

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

1973-1982

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## **Summary records of meetings of the Third Committee 5<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)*

## 5th meeting

Wednesday, 17 July 1974, at 10.40 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

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

[*Agenda item 12*]

1. Mr. HARRISON (United Nations Educational, Scientific and Cultural Organization) said that the law of the sea must be formulated in the context of human culture, human aspirations and, in particular, the natural environment, and that UNESCO was in a unique position to provide assistance, advice or information about the marine environment, either at the request of interested Member States or through co-operative programmes and to help Member States in the training and education of their own specialists.
2. The environment, including the marine environment, was an extremely complex and dynamic system that responded to physical, chemical, biological and geological processes. In the past 30 years intensive scientific research had been carried out on the basic framework of those processes and UNESCO had played a significant part in that research. The environment was the result of the sum total of basic processes and their interactions, whose intensity varied with time and place. Hence detailed local studies were often needed to provide an understanding of specific environmental problems. In addition, the effect of any human activity on the environment was to change it, sometimes drastically and suddenly, but more often gradually, though in ways that could have equally severe cumulative effects. Thus the use of the sea must be carefully planned, controlled and monitored.
3. The biological and mineral resources of the sea and the structure of the sea-bed were the result of long-term natural processes. If that circumstance was ignored, the law of the sea would be weaker and more difficult to implement.
4. In the formulation of the law of the sea cultural considerations had to be taken into account, and they in turn were influenced by the nature of the environment. The law of the sea must serve the ethical goals of human survival, enhancement of the quality of life for the individual and the evolution of culture. At the same time, it must be sufficiently flexible to recognize the inevitable changes in the environment that were brought about by natural causes.
5. UNESCO performed an essential function in disseminating information and in arranging international co-operation with respect to marine sciences, and could provide expertise in scientific questions concerning the marine environment. In its capacity as an educational, scientific and cultural organization, UNESCO could also provide assistance with respect to the social and cultural consequences of legal proposals.
6. In summary, UNESCO's programmes on the marine environment were related to its other scientific co-operation programmes. It helped countries develop their over-all science policies and plans, in which marine sciences played an important part. It also had programmes in education and training and a major programme dealing with the impact on society of scientific and technological progress and, conversely, the effects of society on science and technology. Finally, it was concerned with the quality of life, cultural and social development and human rights, all of which must be taken into account by the law of the sea if it was to be effective.
7. Mr. DELIN (Sweden) said that his delegation considered it extremely important that the Conference should adopt positive decisions regarding the protection of the marine environment. In that respect, it fully shared the opinion expressed by Mr. Strong, Executive Director of the United Nations Environment Programme (UNEP), in his statement at the 31st plenary meeting.
8. In its view, the best way for the Conference to fulfil its task would be to agree on a convention containing basic principles and rules on the obligations of States to preserve the marine environment. It would thus be left to competent international organizations such as UNEP and the Inter-Governmental Maritime Consultative Organization (IMCO) to elaborate detailed provisions.
9. With respect to the texts submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, his delegation accepted the draft article on basic obligations and also supported, in principle, the article on particular obligations, with some reservations on certain details.
10. In connexion with the particular obligations he noted that the draft articles submitted to the sea-bed Committee frequently used the word "standards". His delegation would be reluctant to use that term if it meant, for instance, maximum allowed levels of pollution, for it was impossible to establish such maximum levels for large areas, owing to the varying capacity of the sea water to break down different materials. If, on the other hand, it was agreed that the term "standards" had the meaning of "regulations" or "rules and acting norms", he would consider it acceptable.
11. He could also accept the draft article concerning the transfer of damage or hazard from one area to another and the article on global and regional co-operation.
12. The draft article on monitoring should be supplemented by a provision to the effect that a coastal State must not normally refuse permission to carry out within its territorial sea observations and measurements provided for in the article.
13. With regard to land-based sources of marine pollution, he supported alternative A appearing in volume 1, page 93 of document A/9021 and Corr.1 and 3. On the question of standards for sea-bed sources of pollution, he favoured provisions essentially in conformity with alternative B, appearing on page 94. Finally, as far as standards for vessel-source pollution were concerned, he would support a text stipulating that States should, through the appropriate international organization, establish international standards for preventing vessel-source pollution, including special standards for areas the ecological character of which required stricter regulations.
14. With regard to the competence of States to establish standards for the protection of the marine environment in their coastal waters, his delegation understood the desire of coastal States to protect the marine environment by unilateral standards. On the other hand, it could also well understand the desire of nations which had large merchant fleets that the regulations affecting shipping should be internationally agreed upon in the same way as safety regulations and rules for navigation. A reasonable compromise might be the inclusion in the convention of a provision to the effect that "special areas" might be established if certain oceanographic and ecological conditions existed in certain parts of the sea, a concept which had already been accepted in the International Convention for the Prevention of Pollution from Ships of 1973. In that case, the coastal State which considered that its situation justified the establishment of a special area could notify a competent international organization thereof and submit draft special rules to be applied in that area. That international organization

could then consider whether a special area could be established in accordance with the convention, and in that case, examine proposed rules and approve them before their entry into force. However, proposed regulations regarding dumping, navigation, dangerous cargoes and so forth which were connected with the operation of ships could enter into force as soon as the competent organization had approved the establishment of the special area.

15. As to enforcement measures, his delegation considered that in addition to the flag State, both the coastal State and the port State should be entitled to take action against ships which had violated internationally approved environmental regulations.

16. With regard to liability and compensation, it was essential to emphasize the special character of the damage in question. Damage to the marine environment in many cases did not affect any specific person. Thus it could be said that pollution of the high seas was damaging to mankind as a whole. It was often very difficult to prove a causal relationship between a certain activity and the resulting damage and to estimate the damage in terms of money. For those reasons it was obvious that the traditional doctrine of compensation for damages could not be applied in solving satisfactorily questions concerning compensation for damages to the marine environment, a matter which should be studied in more detail than was possible in the Committee.

17. The convention could stipulate that States should adopt national legislation which would be in consonance with the convention's basic principles. If a State did not observe that or ensure that the regulations were complied with, it would be liable for damage from pollution caused to areas under the jurisdiction of another State. Furthermore, it should be provided that a foreign citizen in a contracting State would have the same legal remedies and the same right to compensation as a citizen of that State, even if the damage had occurred outside its territory. Finally, the convention should specify that States had an obligation to develop international law regarding liability and compensation for marine pollution within and beyond the limits of national jurisdiction. A possible future solution might be the establishment of an international fund for compensation for damage.

18. As his delegation considered it of fundamental importance that the Conference should reach an agreement on the rules concerning the protection of the marine environment, it would be ready to show flexibility in order to contribute to a common solution.

19. Mr. KHARAS (Pakistan), noting that the sea constituted an important part of the human environment, observed that environmental problems on land had their origin in the poor economic and social conditions from which developing countries suffered and that those countries, with their limited resources, were looking to the immense resources of the ocean to overcome those difficulties. Modern technological advances had made it possible to take advantage of those resources but the selfish desire to exploit them quickly had given rise to pollution of the sea and irreversible damage to its living resources.

20. The merchant fleets of the world had increased considerably in number and size of ships, and the risk of accidents and pollution had dramatically increased. That, along with land-based sources of marine pollution, which were the major sources, opened up alarming prospects. The protection of the marine environment had become a matter of great urgency and required solutions at both the national and the international levels.

21. His delegation fully supported the Declaration of Santo Domingo of 1972,<sup>1</sup> which recognized the duty of every State to

refrain from performing acts which might pollute the sea and the sea-bed, either inside or outside its respective jurisdiction. It also fully agreed with the Declaration of the Organization of African Unity (A/CONF.62/33) which gave every State the right to manage its resources and imposed the obligation to prevent and control pollution of the marine environment. It also agreed with the principles concerning the rights and duties of States in respect of the environment, including the marine environment contained in the Declaration adopted at Stockholm in 1972.<sup>2</sup>

22. It was recognized that all States had the sovereign right to explore and exploit the living and non-living resources in their territorial waters and it was expected that under the new convention that right would be extended to the so-called economic zone, which would entail the jurisdiction of the coastal State with respect to the preservation of the marine environment in that zone. For that purpose, his delegation felt that although international standards should be drawn up, their adoption and enforcement should be the responsibility of coastal States in the areas under their national jurisdiction, having regard to such factors as the technological capability and economic resources of the States concerned, as well as ecological and geographical conditions.

23. The International Sea-Bed Authority to be established under the future convention should be responsible for the prevention of pollution and the preservation of the marine environment in the international area and should also provide the necessary technical assistance to coastal States for the adaptation and enforcement of international standards in areas within their jurisdiction.

24. His delegation fully subscribed to the view that there were a number of gaps in the existing conventions for the prevention of marine pollution and that those gaps must be filled. He commended IMCO for its role in supervising and regulating the application of measures for the avoidance of accidents to ships and the prevention of pollution and said he was confident that by the end of the current decade IMCO, with the active cooperation of Governments and other international bodies, would be able to eliminate pollution caused by intentional oil discharges in the seas.

25. Pakistan, whose only major port was Karachi, did not know the exact magnitude of its pollution problem. However, studies and research carried out during the previous 10 years near its coasts had revealed a rapid decline in the shrimp population, which was an important source of Pakistan's foreign exchange. His Government was conscious of that problem and was taking appropriate measures, but lacked adequate information about the state of its coastal waters; it needed to improve its existing fragmentary knowledge of the sources of pollution, the nature of pollutants entering the sea, and so forth. Since other developing countries were perhaps in the same situation, there was need for a system to monitor such information on a regional and global basis, and he was happy to learn that the United Nations Environment Programme had already initiated activities in that area. He hoped that under the new convention the developing countries would be provided with all the necessary data and technology to enable them to combat marine pollution in an effective manner. In that regard, appropriate training of the personnel of the developing countries was equally important.

26. Mr. HASSAN (Sudan) said that his delegation had from the beginning taken an active part in the work of the sea-bed Committee and of the United Nations Conference on the Human Environment, and that the Committee's task now was to make effective the principles and recommendations relating to the marine environment which had been formulated at that Conference, as part of the process of the progressive development of the law of the sea.

<sup>1</sup> *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex I, sect. 2.*

<sup>2</sup> *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

27. The effective contribution of the developing countries to the Stockholm Conference had shattered the myth, prevalent prior to the Conference, that the developing countries would take a lukewarm attitude towards environment issues and regard them as the exclusive concern of the rich countries which monopolized the sea and the oceans. The developing countries, while accepting their share of responsibilities for preserving and enhancing the marine environment, were committed to development and to improvement of the welfare of their peoples. Those two objectives were not necessarily opposed to one another, but were in fact perfectly compatible. The sovereignty of a State over its natural resources in the sea or land area within its jurisdiction was one of the rights solemnly declared in the Charter. The prevention of marine pollution and the preservation of the equilibrium of the marine environment were entirely compatible with the goals of development.

28. His country intended to assume the responsibilities and the duties necessary to prevent destruction of its biological resources, and was devoting considerable resources to that end, since the Red Sea, which was a closed sea, was one of the most important waterways for tanker and container traffic and its coasts were thus exposed more than any other marine area to oil spillage, intentional or unintentional. Using the most modern achievements of science and technology, his country intended to exploit the mineral resources in the sea-bed of its jurisdictional waters, exercising its sovereignty over its natural resources in conformity with its declared objectives of development and welfare. In so doing, it would fulfil its obligation not to pollute the waters, and would observe pertinent national or international regulations.

29. Ecological concerns had prompted his country, at the twenty-seventh session of the General Assembly, to submit resolution 3000 (XXVII) concerning measures for enhancing the human environment, a resolution which had been accepted without a dissenting vote and which was one of the most quoted General Assembly resolutions in its field. In essence, it called for ensuring a compatible relationship between environmental programmes and the application of modern science and technology.

30. His delegation was optimistic, and believed that, with the co-operation of all, an agreement could be reached.

31. Mr. NITTI (Italy) said that pollution problems affected all countries equally, and that a solution should be sought which met the interests and concerns of all States. He wished to set forth briefly the principles and elements on which his delegation's position was based. First, regulations and standards concerning the prevention of pollution from ships should be internationally agreed upon within the framework of appropriate international organizations, particularly IMCO. Secondly, enforcement of such regulations should continue to be within the competence of the flag State, in particular with regard to vessel design, construction and equipment. In that connexion, it had been argued that a void was created when the flag State could not or would not enforce its own rules. However, that concern was not necessarily connected with the question of the source of the regulations, since violations or lack of enforcement of legal rules were perfectly possible whatever the source. Thirdly, his delegation supported international recognition of the notion of "special areas" which, because of their particular characteristics, needed special protection against the danger of pollution. The Mediterranean had been recognized as a special area in the 1973 International Convention for the Prevention of Pollution from Ships. The international approach to that question was a valid one, since States in special areas could, for their part, conclude regional and subregional agreements consistent with the guiding principles and rules adopted at the international level. However, such an approach was not always wholly satisfactory since, for example, the 1973 Convention did not extend to the Mediterranean the prohibition against discharges of certain harmful substances which it

provided for in relation to other areas. Nevertheless, his delegation expressed confidence that such prohibition would ultimately be extended to the Mediterranean; that would justify its conviction as to the opportunity for an approach of an international character which Italy had always supported. Fourthly, measures carried out by States with regard to land-based pollution should take into account standards which were elaborated at the international level, and possibly also at the regional level.

32. Mr. ODA (Japan) said that the international community, having realized that it was necessary to preserve the marine environment from further deterioration, had now also become aware of the necessity for a world-wide agreement on the control of marine pollution. The major type of marine pollution was land-based, and that type included the discharge into the sea of industrial and agricultural wastes and of domestic sewage. Although such pollution should be controlled through laws and administrative action applied by each nation, international law could not be indifferent to its adverse effects. Every nation was bound to prevent pollution which could affect the marine areas beyond its jurisdiction and prejudice the legitimate interests of other nations. That principle had been reflected in the Declaration of the United Nations Conference on the Human Environment, which had also provided that States, through competent international organizations, should establish environmental requirements to serve as a basis for the measures which they elaborated.

33. Exploration and exploitation of the sea-bed did not cause significant pollution problems when properly conducted and controlled. However, because of the ever-increasing number of oil and gas drillings, it was inevitable that risks of pollution would increase. The legal implications of such pollution were similar to those of land-based pollution. In that regard, his delegation believed that appropriate international organizations such as IMCO or the proposed Sea-Bed Authority should establish minimum standards for the prevention of that type of pollution within coastal sea-bed areas. Such standards should include, *inter alia*, design strength, seaworthiness and stability of offshore installations. In addition, it fell within the competence of coastal States to require stricter standards for the exploitation of marine resources in their coastal areas.

34. It also had to be recognized that land-based dumping into the ocean of wastes, including radioactive materials and highly toxic chemical materials, would continue to increase. His delegation therefore hoped that, as soon as possible, a large number of countries would become parties to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which prohibited entirely the dumping of the most dangerous wastes and made the dumping of other wastes subject to a regulatory system. The possibility also had to be taken into account that natural conditions in certain areas required stricter rules to control dumping, which, if approved by any competent international organization such as IMCO, would be applicable to the vessels of any nation.

35. The most significant source of ship-borne pollution was the discharge of oil or oil mixtures into the sea. The International Convention for the Prevention of Pollution of the Sea by Oil, concluded in London in 1954, had not resulted in the complete elimination of intentional discharges of those substances. In 1969, therefore, IMCO had approved extensive amendments which, once they entered into force, should lead to the attainment of that goal. Moreover, in 1973 IMCO had adopted the International Convention for the Prevention of Pollution from Ships which took into account practically all pollutants. However, his delegation believed that other regional arrangements, setting much stricter standards for the discharge or dumping of harmful pollutants in certain ecologically or biologically vulnerable areas, would be required.

36. The adoption of standards posed the problem of ensuring their enforcement. The question had often been raised whether

the flag-State approach constituted a feasible and proper solution to that problem. His delegation believed that in resolving the conflict between the traditional freedom of navigation, on the one hand, and the exercise of enforcement control by coastal States, on the other, the traditional flag-State principle should serve as a basis for enforcing pollution control standards. However, in order to maintain that principle, the flag State should, first, be responsible for compliance by its vessels with international standards for ship design, equipment, construction and manning, as well as those relating to the dumping and discharge of pollutants. Secondly, inspection by competent authorities when ships entered port would be an effective measure to prevent any violation of those international standards. The flag State would use the report prepared by such authorities in taking any necessary administrative or judicial measures against vessels which had violated the standards. Thirdly, in view of the fact that in many cases it was not the flag State which suffered most, it would be appropriate to give certain enforcement powers to the coastal State in cases where a ship had discharged or dumped pollutants in areas close to its coast. In that regard, two overriding interests had to be borne in mind. On the one hand, the marine environment had to be effectively and adequately protected against pollution, and for that purpose the coastal State was perhaps in the best position to enforce the relevant regulations; on the other hand, intervention by the coastal State must not damage the very broad interest of the international community in the freedom of maritime traffic.

37. Mr. MINTZ (Israel) said his country had a twofold interest as a coastal State to protect its shores and seas from pollution and as a shipping State interested in shipborne trade. His delegation therefore considered that the distinction between a coastal State and a maritime nation was a somewhat artificial one, especially when account was taken of the tendency of States to develop their own shipping industry. To reconcile those two interests, practical questions were to be posed: how to induce the shipping industry to prevent pollution and what Governments could do to that end.

38. The first matter to consider was appropriate legislation. He reported that Israel had enacted new anti-pollution legislation which substantially increased penalties for discharge of oil into the sea and considered that the Conference would be taking a constructive step by adopting a resolution calling upon all States to review and if necessary to improve their legislation on the subject.

39. A second practical matter was that of ensuring quick prosecution of those responsible. The Israeli Ministry of Transport, which was vested with the task, had recently filed numerous prosecutions against owners and masters of vessels accused of causing pollution, and had applied for early hearings.

40. A third matter was that of production of evidence of witnesses who were not in the country, as to offences committed abroad. Israel was considering the possibility of introducing in Parliament a bill which would allow the courts to accept documentary evidence submitted by proper foreign authorities as to pollution offences committed by Israeli ships in the vicinity of their coasts. Israel would expect other Governments, on a reciprocal basis, to prosecute their ships upon receipt of similar evidence in writing from Israeli authorities as to pollution violations committed by their ships in the vicinity of Israeli coasts. That would facilitate efficient prosecution by the flag State, as suggested by the previous speaker, the representative of Japan.

41. Those matters could also be the subject of resolutions by the Conference, which might entrust an international organization such as IMCO, which had considerable experience in the subject, with the task of elaborating rules to facilitate prosecution of offenders. Furthermore, IMCO could be entrusted with considering the proposal made by the Norwegian delegation at

the 25th plenary meeting whereby States would set up a mandatory insurance fund to cover pollution damage caused by ships passing through the waters of a foreign State, thus relieving the latter and its nationals of the need to prove fault, negligence and liability by the polluting vessel and also of the cumbersome need to sue in foreign courts. To that end it might be possible to enlarge the scope of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, signed at Brussels in 1971, or to prepare an additional convention modelled upon it.

42. The 1973 International Convention for the Prevention of Pollution from Ships would probably enter into force in 1977 and until that date States bordering upon seas defined as special areas were to provide reception facilities for ships in their ports. Governments represented at the Conference could not raise claims against shipowners unless they carried out obligations devolving upon themselves. Israel was making arrangements to prepare such facilities within the time-limit set by the Convention. It hoped the same attitude would be taken by all States concerned. A Conference resolution in the matter would also be constructive.

43. He referred to the statement of the Finnish delegation at the preceding meeting as to the provisions of the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1) and considered the Helsinki arrangements could serve as guidance in other special areas such as the Mediterranean, to be worked out by experts. A first step in that direction had been the FAO meeting at Rome in February 1974 of Mediterranean States on the Protection of Living Resources and Fisheries from Pollution in the Mediterranean and the Inter-Parliamentary Conference of Coastal States on the Control of Pollution in the Mediterranean, the latter held in April 1974. Just as Israel had co-operated with other Mediterranean States in those two meetings, in order to preserve the Mediterranean marine environment, so it was willing to co-operate on all matters arising out of the 1973 Convention.

44. Mr. MANSFIELD (New Zealand) said that his country's isolation from the rest of the world protected it against certain forms of marine pollution. It was also true that the volume of shipping, which might give rise to pollution of its coasts, was relatively small. However, New Zealand had a very long coastline, a large continental margin, frequently adverse weather conditions and dangerous straits—factors which made the country particularly vulnerable to pollution, especially by oil from shipping. For that reason, it would seek recognition of the right of a coastal State to apply anti-pollution laws to all shipping in a broad zone of its adjacent sea. That position in no way implied that the establishment of internationally agreed standards for the control of vessel-source pollution was not important. On the contrary, such standards were essential for the development of an integrated approach to the preservation of the marine environment. At the same time, it was essential that, within the area under their jurisdiction—he had in mind the economic zone—coastal States should retain the right to enforce international standards in respect of pollution from shipping and, where necessary, to apply reasonable additional or supplementary rules.

45. New Zealand's economy was heavily dependent on maritime trade and hence on international navigation. It would therefore resist any proposal which, in its view, might interrupt or hinder the flow of shipping. The power of the coastal State should be of a residual character only. His delegation was ready to discuss the manner and circumstances in which that power might reasonably be exercised, with a view to striking a satisfactory balance between the interest of the coastal State in protecting its marine environment and the interest of both the coastal and the flag State in ensuring the continued flow of international shipping.

46. The same balance must be struck with regard to enforcing the standards for vessel-source pollution. Clearly, it was for the flag State to ensure that the applicable regulations were enforced. From the coastal State's point of view, however, flag-State jurisdiction alone could not be a sufficient guarantee of compliance with standards.

47. In order to avoid difficulties in obtaining prompt enforcement action by States which in many cases might be situated a great distance from the place where the infringement had occurred, many countries had recognized the suitability of a sharing of enforcement action between the flag State and the coastal State.

48. The area in which the coastal State should have the right to establish its own supplementary standards and to take enforcement action against infringements was the so-called economic zone or patrimonial sea. Within its zone of jurisdiction, the coastal State should have both rights and obligations. It would, in fact, have a responsibility for the rational exploitation of the zonal resources and, for that reason, recognition must also be given to jurisdiction in respect of the preservation of the environment which supported those resources. He therefore urged the Committee to bear in mind the essential relationship between the exploitation of the resources of the economic zone and the prevention of pollution.

49. Mr. PAPAGEORGIOU (Greece) said that the Committee should bear in mind the conclusions reached by Sub-Committee III of the sea-bed Committee with regard to basic obligations to preserve the marine environment, particular obligations to prevent pollution of the marine environment, global and regional co-operation, technical assistance, monitoring and standards, all of which should serve as a basis for future negotiations, together with all the other relevant proposals submitted to the Sub-Committee and any new proposals that might be submitted in the Conference.

50. Turning to the organization of work, he submitted that the Committee should proceed immediately to those issues on which Sub-Committee III had not been able to prepare draft articles, namely, those relating to a definition of marine pollution, responsibility and liability, enforcement measures, immunities, freedom of the high seas, settlement of disputes, relationship to other treaties or conventions and international institutions.

51. On the issue of standards, he reiterated his delegation's view that they must be international, because only in that way would it be possible to attain the goals of the convention. If, at a later stage, a coastal State considered that those international standards were inadequate to cope with a specific situation, it could propose the adoption of additional standards through amendment of the convention. As to the question of enforcement measures, his delegation took the view that responsibility should rest with the flag State. In any case, the port State and the coastal State could be given the power to enforce the international standards in special cases of emergency or in cases where the flag State could not and would not enforce the internationally agreed standards within a specific time. Furthermore, the Conference should take steps to include in the convention special provisions on the enforcement of international standards in the Mediterranean, the Baltic Sea, the Black Sea, the Red Sea and the Gulfs area, which the 1973 IMCO Convention had designated as special areas.

52. His delegation was of the opinion that, instead of giving enforcement powers to coastal States, it would be more appropriate to define exactly the obligations of the flag State. Given the importance of the item, stemming from its complexity and its implications, his delegation intended to submit specific proposals during the Committee's unofficial meetings.

53. Mr. FARINHA DA CONCEIÇÃO (Portugal) stressed the important role which the sea played in his country's economic life. His delegation believed that international standards

with respect to the preservation of the marine environment should be established, on the basis of which every coastal State would have the right to lay down regulations guaranteeing its effective control over operations of any kind carried out in the maritime zone under its sovereignty and jurisdiction. His country was in favour of full international co-operation to that end, including concerted action by neighbouring coastal States with respect to specific problems of a regional nature.

54. Because of its geographical situation, Portugal was more likely to suffer from than to cause pollution. Nevertheless, it accepted coastal State responsibility for damage to the marine environment and to third States, while still claiming coastal State rights when pollution was caused by another State, whether coastal or land-locked.

55. International co-operation and technical assistance to prevent pollution of the marine environment should be carried out between States either directly or through the competent international organizations, bearing in mind the technical and financial possibilities of the parties concerned. A good system of monitoring to prevent marine pollution, however, needed resources and efforts which were not within the reach of countries relatively lacking in resources, and therefore it would also be necessary to give technical and other assistance to the developing countries.

56. Concerning the draft articles worked out by Working Group 2 of Sub-Committee III as set forth in volume I of the 1973 report of the sea-bed Committee his delegation felt that it would be necessary in the unofficial meetings to improve certain of the variations, in order to find formulae that could be more widely accepted and to reach an agreement.

57. Mr. KNOKE (Federal Republic of Germany) said that the different sources of pollution should be dealt with in different ways and should be subject to different legal arrangements. His country was bordered by two seas, the North Sea and the Baltic, both of which, because of ecological and other circumstances, were in grave danger. It had therefore given urgent priority to the task of combating marine pollution and preserving the resources of the sea, and had taken an active part in all international and regional efforts to that end. It was, for example, on the initiative of the Government of the Federal Republic of Germany that the first regional Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, known as the Bonn Agreement of 1969, had been concluded. In its national legislation the Federal Republic had laid special stress on two problems: first, the reduction and prevention of land-based pollution, the most serious source, and, secondly, the question of vessel-source pollution.

58. With regard to land-based pollution, his country wholeheartedly supported recommendation 92 of the United Nations Conference on the Human Environment,<sup>3</sup> held in 1972 at Stockholm, that Governments should speedily draw up effective national regulations to deal with land-based pollution, concert those measures on a broad international basis within the framework of the Third Conference on the Law of the Sea, and co-ordinate their action at the regional level.

59. In his delegation's view, the Conference's main task with respect to the preservation of the marine environment was to improve and develop the international and regional conventions on vessel-source pollution concluded in recent years. The Federal Republic of Germany was a country with an extensive export trade, two thirds of which was carried on by ships under foreign flags, to a large extent via ports in neighbouring countries. It also had a considerable merchant marine of its own. It could therefore not countenance unjustified interference in international maritime trade or the freedom of navigation which was the essential prerequisite of such trade and hence of concern to the whole community of nations. A balance must be

<sup>3</sup> *Ibid.*, chap. II.

sought between the requirements of measures to combat marine pollution and those of unimpeded trade between the continents.

60. Obviously, regulations required to deal with pollution and provisions concerning areas with special ecological conditions must be established by the community of nations through a competent international organization. His delegation pledged its support in that endeavour and was prepared to take into account the interests of the coastal States bordering areas with special ecological conditions.

61. With regard to enforcement measures, his country believed that the flag State was the one best able to ensure compliance with anti-pollution regulations, since that was the State which, by granting the right to fly its flag, decided whether a ship might engage in commercial activities. However, since experience had shown that not all flag States had been equally vigilant in carrying out their regulatory duties, his country would support all efforts to introduce supplementary measures in that regard. The principal aim of the Conference with respect to the protection of the marine environment should be to minimize the risk of intentional or accidental pollution of the seas and thus eliminate as far as possible the need for measures to deal with pollution once it had happened. An obligation might therefore be created on the part of the flag State to deny ships which did not comply with international regulations concerning construction, equipment and operation the right to fly its flag, and to make the flag State liable for marine pollution incidents caused by ships to which it had issued certificates incorrectly attesting compliance with the regulations. To supplement those obligations, there might be established, along

the lines of the 1969 International Convention on Civil Liability for Oil Pollution Damage, a right of the port and coastal States to deny entry to their ports and passage through their coastal waters to ships which could not produce certificates.

62. Where substantial marine pollution had taken place, coastal States could also be authorized, as under the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, to carry out preliminary investigations in parts of the high seas adjacent to territorial waters on ships encountered near the site of the pollution incident. However, there was no need to accord coastal States exclusive investigatory powers within a certain delimited area of the sea. On the contrary, the creation of such powers not limited to particular areas would facilitate investigation and provide an incentive for the setting up of co-operative inspection systems on a regional or bilateral basis. In addition, such regulatory powers could be supplemented by granting the investigating coastal State prosecutory powers in cases where, although violations had been established, the flag State had failed to prosecute.

63. The question of ocean dumping, in his delegation's view, constituted a far greater hazard to the marine environment than vessel-source pollution, and much more extensive rights could therefore be accorded to the coastal States with regard to the control of authorized dumping and the prosecution of illicit dumping activities. For those reasons the Federal Republic of Germany was ready in principle to accord the coastal States effective powers regarding on-the-spot detection of violations of international dumping regulations.

*The meeting rose at 1 p.m.*

## 6th meeting

Wednesday, 17 July 1974, at 3.15 p.m.

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

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

[*Agenda item 12*]

1. Mr. LO Yu-ju (China) said that his delegation resolutely supported the many representatives who had set forth their solemn and just stand in defence of State Sovereignty against maritime hegemony.

2. The increasingly serious pollution found in some sea areas was mainly the consequence of the policies of aggression and plunder pursued by imperialism and especially by the super-Powers, and the victims of their policies were the numerous developing countries. Proceeding from their rapacious and egoistical position, the super-Powers and monopoly capitalist groups obstinately sought high profits and, disregarding the safety of the people of their own countries and of the world as a whole, discharged large quantities of industrial wastes and fluids and toxic, harmful and even highly poisonous substances into the seas, thereby poisoning sea waters, damaging living resources, and seriously endangering the health and safety of the peoples of the world.

3. In such circumstances, it was absolutely just that the coastal States should rise in self-defence and take measures to protect their marine environment and natural resources against pollution from outside sources. Prompted by the urge to maintain their maritime hegemony, however, the super-Powers frenziedly opposed the legitimate rights of coastal States and attempted under the pretext of "international standards" and "global measures" to deny the jurisdiction of those States and

their role in the prevention and control of marine pollution. It was only natural that such attempts should have met with firm opposition by the numerous developing countries.

4. It was admittedly necessary to establish, through joint consultations on the basis of equality of all countries, big and small, an international or regional régime for the preservation of the environment and the prevention of pollution. But that could in no way substitute for anti-pollution regulation by coastal States. It was impermissible to use so-called "international standards" and "global measures" to oppose or weaken the jurisdiction of the coastal States and to restrict the economic and industrial development of the developing countries.

5. Each coastal State had the right to formulate its environmental policy and take all necessary measures to protect its marine environment and prevent pollution in the sea area under its national jurisdiction. In doing so, the coastal State should, of course, have regard to the interests of all, including those of its neighbouring countries.

6. All States, especially the industrially-developed countries, had the duty to take all effective measures to solve their problem of the discharge of harmful substances, and to prevent pollution of the sea areas under their jurisdiction from spreading to, and damaging, the marine environment of sea areas under the national jurisdiction of other States, or of international sea areas.

7. International anti-pollution measures and standards should be adopted, and appropriate international regulation