

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

1973-1982

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**A/CONF.62/C.3/SR.6**

## **Summary records of meetings of the Third Committee 6<sup>th</sup> meeting**

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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 pretexts 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

should be enforced for the marine environment of the international sea area. Discharge of radioactive and other harmful substances into that area must be strictly prohibited.

8. Finally, all States and concerned international organizations should strengthen their co-operation in conducting anti-pollution research, following the principles of respect for sovereignty, equality, and mutual benefit, so as to promote the exchange and the utilization of anti-pollution technology and data.

9. Mr. SADEGHI (Iran) said that despite action by States at the national, regional and international levels and work by United Nations agencies, the marine environment continued to be threatened. Areas close to the coast under national jurisdiction were particularly in danger, and marine pollution was therefore best controlled by coastal States.

10. Iran was adjacent to one of the bodies of water which the 1973 International Convention for the Prevention of Pollution from Ships concluded under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO) had declared a "special area" requiring more stringent protective measures. He had therefore listened with particular interest to those representatives, particularly the representative of Finland at the 4th meeting, who had stressed the need for adequate regional and international action against marine pollution in enclosed seas. The 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1) was a good model of a regional agreement, and he hoped that similar regional arrangements could be made in the region to which Iran belonged. He was therefore encouraged to note that the Kuwaiti Government had invited coastal States to a conference in the near future, and hoped that that conference would be the first step toward a regional agreement.

11. Such a regional agreement should not necessarily be confined to preservation of the marine environment and could also provide, for example, for the establishment of a regional fund to cover accidental or inadvertent damage to coastal States. The 1971 International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage, should, in Iran's area, be supplemented by agreements between coastal States.

12. Pending the entry into force of recent international agreements, Iran had considered it necessary to extend temporarily its domestic regulations on the prevention of marine pollution in the area adjacent to its coast, up to the outer limit of its continental shelf. He hoped that the conference of coastal States which he had mentioned would find regional solutions to that problem.

13. His delegation's sponsorship, with others, of the proposals contained in document A/AC.138/SC.III/L.56 reflected its belief that more stringent rules should be established for special areas adjacent to coasts, particularly with regard to pollution arising from exploration and exploitation of the sea-bed. However, that did not mean that the responsibility of flag States should be reduced; they should remain responsible for any infringements of international anti-pollution rules.

14. Pollution originating beyond areas of national jurisdiction should be within the competence of the International Sea-Bed Authority which he hoped would be established. That Authority should also have regulatory powers over pollution caused by exploitation and exploration of the sea-bed under national jurisdiction, excluding the territorial sea.

15. Miss EMICH (Austria) said that the 1958 Geneva Conventions had dealt with only a few aspects of marine pollution; they were inadequate with regard to pollutants other than oil and radioactive wastes, and with regard to questions of enforcement and compensation. Her delegation welcomed the international activities which had taken place since 1958, and felt that the establishment of a global pollutant-monitoring pro-

gramme and of co-operation in identification and control of pollutants were particularly important. Existing law on the prevention of marine pollution had proven to be inadequate, and it was therefore essential that the Conference should establish new international norms.

16. Austria, like all other land-locked countries whose ecological security was not immediately threatened by marine pollution, was nevertheless highly interested in marine pollution problems, since the global character of the oceans made marine pollution potentially catastrophic to all countries. All countries had to co-operate, at the local, national, regional and global levels in finding adequate solutions. However, those solutions must not impede international navigation, to which her country attached great importance.

17. A useful start in controlling land-based pollution, which was the largest source of pollutants, had been made by the United Nations Conference on the Human Environment, held at Stockholm in 1972 in its recommendation 92<sup>1</sup> for the speedy enactment of national regulations. Pollution resulting from sea-bed exploitation, although now minor, would increase, and it was therefore appropriate to protect against it now through regulations drawn up by an international authority. Those regulations should cover the high seas and an area outside territorial waters but, in the latter area, stricter rules, elaborated at the international level, could be applied by coastal States.

18. Her delegation shared the view expressed by others that vessel-based pollution was best controlled through a single set of uniform international regulations observed by all States, so that vessels would not have to comply with different standards in different areas. There was, however, a need for international regulations to cope with the special ecological circumstances of particular regions. Those could be worked out either by an already existing, technically competent, international organization or by a newly-established International Sea-Bed Authority. A supervisory function concerning vessel-caused pollution should be exercised by the International Authority in the area under its jurisdiction, whereas in the area outside territorial waters a balanced system should be established which took into account the interests of the coastal State, the flag State, and the international community. The International Authority should be responsible for the settlement of disputes and for compensation claims arising from pollution damage.

19. Her delegation had difficulties with some of the ideas in the proposals contained in documents A/AC.138/SC.III/L.27, 28 and 56 in their existing form. It was prepared to support some of the ideas expressed in documents A/AC.138/SC.III/L.32, 33, 35 and 40, but could not support the "zonal approach", as it felt that the goal of implementing the common heritage of mankind could not be achieved through accumulated national jurisdictions. Her delegation believed that the various draft articles prepared in Working Group 2 of Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction showed a great deal of similarity, and that the remaining differences could be worked out in informal meetings. The Committee should begin its work with problems which had not been discussed in the sea-bed Committee.

20. Mr. LEON DUEAS (Ecuador) said that the statement by the Canadian representative at the 4th meeting had been a particularly valuable contribution to the work of the Committee. He regretted only that that representative had failed to refer to the concept of a broad territorial sea in mentioning areas of agreement and disagreement in the work of the Conference.

21. Ecuador believed that all States had a duty to prevent and control pollution, and a legitimate interest in doing so, in order

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

to preserve the marine environment as a basic tool of subsistence and economic development. That principle had led Ecuador to join in sponsoring the proposals submitted to the sea-bed Committee in document A/AC.138/SC.III/L.47 and Corr.1.

22. Since pollution was a problem which affected all States, all States should enact national legislation to combat it, taking into account their degree of development and ensuring that the measures they took did not shift the effects of pollution from one area to another. States likewise should be held responsible for damage to the marine environment of other States or to the high seas caused by dumping from their territory, in waters under their jurisdiction, or from ships flying their flag.

23. A coastal State's right to define the limits of its territorial sea up to 200 miles entailed the right to enact necessary provisions for preservation of the marine environment in the area under its sovereignty and national jurisdiction, taking into account its own interests and those of the international community. However, action by individual States did not rule out broad international co-operation, which should establish regional bodies in areas with geographical similarities to centralize and co-ordinate preservation and protection of the marine environment. Both regional bodies and individual States should seek the co-operation of competent international organs in drafting and implementing rules for areas outside national jurisdiction, and in making recommendations concerning areas within national jurisdiction. Such co-operation should be channelled through the centralized International Sea-Bed Authority that was under study in the First Committee.

24. Mr. JEANNEL (France) said that the Conference should confine itself to elaborating general principles for protection of the marine environment, and leave detailed rules to specialized bodies which had the proper technical facilities.

25. The Conference should, however, examine jurisdictional problems relating to marine pollution, i.e. the allocation of powers between the international community on the one hand, and various categories of States, such as flag and coastal States, on the other. In that regard, the texts prepared by the sea-bed Committee, although they could be improved, seemed to be a good beginning.

26. Different approaches should be taken to different kinds of pollution. Land-based pollution required commitments by States to enact measures which took into account international standards. Regional co-operation clearly permitted the most effective type of action for that kind of pollution, as was shown in particular by the 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources and the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. The encouragement of regional agreements was also the most effective way of combating pollution resulting from exploitation of portions of the sea-bed under national jurisdiction, although for that type it might be useful to allow for minimal international regulations, leaving States free to adopt, individually or collectively, stricter rules applicable to activities carried out in their jurisdictions. Pollution arising from exploitation of the sea-bed outside the jurisdiction of coastal States should be examined in close connexion with the question of an international régime.

27. The prevention of pollution arising from dumping from ships and aircraft called for both an international and a regional approach. The 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft provided good examples of the method that could be followed. Accession to existing conventions should be encouraged, as they contained a wealth of useful provisions.

28. Rules concerning pollution resulting from deliberate acts on board ships must be international, since uniformity was

indispensable in order to prevent ships from being subject to a multiplicity of rules. Unilateral coastal-State regulations against vessel-based pollution, such as prohibitions against discharging certain substances or rules concerning tanker construction, would interfere unjustifiably with freedom of international communication. That did not mean that regional agreements, applicable only to ships of the States which were parties to them, could not lay down stricter requirements. Moreover, certain particularly sensitive regions—such as enclosed, semi-enclosed and Arctic areas—could be declared special areas, as had been done in the 1973 London International Convention for the Prevention of Pollution from Ships adopted under the aegis of IMCO. That should be done within the framework of an international agreement, and measures taken by coastal States should be approved by an international body, as the London Convention provided with regard to certain areas.

29. The enforcement of international regulations in waters outside the territorial sea posed a different problem. Rather than applying only the law of the flag State, leaving the coastal State helpless in the face of violations committed near its territory, the coastal State should have the right of intervention to enforce international rules in a specified zone adjacent to its territorial sea, under specific conditions. That was the solution proposed in the draft articles contained in document A/AC.138/SC.III/L.46, submitted to the sea-bed Committee in 1973.

30. His delegation believed that there should be two well-defined exceptions to application of the law of the flag State: the coastal State should be entitled to verify the violation and report it to the courts of the flag State if it had serious reason to believe that the violation had been committed. It should also be entitled to prosecute the offender in its own courts if the flag State failed to do so. That solution was an effective one, since the flag State often had no interest in prosecuting the offender, and the coastal State was often in the best position to verify commission of the offence. It was also a solution which preserved freedom of communication, since the ship should be stopped only during the time strictly necessary to verify commission of the offence. Since such provisions could lead to disputes, a compulsory settlement procedure for disputes between coastal States and flag States or States of registry had been proposed in the document to which he had referred.

31. Prevention of accidental pollution caused by ships required improvement of marine transport regulations and of the technology of construction and use of ships. That kind of pollution could also call for intervention by coastal States outside their area of sovereignty, if there was an imminent and certain danger to their coast. Thus, the 1969 Brussels International Convention on Civil Liability for Oil Pollution Damage set forth well-defined conditions in which the coastal State could intervene on the high seas, and IMCO was studying the extension of the provisions of that Convention to harmful substances other than hydrocarbons.

32. Warships and other State-owned ships should enjoy the same immunities that they had always had in the past.

33. His delegation saw no reason to depart from the conventional rules on State liability in international law, particularly civil liability for acts of nationals in the performance of their activities. That problem should be dealt with in specific conventions which, like the 1969 Brussels Convention, ensured victims the compensation they needed to repair the damage, without implicating the State.

34. Mr. BARRA (Chile) said that, while his country was fully aware of the need to reach agreement on pollution control measures, it was seriously concerned lest an indiscriminate policy of applying general rules, without taking account of the level of development of individual countries, might hinder their progress.

35. His delegation considered that the item of marine pollution should be divided into aspects relating to the high seas, and those relating to the territorial sea and the 200-mile economic zone. Views of delegations appeared to have become polarized in accordance with two opposing principles—the jurisdiction and sovereignty of the coastal State and of the flag State respectively.
36. The other important issue was whether the same anti-pollution standards should apply to both developed and developing countries.
37. The traditional idea of accepting the jurisdiction of the flag State was apparently being abandoned in favour of a new formula permitting the coastal State to exercise jurisdiction in the areas under its sovereignty or control, while at the same time accepting certain, sufficiently wide, international pollution control measures. His country's position on that point dated back to 1947, as confirmed in 1952, to the effect that it exercised jurisdiction over a zone 200 miles wide adjacent to its coast, within which it exercised exclusive jurisdiction over resources, scientific research, pollution control and marine installations, without prejudice to freedom of navigation and overflight. Consequently, jurisdiction with regard to pollution was an integral part of the concept of the economic zone. Hence his country's opposition to the attitude within certain international organizations taken by the great maritime Powers which sought to deny coastal States their jurisdiction beyond the territorial sea.
38. From his country's point of view, a jurisdiction extending outwards for 200 miles for the purposes of pollution control was very important and could be compatible with international standards, provided different criteria were formulated with regard to the developing countries so as not to hinder their progress. Such international standards must clearly be acceptable to the developing countries and, to that end, they must be adopted in an appropriate international forum. While IMCO was undoubtedly technically competent to consider the question of pollution, it should be pointed out that, for the purposes of negotiating conventions, that body was insufficiently representative, since it consisted of few developing countries and was largely controlled by the great maritime Powers. There was accordingly a need—without affecting its technical competence or trying to convert it into a political forum—to modify its statutes by making it more representative for the purposes of preparing the relevant conventions.
39. Any standards adopted, particularly those relating to ship design, should take account of the capabilities of the developing countries, which should not be required to meet the same standards as did the developed countries—which, in the final analysis, had caused the existing pollution.
40. As to the area beyond the limits of the 200-mile patrimonial sea, international agreements should ensure the utmost degree of pollution control, to be exercised by a duly representative international body. His country supported the struggle against pollution in all its forms and was ready to adopt national measures to that end within the limits of its national jurisdiction, on the basis of regional or international agreements.
41. There must be no freedom to pollute the high seas, which must not be used for carrying out nuclear tests and discharging toxic gases. Drastic sanctions must be imposed in cases of pollution by tankers, such as those from which his country had suffered.
42. The law of the sea was an integral whole and its elements could not be separated. His delegation therefore opposed the elaboration of general principles of marine pollution-control in a forum other than the current Conference.
43. Mr. IORDANESCU (Romania) said that, in its efforts to combat pollution, his country had adopted national measures, including the establishment of special bodies. It took the view that urgent action must be taken at both the national and international levels, otherwise the seas and oceans could not absorb the increasing level of pollution. The subject was, however, extremely complex, since a wide range of geographical characteristics, the existence of special zones, and the vital interests of individual countries, particularly those of the developing countries, all had to be taken into account.
44. The work of Sub-Committee III of the sea-bed Committee provided the basic principles and variants of draft articles which would facilitate the Third Committee's task.
45. In order to ensure the effectiveness of any rules adopted, States must be obliged to take all measures necessary to prevent marine pollution, whatever its source, such measures, depending on the circumstances, to be adopted either individually or jointly. At the same time, States must ensure that activities pursued within the limits of their jurisdiction did not constitute a source of pollution harmful to another State. His country supported the incorporation of provisions for that purpose in the variants of the text proposed or supported by other developing countries. For the purpose of pollution control, world and regional co-operation and technical assistance were essential.
46. With regard to continued surveillance, his delegation supported the proposal whereby, in order to determine whether a State had discharged its obligations in connexion with terrestrial sources of marine pollution, due account must be taken of all pertinent factors, particularly the economic and financial ability of that State to provide the necessary resources to fulfil those obligations.
47. A question of particular interest to his country, since the Black Sea, for various reasons, was extremely susceptible to pollution, was the prevention of pollution in closed or semi-closed seas—for which special rules were required, including the designation of such seas as special zones. The special status of the Black Sea had been recognized in certain international conventions, the provisions of which should be reflected in the convention to be elaborated by the Conference.
48. The powers of coastal States, based on general international rules, could ensure the harmonization of interests with regard to both the protection of the marine environment and international shipping.
49. His delegation pledged its active co-operation in elaborating acceptable rules for all countries.
50. Mr. BUSTANI (Brazil) said that his delegation fully subscribed to the guiding principles on marine pollution in the Declaration adopted by the 1972 Stockholm Conference,<sup>2</sup> which should be incorporated in the convention to be drafted by the Conference. There was an unquestionable need to adopt national protection measures to prevent pollution in accordance with individual capabilities and national environmental policies and through co-operation with other States and international bodies in developing minimum international anti-pollution standards.
51. As to pollution arising from activities both on land and on the sea-bed under national sovereignty, his Government had adopted adequate measures and sanctions against the infringement of existing regulations. Aware of the need to preserve its own environment and that of its neighbours, Brazil exercised its sovereign competence to establish, enforce and control the application of pollution-prevention standards.
52. Turning to pollution from ships, he said that his delegation favoured the adoption of international standards for vessel-source pollution relating to ship design, construction, equipment, operation, etc., to the extent that they were not detrimental—by being too sophisticated—to the development of the merchant marine of developing countries. He welcomed IMCO's work in drafting the 1973 International Convention

<sup>2</sup> *Ibid.*, chap. I.

for the Prevention of Pollution from Ships. Nevertheless, certain aspects remained to be resolved; one of them related to the concept of "new ship" which determined to which vessels the new requirements would apply. His delegation would prefer the adoption of more extended and flexible deadlines or schedules for the implementation of such new standards, especially by ships of the developing countries.

53. The enforcement of such standards should fall primarily within the competence of the coastal State itself in areas adjacent to its coast and within its jurisdiction and sovereignty.

54. His delegation accepted the concept of special areas where, for recognized technical reasons, the adoption of special anti-pollution methods were required. That was coherent with principle 11 of the Stockholm Declaration, which held that internationally agreed criteria and standards should provide for regional and local variations in the effects of pollution and in their evaluation.

55. As to the pollution arising from the exploitation of the international ocean floor, the competent Authority to be established should have full competence to legislate on the matter as well as an important degree of competence with regard to pollution arising from navigation on the high seas.

56. As to the settlement of disputes concerning the interpretation or application of a future convention on the prevention of marine pollution, his delegation would favour general provisions on peaceful settlement through negotiation, conciliation and the like. While his country could not regret having accepted, in the past, compulsory settlement of disputes, recent experience had shown that such a procedure had not proved adequate. Further study of the matter was required before an adequate and just solution was found.

57. Mr. McCOMIE (Barbados) said that the prevention of marine pollution was essential to the very survival of the people of Barbados. The island of Barbados, because of its geographical situation, was particularly vulnerable to the effects of pollution arising in mid-Atlantic and, furthermore, was well placed to monitor pollution levels. The alarming levels of pollution in mid-Atlantic constituted a potentially serious threat to the fisheries and tourist industry of the island. Indeed, while certain areas of the world were, because of various factors, much more vulnerable than others, the very survival of mankind was ultimately at stake. Accordingly, it was his delegation's fervent hope that positive pollution control measures would emerge from the current session.

58. Marine pollution did not respect national boundaries and his country therefore supported the establishment of certain minimal international measures for pollution prevention and control to protect coastlines. While recognizing that weak measures were pointless, Barbados, as a developing country, could not be party to standards so high that they impeded its industrial development or that of other States of the third world. It was also necessary to take account of the essential service provided by world shipping, which could be seriously hampered by any radical tightening of standards. Nevertheless, the gravity of the marine pollution problem demanded sacrifices from all: any victory for freedom of navigation would be a hollow one if it meant freedom to navigate in sewers. The only viable solution was the adoption of effective control measures on a universal basis as soon as possible.

59. His delegation supported the zonal approach set forth in document A/AC.138/SC.III/L.56, to which the representative of Canada had referred. As the Minister for Foreign Affairs of Barbados had stated during the general debate, the coastal State must have sovereign powers in respect of marine pollution in its zones of national and economic jurisdiction.

60. Problems arose in connexion with liability, one of which was identification of the guilty party, especially in the case of pollution from land-based sources. Moreover, even if culpability was established, the offender might be unable to make

full restitution. His country therefore supported the draft articles on responsibility and liability submitted by Trinidad and Tobago in document A/AC.138/SC.III/L.54.

61. His delegation wished to congratulate the Executive Director of the United Nations Environment Programme (UNEP) for his excellent resumé of the problems of marine pollution and for the proposals which he had placed before the Conference at the 31st plenary meeting. While his delegation could agree with many of those proposals, it could not support the proposal under which States would be liable for damage caused to the marine environment by their own activities, those of their nationals or others under their control or registration. His delegation did not believe that exclusive liability should rest with the States concerned since, in many cases, the State would have to assume liability for gross negligence by a private concern and the effects therefrom, and there were fundamental moral and legal objections to such a principle.

62. Mr. HERNANDEZ DE ARMAS (Cuba) said that the preservation of the marine environment was one of the central tasks facing the Conference. If the world were transformed into a biological desert, few countries would retain the militant attitude with which they currently defended their positions.

63. Pollution was undoubtedly the most recent outcome of the long process of development of industrial society. All were partly responsible for the preservation of the marine environment; there was no doubt, however, that the current situation was the outcome of the unfettered development of capitalist industrial society. In addition to marine pollution from land-based sources in the developed countries, pollution was also caused by installations in the under-developed areas of the world operated by transnational imperialist corporations. For example, in the colony of Puerto Rico, with its atomic and petrochemical installations, the vegetation of vast areas has been destroyed and an alarming level of genetic mutations was affecting new generations. The high level of pollution in the United States—a fact acknowledged by its President himself—had even affected the neighbouring States of Canada and Mexico; to that must be added the pollution produced by its ships and aircraft, and by its policies of ecocide and biocide pursued in Indo-China.

64. In the light of the foregoing, the responsibility of the developing countries was very limited. While their share in responsibility for combating pollution could not be denied, they were not principally responsible and should not therefore be required to impede their own development by specific pollution-control measures.

65. His delegation took the view that general pollution-control measures should be primarily of an international nature, mandatory upon all States irrespective of their geographical situation, and aimed specifically at preventing and avoiding pollution from land-based sources, which was the most prevalent. The relevant standards should be contained in an international convention, account being taken of the special characteristics of various States.

66. Turning to the question of vessel-source pollution, he commended the specialized work carried out by IMCO which, in the view of his and many other delegations, should be recognized as the competent international organization on the subject for the preparation of international conventions for the prevention of pollution from ships. Similarly, mandatory international rules should be adopted with a view to avoiding a proliferation of national laws on the subject, thus helping to combat certain discriminatory or unrestricted practices.

67. The Conference should therefore endorse the conventions on marine pollution and on the safety of human life at sea which had been prepared under the auspices of IMCO, and which could constitute principles within the full meaning of international public law, with provision for sanctions against the violation of their provisions.

68. The new convention on pollution currently being drafted must guarantee freedom of navigation beyond the limits of territorial waters and through straits used by international shipping. In that connexion, the rights of States to ensure the prevention of pollution that might harm their interests should be exercised within their territorial waters; beyond those limits, their interest in the application of international pollution control measures should not hamper freedom of navigation; nor should it enable an individual State to apply restrictive or repressive measures against a ship, thus impeding its free passage. The unlimited extension of the right to prevent pollution beyond the limits of the territorial waters would affect a large number of international straits and channels which would thereby fall under national jurisdiction, to the detriment of international shipping. If freedom of navigation through international straits and canals were to be restricted, there would be an increase in areas of conflict and sources of tension.

69. With a view to preventing pollution within their waters, States should be empowered to apply numerous measures, including fines and preventive inspection measures; States should, however, respect the principle of sovereignty of flag States under which, in the interests of the international community, no members of the crew of a foreign vessel should be detained; in the event that sanctions that were stricter than fines were called for, the flag State should be informed so that it could impose stricter penalties, such as deprivation of liberty, it being required to communicate the nature of the sanction in question to the other State.

70. His delegation also took the view that preventive inspection measures should not unduly delay or endanger the vessel. States should also be required to respect the principle of the sovereign immunity of vessels, in accordance with international law and practice.

71. Control measures imposed to prevent pollution from land-based sources, which gave rise to the greatest number of conflicts, were related to the sovereignty of States; most of those conflicts were caused by the developed capitalist States, which failed to take account of the interests of other States.

72. The Conference should seek to establish a body that would regulate maritime activities, including pollution. Such an authority should have the necessary competence to investigate and resolve conflicts arising among States, or between States and international organizations such as IMCO and UNEP, in waters under the jurisdiction of States.

73. Mr. YTURRIAGA BARBERAN (Spain) said that the new convention should contain not merely a statement of principles on the marine environment but a series of basic articles on pollution control and the preservation of the marine environment, which could later be supplemented and developed by regional or specialized agencies.

74. His delegation believed that the Committee was competent to discuss all matters of pollution in all marine areas. It rejected the idea of postponing discussion of substantive matters such as the jurisdiction of States to yet another conference.

75. The articles in the convention should be based on four principles: the duty of States to protect the marine environment; the duty of States to co-operate at the international level; the right of coastal States to self-protection; and international liability. The first two principles had been adequately covered by the texts prepared by Working Group 2 of the sea-bed Committee.

76. From the duty to protect the marine environment—described by the Spanish delegation as a rule of *jus cogens*—was derived the obligation of coastal States to make suitable arrangements to prevent and eliminate large-scale pollution, from whatever source, and to punish violations of those arrangements. From the duty of international co-operation was derived the need to exchange scientific data and knowledge and to provide assistance to the States concerned.

77. According to paragraph 17 of the principles elaborated by the Intergovernmental Working Group on Marine Pollution held at Ottawa in 1971,<sup>3</sup> the coastal State was responsible for protecting the environment in the zones adjacent to its territorial sea, but the meeting had been unable, owing to lack of time, to consider the corresponding rights of the coastal State—particularly the right to protect itself against pollution risks. The principal corollary of that was the right of States to establish, beyond their territorial sea, a marine environment protection zone over which they exercised functional jurisdiction. The Spanish delegation therefore supported document A/AC.138/SC.111/L.56. The principle of international responsibility covered both the prevention of risk and the determination of adequate compensation in the event of damage. He strongly supported the international adoption of rules concerning the preservation of the marine environment, although he believed that those rules did not have to be exclusively international and that certain residual powers of the coastal State should be recognized. He recalled that at the Ottawa meeting his delegation had put forward a text to the effect that States must adopt suitable anti-pollution measures in accordance with internationally recognized standards, in the absence of which coastal States might adopt reasonable and non-discriminatory measures. On that subject, a suitable text had been submitted at the Ottawa meeting by the delegation of Canada.

78. With regard to implementation, he endorsed the Tanzanian delegation's view, expressed at the 4th meeting, that international standards must be accompanied by sanctions to cover cases of violation. He found it difficult to understand why certain delegations, while agreeing to the need for international standards, opposed the application of them by coastal States.

79. His delegation opposed the idea of the jurisdiction of port States for such States could not exercise universal jurisdiction over incidents which occurred many miles away and with which they had no personal or territorial link.

80. His delegation believed that there must be internationally agreed standards to cover all sources of marine pollution. Good work on vessel-based pollution had already been done, notably by IMCO.

81. As far as pollution from exploitation of the sea-bed was concerned, a distinction must be drawn between the sea-bed beyond the limits of national jurisdiction, which was also being dealt with by the First Committee, and the sea-bed within the limits of national jurisdiction. For both areas international regulations would have to be adopted.

82. With respect to land-based pollution, his delegation understood the anxieties of the developing countries, whose industrialization would necessarily involve a certain amount of pollution. A regional approach should therefore be adopted on that subject, as in the 1974 Helsinki and Paris Conventions.

83. As for the matter of competences, it was essential to co-ordinate the activities of the various international and regional bodies concerned with pollution, and in that connexion his delegation endorsed principle 25 of the Stockholm Declaration. It believed that the most appropriate organization to carry out the co-ordination work was the United Nations Environment Programme.

84. Mr. ALTAIF (Libyan Arab Republic) said that his country, which had a coastline 2,000 kilometres long, took marine pollution problems very seriously, especially because it was planning the use of sea water for drinking and agriculture to compensate for its shortage of fresh water.

85. Co-operation among all States was necessary in order to prevent marine pollution, and national laws were needed which gave States the right to intervene in order to prevent pollution.

<sup>3</sup>See *Report of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.73.II.A.14), annex III.

86. Checking points should be set up in order to verify that ships were complying with international regulations concerning pollution. Regional conferences should be held to reach agreement on pollution problems. Further, all States should try their best to finance the construction of tanks to receive waste material from ships. Libya's petroleum port Marsá al Burayghah was already equipped with such tanks, and other Libyan petroleum and commercial ports were constructing them.

87. Libya had acceded to a number of major anti-pollution conventions and had enacted domestic laws in accordance with them. It had also organized scientific training courses on pollution problems. His delegation was thus prepared in every respect to co-operate in reaching successful results in the fight against pollution.

88. Mr. KAKODKAR (India) said that the Committee's mandate was a crucial one, since most of mankind's environment related to the sea. India itself had a long coastline, and a great deal of international navigation engaged in the carriage of oil and other pollutants passed near to its shores. Its merchant fleet was steadily growing. It therefore viewed the problem of prevention and control of marine pollution not only as a coastal State but also as a steadily growing maritime State. Those two aspects of the problem needed to be reconciled, and the Indian proposals would attempt to harmonize them.

89. His delegation believed that the problem of marine pollution should be tackled with reference to its source and at the regional level, particularly in critical regions, although the importance of the global aspects must not be underrated.

90. For land-based pollution as well as for the prevention and control of marine pollution in the pollution-control zone coextensive with the economic zone of a coastal State, standards should be national ones which took into account, and as far as possible incorporated, international standards on the subject, so as to promote uniformity. In that connexion he suggested that international organizations should draw up two sets of standards: first, mandatory standards which would be applicable in any State accepting them, and secondly, recommended practices of persuasive value, with due regard to the economic burdens for developing countries and the problems of sensitive regions or areas. With regard to vessel-based pollution, including the discharge or dumping of sewage, garbage or pollutants, IMCO should be given competence to establish standards and recommended practices on the pattern of the International Civil Aviation Organization (ICAO). It might also formulate standards and recommended practices for aircraft-based pollution. The question of enforcing standards was closely connected with the concept of the pollution-control zone, which his delegation supported. The limits of the zone should be coextensive with those of the economic zone of a coastal State. Within the zone, the coastal State should have exclusive competence to enforce the standards, national or international, and to stop a transit ship, investigate the violation and take suitable enforcement action. In the international zone, beyond the economic zone/pollution-control zone, the application of standards might be left to the flag State, subject to such powers of supervision, direction and control of the International Sea-Bed Authority as might be agreed at the Conference.

91. Moreover, a State facing the danger or occurrence of marine pollution and a State in the sensitive regional areas in which pollution had assumed critical proportions should be able, individually or collectively with other States of the region, to take appropriate measures of self-protection against intentional discharges or dumping as well as accidental discharges through collision, stranding or fire, for example. With regard to land-based and vessel-based pollution, the State concerned or the flag State, as the case might be, while enjoying complete competence in formulating and enforcing standards after taking into consideration the applicable standards or recom-

mended practices, should be under an obligation to take adequate measures to deal with pollution from those sources. The obligation of those States and that of other entities responsible for marine pollution should be coupled with an appropriate concept of international liability and responsibility, so as to ensure that those States and entities took appropriate action to prevent and control marine pollution.

92. With respect to those aspects which were of importance to the developing countries, his delegation felt that the international standards or other regulations should not impose economic burdens on such countries that they might find difficult to bear. Nor should environmental costs be passed on to them without their consent. Further, adequate financial and technical assistance and training, and the necessary equipment and facilities, should be made available to them to deal with the problem of preventing and combating marine pollution through programmes of international co-operation and by the international organizations concerned. All States should be kept fully informed of the results of monitoring, data collecting and other information, as well as the likely danger or actual occurrence of pollution in the marine areas or regions adjacent to them.

93. Much useful preparatory work had been done by Working Group 2 of Sub-Committee III of the sea-bed Committee. The Third Committee should bear in mind the alternative formulations prepared by that Working Group as well as any new proposals submitted at the current session. The Committee might also like to consider the following items in that connexion: First, the right of States to exploit their resources pursuant to their environmental policies; secondly, coastal State jurisdiction in pollution-control zones and the right to take measures of self-protection; thirdly, international machinery for preserving the marine environment and co-ordination of activities of organizations having competence in that field; and fourthly, promotion of regional agreements.

94. His delegation hoped that, in view of the importance of those matters, the Committee could agree to add them to the list of items already suggested by the Chairman.

95. The CHAIRMAN said that the supplementary items suggested by the representative of India would be considered during the informal meetings of the Committee.

96. Mr. LADJIMI (Tunisia) said that his country was particularly interested in the preservation of the marine environment, because of the intensive maritime trade and off-shore oil activities in the Mediterranean; there was even a grave risk that that sea would shortly become biologically dead. Tunisia's tourist industry and fisheries needed protection. There was a permanent risk of pollution from which no country was immune, and that was because the wrong approach to solving the problem had been adopted. Stringent measures must be adopted and it was natural that those who polluted should pay. International rules were not sufficient to protect the marine environment: national and regional measures were also needed, and all such measures had to be strictly co-ordinated.

97. A coastal State had to protect its exclusive economic zone and must therefore assume full competence over it.

98. As far as vessel-based pollution was concerned, national authorities must lay down certain standards, including the provision of special equipment and the processing of oil residues.

99. He agreed with the delegation of Canada that States should be authorized to apply the provisions of international conventions to ships in their harbours, whatever the area in which the violation was committed. That required a redistribution of competences between coastal States and the various international and regional bodies dealing with the protection of the marine environment, and above all respect for the rules and standards which the Committee would formulate.

100. Mr. BUSTERUD (United States of America) said that there was a growing awareness in the world of the dangers of



marine pollution. States must organize themselves internationally to prevent further degradation of the marine environment. Some organizational difficulties still persisted, but it was clear that there was no difference about the goal to be achieved.

101. His delegation had listened with great interest to the helpful summaries of national positions that had been made, and had been impressed by the spirit of accommodation demonstrated, which boded well for the success of the Committee's work.

102. In view of the fact that the Committee had so few working days left his delegation had decided to defer its substantive comments until the informal meetings on the subject.

103. His delegation's position had already been made plain in the sea-bed Committee, to whose report (A/9021 and Corr.1 and 3) he wished to call the Committee's attention.

104. He hoped that an early start could be made on the remaining topics before the Committee, starting with the enforcement articles and the unfinished work left by the sea-bed Committee. The Third Committee could then return to a reading of all the draft articles, which could then be considered in detail. That, he felt, would be the most effective way of proceeding.

105. Mr. BUHL (Denmark), speaking on behalf of the seven States parties to the Helsinki Convention, proposed that, for the information of the Committee, the preamble, the 29 articles, annexes I to III, and the headings of annexes IV to VI of the Convention, together with a resolution adopted by the signatories, should be circulated as a document of the Committee in the original language, English, and later possibly in the official Russian translation.

106. The CHAIRMAN said he would take it that the Committee agreed to the suggestion.

*It was so decided.*

107. In response to a question from Mr. YTURRIAGA BARBERAN (Spain), the CHAIRMAN said that to translate those parts of the Helsinki Convention which it was proposed to circulate into all the languages of the Conference would be a lengthy and expensive undertaking. He therefore suggested that the Committee might waive its right to such translations.

*It was so decided.*

108. The CHAIRMAN announced that the Committee had ended its discussion of item 12, which had been held in an atmosphere of mutual accommodation. Constructive proposals had emerged from the debate, and although the emphasis laid on priorities had varied, some very important general trends were discernible.

109. Clearly, all States were gravely concerned about the mounting danger of marine pollution and the deterioration of the marine environment, and about the urgent need for effective, co-ordinated action. Moreover, it had been pointed out that the scope and extent of coastal and flag State rights and duties with regard to marine pollution control were matters of paramount importance. Reference had been made to the general and particular obligations of States and to the need for an appropriate balance between coastal State and flag State jurisdiction in marine pollution control.

110. There had been general emphasis on the interrelationship between global, regional and national action to prevent or reduce marine pollution, and special reference had been made to regional arrangements such as those provided for in the Helsinki Convention, which had been mentioned as a possible model. International and national regulations or standards had to be dealt with in an appropriate manner.

111. Great stress had been laid on the need for assessment, operational control and enforcement action with respect to the main sources of pollution, namely, land-based pollution, pollution deriving from sea-bed exploitation, vessel-based pollution and dumping. Special reference had been made to particularly hazardous pollutants such as radioactive substances.

112. It had been pointed out that the responsibility and liability of States, particularly flag States, with regard to vessel-based pollution had to be given special consideration.

113. A number of delegations had emphasized the need to make greater use of existing international institutions concerned with the conservation of the marine environment, and to the need for more co-ordination among them.

114. Many delegations had underlined the importance of the progressive development and codification of international law, with special reference to the need for an "umbrella" convention.

115. A number of problems were, however, still outstanding, and differing views had to be reconciled in the Committee's forthcoming discussions. The main objective was to embark on meaningful negotiations, particularly during the forthcoming informal meetings, and to make full use of the preparatory work already done. The Committee now had to work out draft articles on the basis of existing texts and new proposals, to reduce the number of alternatives and narrow down existing difficulties. On that subject he informed the Committee that the Secretariat had now completed the tables of proposals relating to the items on the Committee's agenda.

*The meeting rose at 6.15 p.m.*

## 7th meeting

Thursday, 18 July 1974, at 3.30 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research  
[Agenda item 13]

Development and transfer of technology  
[Agenda item 14]

1. Mr. RASOLONDRAIBE (Madagascar) said that recent technological developments had made large-scale exploitation of the resources of the sea feasible, which was fortunate at a time of growing awareness that land resources were not inexhaustible. The Committee had to decide what legal rules would

regulate the scientific research that was needed to develop marine technology. Some delegations called for total freedom of scientific research by analogy with the principle of the freedom of the high seas. Rejecting that approach, he referred to a recent article in *Le Monde* which pointed out that the choice of areas to be researched was very often determined by subjective criteria and value judgements. Since marine research was and for some time would be carried out almost exclusively by the developed countries, he considered it politically necessary that the subjective element of scientific research should be offset by some provision to ensure that marine research was