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Summary records of meetings of the Third Committee 13th meeting

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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 seabed 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

fully agreed that no lines could be drawn between pure and other research and that all such research should be conducted for peaceful purposes.

16. He agreed with the Egyptian representative that article 1 did not constitute an adequate definition of marine scientific research.

17. Article 2 was in line with a document sponsored by his delegation at the sea-bed Committee (A/AC.138/SC.III/L.55), though it differed in that it used the words "prior approval" whereas his delegation's text had read "explicit consent". The new draft articles also distinguished between the territorial sea and the economic zone.

18. His delegation endorsed the ideas in articles 3, 4 and 5. With respect to article 5, his delegation had submitted a similar proposal (CRP/Sc.Res./8/Rev.1).

19. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation had some problems with regard to the document as a whole.

20. With respect to article 5, it would be unrealistic to ignore the fact that no State would be ready to give the International Authority exclusive rights to marine scientific research, for the Authority would then carry out only such research as was of interest to it. Moreover he foresaw certain problems of financing.

21. Mr. MBOTE (Kenya) said that his delegation was generally in agreement with the draft articles but it, too, would like a clarification of the distinction between "prior approval" and "prior authorization".

22. Since the list of the rights of coastal States given in article 4 could not be exhaustive, it might be better to insert the term "*inter alia*" in the introductory paragraph; alternatively, the list might be omitted.

23. He understood that the question of the "international area", referred to in article 5, was still being debated in the First Committee. The Third Committee should not of course prejudge the outcome of that debate, but for the time being he could support the wording of the article.

24. Miss MARIANI (France), referring to article 1 (b), according to which it was impossible to make a distinction between pure scientific research and industrial or other research, said that what was involved was the absence of a definition, not a definition, and in her delegation's view a fundamental distinction should be made between open basic scientific research, carried out for the benefit of the community, without concern for profit, and industrial research.

25. The difference lay mainly in the possibility of immediate utilization of industrial research for economic purposes, while scientific research, which did not involve the same restraints on time and efficiency for the sake of specific results, yielded data which were accessible to all, were not of a secret nature, and were public property.

26. Her delegation could not now accept article 5 which prejudged the decisions to be taken elsewhere concerning the international zone. Her delegation thought that the sponsors had not reflected sufficiently on the financial implications of the article.

27. Mr. BOHTE (Yugoslavia) said that his delegation would also like to have clarification of the difference between "prior approval" and "prior authorization". It might be possible to link articles 2 and 4, using clearer terminology.

28. He agreed with the comments made by the representative of Kenya about the rights listed in article 4; the list might well be omitted.

29. He thought that the wording of article 5 should be the same as that used in the proposals which the Group of 77 had submitted to the First Committee, where the question of the international zone was still under consideration.

30. Mr. MOLTENI (Argentina) said that his delegation supported article 1 because there was no practical difference between pure and applied research. It, too, would like a clarification of the terms "prior approval" and "prior authorization". He agreed that the list of rights in article 4 was not exhaustive; moreover, the possibility that coastal States might impose other requirements should be left open. Article 5 must for the moment remain provisional, being dependent on the jurisdiction vested in the International Authority. On that understanding, his delegation could accept it.

31. Mr. SHUTTLEWORTH (South Africa) suggested that the words "or refusal" should be omitted from article 4, subparagraph (d), and that the second part of the subparagraph should read: "such consent being given within a reasonable time, and not being unreasonably withheld".

32. Mr. YTURRIAGA BARBERAN (Spain) said that the definition given in article 1 was acceptable but that it might be better to preface it with the words "for the purposes of this convention". His delegation agreed with the point made in subparagraph (c) but thought that it might be omitted.

33. With regard to the distinction between "prior approval" and "prior authorization", his delegation thought that the requirement for the territorial sea should be different from that for the economic zone.

34. He noted that there was no intention to give an exhaustive list in article 4, since the article referred to "minimum requirements". He agreed that article 5 gave rise to problems and that the Committee should not prejudge the decisions of the First Committee. However, he could not agree that the question of the international zone concerned only the First Committee. There were two main aspects: the régime governing scientific research beyond the limits of national jurisdiction; and the conduct of such research. While the régime fell within the competence of the First Committee, the question of the conduct of scientific research fell within the competence of the Third. There might be a need for a joint meeting of the two Committees.

35. Mr. DAHAK (Morocco) said that the definition given in article 1 was not complete. He noted that the term "marine environment" had itself not yet been defined. The definition of marine scientific research could be accepted provided that the marine environment was not understood to include the air space above the sea.

36. Article 1, subparagraph (c) might be improved by replacing the words "by means not harmful" by the words "by means not prejudicial", since harmful effects might not be apparent at the time the research was being conducted.

37. Mr. BUSTANI (Brazil) asked the representative of Spain whether the distinction he had made between "prior approval" and "prior authorization" meant that he wanted to have different jurisdictions for the territorial sea and the continental shelf.

38. Mr. McCOMIE (Barbados), speaking on a point of order, said that he had understood that, when a proposal had been introduced by its sponsor, delegations might then seek clarification but should not enter into substantive issues. The current debate clearly dealt with substance and amendments had even been submitted.

39. The CHAIRMAN agreed with the point made by the representative of Barbados: substantive matters should first be discussed in informal meetings. He appealed to delegations to conform to that arrangement.

40. Mr. HUSSAIN (Pakistan) said that he wished to make his delegation's position on article 3 clear: the aim was to include the concept of national jurisdiction; therefore, the words "or areas of national jurisdiction" should be inserted after the words "territorial sea".

41. Mr. BERTELS (Netherlands), referring to article 4, said that the granting of prior authorization made sense only if it

was subject to specified maximum, rather than minimum, requirements.

42. Mr. APPLETON (Trinidad and Tobago), referring to the distinction between "prior approval" and "prior authorization", said that the intention was to provide a stronger régime for the territorial sea than for the economic zone. However, his delegation thought that the terms could be used interchangeably.

43. Subparagraph (b) of article 1 was not meant to be part of the definition of marine scientific research, which was given in subparagraph (a).

44. The territorial sea and the economic zone or patrimonial sea had been dealt with separately in articles 2 and 3 and in article 4 respectively, for the purposes of negotiation.

45. He agreed that the list of rights given in article 4 was not exhaustive but, as the representative of Spain had pointed out, the introductory paragraph did include the term "minimum requirements".

46. The representative of the Byelorussian SSR had said, with reference to article 5, that the International Authority should not have the exclusive right to control scientific research. In his delegation's view, the essential point was that the Authority should have the right to decide who should undertake the research, even if initially it lacked the means to do so itself. He agreed, however, that the Committee should not prejudge the issue. He accepted the suggestion made by the representative of India that some formula such as "in conformity with its competence" should be inserted after the words "shall be conducted" in the same paragraph.

47. If the South African proposal that the words "or refusal" should be omitted from article 4, subparagraph (d), were accepted, there would be no need to require the consent of the coastal State, since it would not have the right to refuse.

48. He noted that article 1, subparagraph (a), included the words "and experiments related thereto", which he thought covered the point made by the representative of Morocco concerning air space.

49. Mr. COLLINS (Liberia), introducing document A/CONF.62/C.3/L.10, said that the purpose of the amendment proposed in paragraph 2 of that document was to ensure that port States adopted the national legislation required for the enforcement action referred to in article 8 of document A/CONF.62/C.3/L.4.

50. His delegation could not accept document A/CONF.62/C.3/L.4 as it stood, but could accept it with the amendments proposed in the document he was introducing.

51. Mr. PERRAKIS (Greece) said that he found the amendments proposed in document A/CONF.62/C.3/L.10 quite acceptable. In fact, they clarified and improved upon document A/CONF.62/C.3/L.4.

52. Mr. BREUER (Federal Republic of Germany) said that he wished to clarify certain aspects of document A/CONF.62/C.3/L.7 which he had not had time to explain in his statement at the preceding meeting of the Committee.

53. That document tried to serve two fundamental interests: the protection of the marine environment of coasts, and the free flow of shipping. The latter interest was of the highest importance for developing countries which were entering the area of sea trade with new ships flying their own flags. Those States were concerned that coastal States should not apply standards stricter than those laid down by international law concerning the construction, design, equipment, maintenance and operation of vessels. Document A/CONF.62/C.3/L.7 had been prepared with that interest in mind.

54. According to scientists, the most hazardous long-term effects on the marine environment resulted not from major pollution incidents but from chronic pollution caused by continuously escaping small quantities of oil and other harmful

substances. To remedy that problem, article 1, paragraph 1, of his delegation's proposal imposed on flag States the obligation to deny to ships which did not comply with the requirements of the Inter-Governmental Maritime Consultative Organization (IMCO) or stricter flag-State anti-pollution requirements the right to fly their flag, and to issue certificates for ships complying with those requirements.

55. To facilitate inspection measures, article 1, paragraph 2, provided that those certificates would have the same validity with respect to the authorities of other States as if those States had issued them. That should be acceptable if at the same time, as provided in article 1, paragraph 3, the flag State was held responsible for marine pollution incidents caused by ships to which it had issued certificates that incorrectly attested to compliance with anti-pollution requirements. However, he wished to emphasize that that last provision was not intended to detract from the primary liability of ship-owners in respect of pollution damage.

56. Still more important were the provisions designed to ensure that flag States complied with their obligations. His delegation's proposal provided, first, for the participation of port and coastal States in the enforcement measures implemented by flag States with a view to supporting and controlling flag States in that regard. For that purpose, article 2, paragraph 1, made provision for the inspection of certificates of ships in certain areas by port and coastal State authorities, and even for inspection of the ships themselves under some circumstances.

57. A second category of measures was designed to put pressure on flag States to carry out their obligations. To that end, article 3, paragraph 1, entitled port States to deny entry to their ports or off-shore terminals to ships not carrying valid certificates, and entitled coastal States to deny such ships passage through their territorial sea. However, his delegation did not think it necessary to give coastal States the right to inspect ships in innocent passage through their territorial sea, as their rights in that area were adequately protected by the presumption contained in the second sentence of article 3, paragraph 1, which allowed them to order ships to leave the territorial sea. That was a considerable step towards ensuring that ships complied with environmental requirements, for it meant that ships not carrying the required certificates could not fully engage in commercial activities since they could not be sure of unloading their cargoes.

58. The question of free passage through international straits which formed part of a territorial sea was still unresolved at the Conference. His delegation's current view was that the right to deny foreign ships passage through the territorial sea would not apply to such areas.

59. The articles concerning violations of discharge regulations were also based on co-operation and mutual control by flag, port and coastal States. They set up a system of inspection measures ensuring effective and adequate investigation of all types of violations. Article 2, paragraph 2, envisaged that the inspection of ships should normally be carried out in ports, off-shore terminals or internal waters. If that inspection indicated that discharge regulations had been violated on the high seas, a report, pursuant to paragraph 3 of the same article, would be forwarded to the flag State and to the competent international organization which, in his delegation's opinion, should be the Inter-Governmental Maritime Consultative Organization. However, if a ship had violated discharge regulations in the territorial waters or internal waters of the inspecting State, paragraph 3 provided that that State could institute proceedings against the ship under its national law. Article 3, paragraph 2, complemented those inspection rights of port States by establishing similar rights for coastal States, under the circumstances specified in that paragraph, with respect to ships passing through their territorial sea.

60. In cases of substantial pollution on the high seas in the vicinity of the territorial seas of coastal States, coastal State inspection powers should be supplemented, as provided in article 4, paragraph 1, by conferring on those States the right to inspect a ship found near the site of the pollution incident, if there were reasonable grounds for believing that it had violated discharge regulations. That provision was the core of his proposal. Although the provision was limited to pollution incidents, his delegation believed that it gave coastal States more protection against vessel-source pollution adjacent to their territorial seas than would pollution control zones, since under his delegation's approach, ships would be subject to inspection not only within such zones but everywhere on the high seas in the vicinity of the territorial seas of coastal States. That would have the advantage of greater flexibility and effectiveness. Regional or bilateral arrangements for the establishment and implementation of co-operative inspection procedures could further increase the effectiveness of that new right of coastal States.

61. Inspection of ships for violations of discharge regulations would, in the high seas, normally be carried out through co-operation between flag and port States. However, if such viola-

tions resulted in substantial pollution of the marine environment of the high seas in the vicinity of the territorial sea of coastal States, i.e. if coastal States were confronted with a real danger to their coastlines and marine resources, his delegation's approach also provided for on-the-spot detection by coastal States. That had the advantage of ensuring not only effective investigation and punishment of violations of discharge regulations but also recognition of the right of coastal States and their nationals to compensation for damage resulting from pollution incidents.

62. His delegation realized that those provisions and the other enforcement rights contained in its proposal could entail a certain risk of unjustified interference with international navigation. Article 5 of the proposal therefore provided some safeguards designed to minimize those risks as far as possible. Most of those safeguards had already been incorporated in international conventions and required no explanation. He wished merely to point out that his delegation attached great importance to the elaboration and implementation of regulations which, as stated in article 5, paragraph 1, would render unnecessary the stoppage or boarding of ships en route.

The meeting rose at 1 p.m.

14th meeting

Friday, 9 August 1974, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)* [Agenda item 12]

1. Mr. ODA (Japan) said that in 1973 his delegation had presented a proposal (A/AC.138/SC.III/L.49) to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction based on what might be called the "zonal approach". His country had always considered it a fundamental policy to harmonize the two interests of the international community—preservation of the marine environment and promotion of the free flow of maritime traffic—both of which were undoubtedly beneficial to all nations, whether developed or developing, maritime or land-locked.

2. It was important that all ships sailing on the sea should comply with design and construction standards that were adequate to prevent marine pollution. Such international regulations must be established through competent international organizations such as the Inter-Governmental Maritime Consultative Organization (IMCO). Moreover, uniform, universally accepted standards for regulating the discharge of pollutants from vessels were essential to ensure the preservation of the marine environment without hindering the smooth flow of maritime traffic. It was possible that States in certain ecologically or biologically vulnerable areas might conclude regional agreements with more stringent standards for regulating the discharge of harmful pollutants. Such standards, once accepted by the competent international organizations, should be observed by all ships.

3. In short, his delegation opposed the contention that each coastal State might impose on foreign vessels sailing off their coasts national standards with respect to construction, equipment, manning or discharge of pollutants from vessels.

4. In order to ensure compliance with international standards, it was necessary to provide adequate means for enforcement. In that connexion the following problems arose.

5. First, it must be borne in mind that the jurisdiction of the flag State had served as a basic principle supporting the legal system of the sea. Under that principle, the flag State had the right and the obligation to ensure that ships flying its flag complied with any rules of international law. Article 5 of the 1958 Convention on the High Seas¹ provided that "the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". His delegation saw no need to abrogate that principle, which should continue as a basic rule for controlling navigation, since without such a rule there would be chaos. His delegation would support proposals based on that principle, such as article 4 of the Greek proposal (A/CONF.62/C.3/L.4) and article 1, paragraph 1, of the proposal presented by the Federal Republic of Germany (A/CONF.62/C.3/L.7).

6. Secondly, regarding design and construction standards, which must be uniform and internationally accepted, the flag State should have the right and obligation to enforce such standards. The coastal State should not have jurisdiction with respect to design and construction standards, for the following reasons: first, the flag State was in a better position to exercise effective control in that regard; secondly, violation of construction and design standards was difficult to recognize from a distance and it was not unlikely that once coastal States were granted the right to enforce those standards they might abuse it. On the other hand, when ships were in port, the port State should be given the power to inspect them and even prosecute and punish them if violation of international construction and design standards was verified. Inspection of ships to ascertain whether such standards were being complied with could best be effected in port, without causing any impediment to the sailing of the vessel. Although his delegation was suggesting a zonal approach it did not intend that approach to apply to the enforcement of standards in respect of the construction, equipment or manning of vessels.

*Resumed from the 12th meeting.

¹United Nations, *Treaty Series*, vol. 450, p. 82.