

Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the Third Committee 12th meeting

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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.

mentary to those of Kenya (A/CONF.62/C.3/L.2) and Greece (A/CONF.62/C.3/L.4) as well as to the proposal of the Federal Republic of Germany (A/CONF.62/C.3/L.7), which he supported.

7. Miss AGUTA (Nigeria), introducing the draft articles contained in document A/CONF.62/C.3/L.8, said that the concept of the common heritage of mankind would be meaningless unless it was accompanied by the development and transfer of technology. There were four essential aspects to that concept: first, all men, living in both developed and developing countries and irrespective of their geographical situation, were heirs to the common heritage; secondly, the developing countries must have control of the exploration and exploitation of their own resources within their national jurisdiction; thirdly, those countries must be assisted to attain their economic independence; and fourthly, there must be a levelling up of world living standards.

8. Her delegation was happy to see that its proposals corresponded to the four aspects singled out by the Secretariat in document A/CONF.62/C.3/L.3, namely, development of technological capabilities of developing countries; sharing of knowledge and technology between developed and developing countries; training of personnel from developing countries; and transfer of technology to developing countries.

9. The problem of the development and transfer of technology which the Committee was considering was complex and delicate; it should therefore be approached with great care, but with realism. Her delegation had tried to formulate an approach whereby standards would be made uniform, gaps bridged and the acquisition of knowledge facilitated, information disseminated to all and benefits equitably shared.

10. Taking the draft articles one by one, she pointed out that article 1 aimed at ensuring an adequate and equitable transfer of technology, for to promote the concept of the common heritage of mankind there must be equal opportunity for all its heirs.

11. In article 2 her delegation had tried to map out methods by which that goal could be achieved, namely, by the establishment of regional and subregional centres responsible for training and education, advanced management studies and the prompt publication of results.

12. Article 3 made provision for the issue of exploration and exploitation licences and for the in-service training of the nationals of developing geographically disadvantaged countries; it also linked scientific research with development and the transfer of technology. Paragraph 2 of the same article would make available to every State the blueprints and patents of plant and machinery used in the exploration and exploitation of the international area. Paragraph 3 ensured that States which originated the blueprints and patents would not lose but gain by their contribution to mankind. Paragraph 4 took care of the needs of the developing countries in that sphere.

13. It was obvious that no regulations could be enforced without co-operation; that was why her delegation suggested in article 4 that all States should co-operate actively with the International Sea-Bed Authority in the achievement of the noble ideal of a common heritage.

14. If the level of living of the developing countries was raised and if the concept of the development and transfer of technology was promoted, the general living standards of the entire world would automatically rise.

15. Some delegations had already supported the draft articles she had introduced; her delegation hoped that they would command general support.

16. Mr. JAIN (India) said that the draft articles submitted by Nigeria were most interesting; however, he thought they should contain a reference to the principle of non-discrimination.

17. Mr. KIRTON (Jamaica) said that his delegation's approach to the question of the preservation of the marine envi-

ronment was guided by five basic considerations: the need clearly to define and delimit the jurisdictional competence within the various maritime zones; the need to establish objective scientific and technological criteria for the formulation of rules, standards and recommended practices; the necessity of bearing in mind the interaction between the physical, human and biological activities that were constantly taking place in those zones and their consequent implications for the formulation and implementation of rules, standards and recommended practices; the need to strike a proper balance between the integrity of the marine environment and other legitimate uses of ocean space; lastly, the need to recognize a new economic and social order in which the industrial and economic development of the developing countries was to be speeded up.

18. His delegation had considerable sympathy with the zonal approach, provided that in the maritime zones in which national jurisdiction extended beyond 12 miles, developing geographically disadvantaged countries such as Jamaica would have a right of access to the living resources. The competence to establish rules and standards and recommended practices would lie with the coastal States in the case of zones lying within their national jurisdiction, whereas the Authority managing the common heritage of mankind would be competent in the zone beyond national jurisdiction, subject to the powers of international organizations such as the United Nations Environment Programme (UNEP) and the Inter-Governmental Maritime Consultative Organization (IMCO) with regard to co-ordination and technical matters. In the exercise of that competence, the Authority should ensure that standards were formulated according to objective scientific and technological criteria, that particular emphasis would be placed on regional characteristics, and that the standards would be sufficiently high but not beyond the economic capacity of developing countries and would not prevent them from continuing their economic development programmes.

19. In that respect, a distinction made by the International Civil Aviation Organization (ICAO) regarding the régime applicable to the air might provide a pointer in the solution of the dilemma between standards and recommended practices. The standards would constitute the indispensable minimum for effective regulation and would be binding in character, whereas the recommended practices would constitute desirable objectives to be attained according to each country's capacity. That system would recognize the legitimate fears of the developing countries while at the same time respecting the need to develop science and technology; it would also recognize the moral obligation of the developed countries to take all possible measures to redress the balance of nature, which had been disturbed by centuries of pollution for which they were responsible.

20. If special competences within the various maritime zones were to be recognized, the existence of legitimate rights and uses by others in such zones must also be recognized. Accordingly, standards for the preservation of the marine environment should not be formulated in such a way as to interfere unduly with the legitimate exercise of such rights as innocent passage and freedom of navigation or of the rights of developing geographically disadvantaged States.

21. The Conference would have to determine the ways in which the obligations created by the new convention in relation to the preservation of the marine environment would be implemented; it would also have to determine the responsibilities and liabilities that would arise from failures to respect those obligations. His delegation considered that it would be the duty of States to incorporate in their domestic law any obligations arising under the future convention in matters falling within their jurisdiction. However, liability for any damage arising from failure to comply with those obligations must rest with the person committing the act. It would be quite intolerable to make the State liable simply because the act had been committed within its jurisdiction. In that connexion, the Jamai-

can delegation considered that the proposal in document A/CONF.62/C.3/L.6 placed undue emphasis on the obligations of States. That was particularly true of article 3, paragraph 2, which provided that "States shall take all necessary measures to ensure that activities under their jurisdiction or control do not cause damage to areas beyond their national jurisdiction . . .".

22. Most of the developing countries might well find themselves unable to take such measures in an extensive jurisdictional area. It seemed impractical, bearing in mind the right of freedom of navigation, to guarantee that all activities carried on in that zone would never cause damage outside the zone, and it would be unrealistic to expect States to accept liability for such damage. That was why it was necessary to distinguish clearly between the obligation of the State to prescribe standards, on the one hand, and the liability of the person who committed the act that caused the damage, on the other.

23. Jamaica was located in an area where a very great number of maritime activities were carried on and it was exposed to all the dangers of pollution. For that reason it was prepared to cooperate in finding effective and generally acceptable solutions.

24. Mr. BOTHERA (South Africa) stressed that the problem of marine pollution, especially ship-based pollution, was of vital importance to his country. Indeed, South Africa was a country with one of the longest coastlines relative to its total land area. The major ocean currents flowing along the coasts of his country affected not only its own shores, but also the shores of countries very far afield, such as Australia, New Zealand, Madagascar, Mauritius, Brazil, Uruguay and Argentina. The danger of pollution along the southern coast of South Africa had been increased, on the one hand, as a result of the conclusion of the International Convention on Load Lines of 1966 and, on the other, because of most unfavourable sea conditions. The number of vessels rounding the tip of South Africa had increased greatly during the past 10 years: more than 60 per cent of the total volume of oil carried by sea passed close to the shores of South Africa. The risk of accidents—and some had already occurred—was therefore very great.

25. Land-based pollution was likewise causing serious concern, and the South African authorities were endeavouring to combat it; in contrast, they were unable to prevent or control ship-based pollution. Because of inadequate international arrangements, especially with regard to coastal State jurisdiction, South Africa had to spend large amounts of money on equipment and cleaning operations in order to minimize the effects of pollution caused by spillages or discharges.

26. The various proposals that had already been advanced placed the responsibility, broadly speaking, for combating ship-based marine pollution on the flag State, the port State and the coastal State. The South African delegation believed that internationally agreed standards and criteria were prerequisites for effectively controlling marine pollution on a worldwide basis. Only in cases of emergency should the coastal States be empowered to intervene.

27. The South African delegation would support any proposal granting suitable powers of enforcement to the flag State, the port State or both. It was, however, also necessary that the coastal States should be endowed with strong and effective powers of enforcement.

28. Mr. VELLA (Malta) said that his delegation approved, in its broad outlines, the report entitled "Problems of acquisition and transfer of marine technology" (A/CONF.62/C.3/L.3), which constituted a valuable source of information for the developing countries. It was obvious that the study could not be exhaustive because of the nature of the subject itself. Technology was never at a standstill, and it would perhaps be useful if the Secretariat would keep the study up to date.

29. Section E of part IV, which was entitled "Appropriate actions which may be taken by the United Nations", showed the

limitations of the study. It was to be noted that some of those measures would entail financial implications whereas others would not involve additional expenditure.

30. The delegation of Malta wished to associate itself with that of Peru in requesting the Secretariat to prepare a study, for use at the next session of the Conference, on the uses of ocean space mentioned in paragraph 60 of the report. It could be a short informative study, describing the various types of technology and use of ocean space, and the possibilities of transferring those types of technology. The uses of ocean space had important implications for the law of the sea in general, and a study by the Secretariat on that subject would be of great value to the Conference.

31. Mr. JAIN (India), replying to the comments of the Jamaican representative on Article 3, paragraph 2, of document A/CONF.62/C.3/L.6, said that Jamaica's concern was most understandable. Nevertheless, if the intention really was to prevent pollution of the marine environment, it would hardly be possible to restrict the scope of the measures envisaged. He wished to point out, however, that the word "damage" must not be interpreted to mean actual damage; the word should be understood in its legal sense. Thus, since what was at issue was a legal concept which covered the extent to which the law took damage into consideration, he did not think there would be any difficulty about its adoption.

32. Mr. BREUER (Federal Republic of Germany) said that, before introducing document A/CONF.62/C.3/L.7, he would like to make a few general observations. As it had already indicated when the general statements were being made, the delegation of the Federal Republic of Germany considered that the essential task of the Conference, as far as preservation of the marine environment was concerned, consisted in improving and further elaborating the international and regional conventions on ship-based pollution which had been concluded in earlier years. For that reason, the draft articles that his delegation was submitting dealt mainly with that aspect of pollution. The text concentrated on the enforcement of regulations in that respect and in particular on the crucial issue of ship inspection. The question of criminal jurisdiction, while closely related to the enforcement problem, posed quite different problems and hence should be dealt with separately. His delegation was ready to submit a draft article on that topic at a later stage.

33. The arguments of delegations which advocated the so-called "zonal approach" were not very convincing, either from the point of view of the protection of the marine environment or from that of the protection of coastal States' marine resources. The marine environment and its resources could only be effectively protected if the oceans were treated as an ecological unit. Pollution control zones could deal only with the problems caused by pollution incidents occurring within those zones. Ships at sea were a potential source of pollution everywhere and harmful substances discharged by them outside such zones could drift into those zones without the coastal State's being able to take enforcement measures against those ships. Furthermore, there were considerations of principle which argued against the establishment of environment protection zones to control vessel-source pollution on the high seas. The argument most frequently put forward in favour of the establishment of such zones was that coastal States were in general more vigilant than flag or port States in carrying out their responsibilities. If that were true, land-based pollution, for which coastal States were largely responsible, would not be the principal source of marine pollution. His country, as a coastal State as well as a flag and port State, rejected that assumption for the following reasons: international law regulated relations between States and as such was based on the principles of sovereign equality and non-discrimination. The new law of the sea must not therefore contain provisions which undermined those essential foundations. However, his delegation believed that States did not neglect their environmental responsibilities

intentionally, but because they did not possess the administrative and other means to carry out those obligations effectively. Flag States were not the only ones which faced those difficulties; the great majority of coastal States would find themselves in the same situation if they were to assume the responsibility for controlling such vast areas of the sea.

34. His delegation therefore preferred a system of pollution prevention measures based on international co-operation, thus avoiding the risks of dividing up large areas of the high seas into national pollution control zones.

35. In the draft articles in document A/CONF.62/C.3/L.7, his delegation had tried to elaborate the main elements of such a system. Since they conferred the various control functions in

each case on the State which seemed the most appropriate to exercise them effectively, the approach might be called "functional".

36. Since the draft articles were not yet available in all languages, he read out the various articles, drawing particular attention to article 4, which empowered a coastal State to board any ship suspected of having substantially polluted the high seas in the vicinity of its territorial sea and, after inspecting that ship, to send a report to the competent international organization and to the flag State.

37. He reserved the right to make a further statement concerning the draft articles he had just introduced.

The meeting rose at 4.35 p.m.

13th meeting

Friday, 9 August 1974, at 10.55 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Reports of the Chairmen of the informal meetings

1. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment) said that at those meetings a method of work had been adopted that would enable delegations to continue working in an orderly manner. It had been decided to cover the following subjects: pollution from land-based sources; marine pollution from activities concerning exploration and exploitation of the sea-bed within the areas of national jurisdiction; marine pollution from activities concerning exploration and exploitation of the sea-bed beyond the areas of national jurisdiction; pollution from vessels (flag State, coastal State, port State); marine pollution from the atmosphere; pollution from dumping of wastes in the sea (flag State, coastal State, port State); and other sources of marine pollution.

2. It only remained to undertake the difficult task of drafting provisions on those and other topics in the small drafting and negotiating group.

3. Mr. METTERNICH (Federal Republic of Germany), speaking in his capacity as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that the consultation and negotiation group set up at the informal meetings had worked out texts for two articles, and three paragraphs of a third article. Negotiations would continue on a further paragraph of that article.

4. As soon as a consolidated position was reached among delegations concerning rules of conduct for marine scientific research and consent, and participation and obligations of coastal States, the consultation and negotiation group would start working out texts on those items, which would then be submitted to the Committee, meeting informally.

5. It was hoped that the consultation and negotiation group would that day end its task of drafting an agreed text on general conditions for the conduct and promotion of marine scientific research. There would then be an informal meeting for a first reading of the third item of the informal comparative table (CRP/Sc.Res./1).

6. If there was time, the informal meeting could then begin its first reading of the fourth and fifth items and then go on to discuss a number of drafts introduced in Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973.

Scientific research (*continued*)

[*Agenda item 13*]

7. Mr. APPLETON (Trinidad and Tobago) introduced document A/CONF.62/C.3/L.9, containing draft articles on marine scientific research.

8. Reviewing the articles, he said that since in article 1 it was very difficult to make a clear distinction between pure scientific research and industrial or other research, a considerable degree of control would be needed.

9. With respect to subparagraph (c) of article 4, he recalled the extreme position adopted by certain delegations at the sea-bed Committee that the results of scientific research should be the property of the coastal State. His delegation was now proposing that the originals should remain the property of the coastal State only where specimens could not be duplicated. Under subparagraph (d), his delegation now wished to add the words "and not being unnecessarily withheld" at the end.

10. Mr. YTURRIAGA BARBERAN (Spain) pointed out a discrepancy between the wording of articles 2 and 4. The former read "Marine scientific research in the territorial sea shall only be conducted with the prior approval of the coastal State . . ."; article 4, however, read: "Marine scientific research in the exclusive economic zone/patrimonial sea and on the continental shelf shall be conducted only with the prior authorization of the coastal State . . .".

11. Mr. JAIN (India) endorsed that view. It would be better to use the word "authorization" in both places.

12. With respect to article 5, he pointed out that it was not clear whether the International Authority would have authority over the water column. He therefore wondered whether it would be possible to add, after the words "be conducted", the words "in conformity with its competence".

13. Mr. RAMADAN (Egypt) said that draft article 1 seemed to lack the proper scientific approach. The definition in CRP/Sc.Res./12, submitted by his delegation, might be more suitable.

14. Mr. BUSTANI (Brazil) asked whether there was a difference between "prior approval" and "prior authorization" in the view of the Trinidad and Tobago delegation. If there were no difference, he wondered why there were separate sections in the draft articles for the territorial sea and the economic zone.

15. Mr. HUSSAIN (Pakistan) said that his delegation was in agreement with the draft articles in A/CONF.62/C.3/L.9. It