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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

PROVISIONAL SUMMARY RECORD OF THE FORTY-FIRST MEETING*/

held at the Palais des Nations, Geneva,
on Wednesday, 18 July 1973, at 3.25 p.m.

Chairman:	Mr. van der ESSEN	Belgium
Rapporteur:	Mr. IGUCHI	Japan

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*/ This provisional summary record, together with the corrections to be issued in consolidated form after the session, will constitute the final record of the meeting.

CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE "AGREEMENT REACHED ON ORGANIZATION OF WORK" AS READ OUT BY THE CHAIRMAN AT THE 45TH MEETING OF THE COMMITTEE HELD ON 12 MARCH 1971 (continued) (A/AC.138/SC.III/L.27-41).

The CHAIRMAN invited the sponsors of proposals relating to the preservation of the marine environment, scientific research and the development and transfer of technology to introduce them.

Mr. MOORE (United States of America), introducing the draft articles on the protection of the marine environment and the prevention of marine pollution submitted by his delegation in document A/AC.138/SC.III/L.40, said that marine pollution was a global problem requiring a truly international solution and that the many new and intensified ocean uses to be considered by the Law of the Sea Conference might pose significant risks of environmental damage which must be dealt with promptly and effectively. The Conference should establish an adequate jurisdictional basis for co-ordinated international action, which would have to be adapted to the needs of each specific threat to the marine environment. Vessel-source pollution problems, for example, were fundamentally different from those raised by land-based sources or sea-bed resource activities and required different solutions. A distinction must also be made between jurisdiction to set standards and jurisdiction to enforce such standards. The United States delegation had tried to provide for those requirements in its draft articles.

Section A of the draft articles, dealing with the basic obligation to protect the marine environment, had been left open and would be based on the outcome of the discussions in the Working Group and the Sub-Committee. The Section B dealt with competence to establish standards, differentiating between pollution from vessels and pollution from activities under coastal State jurisdiction in the coastal sea-bed economic area. The proposed international sea-bed resource authority to be set up under the Convention would establish standards for those activities and also for activities under the control of the authority in the area beyond. Since the coastal State would have primary responsibility for the management and control of sea-bed exploration and exploitation activities, it should have the right to establish stricter standards for the activities under its jurisdiction in its coastal sea-bed economic area.

At the Committee's spring session his delegation had introduced a working paper explaining why it considered that standards for vessel-source pollution should be internationally established. Because of its technical competence and experience, IMCO should be designated as the international organization responsible for establishing those standards. To ensure that new problems were adequately and rapidly dealt with and that all countries interested in participating in the establishment of such standards would have an opportunity to do so, the United States had proposed in the IMCO Council the creation of a marine environment protection committee for dealing with vessel-source pollution. That committee, whose membership would be open to all interested States, would be empowered to adopt regulations and circulate them directly to Governments without review or approval by the IMCO Assembly or Council. The regulations would then come into effect automatically unless opposed by a specified number, or category, of States. The committee would have regional sub-committees for considering solutions to regional problems.

The draft articles provided for the international establishment of special standards for special areas and problems. There were provisions enabling port States, in accordance with their general right to regulate vessels entering their ports, to apply higher vessel-source pollution standards to such vessels, and flag States to continue to do so for their own flag vessels. There was also provision for co-operation among the various international organizations active in the environment field, including the United Nations Environment Programme.

The sections of the draft dealing with enforcement were intended to provide adequate enforcement authority to cope with the variety of pollution problems arising from sea-bed activities and from vessels. The coastal State was given complete authority to enforce both its own and international standards for sea-bed activities under its jurisdiction in its coastal sea-bed economic area. Since other States might be affected by pollution from such activities, provision was also made for international inspection to ensure compliance with the international standards. Flag States, port States and coastal States would all share specified enforcement rights and duties with regard to pollution from vessels and would be able, by agreement, to authorize other States to act for them in the exercise of those rights and the performance of those duties.

The flag State would continue to have enforcement responsibilities over its vessels, although such authority would not be exclusive, and would assume a specific obligation to enforce international standards in the case of vessels flying its flag, subject to the right of other States to have recourse to compulsory dispute settlement procedures to ensure that the obligation was fully discharged.

The port State would be able to enforce pollution control standards in the case of vessels using its ports, regardless of where violations took place.

The coastal State would have rights and remedies that would fully protect its environmental interests; provision was made for dealing with the four major marine pollution problems facing a coastal State: serious maritime casualties off its coasts, violations of international standards presenting imminent danger of major harmful consequences, persistent and unreasonable failure of a State to enforce the international standards with respect to vessels flying its flag, and general violations of the standards.

The 1969 Intervention Convention, which enabled the coastal State to take direct action to prevent, mitigate or eliminate a major threat of oil pollution in the case of maritime casualties, was being expanded to apply to pollution by other substances. The coastal State should also be allowed to take direct enforcement measures, including detention or, where necessary, arrest, in order to prevent, mitigate or eliminate imminent danger of major harmful consequences due to a violation of the international standards, since serious pollution was possible without the occurrence of a maritime casualty.

All States, whether coastal or not, would have the right to lodge a complaint through the dispute settlement machinery against a particular flag State which unreasonably and persistently failed to enforce the international standards. If the complaint was upheld, coastal States would be authorized to take additional enforcement measures, including measures on the high seas, against all vessels of that flag violating the international standards.

There was also provision for a general system for dealing effectively with ordinary violations of the international standards. Vessels suspected of such a violation would be required to supply relevant information requested by the coastal State concerned. If the vessel was bound for a port in the coastal State, the latter could request an immediate on-board inspection and deny port entry if the request was refused. If the suspected vessel was headed elsewhere, the coastal State might forward evidence to a port of call of the vessel or to the flag State, in which case the port State or flag State would be required to undertake an investigation, in which the

coastal State would be entitled to participate. If the investigation revealed a violation, the port State might institute proceedings, but if it did not, the flag State would have to do so. The flag State's obligation to institute proceedings and ensure adequate penalties would be enforceable through compulsory dispute settlement.

Other draft articles dealt with State responsibility, penalties, liability for unreasonable enforcement measures, multiple proceedings and co-operation. There was also provision for compulsory dispute settlement. If the rights and duties of States set forth in the proposed Convention were to have any meaning, the parties to it must agree to settle all disputes peacefully. The United States could not agree to many of the proposals it had itself made in the Committee if there was no general system of compulsory dispute settlement.

The United States proposal for the establishment of a new marine environment protection committee in IMCO, copies of which had been circulated to members of the Committee, would in no way detract from the jurisdiction of the Sea-Bed Committee, or prejudice the options of the Law of the Sea Conference regarding the jurisdiction of States. There was general agreement that strict international standards were needed for the protection of the marine environment and the United States proposal was designed to ensure that those standards were expeditiously and effectively established. There could be no question that IMCO had broad authority, under its Charter, to deal with vessel-source pollution problems, and it had been active in that field since its inception.

Mr. MBOTE (Kenya), introducing his delegation's draft articles on the prevention and control of pollution in the marine environment (A/AC.138/SC.III/L.41), said that it had taken as guiding principles the provisions contained in articles 8, 11, 15, 16 and 17 of the OAU Declaration on the Issues of the Law of the Sea (A/AC.138/89), and in document A/AC.138/SC.II/L.40, on the exclusive economic zone.

His delegation believed that the Charter of the United Nations and established principles of international law empowered sovereign States to exploit their natural resources in a manner consistent with their own environmental policies. But at the same time they had a responsibility not to cause pollution that would damage other States or the environment as a whole. Each State should therefore formulate and implement whatever measures were necessary to protect the environment.

The main burden of cleansing the marine environment should be borne by the industrialized developed countries, which were the main polluters. Unfortunately, industrialization and almost every human activity caused pollution, and although Kenya fervently hoped that it could preserve its unpolluted environment, it had espoused the cause of economic development through industrialization and could not become a party to measures that might have an adverse effect on its economic aspirations.

Article 1 of his delegation's draft articles provided that coastal States had the right to establish marine zones within which they would exercise jurisdiction or control for the purpose of preventing or minimizing damage to their marine environment, and the reason for that provision was that 80 per cent of marine pollution originated from land and the remaining 20 per cent, although originating from the activities of both coastal and non-coastal States, affected only coastal States. Article 1 was a defensive mechanism against the dangers to Kenya's living resources, beaches and tourist amenities through pollution in the marine environment and through international land-based sources of pollution such as international rivers, lakes etc.

Draft article VIII provided that States should co-operate directly or through competent international or regional bodies, taking into account all relevant factors including the source and type of pollution, geographical and ecological aspects of specific areas, and, as appropriate, the economic characteristics of the countries concerned. His delegation did not consider it necessary to formulate international standards of marine pollution control to be implemented exclusively on an international basis, because it was not in the interests of any State to pollute its own waters, let alone those of others. Consequently, all States could be expected to take maximum account of agreed international standards. There was no reason to fear that the developing countries, say, would adopt standards that were too low, because they treasured their present relative freedom from pollution and would, if anything, adopt higher standards. Agreed pollution control obligations would need to be carried out through bilateral and multilateral co-operation, having regard to all relevant factors and particularly the economic capabilities of countries to discharge such obligations.

That could not be the case, however, unless all States were technically able to participate actively in the necessary measures on an equal footing. Therefore, with respect to the transfer of technology, the advanced countries had a duty to assist less privileged countries in the training of personnel, dissemination of pollution research data and the provision of the necessary pollution control equipment. In the event of emergencies at sea, the affected States, and particularly the developing countries, should be entitled not only to emergency assistance from the international community but also to whatever aid was needed to minimize the pollution danger.

With regard to the United States proposal in IMCO that a new permanent body should be established to carry out IMCO's environmental responsibilities, his delegation considered that the proposed new functions should be performed by the United Nations Environment Programme, with IMCO acting as the latter's technical department. The United Nations Environment Programme should also be responsible for administering any other existing or future conventions or organizations concerned with the prevention of pollution to the marine environment.

As to liability for damages and settlement of disputes, his delegation believed that damage occurring in areas beyond national jurisdiction should be dealt with by the States or international organizations responsible and that the appropriate international body should ensure that there was compliance with agreed procedures. Within national jurisdiction, the coastal States concerned should deal with pollution according to their own law. His delegation's views on the settlement of disputes were still flexible, but it would be pointless to promulgate international law unless an efficient system of settling disputes was agreed upon, and Kenya would therefore participate fully in formulating appropriate clauses.

Finally, his delegation undertook to revise the draft articles to bring them into line with the progress being made in the Working Groups.

Mr. GARCES GIRALDO (Colombia) said with reference to the transfer of technology that he wished to stress the international community's fundamental responsibility to ensure that the benefits derived from the exploitation of marine resources contributed effectively towards narrowing the gap which now separated some nations from others. For over ten years the international community had been expressing concern and the desire to accelerate the development of the less advanced countries by the application of science and technology, but it was discouraging to see how little progress had been achieved since the United Nations Conference on the Application of Science and Technology for the Benefit of Less Developed Areas in 1963.

No one now questioned the mutual advantages to be gained from a broad programme of transfer of technology, and his delegation believed that the implementation of such a policy with respect to the oceans and their resources could be beneficial to present and future generations. The just and equitable rules which must be applied to it had fortunately already been agreed upon by the United Nations General Assembly in 1970, when it adopted its Strategy for the Second Development Decade. The Strategy had also prompted the Latin American delegations to submit their proposal concerning the regime for the sea-bed and ocean floor, and sub-soil thereof, beyond the limits of national jurisdiction in 1971 (A/AC.138/49).

The authors of that draft had proposed, in a chapter on the international machinery, that the international authority should itself explore and exploit the resources of the sea. In order to ensure the active participation of the developing countries in the application of marine technology, they had also provided for the establishment of regional oceanographic institutions, technical assistance facilities, the co-operation of experts at the request of the developing countries, the employment in the international machinery of personnel drawn from the developing countries, the location of processing plants in those countries and the establishment of joint ventures.

The proposals submitted at that time by the industrialized countries had been directed to the simple granting of licences, which would have the effect of excluding the developing countries completely from the technical exploitation of marine resources. That approach had fortunately been rejected by a large majority, and it was pleasing to note that now, as the Conference on the Law of the Sea drew nearer, few countries still insisted on the maintenance of anachronistic privileges which had no place in the international machinery.

Where the use of technology in resource exploitation, scientific research and the conservation of the marine environment was concerned, the interests of individual States must be fairly balanced against those of the international community. As the delegations of Colombia, Mexico and Venezuela had proposed in document A/AC.138/SC.II/L.21, in the patrimonial sea the coastal State should have sovereign rights over all resources to a distance of 200 miles from the coast, without prejudice to freedom of communication, and should exercise jurisdiction over the preservation of the marine environment, scientific research and pollution control. To enable the developing countries to exploit the resources of the patrimonial sea effectively, however, it was essential to ensure that technology was transferred equitably through regional institutions or joint enterprises with the participation of industrialized States, possibly acting in co-ordination with the international authority.

It would be helpful if the forthcoming Conference on the Law of the Sea could be provided with a study which would enable it to establish the main objectives of the transfer of technology and also rules for achieving it in a rational and progressive manner. Reference might be made in the study to various kinds of programmes designed to promote transfers at both the international and the regional level. It was essential that the developing countries be given access to technical

knowledge, whether or not it was protected by patents, under fair and reasonable conditions; techniques must be adapted to meet their needs; they must be helped to acquire technical know-how more quickly; and opportunities must be created for personnel from the developing countries to receive training in marine science and technology and to participate fully in activities at the international level.

With regard to preservation of the marine environment, he said that it was clear that States had a duty to preserve the environment; at the same time, the inability of the developing countries to control pollution had also been recognized. In order to preserve the marine environment it was necessary to analyse its ecology. It was also necessary to determine the nature of pollution in order to control it, and neither process could be carried out effectively without scientific research. The exploitation of the living and non-living resources of the sea likewise depended on scientific research, which, however, was too costly for all but a few countries.

Technical assistance from the more developed countries could help the developing countries to achieve their resource exploitation and pollution control objectives. The preparations for such assistance on the part of donor and recipient alike were all-important and should be the object of their combined efforts.

There were thus, three main points to be considered in connexion with the transfer of technology: first, a study should be undertaken with a view to devising an international set of rules governing technical assistance and transfers of technology; secondly, States and other bodies involved in scientific research should support parallel programmes of technical assistance, including transfers of technology, aimed at the countries of the zone or region in which the research programmes were to be carried out; and lastly, all programmes of scientific research, technical assistance and transfers of technology should be co-ordinated and guided by one large technical and scientific body directly answerable to the international authority.

Mr. PERISIC (Yugoslavia) recalled his delegation's statement the previous year to the effect that as scientific research tended to limit the freedoms of the seas, it was evident that in the interests of peace and co-operation no new freedoms could be instituted on the old basis of inequality. His delegation had also supported the request of the developing countries to be allowed to participate in and benefit from scientific research on the sea and its resources.

A request for tighter restrictions on activities connected with the sea might appear to the developed countries as an obstacle to the further development of science and technology. The developing countries, bearing in mind the principle of the common heritage, took a different view, insisting that their interests should on no account be disregarded in the elaboration of new rules of conduct.

The transfer of technology and the problem of its financing had not received the full attention of the United Nations for some time, primarily owing to resistance from the vested interests in the existing markets for technology. Efforts made by the developing countries had, however, brought about notable changes, in particular the setting up of new institutions under the auspices of UNCTAD, ECE and the Economic and Social Council to deal with future problems relating to the transfer of technology. Various UNCTAD bodies had already contributed considerably to the study of many aspects of that question.

The transfer of technology involved all sectors of economic activity. Unfortunately, the growing technological dependence of the developing countries on the developed countries gave cause for grave concern, particularly in view of the fact that it tended to hamper their development efforts. It was therefore essential in the interests of efficiency that new machinery for dealing with the transfer of technology, notably with regard to specific areas such as the sea bed and its resources, should be co-ordinated with existing United Nations bodies.

The continuing situation in which only a few of the most developed countries could benefit from the application of technology to the exploration and exploitation of the sea-bed did not improve the position of the developing countries. His delegation accordingly supported their request for the establishment of international centres to provide information on technology markets; such centres should help to reduce the total cost of transfers, which represented one of the major obstacles to development programmes. Transfers of technology might be carried out more efficiently and put to better use if institutions were also set up in the developing countries themselves to analyse various aspects of the process.

Experience had shown that the transfer of technology on a commercial basis was not in keeping either with the principles on which marine research should be based or with the general principles of international development policy. Efforts must be made to establish new relations among States with regard to the market for technology in general and with particular regard to the sea and its resources. The setting up of a new legal regime and machinery offered opportunities to achieve that aim.

Where the exploitation of the sea-bed was concerned, most developing countries were technologically in the position of least developed countries. Special plans should therefore be made to train personnel and establish appropriate institutions in those countries, in accordance with the programme for the development of the least developed countries drawn up by the Third UNCTAD Conference. Only the direct participation of developing countries in exploration and exploitation, which necessarily modified the traditional concept of technical assistance, could place the developing countries on an equal footing with the developed countries and effectively bridge the ever-widening gap between them.

Yugoslavia was the co-ordinator of a working group concerned with the preparations for the Conference of the Heads of State of Non-Aligned Countries to be held in Algiers in September 1973. On the draft agenda for the Conference was an item entitled "Co-ordination of policy with regard to the next Conference on the Law of the Sea". The economic aspects of the Law of the Sea, scientific research and, in particular, the transfer of technology occupied the same prominent place in the work of that working group as in that of Sub-Committee III.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) said it was not by chance that his delegation had supported the proposal of certain developing countries that the question of transfers of technology should be referred to the Working Group dealing with scientific research. Modern oceanographic research was extremely costly and complicated, and frequently required funds and resources which were beyond the means even of moderately developed countries. It was therefore desirable that a considerable number of countries should participate in such work. Soviet oceanographers had recently had the opportunity to carry out investigations in co-operation with scientists from a number of developing countries. On one research vessel, for example, nineteen scientists from various west African countries had participated in a special seminar organized by FAO. On other occasions, also on board Soviet ships, experts from Chile and Peru had participated in scientific work with their Soviet colleagues, and Egyptian and Iraqi scientists had taken part in expeditions.

Participation in scientific expeditions was of course only one of the measures which could help to increase the capabilities of the developing countries in the area of scientific research. There was much work to be done on such matters as the implementation of joint programmes, the transfer of scientific and technical information, joint action to assist the developing countries in establishing scientific research centres, and the setting up of machinery for transferring patented know-how. The question of the transfer of technology was, in his view, directly related to the principle of freedom of scientific research on the high seas, for unless that principle was upheld there could be no real international co-operation in the study of the oceans.

In July 1972 Bulgaria, Czechoslovakia, Hungary, Poland and the Soviet Union had signed a Declaration on Principles of Rational Exploitation of the Living Resources of the Seas and Oceans in the Common Interests of All Peoples of the World (A/AC.138/85). He suggested that that Declaration might offer a basis for the formulation of draft articles on the transfer of science and technology and more particularly on questions relating to fisheries and fishing. Article 4 of the Declaration expressed support for the struggle of developing countries to establish independent economies, and sympathy with their aspirations to create modern fishing industries of their own. It also noted the need for co-operation with the developing countries in the sphere of marine fishing, the need to assist the developing countries in the establishment of a modern marine fishing industry with the necessary shore installations and the need for aid in the training of national cadres for the fishing industry.

In his delegation's view transfers of science and technology must be based on agreements between the countries concerned, and the socialist countries would, on a bilateral basis, elaborate and implement programmes of technological transfers related to all aspects of marine research, resource exploitation and pollution control.

He drew attention to the draft article for a convention on scientific research in the world ocean submitted earlier by his delegation and those of Bulgaria, Poland and the Ukrainian Soviet Socialist Republic (A/AC.138/SC.III/L.31), article 5 of which dealt with the provision of assistance to developing and land-locked countries in matters relating to research and the training of scientific staff. Related provisions were contained in article 6 of his delegation's draft articles for a convention on general principles for the preservation of the marine environment (A/AC.138/SC.III/L.32). Those proposals might, he thought, provide a sound basis for the elaboration by Sub-Committee III of provisions relating to transfers of science and technology to the developing countries.

Mr. PAPAGEORGIOU (Greece) said that his delegation supported in principle the proposal that scientific research and the transfer of technology, which were closely interrelated, should be considered together by the Working Group established by the Sub-Committee for that purpose. Work in preparing the international Convention would be futile unless there was full co-operation on the question of transferring technology. Indeed, the concept that the sea beyond the limits of national jurisdiction belonged to the world community would be nothing but an empty theory if the technological achievements and inventions were not transferred to all countries for peaceful uses. Peaceful and productive co-operation between the peoples of the world depended upon allowing the developing countries equal use of technological achievements, which should themselves be considered as belonging to mankind as a whole.

His delegation believed that the proposed international machinery and the technologically advanced countries should direct their efforts towards transferring technology to the developing countries and training the latter's personnel. The supply of materials and systematic training would result in parallel activities taking place in the exploitation of the sea and in scientific research, from which considerable benefit would accrue to the international community. Greece, for its part, had already translated its views into action: its merchant marine schools were open to trainee officers from the developing countries. Those schools were equipped with the most advanced means of marine technology and scientific navigation and trainees from the developing countries could benefit from them on an equal footing with Greek nationals.

Mr. VELLA (Malta) said that his delegation considered that the United States proposal in the IMCO Council that a new marine environment protection committee should be set up under the auspices of IMCO would be prejudicial to the forthcoming Conference on the Law of the Sea. Such a step meant expanding IMCO's terms of reference, and it was therefore a constitutional matter, which involved all members of the United Nations. Since the Sea-Bed Committee was a preparatory Committee for the Conference on the Law of the Sea, it was directly affected by any proposal that conflicted with the objectives of the Conference. His delegation had no objection to the discussion of the issue in the Sub-Committee, although perhaps it was a matter that should be dealt with by the Main Committee. He read out to the Sub-Committee a statement made to the Council of IMCO on 5 June 1973 by Mr. Russel Train, in support of his own view that the establishment of a new IMCO subsidiary would be prejudicial to the work of the Conference on the Law of the Sea.

The question of the distribution of revenues from sea-bed resource activities was already a highly controversial question and it would be wrong to complicate it further by deciding that future revenue would be partly used to make a contribution to the cost of machinery created outside the Conference.

He had similar objections to the Kenyan proposal that the responsibilities and functions envisaged for the marine environment protection committee should be given to the United Nations Environment Programme, because the Conference on the Law of the Sea was the only machinery appointed by the General Assembly to undertake a general review of the law of the sea, including the establishment of an international body with competence in the marine environment. The United States and Kenyan proposals, and any other attempts to create new bodies with competence in the marine environment or to divert functions that the Conference might give to the future international authority would have a fragmenting effect and were contrary to the oft-stated view of the members of the Sea-Bed Committee that a unitary and comprehensive approach should be adopted. After all, the protection of the marine environment was one of the questions in the list of subjects and issues on which the Committee was working.

The meeting rose at 5.20 p.m.