

# **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/C.3/SR.11**

## **Summary records of meetings of the Third Committee 11<sup>th</sup> meeting**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (Summary Records of Meetings of the First, Second and Third Committees, Second Session)*

purpose of inspection. In that connexion he stressed the need to avoid, as far as possible, stoppage of ships in transit.

53. With regard to article 6, paragraph 2 of the draft, he said that the purpose of authorizing the coastal State or any port State, as well as the flag State, to initiate proceedings, was to impose obligations on as many States as possible to enforce the convention. Article 6 was consistent with article 8; article 6 dealt with proceedings, while article 8 dealt with enforcement of sentences.

54. With regard to article 7, he said that articles 2, 3 and 6, referred to in article 7, would not give land-locked countries the right to enforce the convention unless they were flag States.

55. Mr. HASSAN (Sudan), commenting on article 5, paragraph 2, of the draft articles submitted by Greece, expressed agreement with the representative of Bangladesh that the use of the word "serious" introduced a subjective element. He also suggested that the word "substantially" in article 5, paragraph 4, introduced another subjective element. If the certificate was valid, the condition of the ship should surely correspond substantially to the particulars in the certificate.

56. Mr. TIMAGENIS (Greece) said that the second sentence of article 5, paragraph 4, to which the representative of Sudan had referred, had been taken from the text of the International Convention for the Prevention of Pollution from Ships, adopted in London in 1973, and was therefore a negotiated and compromise text. In any event, article 5, paragraph 4, should be read with article 5, paragraph 1, which imposed the obliga-

tion for the flag State to inspect the ship regularly, and article 4, paragraph 3, which imposed the obligation for the flag State to issue a certificate after due inspection, the certificate being valid for all States parties. The coastal or port State inspecting a ship should ensure that a proper certificate had been issued; if it had, no further action would normally be taken; however, if the ship was apparently or substantially unseaworthy, despite the valid certificate, then the right of further inspection would be given to the coastal or port State.

57. Mr. MBOTE (Kenya), replying to comments made by the representative of Japan on the draft articles submitted by his delegation, said that the International Authority should be empowered to enforce compliance with provisions for the prevention of pollution in areas beyond national jurisdiction, because pollution in such areas could easily drift to areas under national jurisdiction. Some authority must ensure that the standards were complied with in the international area. Activities in the water column should also be controlled and regulated, perhaps not by the International Authority, but by some body such as the fisheries commissions of the Food and Agriculture Organization of the United Nations. His delegation did not feel that it would be too cumbersome to give the International Authority, whose establishment was being considered by the First Committee, powers to ensure that provisions for the prevention of pollution were complied with. His delegation would make the necessary relevant proposals in the appropriate forum.

*The meeting rose at 5.40 a.m.*

## 11th meeting

Monday, 5 August 1974, at 10.55 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

### Reports of the Chairmen of the informal meetings

1. The CHAIRMAN once again drew the attention of the Committee to the estimated time available for considering the items. Of the 22 working days remaining, four would be devoted to the general report to the plenary meeting, and at least three to official meetings of the Committee, leaving approximately seven days for each of the two items.

2. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment), said that in the previous week informal meetings had been held on 30 July and 1 August. At those meetings the revision or second reading of the texts prepared by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, covering the following documents and items, had been concluded: WG.2/Paper No. 12 on technical assistance; No. 13 on observation; No. 11 on the question as to whether economic factors should be considered in determining whether States were complying with their obligations under the convention with regard to land-based sources of pollution of the marine environment; No. 14 on the obligation of States to put an end to activities when they were denounced as in violation of international law; No. 15, containing various texts on rules governing sources of land-based marine pollution, marine and vessel-based sources of pollution, and on the competence of each State to establish rules.

3. As had been agreed previously, all the amendments submitted appeared in Conference Room Papers Nos. 5 to 9, which would be examined and studied by a small negotiating and drafting group.

4. On 1 August he had convened for the first time the special drafting group, which would consider all proposals officially submitted both to the sea-bed Committee and to the Conference, and also all suggestions and amendments submitted during the second reading and revision of the texts previously prepared, and any suggestions that might arise within the small special working group.

5. The group had already started its drafting work in connexion with the item "Special obligations of States" (WG.2/Paper No. 8/Add.2, and CRP/MP/3 and Add.1) and had before it a consolidated text, prepared by himself, with the help of the Secretariat.

6. On 1 August there had been informal discussions regarding a method of work suggested by the Chairman, with a view to conducting the study in an orderly and objective manner when dealing with the crucial questions of rules, jurisdiction and application.

7. It had not been possible to reach agreement at the meeting, but informal discussions had continued and a method of work had been decided on whereby the question of rules, jurisdiction and application would be studied, having regard to the source of the pollution to be controlled, since it had been agreed that the different sources of pollution called for different treatment, without prejudice to the fact that all the rules would later be considered as a whole.

8. Mr. METTERNICH (Federal Republic of Germany), speaking in his capacity as Chairman of the formal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that four meetings had been held the previous week.

9. The first reading of the question of marine scientific research as the basis for legal claims could be concluded with an agreement on the single compromise text contained in CRP/Sc.Res./3, with alternative disclaimers concerning rights of coastal States.

10. The discussion had continued during those meetings on items 2 (a) and (b) of the informal comparative table (CRP/Sc.Res./1). Many delegations had referred to both items and a number of amendments had been submitted. The proposals on item 2 (a) were included in documents CRP/Sc.Res./8/Rev.1, and CRP/Sc.Res./10, 11, 15, 18 and 24. The proposals on item 2 (b) appeared in documents CRP/Sc.Res./15 to 17 and 19 to 23.

11. After detailed discussion on both items it had been decided that the best course would be to send all the documents mentioned, together with the texts appearing in the informal comparative table, to a special negotiating group, which would do its best to draft a single text for each item, or at least to reduce the number of alternatives.

12. He was pleased to inform the Committee that the various delegations which held similar views had met to consider the texts and that it would be appropriate if all delegations which had submitted texts were to participate in that group, which would advise the informal meetings as soon as a consolidated text was ready.

13. The next informal meeting would begin to examine item 2 (c), but the convening of that meeting would depend on the progress made in the informal negotiating group.

14. The CHAIRMAN said that the progress was encouraging, but unfortunately there was still no formal proposal on item 14, with the exception of one which would be submitted during the current meeting.

15. He called the Committee's attention to the fact that there would be an opportunity to consider an introductory study prepared on the item by the Secretariat, which could serve as background material.

#### Preservation of the marine environment (*continued*)

##### [*Agenda item 12*]

16. Mr. STEINER (Secretary of the Committee) presented document A/CONF.62/C.3/L.3, which had been prepared by the secretariat of the Conference at the request of various delegations, and which dealt with the provision of basic information and background material that might serve as the basis for a later agreement.

17. Part I contained an introduction in which the meaning of marine technology was defined; it also included a table of marine activities.

18. Part II covered methods of acquiring and transferring marine technology, which were closely associated with the type of capability that the recipient country desired to acquire and also depended on the characteristics and situation of the marine resources, and the nature of the sea-bed in general.

19. Part III described the obstacles and problems connected with the acquisition and transfer of marine technology. Specific examples were given of certain problems that might arise, although it did not constitute an exhaustive review.

20. Part IV enumerated ways and means of improving the acquisition and transfer of marine technology. Among the different possible measures, mention was made only of the following: information needs; measures to meet the need for expertise and equipment; training and education; possible action at regional and subregional levels; and appropriate actions which might be taken by the United Nations.

21. Part V embodied a summary of the suggestions contained in the paper concerning possible action for enhancing the transfer of marine technology in order to facilitate the work of delegations.

22. Mr. JAIN (India) presented document A/CONF.62/C.3/L.6, entitled "Draft articles on a zonal approach to the preservation of the marine environment", sponsored by 10 countries, namely, Canada, Fiji, Ghana, Guyana, Iceland, India, Iran, New Zealand, Philippines and Spain. In preparing the document, the sponsors had taken into consideration the interests and viewpoints of the main interest groups represented in the Committee. According to his understanding, those were the following: first, the interests of coastal States whose main concern was to protect the marine environment of the seas adjacent to their coasts in areas under their national jurisdiction and/or sovereignty; secondly, the interests of the large shipping States, whose main concern was to protect shipping against such measures taken by the coastal States in connexion with the prevention and control of marine pollution as would, according to them, hinder the free flow of navigation; thirdly, the interests of the developing countries, whose main concern was their economic development, and which favoured such rules and measures as would protect their marine environment without hampering their economic development or imposing on them unduly burdensome environmental costs; and fourthly, the interests of countries situated in special or critical areas, such as enclosed or semi-enclosed seas or international straits which, because of their characteristic geographical features or for reasons of the passage of heavy international traffic in marine areas adjacent to their shores, were specially vulnerable to pollution.

23. He recalled that India had a long coastline of over 4,000 miles, and that a considerable volume of international shipping passed close to its shores. Moreover, India possessed a rapidly growing merchant fleet, and wished to ensure that its ships could visit all areas of the world without difficulty. Further, India was a developing country and desired to ensure that the environmental standards adopted did not impose unduly burdensome costs on its economy.

24. The zonal approach implied that, in a defined area adjacent to its coasts, which would be coextensive with its economic zone, the coastal State had certain rights and responsibilities in regard to management of the environment in that area. The essence of the proposal was contained in articles 6 to 9. Article 6 referred not only to the rights of coastal States, but also to their duties with regard to management of the marine environment within the zone. In articles 6 and 7, provision was made for the coastal State to have jurisdiction to take measures and enforce its laws and regulations for the purpose of preventing marine pollution in its economic zone. Article 7 provided that such measures, laws and regulations had to take into account internationally agreed rules, standards, recommended practices and procedures. In respect of vessel-based pollution, provision was made that the laws and regulations of the coastal State should conform with internationally agreed rules and standards, except in specially vulnerable areas, where the coastal State would be empowered to apply more stringent measures, although, in order to promote uniformity, those stricter measures, laws and regulations would be required to conform with accepted scientific criteria. The State adopting them was under an obligation to notify them to other States through the competent international organization.

25. Articles 8 and 9 laid down that the rights and jurisdiction of the coastal State in the zone had to be exercised in such a manner that they would not interfere unduly with other uses of the sea, such as freedom of navigation, overflight and the laying of cables and pipelines.

26. The interests and needs of the developing countries had been taken into account, first, in article 5, where it was provided that nothing in the articles should derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its obligations connected with pollution control; secondly, article 3, paragraph 1, provided that States should take all necessary

measures for marine pollution control from any source, using the best practicable measures in accordance with their capabilities and national environmental policies.

27. The various obligations relating to the control of pollution from different sources were laid down in articles 1 and 2. Article 2, paragraph 2, dealt with regional co-operation.

28. At the end of the proposal, it was stated that further provisions would be necessary on the mechanism for the formulation of rules and standards, and enforcement thereof outside the zone, as well as on the questions of liability, intervention and other matters.

29. In conclusion, he said that, when the word "rules" was used in the English text, that referred basically to principles, whereas the word "regulations" referred to the practical translation of such principles into laws, agreements and other legal provisions.

30. Mr. SADEGHI (Iran) said that, in drafting document A/CONF.62/C.3/L.6, the sponsors, including his own country, had encountered certain difficulties in arriving at general agreement on the different texts, since not all of them shared the same positions with regard to the issues embodied in the draft articles. Nevertheless, they had overcome the difficulties referred to in a spirit of furthering the work of the Conference and because the draft articles, as was indicated in the introduction, did not imply the withdrawal of official proposals that had already been submitted. The document was incomplete, especially with regard to the provision concerning special zones and regional agreements. His delegation attached great importance to that subject and hoped that additional articles would be prepared. He hoped that the draft submitted would serve as a basis for discussion and that general agreement would be reached on the subject.

31. Mr. MANSFIELD (New Zealand) said that his country, as a sponsor of the draft articles on a zonal approach to the preservation of the marine environment did not consider that the articles established a final position. There were undoubtedly omissions and imperfections which were, in part, a reflection of the fact that the sponsors were drawn from different regions and groupings and also of the fact that they had been working against time. Nevertheless, his delegation believed that the paper constituted a positive contribution to the negotiations which would have to be carried out if a final agreement was to emerge on the issues bearing on marine pollution.

32. Referring to the points to which his delegation attached particular importance, he drew attention first of all to the establishment of a global approach to the protection of the marine environment. In its general statement on item 12 at the 4th meeting, his delegation had already reiterated the need for an "umbrella" treaty dealing with all aspects of pollution of the seas. That approach, which had found general acceptance, was carried forward in the draft articles. In article 1, the fundamental general obligation of States to protect and preserve the marine environment was stated. Then, there was the more specific obligation to take the measures necessary to prevent pollution of the marine environment from all possible sources. The broadness of that obligation and its consequent importance were indicated in article 3. The need for that broad approach, to encompass pollution from sources as different as sea-bed drilling, sewage, oil discharges, radio-active releases, and factory and car exhausts was obvious when it was realized that by far the greatest amount of pollution finding its way into the sea did not originate in activities carried out on or under the sea itself. Coupled with the obligation to prevent pollution of the marine environment, as set forth in article 3, there was the other equally important obligation on States to ensure that activities under their jurisdiction or control did not cause damage outside their own areas of jurisdiction, whether to other States or their environment or to the areas of the marine environment not under the jurisdiction of any State. Of course, the obligation not to cause damage to other environments

encompassed a duty to avoid deliberate acts which constituted a hazard to those other environments.

33. The second important element in the draft articles was the provision in article 6 that within the economic zone the coastal State had certain rights and duties in respect of the preservation of the marine environment. It should have an over-all management responsibility for the economic zone, and consequently its jurisdiction in respect of the resources must go hand in hand with jurisdiction in respect of the preservation of the marine environment which supported those resources.

34. Article 7 established the coastal State's power to enact laws and regulations applicable to the zone which should take into account international standards or be adjusted to conform to them, where applicable. However, where international standards were either not in existence or were inadequate, coastal States might adopt reasonable, non-discriminatory laws and regulations additional to or more stringent than the internationally agreed rules and standards. In respect of ship design and construction standards, the residual power could only be used where those higher standards were made essential by exceptional hazards to navigation or the special vulnerability of the marine environment. That residual power of the coastal State was carefully circumscribed in the draft articles, which should therefore meet the concern of those who feared that such powers might give rise to the emergence of conflicting standards, while at the same time it should protect the essential interests of the coastal States in the preservation of their marine environment. In any case, his delegation was ready to discuss additional safeguards in respect of the exercise of such residual powers.

35. He drew attention to the note at the end of the document to the effect that further articles would be needed, including provisions for the peaceful settlement of disputes. The New Zealand delegation attached considerable importance to the elaboration of a provision under which the exercise by the coastal State of the residual power provided for in article 7 could be subject to review.

36. Mr. SANDERS (Guyana) thought that specific mention should be made of measures designed to prevent or minimize the release of noxious or harmful substances from structures such as aerodromes, cities and recreational sites within the marine environment. In that connexion, he referred to reports that mobile floating airports were technically feasible and that *floating sea-cities* had already been proposed. "Underwater tourism" had already been developed. There was, therefore, a need to provide for the prevention of pollution from such sources.

37. Mr. NIKOI (Ghana) said that his delegation, which was a sponsor of the draft articles in question, associated itself with the views expressed by the representative of India when introducing them. The articles expressed the zonal approach to the solution of the problem of preserving the marine environment and his delegation, which supported the economic zone concept, considered that the coastal State, as a consequence of its jurisdiction over the economic zone, had the obligation to preserve the marine environment and to take adequate steps, commensurate with its capabilities and resources, to control and prevent pollution. Those measures were necessary to preserve the resources of the zone, particularly the living resources. While his delegation did not dispute the need to agree on international standards in that respect, they should not prejudice the sovereign rights of States to determine their own national standards.

38. Mr. LEGAULT (Canada) said that the draft articles of which his delegation was also a sponsor, attempted to set out the basic elements of an approach to the problems of marine pollution that was both zonal and functional; zonal in that it was founded on the concept of the economic zone or patrimonial sea, and functional in that it recognized that environmental management was inseparable from resource manage-

ment and that the marine environment could be effectively protected only by global, regional and national measures.

39. Although the draft articles did not represent a complete convention, he hoped that they at least made clear the nature and extent of the coastal State's jurisdiction in respect of marine pollution within the economic zone and would facilitate analysis of the question.

40. The nine draft articles were based to a great extent on the work of the marine pollution working groups of Sub-Committee III of the sea-bed Committee. They laid down the obligation of States to protect and preserve the marine environment; to co-operate to that end on a global and regional basis; to adopt measures for the prevention of pollution from all sources; and not to cause damage to areas beyond their national jurisdiction, including damage to other States and their environment, by pollution of the marine environment. The sponsors hoped that in all those respects, the draft articles represented the emerging consensus of the Conference.

41. He hoped that the draft articles would help to solve two important problems: first, the consideration to be given to the developing countries in devising measures for the prevention and control of marine pollution and, secondly, the rights and obligations of coastal States in respect of ship-generated pollution within the economic zone or patrimonial sea.

42. With regard to the first problem, draft articles 2, paragraph 1, and 3, paragraph 2, and 5, attempted to strike the proper balance between the need for strong, effective measures of environmental preservation and the need to keep those measures within the limits of the capabilities of the developing countries. If the convention were to be ratified and implemented by the developing countries, there must be a realistic approach to that question. While all countries had the same environmental duties, all had not the same ability to discharge them. It should also be remembered that the developing countries were not the greatest polluters of the marine environment.

43. With respect to the problem of ship-generated pollution, draft article 7 tried to reconcile the legitimate concern of all States to maintain international commerce and communication by sea and the equally legitimate concern of coastal States to protect their environment. Consequently, it required that the laws and regulations of coastal States regarding that type of pollution should conform to internationally agreed rules and standards. It also recognized the right of coastal States to adopt stricter national rules and standards where no international standards existed or where they were inadequate, and distinguished between the coastal State's right to adopt ship-discharge standards, for instance, and its right to adopt ship design and construction standards in strictly defined circumstances where hazards to navigation were exceptionally great or the environment especially vulnerable. Finally, it introduced additional safeguards by providing for the submission of national rules and standards to the competent international organizations, with the object, so far as his delegation was concerned, of having such standards put on an international basis if possible. Thus draft article 7, together with draft articles 8 and 9, tried to meet the fears that the rights of coastal States in respect to ship-generated pollution would lead to distinct, contradictory standards that would make international shipping virtually impossible. His delegation was prepared to work with other delegations to elaborate that approach further and to develop further safeguards.

44. In conclusion, he emphasized the note at the end of the document to the effect that further articles would be needed concerning certain subjects. His delegation would like to add to that list the question of sovereign immunity and the matter just raised by the representative of Guyana.

45. Mr. BAKULA (Peru) said that the zonal approach of the draft articles had the merit of bringing the Committee nearer to attaining its aims. The problem of pollution was not purely technical and should be considered in the true context of inter-

national relations and prevailing economic and social structures. From that point of view, it could be seen that the problem of the preservation of the environment and that of sharing the wealth resulting from the capitalist system and in particular colonialism—with its two extremes of an affluent, consumer society for some and poverty for others—constituted a single problem which should be understood and treated in the same way. In that context, the zonal approach came close to being the effective way of dealing with pollution questions.

46. He then commented in detail on the draft articles on the basis of document A/AC.138/SC.III/L.47 and Corr.1, submitted at Geneva by his and other Latin American delegations.

47. First, draft article 2 should take account of paragraphs 10, 11, 12 and 13 of the Latin American document, which were more specific with regard to international co-operation, concerning both the limit within which the coastal State exercised sovereignty and jurisdiction and the so-called high seas, which should henceforth be called the international sea. Secondly, in draft article 3, paragraph 2, the formula for the activities subject to jurisdiction or control did not cover the rights of sovereignty or jurisdiction proclaimed and exercised by many countries. In that connexion, it should be more clearly stipulated that the measures adopted by the coastal State to protect and preserve the marine environment from pollution should not transfer the effects of that pollution from one area to another. Thirdly, that article, which mentioned various sources of pollution of the marine environment, should specifically include a sentence concerning nuclear experiments and explosions, which affected marine fauna and even endangered human life. The reference to the discharge of noxious and harmful substances was inadequate. Fourthly, draft article 5 referred to the sovereign rights of coastal States, an expression which should be used in the other articles also. Fifthly, draft articles 6 and 7 contained fundamental aspects of the zonal approach which were not identical with his delegation's position. He would therefore suggest certain amendments to the sponsors of document A/CONF.62/C.3/L.6, after consultation with the other sponsors of document A/AC.138/SC.III/L.47 and Corr.1. Lastly, with regard to article 9, which referred to freedom of navigation and overflight within the zone, his delegation reminded the Committee that the Second Committee was studying other concepts which it considered more appropriate; it therefore seemed advisable to postpone any decision on the matter.

48. The Secretariat's report on problems of acquisition and transfer of marine technology (A/CONF.62/C.3/L.3) should be studied with the utmost attention. Paragraph 60 stated that initiatives had yet to be taken regarding marine activities which would fill important gaps in the dissemination of knowledge and application of marine technology. His delegation therefore requested the Secretariat to ensure that the Ocean Economics and Technology office of the United Nations continued to prepare its technical studies, which made an important contribution to the transfer of technology.

49. Mr. RASHID (Bangladesh) noted with satisfaction that the sponsors of document A/CONF.62/C.3/L.6 had endeavoured to introduce a zonal approach in dealing with the preservation of the marine environment, an approach his delegation fully supported.

50. His delegation assumed that the obligation stated in article 1, to protect and to preserve the marine environment, referred to national jurisdiction, since the problem could arise within or outside national jurisdiction; it was necessary, therefore, to ensure co-ordination between both jurisdictions. A further consideration was the need to include some basic definitions concerning pollution.

51. With respect to article 2, paragraph 2, he believed that it should be so drafted as to impose a strict obligation upon States.

52. Article 3, paragraph 2, should include the activities that caused damage. Furthermore, the term "measures" and the expression "the best practical means in accordance with their capabilities" in paragraph 1 of article 3 required clarification, since the measures could include legislative and legal measures, and the practical means could include scientific, technical and economic means.
53. Articles 6 to 9 dealt with matters related to the economic zone and had been referred to the Second Committee for consideration. To deal with them would merely be a duplication of effort.
54. Mr. BUHL (Denmark) said that article 7, paragraph 3 (b) (i) of the document, set forth the principle that in respect of ship-generated pollution the laws and regulations of the coastal State should conform to international agreed rules and standards. However, paragraph 3 (b) (ii) seriously weakened that basic principle since it authorized unilateral promulgation of laws and regulations, something which should be avoided at all costs. His delegation considered that one of the basic objectives of the Conference was to strengthen common endeavours to combat marine pollution while at the same time avoiding unnecessary interference with legitimate uses of the sea, such as shipping.
55. A number of international organizations had been actively engaged for several years in developing standards governing the design, construction, equipment and manning of ships, and Denmark had full confidence in the effectiveness of those organizations, particularly the Inter-Governmental Maritime Consultative Organization (IMCO).
56. The previous week, the Swedish delegation had submitted a draft on the promulgation of more stringent standards to prevent vessel-source pollution within special areas. Those rules would apply to the construction, design, equipment and manning of ships but would not enter into force until they had been approved by the competent international organization.
57. The Danish delegation considered that it was essential to maintain international standards in these specific fields, since otherwise contradictory standards might be promulgated, to the detriment of all countries. He agreed with the basic considerations in document A/CONF.62/C.3/L.6 and supported the informal proposal by Sweden.
58. Mr. MOLTENI (Argentina) said that his delegation supported the zonal approach adopted in document A/CONF.62/C.3/L.6, since the coastal State possessed competence and jurisdiction to prevent the deterioration of the marine environment within the 200-mile zone, and since any regulations on ship-generated pollution should strike a reasonable balance between all interests, namely those concerning protection of the environment and those concerning shipping.
59. Experience had shown that the systems hitherto adopted by the international community to protect and preserve the marine environment had proved inadequate, and that the only effective means of ensuring implementation of international standards was to give the coastal State powers to that effect, since that State had a vested interest in ensuring that no damage would be caused in the maritime space facing its coast.
60. On the question of pollution from vessels, he said that the flag State had traditionally been given primary responsibility for the application of those standards, but not all States had shown the same diligence in enforcing them. That was why the alternative solution had been proposed of giving the coastal State powers to enforce international standards within the 200-mile zone adjacent to its territory, regardless of the flag State.
61. Obviously such a system would not prove fully effective unless the international community ensured that the largest possible number of States participated in the elaboration of the relevant standards and that all interests were represented.
62. The Argentine delegation considered that the coastal State should adapt its laws and regulations to any agreed international standards, and also that its national standards should be reasonable and non-discriminatory.
63. He further considered that if the coastal State adopted standards additional to those internationally agreed, some States might impose arbitrary or discriminatory restrictions on the access of ships of developing States to its sea-coast, thereby controlling and regulating international maritime traffic to the detriment of those countries whose economic situation precluded renovation and modernizing of their merchant fleets.
64. Consequently, he could not approve of the existing wording in article 7, paragraph 3 (b) (ii), of document A/CONF.62/C.3/L.6, which provided for the possibility, in certain circumstances, of adopting laws and regulations additional to and more stringent than the internationally agreed rules and standards. The preservation of the marine environment should be an international concern, and the text did not provide sufficient safeguards in that respect, since it did not spell out the special circumstances mentioned in the text of that article. The Argentine delegation was prepared to co-operate in solving that problem.
65. Mr. MBOTE (Kenya) said that his delegation had always supported the concept of an economic zone and therefore supported document A/CONF.62/C.3/L.6. Nevertheless, the document was incomplete and certain amendments were required to make it more generally acceptable. His delegation had submitted document A/AC.138/SC.III/L.41 to the sea-bed Committee, which stated in article I, that all States had the right to establish a marine pollution control zone within which they would exercise jurisdiction to control activities for the purposes of preventing or minimizing damage to the marine environment. Prevention of pollution was part of the management of marine resources.
66. The draft articles in document A/CONF.62/C.3/L.6 followed that approach and were therefore supported by Kenya.
67. Mr. PERRAKIS (Greece) said that article 7, paragraph 3, (b) (ii) gave ground for concern, as it sought to combine two concepts which in his opinion were not necessarily compatible. There was a contradiction between that provision and article 2 of the document: while it was provided, in article 2, that States should co-operate on a global basis and, as appropriate, on a regional basis, to formulate and elaborate treaties, rules and standards, it should not be left to the judgement of individual States to determine such rules or provisions as suggested in article 7, paragraph 3 (b) (iii). Further, the approach should vary depending on the existence or non-existence of international rules. In the latter case, i.e. if the coastal State had no rules on pollution to guide it at the international level, it would decide what rules it considered appropriate to protect its marine environment and would try not to interfere unduly with traditional maritime usages. On the other hand, if relevant international rules did exist, it was not for the coastal State to decide whether they were or were not adequate, as that would mean introducing an element of arbitrariness and uncertainty, which would hinder the necessary uniformity, without prejudice to that State's right to approach the appropriate organizations and state its reasons for believing that those rules were not adequate.
68. Mr. MANANSALA (Philippines) said that the statements of previous speakers with regard to the draft articles made it unnecessary for him to speak on the item. The document set forth the obligation of each State to protect the marine environment. He supported the draft articles and thought that they constituted an appropriate basis for consideration by the Committee.
69. Mr. DEMPSEY (Ireland) said that, generally speaking, he agreed with the delegation of New Zealand that coastal States should have the primary responsibility for preserving the

marine environment adjacent to their shores. He concurred with the delegation of Argentina that the coastal State being the one most affected by the problems connected with pollution of its waters also had the greatest interest in taking whatever steps were necessary. He therefore approved of the concept of a pollution zone within which the coastal state would establish and enforce standards and regulations. He welcomed the draft articles in so far as they reflected that concept and reserved the right to revert to the matter at a later stage.

70. Mr. JAIN (India) said that the comments by various representatives regarding the draft articles were extremely constructive.

71. The suggestion by the representative of Bangladesh that definitions should be included was very useful and perhaps the definitions given in the draft articles submitted by the delegations of Kenya (A/AC.138/SC.III/L.41) and Canada (A/AC.138/SC.III/L.28) in Sub-Committee III of the sea-bed Committee could be used.

72. As for the comments of the representative of Bangladesh on the scope of article 1, he explained that the obligation of States to protect and preserve the marine environment included not only areas under national jurisdiction, but also the marine environment outside national jurisdiction.

73. In regard to the suggestion made by the representative of Peru to use the words "rights of sovereignty" in article 3, he thought that the matter should remain in abeyance until the decisions of the Second Committee, which was studying the question of a patrimonial sea, were known.

74. The concept of "damage" in article 3, paragraph 2, referred to by the representative of Bangladesh, was the legal concept of damages and was bound up with the question of liability.

75. Concerning articles 6, 7 and 9, he did not agree with the representative of Bangladesh that they should be dealt with by the Second Committee. The Second Committee was examining the problem from another angle, and the Third Committee had to consider the whole question of the conservation of the marine environment from its own viewpoint. Moreover, those articles constituted the basis of the entire draft.

76. In regard to article 7, paragraph 3 (b), on ship-generated pollution, about which several delegations had expressed their concern, he thought that there should be uniform rules but that account should also be taken of the fact that there were special situations arising from geographical circumstances, intensity of traffic, etc. He pointed out that the draft provided for various safeguarding measures and required that any national laws and regulations to deal with the situations referred to should have a scientific foundation. Further, any special measures introduced should be brought to the notice of the appropriate international organizations.

77. Mr. LEGAULT (Canada) said he agreed with the remarks of the representative of India and, with regard to the legitimate concern expressed by the delegations of Denmark, Argentina and Greece, he explained that there was no intention of permitting a coastal State to introduce arbitrary or discriminatory rules.

*The meeting rose at 1.20 p.m.*

## 12th meeting

Monday, 5 August 1974, at 3.25 p.m.

*Chairman:* Mr. A. YANKOV (Bulgaria).

### Scientific research (continued)\*

[Agenda item 13]

1. Mr. BOHTE (Yugoslavia), referring to the document (CRP/Sc.Res./24) which had just been distributed, asked why it had not been formally introduced at the informal meetings on scientific research. He would also like to know what had become of the proposal made by Peru and supported by Yugoslavia that the representative of the United Nations Conference on Trade and Development (UNCTAD) should be invited to make a statement to the Committee on the transfer of technology.

2. The CHAIRMAN said that the document to which the Yugoslav representative had referred was part of the second progress report of the Chairman of the informal meetings on scientific research, who happened to be the representative of the Federal Republic of Germany.

3. Mr. BREUER (Federal Republic of Germany), speaking on behalf of the participants in the informal meetings, agreed with the Yugoslav representative that the document had not been formally presented; its appearance had merely been announced by one delegation at the meeting held on 31 July; as it was to be distributed on 5 August, the sponsors had had no objection to its being mentioned in the progress report.

4. Mr. STEINER (Secretary of the Committee), replying to the Yugoslav representative's second question, said that when the proposal had been made, the UNCTAD representative had

already left Caracas. Another UNCTAD representative was to take part in the work of the Conference, but he had not yet arrived; in that connexion he pointed out that that representative might not be fully conversant with the question under discussion. In any event, the Secretariat would inform him of the Third Committee's invitation and he was sure that it would be accepted.

### Preservation of the marine environment (continued)

[Agenda item 12]

5. Mr. HARAN (Israel) introduced document A/CONF.62/C.3/L.5. Article 1 was in line with a trend that was emerging in international law, namely, to make offences that might have serious consequences for the international community, such as hijacking of aircraft or other acts of illegal interference with civil aviation, considered crimes *jure gentium*. All States were under an obligation to punish such crimes by appropriate penalties and it was particularly appropriate that such an obligation should apply to offences against the marine environment. During the general debate his delegation had already pointed out the difficulty of proceeding rapidly and effectively against those who caused damage to the marine environment. Article 1 was designed to ensure prompt prosecution and punishment of such offences.

6. Article 2 aimed at facilitating and speeding up legal proceedings by providing that documentary evidence submitted by the competent authorities of one State would be admissible in the courts of another State. Those two articles were comple-

\* Resumed from the 9th meeting.