

Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the Third Committee 14th 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)*

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.

7. With respect to competence to enforce compliance by vessels with internationally accepted discharge standards, the flag State was not always in the best position to apply international rules and regulations to its vessels sailing throughout the world. In many cases, it was not the nation to which the vessel officially belonged that suffered most seriously from pollution. A supplementary method must be worked out in order to ensure effective enforcement of discharge standards. Various proposals had been put forward in that regard: some favoured a coastal State zonal approach, while others supported port State jurisdiction. His own delegation subscribed to the coastal State zonal approach as proposed in its document submitted to the sea-bed Committee. The effectiveness of port State jurisdiction in preventing pollution from operational discharge of pollutants from vessels was limited. The port State would face the same difficulty as the flag State when it investigated or prosecuted a ship found in its ports with respect to unlawful discharge in the territorial waters of other distant States. It should be the coastal State that exercised jurisdiction in that regard, for it was the coastal State that would directly suffer from the damage caused, and, in addition, it had a special interest in taking the necessary measures to protect the marine environment off its coasts. His delegation viewed coastal jurisdiction not only in terms of rights but also in terms of the obligation to preserve the marine environment. In establishing a pollution control zone, primary consideration should be given to the capability of the coastal State to fulfil its obligation to guard against the offence of illegal discharge and to take administrative or judicial actions when necessary.

8. When his delegation had submitted its proposal to the sea-bed Committee the year before, it had left blank the breadth of the zone, since to claim jurisdiction over a wide zone in which it would be practically impossible to exercise control would not solve the problem. His delegation had in mind a reasonable breadth, such as 50 nautical miles measured from the coast. That suggestion was not a definite one, but it corresponded to the breadth of the coastal area in which oil discharge was prohibited under the 1973 International Convention for the Prevention of Pollution from Ships. The régime of that zone should not be identified with the régime of the economic zone.

9. His country was also concerned about the danger of coastal States abusing their rights. The coastal State had the right to stop and investigate a vessel in that zone only when there was sufficient reason to believe that a contravention of internationally accepted discharge standards had occurred. Furthermore, there must be sufficient evidence available to institute judicial proceedings, which must be fair and non-discriminatory. In that connexion his delegation was in agreement with article 9, paragraph 1, of the Greek proposal (A/CONF.62/C.3/L.4) and article 5, paragraph 1, of the proposal of the Federal Republic of Germany (A/CONF.62/C.3/L.7). Once taken to a port of the coastal State, a vessel should not be detained longer than was essential for purposes of investigation and it should be promptly released if the investigation did not reveal a violation of the applicable standards.

10. Finally, he stressed that whether it was the coastal State jurisdiction or the port State jurisdiction which was finally recognized as supplementary to the flag State jurisdiction, there would be no assurance that the current serious problems of marine pollution would be eliminated if all States did not firmly decide to co-operate in attaining that highly important objective.

11. Mr. AHMED (United Nations Environment Programme) said that he hoped that the recommendations on protection of the marine environment made by Mr. Maurice Strong, the Executive Director of UNEP, in his statement at the 31st plenary meeting would be helpful to representatives. He requested the Secretariat of the Committee to make the recommendations available to them.

12. He described the functions and responsibilities of UNEP as set forth in General Assembly resolution 2997 (XXVII), part I, paragraph 2. The purpose of those functions and responsibilities was to add a new dimension to international environmental co-operation by providing States with a new forum devoted exclusively to the protection and preservation of the human environment and a focal point for international environmental action and co-ordination of activities within and outside the United Nations system. UNEP, therefore, was not a supra-national regulatory agency that sought to impose policies, rules or regulations on sovereign States or to pre-empt the sectoral responsibilities of international organizations active in the field of the environment. Its sole purpose was to establish the framework for an over-all system which would provide sovereign States with the means of reviewing and directing all activities that might affect the human environment, with a view to identifying gaps and recommending ways and means of filling them in accordance with a well-defined set of common policies and goals.

13. With respect to existing or newly-created international organizations, UNEP made no claim to a monopoly of environmental action nor did it intend to take over the manifold activities pursued by a variety of intergovernmental and non-governmental organizations. However, the primary responsibilities of many of those organizations would not be environmental and might on occasion conflict with environmental interests. On such occasions, it would be the responsibility of UNEP to make sure that those whose primary mission lay elsewhere took full account of the environmental problems they created and that their activities were carried out in accordance with the over-all environmental objectives and priorities established by the common will of States. Even where there was no conflict of functions, co-ordination was essential for proper environmental management. It was for that purpose that General Assembly resolution 2997 (XXVII) in its part IV had established the Environment Co-ordination Board, composed of high-ranking representatives of all organizations within the United Nations system, to meet periodically to review and co-ordinate their environmental activities and programmes.

14. With regard to the financial arrangements of UNEP, that resolution had established a voluntary fund in order to enable the Governing Council of UNEP to fulfil its policy-guidance role and to finance wholly or partly the costs of the new environmental initiatives undertaken within the United Nations system. The various environmental uses to which the fund should be put were set forth in part III, paragraph 3, of the resolution.

15. The protection and preservation of the marine environment were of particular concern to UNEP. At its first session, held in June 1973, the Governing Council had requested the Executive Director to undertake, *inter alia*, the following tasks: to carry out objective assessments of problems affecting the marine environment and its living resources in specific bodies of water; to assist nations in identifying and controlling land-based sources of pollution, particularly those which reached the oceans through rivers; to promote the conclusion of international and regional agreements for the control of all forms of pollution of the marine environment, especially agreements relating to particular bodies of water; to urge IMCO to set a time-limit for the complete prohibition of intentional oil discharge in the seas, and to seek measures to minimize the probability of accidental discharges; to develop a programme for the monitoring of marine pollution and its effects on marine ecosystems, paying particular attention to the special problems of specific bodies of water, including some semi-enclosed seas, if the nations concerned so agreed; and to promote the development, on an entirely voluntary basis, of a register of clean rivers.

16. In response to those requests, the UNEP secretariat had already initiated several programmes and had others in various stages of planning and development. In the field of marine pollution, for example, the Global Environmental Monitoring System (GEMS) now being established would eventually provide the framework for a wide variety of activities. Some activities relating to the global monitoring system were already under way, such as the Global Investigation of Pollution in the Marine Environment (GIPME), Pollution of the Oceans Originating on Land (POOL), River Inputs to Ocean Systems (RIOS) and Integrated Global Ocean Station System (IGOSS). Those programmes, most of which were concentrating on land-based sources of marine pollution, would be undertaken by intergovernmental or non-governmental organizations with support from UNEP. As far as planned actions were concerned, criteria for selecting clean rivers to be established by a group of experts would be considered at an intergovernmental meeting at which future action would be agreed on. A broad intergovernmental meeting on land-based sources of pollution in general was also contemplated.

17. The draft articles under consideration could affirm and recognize the functions and responsibilities of UNEP. With respect to the general functions, the convention could recognize the role of UNEP in providing the over-all integrated framework for comprehensively co-ordinating, reviewing and guiding activities of States and international organizations that might affect the quality of the marine environment. With regard to the specific responsibilities, the convention could recognize UNEP as the appropriate forum for the international community of States in its endeavour to establish, both at the regional and global levels, standards, rules and regulations for the prevention of marine pollution from land-based sources.

18. Mr. BUSTERUD (United States of America) said that the statement made by the Observer for UNEP was very valuable. His country had played an active part in the preparations for the United Nations Conference on the Human Environment, held at Stockholm in 1972, and was taking steps to implement the recommendations of that Conference and the decisions of the Governing Council of UNEP. In his view, the idea that UNEP was the appropriate organization in which to examine the question of land-based marine pollution deserved consideration. That was a subject in the study of which duplication of effort must be avoided. The articles of the convention that the Conference was engaged in elaborating should reflect the role of UNEP in that sphere.

19. Mr. MBOTE (Kenya) said that as the host country of UNEP, Kenya was privileged to follow its work closely. His delegation had noted that in some draft articles before the Committee, certain delegations had called for the establishment of an international organization which should be made responsible for co-ordinating various efforts aimed at protecting the marine environment from pollution. It would be advisable for those delegations to study the mandate of UNEP carefully; perhaps they would then be convinced that the appropriate international organization they had been calling for already existed in the shape of UNEP. In that connexion, he pointed out that in articles 11 and 24 of the proposal submitted by his delegation in document A/CONF.62/C.3/L.2, provision was made for UNEP to perform the functions indicated.

20. Mr. JAIN (India) said that his country wished to see UNEP play an important part in the preservation of the marine environment, particularly where land-based pollution was concerned.

21. Mr. HUSSAIN (Pakistan), referring to document A/CONF.62/C.3/L.7, said that his delegation had no difficulty in accepting article 1. He observed, however, that it was not specified in that article what authority would be responsible for deciding in which cases a ship had failed to comply with the provisions of the regulations on protection of the marine environment. Articles 2 to 4 referred to implementation of the

regulations in the territorial sea and on the high seas, but they did not take into account the concept of the economic zone, which had been widely supported in the Second Committee. That might be considered a serious shortcoming, especially as far as article 4 was concerned. Furthermore, if the flag State was the one that would have to take appropriate action, the discharge of that responsibility would require considerable time and the coastal State meanwhile would be unable to take appropriate measures for its own protection.

22. His delegation suggested that in article 2, paragraph 3, the words "the territorial sea or internal waters" should be replaced by the words "the areas of national jurisdiction". Article 4 should be similarly amended to embody that concept.

23. With reference to article 5, Pakistan considered that it was very important to avoid ships being unduly detained or delayed, although it felt that when vessels infringed the regulations, such acts should fall under the jurisdiction of the coastal State.

24. The CHAIRMAN suggested that, in accordance with the decision he had referred to at the previous meeting, the Committee should refrain from discussing the substance of the draft articles before it and from proposing amendments to the documents submitted, since those deliberations should be reserved for informal meetings.

25. If there were no objections, he would take it that the Committee was in agreement with that procedure.

It was so decided.

26. Mr. McCOMIE (Barbados) said that, in compliance with the recently reiterated decision, Barbados would like clarification of article 5, paragraph 4, of document A/CONF.62/C.3/L.7. What organization was to decide whether a vessel had been unduly detained or delayed, and what criterion would be used to determine compensation for damage suffered?

27. Mr. BREUER (Federal Republic of Germany) said that the question could be decided only by the authorities of the State which had detained or delayed the vessel, as, under existing rules, that would be the only solution.

28. Mr. SIMMS (United Kingdom), referring to the very interesting and informative statement made by the representative of Japan, noted that his delegation had reservations on two points. At that stage, however, he wished to comment on the practicability of coastal State powers to board and inspect in an area outside the territorial sea. The United Kingdom had made every effort to apply within its territorial sea of 3 miles the existing international conventions and agreements, and had found that extremely difficult. It was therefore particularly interested in the comments of the Japanese delegation on the costs and difficulties involved in controlling an area which might extend as far as 50 miles. It would therefore be grateful to receive more detailed information if the Japanese delegation could provide it.

29. Concerning the statement made by the representative of the United Nations Environment Programme, he welcomed the clarification on UNEP's co-ordinating role. In particular, his delegation had submitted a proposal for a diplomatic conference on control of land-based sources of marine pollution.

30. Finally, the United Kingdom regarded UNEP's role as a co-ordinating body as vitally important, and he questioned whether it should attempt an executive function, which might deprive it of its independence and prevent it from fulfilling its crucial functions of co-ordination and observation.

Organization of work

31. Mr. STEINER (Secretary of the Committee), said that the Secretariat would prepare a study on the use of ocean space, in accordance with paragraph 60 of the report in document A/CONF.62/C.3/L.3, which would not have any financial implications for the United Nations. The Conference would have that study at its disposal the following year.

32. The CHAIRMAN said that he wished to express in advance his thanks for the study on the transfer of technology to be prepared by the Secretariat.

33. Further, he asked the Committee to consider the possible format and character of the report to be submitted by the Third Committee to the Conference, and urged it to accelerate the

preparation of consolidated texts and to try to reduce the number of variants and working documents to the minimum.

34. Mr. STEINER (Secretary of the Committee) said that the Group of 77 had completed the preparation of its documents.

The meeting rose at 4.50 p.m.

15th meeting

Friday, 16 August 1974, at 10.50 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 the drafting and negotiating group had considered draft articles concerning the basic obligations on States to preserve the marine environment and reduce marine pollution; the right of States to exploit their own natural resources; particular obligations; the obligation not to transfer pollution from one area to another; global and regional co-operation; technical assistance; and economic factors in respect of land-based sources of marine pollution. The results of the efforts of the drafting and negotiating group would be submitted to the informal meetings on item 12 and subsequently to the Committee for consideration.

2. Mr. METTERNICH (Federal Republic of Germany), speaking as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that efforts were being made to arrive at specific alternative texts concerning general conditions for the conduct of marine scientific research. The informal consultation and negotiating group had prepared a complete table on that subject. The informal meetings had considered consent, participation and obligation of coastal States and international and regional co-operation for marine scientific research, including exchange and publication of scientific data and international ocean space institutions. Discussions concerning general conditions for the conduct of marine scientific research had been postponed to the next meeting. It had also been agreed that matters relating to the status of scientific equipment in the marine environment and responsibility and liability should be considered at a later stage in the context of the convention as a whole. Informal proposals on those matters had been submitted. As Chairman of the informal meetings, he had been requested to prepare a text concerning the matter of consent, participation and obligations of coastal States, as only a few proposals had been submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction on that subject. That text would be considered at the next informal meeting of the Committee.

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

3. Mr. HOOR TEMPIS LIVI (Italy) said that his Government, greatly concerned over the marine environment, particularly of the Mediterranean Sea, had approved the provisions of principle 25 of the Declaration of the United Nations Conference on the Human Environment,¹ concerning the role of international organizations in the preservation of the environment. Recalling the statements made by the Executive Director of the

United Nations Environment Programme at the 31st plenary meeting, and by the representative of UNEP, at the preceding meeting of the Committee, he wished to comment briefly on the matter of co-operation among States and international bodies.

4. First, he agreed that States that had accepted the conventions on ocean dumping and pollution from ships should accelerate the national procedures required to bring those conventions into effect and should oblige ships flying their flags to respect their international obligations. In that connexion, he drew attention to the fact that his Government had now acceded to the 1973 International Convention for the Prevention of Pollution from Ships. His delegation also believed that States should co-operate in providing technical assistance to developing countries to enable them to participate in marine scientific research and to take measures to protect the marine environment, and he could therefore accept the provisions of article 17 (a) of the Kenyan draft articles in document A/CONF.62/C.3/L.2.

5. Secondly, he supported the concept that the United Nations Environment Programme should act as international co-ordinator of environmental activities within and outside the United Nations system, and not as a supranational regulatory agency seeking to enforce policies, rules and regulations or to take over the sectoral responsibilities of different international organizations. It should accordingly co-ordinate activities under the Environment Co-ordination Board established pursuant to General Assembly resolution 2997 (XXVII).

6. Thirdly, since he felt that the preservation of the marine environment, on the one hand, and the protection of the living resources of the sea on the other, should be dealt with separately by different organizations, the United Nations Environment Programme and other competent international organizations should co-operate closely in order to avoid duplication of effort, with UNEP providing the over-all framework for co-ordinating, reviewing and guiding the activities of States and international organizations that might affect the quality of the marine environment. His delegation would therefore prefer to retain, with some small amendments, the text submitted to the sea-bed Committee by Kenya in article XVII of document A/AC.138/SC.III/L.41 rather than article 14 of Kenya's proposal in document A/CONF.62/C.3/L.2. As far as specific responsibilities were concerned, the Governing Council of UNEP, of which Italy was a member, had recently instructed UNEP to assist States in establishing, at regional and local levels, standards, rules and regulations for the prevention of marine pollution from land-based sources; the future convention should also recognize UNEP as the appropriate forum for such an effort.

7. Fourthly, further consideration should be given to articles 12 to 16 of the Kenyan proposal.

8. The United Nations had taken decisions of historic importance in 1972 in establishing institutional machinery for envi-

¹ See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. 1.