

Finally, he expressed satisfaction at the decision to establish a working group on scientific research. The group might also consider other matters relating to science and technology.

Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) agreed that a more profound knowledge of the ocean would help to solve other problems such as those connected with the improvement of weather forecasting and the geological structure of the earth.

His delegation's proposals for the legal regulation of scientific research in international waters were reflected in the draft articles of document A/AC.138/SC.III/L.31 which were largely based on the provisions of document A/AC.138/SC.III/L.23. The most important principle was undoubtedly that of the freedom to conduct scientific research in the world ocean, which was one of the freedoms of the high sea and confirmed by long-standing oceanographic and other research practice. Although the concept was a subjective one, it was also an objective necessity for mankind in its efforts to acquire a comprehensive knowledge

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of the world ocean as a whole. The principle was stated in the first part of article 2, while the second part, together with article 1, contained proposals relating to the definition of "scientific research in the world ocean" and "world ocean". The need for such definitions was quite clear. Article 3 enumerated the specific means for conducting scientific research. It would be difficult to enumerate such means exhaustively; indeed, it hardly seemed necessary to do so.

The purpose of articles 4 and 6 was to establish the obligation of participating States to co-operate internationally on scientific research in the world ocean for peaceful purposes. Article 4 covered bilateral and multilateral co-operation; article 6 covered co-operation under international research programmes.

The sponsors of the draft articles believed that an important factor in acquiring a satisfactory knowledge of the world ocean was a joint effort by all countries on the material, technological, scientific and other fronts. Scientific research in the world ocean was a long, labour-consuming and expensive undertaking that required the latest equipment and technology serviced by skilled personnel. It could be accomplished on a world-wide scale only by the joint effort of all countries.

It was, of course, understandable that a number of countries, particularly the developing countries, were not yet in a position to make a direct contribution to scientific research in the world ocean, although they had an interest in it. That situation was covered in article 5. Experience, including that of Ukrainian scientists, bore witness to the feasibility of the type of assistance outlined in the article. Article 7 was also intended to cover the provision of assistance. Under Ukrainian legislation, scientific and technical material could be printed free of charge in foreign publications, provided the publishers were not trying to make a profit. That provision also applied, of course, to the publication of scientific material relating to the results of research in the world ocean.

No unjustified obstacles should be placed in the way of scientific research in the world ocean, but scientific research should not interfere with shipping, fishing or other lawful activities. Those points were covered in articles 8 to 10.

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Article 11 dealt with scientific research and marine pollution. Article 12 was an expression of the universally recognized rights of coastal States over their territorial waters and continental shelf. Article 13 dealt with responsibility for possible damage caused during the conduct of scientific research. Article 14 stressed the importance of the Charter and other generally accepted international instruments. He hoped the draft articles would provide a working basis for the Working Group which, it was hoped, would shortly begin to draft a convention on scientific research in the world ocean.

Mr. LOPEZ REINA (Colombia) noted that the purpose of scientific research on the marine environment was twofold, firstly, to further mankind's intellectual and scientific progress by obtaining further knowledge of matters related to the ocean and, secondly, to ensure man's survival by providing information on the renewable and non-renewable resources of the ocean. Although many international bodies, countries and universities conducted scientific research, the results were of benefit to only a few countries, for the overwhelming majority of the developing countries lacked the trained personnel needed to analyse them. Moreover, technological advances were being made so rapidly that, even if a developing country was able, at great effort and cost, to train a few individuals and obtain the necessary equipment, the latter was soon replaced by more modern equipment, thus barring the country from participation in research. Naturally, that situation could not continue, particularly since it had been recognized that the sea and all its resources were the common heritage of mankind. His delegation therefore believed that the great gap between the scientifically advanced and the developing countries could be closed only if true international co-operation and participation existed in all scientific programmes relating to the sea. To that end the following points should be borne in mind.

Firstly, the working group on scientific research to be established by the Sub-Committee should study both scientific research on the marine environment and development and the transfer of technology, for the two were complementary.

Secondly, in all scientific research carried out in territorial waters, the country instigating the investigation should ensure that the coastal State concerned participated actively in all stages, from the planning stage to the interpretation and publication of the final results.

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(Mr. Lopez Reina, Colombia)

Thirdly, scientific research conducted in the patrimonial sea or in the economic zone, in other words from the territorial sea up to a distance of 200 miles from the coast, must be conducted under the same conditions and involving the same obligations as pertained to the territorial sea.

Fourthly, scientific research conducted in areas beyond national jurisdiction or the patrimonial sea must conform to the norms to be established by the assembly and council of the international authority.

Finally, it should be borne in mind when considering the first four points, that scientific research must not be restricted but, on the contrary, intensified.

Mr. SHEN (China) said that many representatives, especially those of developing countries, had maintained that international marine scientific research must be conducted in conformity with certain principles, namely, that any State wishing to conduct scientific research in a sea area under the jurisdiction of another State must obtain the latter's consent, and that scientific research in areas beyond the limits of national jurisdiction should comply with the regulations laid down under the international régime to be established. That was entirely reasonable.

Nevertheless, one or two super-Powers, in utter disregard of the just demands of the vast number of developing countries, advocated with ulterior motives the so-called "freedom of scientific research". They claimed that the freedom of scientific research was "a recognized principle of international law" and "one of the freedoms of the seas and oceans generally accepted by international law". Those assertions were completely untenable. The countries concerned advanced their own opinions as recognized principles of international law and attempted to impose them on others. That was absolutely unacceptable to all States which upheld justice.

It was a well-known fact that the super-Powers, relying on their superiority in marine technology, were stealthily gathering marine intelligence on a large scale in order wilfully to plunder marine resources under the screen of scientific research. To justify themselves, the super-Powers had resorted to the fallacy of so-called "pure science". According to those Powers, marine scientific research was nothing but "pure science", which was "for the welfare of all countries" and therefore "should not be restricted in any way". Every State was obliged to agree to such research even if it was conducted in territorial waters by another State. Such an allegation was untenable.

(Mr. Shen, China)

It was common knowledge that in the present-day world marine scientific research, like any other, whether basic or applied, served definite political, economic and military purposes either directly or indirectly. "Pure scientific research", unrelated to social practice, did not in fact exist. By playing with such attractive words as "pure", "open", "harmless" and "for the welfare of all mankind", some people were merely trying to disguise the "freedom of scientific research" which they advocated. But the fact was that the super-Powers had never ceased to use marine scientific research as a tool for furthering their maritime hegemony. Motivated by their need to contend for hegemony, the super-Powers had been stepping up their expansion on the seas and the sea-bed. Marine scientific research had already become an indispensable means for carrying out their economic plundering and military aggression. Military oceanography was increasingly stressed by the super-Powers in their marine scientific research; investment in that field was growing continuously. Some of their naval leaders had asserted bluntly that oceanography had already become an indispensable factor for their nations' command of the sea. Not only had their navies directly engaged in marine survey and research and participated in national and international marine research; their naval scientific research projects had been assigned by contract to governmental institutions, research institutes and universities under the guise of non-governmental scientific research. They often approached the coasts of other States for military reconnaissance and the exploration of resources in the name of "marine scientific survey". It might be asked in what respect such marine scientific research could be termed "pure". If the super-Powers were allowed to conduct such scientific research freely, how could coastal States safeguard their sovereignty and national security?

The principles of respect for the sovereignty and equality of all States, large and small, formed the basis for a reasonable solution to the question of international scientific research on the seas. Foreign marine scientific research in the territorial sea of a coastal State and in areas under its jurisdiction were subject not only to the coastal State's approval, but also to its appropriate control. No foreign countries could interfere with the sovereignty of a coastal State on any pretext or by any means whatsoever, nor had they any right to give it orders.

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His delegation agreed with the view held by a majority of States that the international régime to be established should regulate in an appropriate manner scientific research conducted in areas beyond the limits of national jurisdiction. Otherwise, there would be no guarantee that the international sea-bed and its resources would not be subjected to unlawful occupation, exploitation and utilization by the one or two super-Powers. Only through such regulation could the monopoly of marine scientific research by the super-Powers be broken, and true international co-operation in marine scientific research in the area be promoted. Only thus could the peoples of all countries be in a better position to exploit and utilize the resources of the area and preserve the marine environment.

International co-operation in marine scientific research was feasible, but it must be based on the principles of mutual respect for sovereignty, equality and mutual benefit and must be agreed on through bilateral or multilateral consultations; it must not be dominated by the super-Powers and made to serve their selfish interests.

The following principles should guide marine scientific research: a coastal State should enjoy full sovereignty over its territorial sea and no other State should be allowed to carry out research in the area without its consent; a coastal State should exercise exclusive jurisdiction over its national jurisdictional zone, exclusive economic zone, fishing zone and patrimonial sea adjacent to its territorial sea, and any foreign country wishing to carry out marine scientific research in the area must obtain the prior consent of the coastal State and strictly observe its relevant laws and regulations; a coastal State should be entitled to take part in the scientific research carried out by other countries in its territorial sea or national jurisdictional zone and to receive data and samples obtained in such scientific research, while the publication of the results of such research should be subject to the prior consent of the coastal State concerned; the international sea-bed area beyond the limits of national jurisdiction and the resources thereof should, in principle, be jointly owned by the peoples of all countries, and scientific research carried out in the area should be subject to regulation by the international machinery to be established; all States should, in accordance with the spirit of the "Declaration of Principles", promote international co-operation in marine scientific research based on the principles of mutual respect

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of sovereignty, equality and mutual benefit, and concerted programmes of international marine scientific research should be worked out jointly provided that they guaranteed the equality of all States, large and small.

Mr. GORSHKOV (Union of Soviet Socialist Republics) said he would clarify some of the legal aspects of the draft articles in document A/AC.138/SC.III/L.31.

The Canadian definition of "scientific research", given in document A/AC.138/SC.III/L.18, failed to reflect certain legal and other aspects of scientific activity in the world ocean. It did not mention the fact that State agencies, individuals and international organizations had the right to conduct scientific research, nor was the prime purpose of scientific research defined. Article 1 of document A/AC.138/SC.III/L.31, using some of the provisions of the Canadian document, attempted to provide a more comprehensive definition of scientific research. The adoption of that wording would clear up a number of questions, particularly with regard to the need to distinguish between pure scientific research and the industrial exploration and exploitation of resources in the world ocean.

The scope of the convention was an important matter. Article 2 of the draft provided a definition of the term "world ocean", thereby defining the scope of the convention and the right of States and international organizations.

The whole international community was interested in finding the best way of formulating a policy to encourage scientific research and observance of the principle of freedom of scientific research in the waters and on the sea-bed of the high seas. Articles 10, 11 and 12 of the draft convention covered the points, made at an earlier meeting by the representative of Ghana, that the freedom of scientific research must be protected but must also reflect the interests of other States.

The representatives of a number of countries had referred to the lack of special legal norms defining the principle of freedom of scientific research in the world ocean, and had attempted to attach conditions to the conduct of such research. A comprehensive study of the processes occurring in the waters and on the sea-bed beyond the continental shelf was necessary if the scientific research programme for studying the world ocean was to be completed successfully. Limitation of research

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would destroy its comprehensive nature and would make it difficult or impossible to discover scientifically important phenomena and processes occurring in the world ocean, thereby reducing the completeness and scientific value of the information obtained.

One of the principles put forward by his delegation had been a proposal that the agreement on the régime for the international zone of the sea-bed should cover exclusively the exploration and exploitation of the mineral resources of the international area and that such activity should not create unjustified interference with the recognized freedom of the high seas, including the freedom of scientific research. In view of the importance of expanding marine scientific research, attempts to deny or limit the freedom of scientific research in the world ocean were completely unjustified. Any such limitation would be a step backward and highly detrimental to the interests of the world community. His delegation's point of view was reflected in article 2 of the draft. Coastal States could always define conditions or rules for the conduct of scientific research work, but only within their own territorial waters, over which they exercised sovereignty in accordance with international law.

Scientific research on the continental shelf should also be conducted with the permission of the coastal State. Appropriate provisions were set out in draft article 12.

The Soviet Union, which wished to facilitate the development of the world ocean, attached great importance to inter-State co-operation in the conduct of scientific research. The fundamental provisions of document A/AC.138/SC.III/L.23 which afforded guarantees that research would not affect the sovereignty and rights of other States and would not harm the marine environment for shipping and fishing, constituted the basis for articles 2, 4, 5, and 10 of document A/AC.138/SC.III/L.31. Those articles provided for various forms of inter-State co-operation.

His delegation had always been guided by the principle that, when drafting any international legal principles and norms, the starting-point must be, firstly, the general trend of the progressive development of international law and, secondly, the lawful and just interests of all States. It was important, therefore, in order to ensure the successful development of the world ocean, that all States played an active part in research, developed their national research capability and set down their rights and mutual obligations in a general agreement. His delegation

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understood very well that a comparatively small number of States were in a position at present to carry out large-scale oceanographic research. Considerable progress was being made in that field, however, since the developing countries were starting to develop their world ocean research activities. Consequently, all countries had a moral and legal responsibility to intensify mutual aid in the development and conduct of joint research. The Soviet Union was doing everything possible to encourage scientists from developing countries to participate in world ocean research and would continue to exchange scientific information through existing data centres. Soviet research, particularly in the Caribbean, was being carried out jointly under the UNESCO international programme with Venezuela, Colombia, Cuba, Mexico, the United States and the United Kingdom. Four more Soviet expeditions were due to join the research ship "Academik Kurchatov" in the Caribbean. Scientists from Venezuela, Colombia, Cuba and Mexico would be working on that ship to familiarize themselves with the work of the expeditions and to develop oceanographic research in the Latin American countries. Material obtained would be sent to special international centres.

The Working Group on scientific research might find it useful to include some of the principles set out in the draft articles in the draft preamble to the future convention.

Mr. ARCHER (United Kingdom) said that his delegation had listened with great interest to the debate on scientific research and to the arguments in favour of the international sea-bed authority playing a role and regulating activities in that field.

His delegation had considerable difficulty in accepting that there were any grounds for regulating scientific research, except possibly where it involved relatively deep drilling into the sea-bed. The results of scientific research had been of benefit to all mankind and such research, rather than damaging the environment, provided the basic information essential to appreciate the extent of and control pollution. The suggestion that, in view of the limited facilities available, pure research should be abandoned in favour of applied research contained an inherent fallacy in that it was impossible to foresee the future applications of scientific discoveries. Moreover, his delegation particularly

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disagreed with the reasoning that scientific research beyond the limits of national jurisdiction should be regulated simply because it was not regulated at the present time. Consequently, it remained firmly convinced that only good would come from allowing scientific research to continue unregulated. In conclusion, he reiterated the warning that, if regulations were introduced, there was likely to be a decrease in the international scientific research effort at sea and that would benefit no one.

Finally, he asked whether the statement prepared by the International Council of Scientific Unions on the conditions for effective scientific research could be brought to the Sub-Committee's attention.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that his delegation had no objection to the statement's being circulated as an unofficial document provided that it did not constitute a precedent.

Mr. LEGAULT (Canada) said that, although he did not oppose circulation of the statement, he would object if it were circulated on such conditions.

Mr. ARAUJO CASTRO (Brazil), supported by Mr. MBOTE (Kenya) suggested that the ICSU statement could be circulated as a Committee document if it was clearly indicated that it was being done at the formal request of one delegation.

The CHAIRMAN said that, if he heard no objection, he would assume that the United Kingdom representative had made a formal request to have the ICSU statement circulated as an official Committee document.

MARINE POLLUTION (concluded)

Mr. VALLARTA (Mexico), speaking as the Chairman of Working Group 2 and presenting a progress report on its deliberations, said that the Working Group had held 13 meetings during the current session. A constructive dialogue had focused on the proposals formally submitted in the Sub-Committee and had covered the following subjects: the general obligation to preserve and protect the marine environment, the rights of States to exploit their resources in accordance with their obligation not to contaminate the marine environment; the general obligation of States to adopt measures to prevent pollution of the marine environment from

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(Mr. Vallarta, Mexico)

any source; the particular obligations of States to take specific measures, depending on the source of pollution; the obligations of States not to cause damage to other States by pollution of the marine environment; regional and international co-operation to prevent pollution of the seas and technical assistance. The Working Group had discussed the question as to whether co-operation among States should be supplementary to or substituted for unilateral action by States.

The informal consultations among the sponsors of formal proposals and other delegations had continued. On the basis of those informal consultations, he had submitted to the Working Group draft articles on the following subjects: the general obligation to preserve and protect the marine environment; the right of a State to exploit its own resources in accordance with its duty to protect and preserve the marine environment; the general obligation to take measures to prevent pollution of the marine environment from any source and the particular obligation of States to take measures to ensure that activities did not cause damage to other States by pollution of the marine environment.

During the current week the informal consultations would continue and he would present a final report to the Working Group on the outcome. He would also submit to the Working Group the letter he had sent to the Chairman of the Sub-Committee concerning the Group's deliberations during the current session.

Mr. McKERNAN (United States of America), introducing his delegation's working paper on competence to establish standards for the control of vessel source pollution, said that the paper explained why a system of exclusively international standards on the high seas and in straits used for international navigation would effectively protect the shared community interests in the quality of the marine environment and navigation.

Firstly, it was essential that the basic international interests in the protection of the environment and navigation should be represented and balanced in the formulation of the required standards. Secondly, only uniform standards would avoid the difficulty of complying with several sets of standards. Thirdly, since marine pollution was a global problem, only exclusively international standards could provide effective protection. Fourthly, a system of exclusively international standards would be more responsive to change than one which permitted more than 100 sets of standards. Lastly, uniform international standards would eliminate competitive economic concerns thus ensuring that effective standards were agreed to.

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(Mr. McKernan, United States)

His delegation hoped that at its next session the Sea-Bed Committee would discuss the United States proposals that enforcement should be based on flag and port State authority and that port States should be authorized to take action against vessels in their ports which had committed a violation of international standards in areas beyond their jurisdiction.

Finally, he informed the Committee that his delegation had a copy of the recently signed Convention on International Trade in Endangered Species of Wild Flora and Fauna which it would transmit to the Secretariat, as previously requested, for whatever action deemed appropriate.

Mr. METALNIKOV (Union of Soviet Socialist Republics) said that his delegation reserved its right to comment at the next meeting on the points made during the discussion on scientific research.

Mr. LEGAULT (Canada) said he assumed that the debate on marine pollution had been reopened and that delegations would be able to comment at forthcoming meetings on the points made by the United States representative.

The CHAIRMAN pointed out that the debate on marine pollution had been concluded. It had been his understanding that the purpose of the statement by the United States representative had been merely to introduce the working paper in question. However, the matter could be decided at the next meeting.

The meeting rose at 6.25 p.m.

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SUMMARY RECORD OF THE THIRTY-NINTH MEETING

Held on Friday, 6 April 1973, at 11.5 a.m.

Chairman:

Mr. Van der ESSEN

Belgium

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REPORT BY THE CHAIRMAN OF THE WORKING GROUP ON SCIENTIFIC RESEARCH

Mr. OLSZOWKA (Poland), speaking in his capacity as Chairman of the Working Group on Scientific Research, said that the Working Group had held its first meeting, at which it had discussed the organization of work and had decided to invite members of Sub-Committee III to submit draft articles for its consideration. The Working Group had decided to follow the precedents set by the Working Group on Marine Pollution. It would hold a further meeting at the time of the Committee's summer session.

MANDATE OF THE WORKING GROUP ON SCIENTIFIC RESEARCH

The CHAIRMAN said it had become apparent from informal consultations that a majority of delegations were in favour of broadening the Working Group's mandate to include the transfer of technology. He asked whether it was the Sub-Committee's wish that the Working Group's mandate should be broadened in that manner.

Mr. METALNIKOV (Union of Soviet Socialist Republics), Mr. CLELAND (Ghana), Mr. BAKULA (Peru), Mr. RAMERO OCANDO (Venezuela) and Mr. DIGGS (Liberia) said that they were in favour of including the transfer of technology in the Group's mandate.

Mr. VELLA (Malta) said that he was not opposed to taking that step. He wished to know, however, whether any limitations would be placed on the range of questions relating to the transfer of technology which would be discussed in the Working Group. His delegation's difficulty related to the precise meaning of the term "transfer of technology", and it therefore considered the question of how the topic would be handled to be an open issue.

Mr. KATEKA (United Republic of Tanzania) said that scientific research without the transfer of technology was meaningless for the developing countries. The issue was not whether the item should be included in the Working Group's mandate but how it should be included.

Mr. BEESLEY (Canada) said he believed that the question of technology had been included at the time the Sub-Committee's work programme had been drawn up. If that was indeed so, the matter was virtually settled.

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The CHAIRMAN confirmed that the transfer of technology was included in the work programme.

Mr. CEAUSU (Romania) said that he was very strongly in favour of including the transfer of technology in the Working Group's mandate. He proposed that the name of the Group should be changed to "Working Group on Scientific Research and the Transfer of Technology".

Mr. YTURRIAGA (Spain), Mr. LOPEZ REINA (Colombia) and Mr. BAKULA (Peru) supported the proposal by the representative of Romania.

The CHAIRMAN said that the Sub-Committee seemed to have reached a virtual consensus. The range of questions relating to the transfer of technology that could be discussed by the Working Group would be established during the general discussion.

If there were no objections, he would take it that the Sub-Committee wished to include the transfer of technology in the mandate of the Working Group on Scientific Research and to rename the Working Group the "Working Group on Scientific Research and the Transfer of Technology".

It was so decided.

REPORT BY THE CHAIRMAN OF WORKING GROUP 2 (A/AC.138/SC.III/L.39)

Mr. VALLARTA (Mexico), speaking in his capacity as Chairman of Working Group 2, drew the attention of the Sub-Committee to the contents of document A/AC.138/SC.III/L.39, which was self-explanatory. He asked delegations intending to submit new proposals at the summer session to take into account the comments that had been made by the Working Group.

Mr. PAPAGEORGIOU (Greece) said it was undeniable that the preservation of the human environment and the struggle against pollution were of great importance, since pollution, directly or indirectly, affected the welfare and life of all mankind. Individuals and States must co-operate closely and take measures on a world-wide scale to protect the environment against any kind of pollution.

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(Mr. Papageorgiou, Greece)

The marine environment needed special protection. The capacity of the sea to assimilate waste and its ability to regenerate natural resources were not unlimited. Measures to prevent and control marine pollution must, therefore, be regarded as essential to the management of the oceans and seas and their natural resources. Consequently, the marine pollution convention which the Sub-Committee had been instructed to prepare must be acceptable to all the participants in the forthcoming Conference on the Law of the Sea.

The drafts submitted to Working Group 2 for consideration were in principle an excellent basis for the fulfilment of the Sub-Committee's task. Nevertheless, although some of the basic principles in the drafts promoted the objective of the convention, others represented an attempt to interfere in technical matters which had been very carefully elaborated by other competent specialized bodies of the United Nations system. The Sub-Committee could not ignore the conclusions reached by those bodies, and particularly by IMCO.

The provisions of the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter and the final draft of the new convention on marine pollution which was to be adopted in the autumn covered many of the points of the present convention. The latter must be confined to general issues and not introduce details and technical matters which might create contradictions and hinder the Sub-Committee's work. Otherwise, the Sub-Committee would probably be unable to reconcile the views of the contracting parties on the details and technicalities which had been criticized in Working Group 2. The introduction of principles that sought to abolish the sovereignty of flag States on their own ships in the territorial waters of other States was illogical. It was contrary to the United Nations Charter and the principles of international law and as such could not be accepted.

The maritime nations, including his own country, did not like to see their merchant fleets subject to the laws of other States in matters which had been regulated for centuries by existing international law and by the internal legislation of the flag States. They would not like, for example, to see their merchant vessels barred from entering a coastal State's waters on the grounds that

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(Mr. Papageorgiou, Greece)

an insufficient or improperly licensed crew, or even minor defects in equipment, threatened to cause marine pollution.

The so-called special measures, the control of operations and the introduction of indefinite liability for compensation on the part of flag States which were contained in some of the drafts submitted were contrary to common sense and a danger to world shipping and thus had no place in the convention that Working Group 2 had been trying to prepare.

It must be recognized that details and technicalities should be left to IMCO, whose technical personnel possessed expertise that would contribute greatly to the solution of the problem of ship-generated pollution. A coastal State must not be permitted to take unilateral action against a third-flag vessel, since that meant nullifying the sovereignty of the flag State. Action must be based on international standards and regulations accepted by a majority or all of the participants. Otherwise, arbitrary national action and abuse was likely and would create chaotic situations and disorder. The prevention of marine pollution must be balanced against the interests of States in freedom of navigation and against the economic and industrial factors which had resulted in such spectacular advances by mankind. Moreover, if a State was permitted to take the unilateral measures called for in one of the drafts submitted, he wondered what would be the value of the other international measures which the Sub-Committee was trying to adopt or of internationally accepted standards.

It was inaccurate to say that IMCO had failed to take appropriate measures against marine pollution. It was the only United Nations body competent to solve the problem of ship-generated pollution, and its progress and work so far must not be ignored. As the observer for IMCO had stated, any representative who thought that additional measures must be taken to protect the marine environment from ship-generated pollution was free to participate in the forthcoming IMCO conference and state his views. Freedom of navigation and the sovereignty of the flag State on its own ships were principles that had been applied for centuries. They were based on existing written or customary law and could not be abolished by unilateral State action.

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Mr. BEESLEY (Canada) commended the Working Group on Marine Pollution for having drafted a provisional common text of four draft articles for inclusion in a comprehensive draft treaty. Although the articles did not touch on the basic issue of coastal State jurisdiction, they represented no small accomplishment, since the Sub-Committee's session had begun without any concrete draft articles. His delegation was grateful for the favourable reaction of other delegations to its draft articles and wished to compliment the delegations of Australia, the USSR and Malta for their proposals and for the spirit of conciliation they had displayed in working out a common text. The spirit of accommodation demonstrated by other delegations in the Working Group and in the informal consultations augured well for further progress. Delegations proposing to submit further texts should build upon the provisional agreements already reached rather than submit totally new texts. He pledged Canada's continued co-operation in efforts to resolve the remaining difficulties, particularly the need to balance coastal-State and flag-State interests.

The prevailing approach, which his delegation strongly supported, held that the preservation of the marine environment and control of pollution required, inter alia, agreement on enforcement by coastal States of internationally agreed standards. There was as yet less agreement concerning the extent to which residual standard-setting authority should be delegated, or otherwise agreed to pertain, to the coastal States for the purpose of taking action in special circumstances or in order to take account of local or regional problems.

With regard to the statement by the representative of Greece, his delegation believed that the necessary accommodation of interests could be found in the concept of shared or universal jurisdiction, the approach which had been followed in the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter prepared by the London Conference. That would lead to the enforcement by both coastal and flag States of agreed measures - or of coastal-State standards in exceptional circumstances - in areas adjacent to the territorial sea to a distance as yet undetermined, to stricter enforcement than heretofore by flag States of agreed measures on the high seas beyond the environmental protection zone, and, should an offending flag-ship move beyond that zone to the high seas or the territorial sea of another State, to enforcement by a flag State or other coastal

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(Mr. Beesley, Canada)

States. On that issue, as on all others facing the Conference on the Law of the Sea, it would not be possible to spell out every aspect of the range of problems and solutions. Accordingly, he agreed with the representative of Greece that efforts should focus on the preparation of a comprehensive treaty. Some element must be left to the good faith of States and to the process of third party compulsory adjudication in the event of disputes. His delegation was hopeful that it would prove possible to reach agreement on that basic issue; failure to resolve it would inevitably make it difficult to settle related issues.

Although he could not support the Greek position, he respected it and was pleased that the Greek delegation had co-operated very closely at the London Conference in the effort to produce internationally agreed standards. In fact, a set of draft articles co-sponsored by Greece in Sub-Committee II showed the need to develop the concept of innocent passage so as to take account of the need of the coastal State to preserve the marine environment. He could not accept the Greek representative's suggestion that flag-State sovereignty was absolute. However, it was not a question of competing rights or interests; what was needed was an accommodation of differing uses, rights and interests in working out a common solution. He agreed that as many delegations as possible should participate in IMCO's work, which was so closely related to the work of the Sub-Committee.

Canada welcomed the establishment of the Working Group on Scientific Research and the Transfer of Technology and the Group's recommendation that Governments should submit comments, preferably in the form of draft articles. His delegation hoped to produce draft articles on the subject based on a working paper which it had submitted at the preceding session.

Mr. WARNER (Trinidad and Tobago) said that considerable progress had been achieved in Working Group 2. His delegation agreed that States had the general obligation to preserve and protect the marine environment; however, nothing in the future treaty should derogate from the sovereign right of States to exploit their own resources pursuant to their own environmental and developmental policies. A balance must be struck between enforcement and protection of that right, particularly as concerned the developing countries. That did not mean that his delegation was advocating the right to pollute the environment.

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(Mr. Warner, Trinidad and Tobago)

It would not be feasible at the present time to impose exclusively international standards for the control of vessel pollution on the international community, as was proposed by the United States delegation in document A/AC.138/SC.III/L.36. The differing geographical characteristics of States and the fact that they were at different stages of economic development made it impossible for them to establish common standards for pollution control. Standards set by the major maritime powers could not be met by some coastal States. Nevertheless, the United States working paper contained desirable objectives towards which all States should strive.

All States must co-operate in the task of elaborating a new code of conduct regarding pollution in the oceans.

Mr. DIGGS (Liberia) said his delegation felt that the fear that pollution control by coastal States over coastal waters might be transformed into control over navigation was premature. A common ground must be found between exclusively international and exclusively national interests. Accordingly, while acknowledging flag-State jurisdiction, his delegation also believed that IMCO should implement international standards. It should be possible to reach a compromise, given the recognition in some of the working papers that exclusively international measures were required to deal with pollution of the marine environment as a whole and the statement that no conclusions need be drawn from the working papers except that standards should be international. His delegation could not accept any unilateral declarations as to what the international standards should be.

Mr. VELLA (Malta), noting that his delegation had agreed that delegations' views should be reflected in the notes to the draft articles in document A/AC.138/SC.III/L.39, said that it had done so in a spirit of co-operation and because it recognized that no commitments were involved. No purpose would be served by elaborating further on the provisional draft articles until Governments had had the opportunity to review them in preparation for the summer session.

Mr. MOLTENI (Argentina), referring to draft article IV in document A/AC.138/SC.III/L.39, which related to States' rights to exploit their own

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(Mr. Molteni, Argentina)

resources pursuant to their environmental policies, said that both the Canadian and the Australian proposals, on which the provision was based, stipulated that in exercising those rights States must act in accordance with the Charter of the United Nations and the principles of international law. That stipulation was in turn based on principle 21 of the Declaration of the United Nations Conference on the Human Environment. Inasmuch as that principle, as well as others in the Declaration, complemented the legal principles governing the relevant aspects of environmental policy which were to be formulated by the Conference on the Law of the Sea, the article in question must include a specific reference to the Charter and the principles of international law, thus ensuring that no State would abuse its rights and that there would be grounds for an international claim should that occur.

Mr. OXMAN (United States of America) said that although the draft articles prepared by Working Group 2 did not deal with the difficult questions of coastal-State jurisdiction and flag-State jurisdiction, they did represent important accomplishments on the issues with which they were concerned. He thanked delegations for their comments on the United States working paper on standards for the control of vessel source pollution (A/AC.138/SC.III/L.36).

In view of the Sub-Committee's decision to add the question of the transfer of technology to the mandate of its new Working Group, he wished to know whether the request by the Chairman of that body that States should submit proposals for consideration at the summer session also applied to matters relating to the transfer of technology.

The CHAIRMAN said he presumed that that was the case.

Mr. YTURRIAGA (Spain) said it was not clear which area of ocean space the third sentence of the first paragraph of section III of the United States working paper (A/AC.138/SC.III/L.36) applied to. His delegation could agree that freedom of navigation applied in the high seas; however, that was not the case in the territorial sea, where only the right of innocent passage applied.

Following an exchange of courtesies, the CHAIRMAN declared the spring session of Sub-Committee III closed.

The meeting rose at 12.25 p.m.