NTER-GOVERNMENTAL MARITIME
CONSULTATIVE ORGANIZATION

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IMCO

INTERNATIONAL CONFERENCE ON
MARINE POLLUTION, 1973

SUMMARY RECORD OF THE ELEVENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1,
on Thursday, 1 November 1973 at 9.45 a.m.

President:	Mr. S. BHAVE (India)
Secretary-General:	Mr. Colin GOAD (Secretary-General of IMCO)
Executive Secretary:	Mr. A. SAVELIEV (IMCO Secretariat)

A list of participants is given in MP/CONF/INF.1/Rev.3

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AGENDA ITEM 7 - CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 (MP/CONF/WP.17; MP/CONF/WP.17/Corr.1; MP/CONF/INF.7/Add.1) (continued)

Article 5

Mr. RAFFAELLI (Brazil) made the following statement:

"The Brazilian delegation has been authorized by the Brazilian Government to approve the language of paragraph (4) of Article 5. However, in so doing, the Brazilian Government wishes to leave on record that they would not agree to the said paragraph being interpreted as granting Parties to the Convention the right to discriminate against ships of non-Contracting States. In other words, while paragraph (4) of Article 5 forbids that ships of non-Contracting States receive a more favourable treatment than ships of Parties to the Convention, it does not warrant a less favourable treatment to ships of non-Contracting States."

Mr. YTURRIAGA (Spain) suggested the following amendments:

Paragraph (2). The word "another" in line 3 should be amended to "a".

Paragraph (3). Line 1 should be amended to read: "If a Party denies a foreign ship access to its ports or", to make it agree with the terminology used in the other Articles.

Paragraph (3). The words "of the ship concerned" should be added after the word "Administration" in line 3 from the end.

Paragraph (4). The English text did not seem to concord with the French and Spanish texts. The word "discriminación" in Spanish always had a pejorative meaning. The Spanish and French texts were preferable to the English.

Mr. SOLOMON (Trinidad and Tobago), Chairman of Committee I, in response to a request by the President, gave it as his opinion that the changes to paragraphs (2) and (3) were satisfactory. The English wording of paragraph (4) was satisfactory, since "discrimination" was not necessarily pejorative in English. However, the difficulty could be circumvented by amending the last line of paragraph (4) of the English text to read: "that no more favourable treatment is given to such ships."

Mr.YTURRIAGA (Spain)had a further three comments to make on the Spanish text. First, the word "reglamentos" in line 3 should be amended to "reglas" and the same change should be made throughout the Convention and Annex. Second, the word "adecuado" (appropriate) had been omitted from the last line of paragraph (2) and should be inserted. Third, the word "threat" in paragraph (2) line 4 from the end of the English text had been mistranslated as "riesgo" and should be amended to "amenaza".

Mr. ARCHER (UK) proposed amending "its ports" in line 1 of paragraph (3) to "the ports".

Mr. BREUER (Federal Republic of Germany) and Mr. PIERACCINI (Italy) were worried by the amount of work still to be done on the substance of the draft Convention and strongly urged representatives to leave minor drafting points to be settled later on in the Drafting Committee.

Mr. KOH ENG TIAN (Singapore) wanted to know, in connexion with paragraph (3), line 5, how a flag State could be informed before proceedings were started if it had no representative in the country where the alleged offence occurred.

There was further discussion in which the delegations of the USSR, Singapore, Switzerland and the United Kingdom participated.

The PRESIDENT suggested adding the following words after "fly" at the end of line 5 of paragraph (3): "or, if this is not possible, the Administration of the ship concerned".

It was so decided.

Mr. YANKOV (Bulgaria) complained of the plenary's repeated failures to observe the Rules of Procedure. It was very difficult to know whether or not an amendment was actually before the plenary. At the present rate of progress a further week would be needed to adopt the Convention. In the present case, he was prepared to vote on the whole of Article 5 as it stood at present, but only on the understanding that any proposals to change the remainder of the text should be treated as amendments and dealt with accordingly.

The PRESIDENT invited the plenary to vote on Article 5.

Article 5 was adopted by 55 votes to none, with 2 abstentions.

Article 6

Mr. YTURRIAGA (Spain) said that he wanted to give an explanation of his vote after the voting.

Mr. TIKHONOV (USSR) said that under the Rules of Procedure, Article 6, paragraph (5), should be voted on separately.

Mr. RENTNER (German Democratic Republic) agreed.

It was decided to vote on paragraph (5) separately.

Mr. TRAIN (USA) asked whether there would have to be a vote approving Article 6 as a whole if paragraph (5) was voted on separately.

The PRESIDENT confirmed that that was the case.

He invited the plenary to vote on paragraph (5).

Paragraph (5) of Article 6 was adopted by 42 votes to 9, with 6 abstentions.

The PRESIDENT invited the plenary to vote on Article 6 as a whole.

Article 6 as a whole was adopted by 48 votes to none, with 8 abstentions.

Mr. YTURRIAGA (Spain) said that the Spanish delegation had voted in favour of Articles 5 and 6 on the understanding that the rights of coastal States recognized in those Articles were not the only rights that a coastal State had both in its ports and its territorial sea.

In order to clarify that point, his delegation would submit, in due time, the following amendment to the draft Resolution proposed by Mexico and Venezuela (MP/CONF/WP.24) - to add a second operative paragraph: "Further declares that the rights recognized to a coastal State in the Convention in areas within its jurisdiction do not preclude the existence of other rights in accordance with international law".

Article 7 (formerly 6(b))

The PRESIDENT invited the plenary to vote on Article 7 (formerly 6(b)).

Article 7 was adopted by 56 votes to none, with 1 abstention.

Article 8 (formerly 7)

Mr. SASAMURA (IMCO Secretariat) announced a number of amendments which had been agreed on by the plenary.

It had been decided to transfer paragraph (1) to Article 2 as paragraph (6). The remaining paragraphs (2) to (5) of Article 8 therefore had to be renumbered (1) - (4).

In paragraph (1)(formerly (2)) the last part of line 2 after "provisions of" and line 3 had been amended to read "Protocol 1 to the present Convention". In paragraph (4) (formerly (5)), the words "to the present Convention" had been added after "Protocol 1" in line 3.

The PRESIDENT invited the plenary to vote on Article 8 as thus amended.

Article 8, as amended, was adopted unanimously.

Article 9 (formerly 8)

Mr. RAFFAELLI (Brazil) made the following statement:

"The Brazilian delegation has been instructed by the Brazilian Government to abstain in the vote on Article 9, as they believe it necessary to proceed to a deeper examination of this Article. This is due to doubts arising as to the meaning of expressions such as 'the particular characteristics' of certain waters and 'accepted scientific criteria'. While the said expressions correspond to legitimate preoccupations on the part of certain delegations, it is the Brazilian Government's contention that they introduce a measure of ambiguity into the Convention".

Mr. GOWLAND (Argentina) thought that the Article was a confusing compromise which limited the power of the coastal State, provided inadequate freedom of navigation and dealt with matters which were more the province of the next Conference on the Law of the Sea. Argentina had consistently held that all anti-pollution measures were a matter for maximum international agreement. Article 9 was unnecessary and should therefore be deleted.

Mr. TRESSELT (Norway) said the whole object of the Conference's work was to create new international standards in order to minimize pollution from ships. The rules established in the Convention and the Annexes would lead to a very considerable reduction of vessel source pollution, by imposing strict regulations in respect of discharges and by introducing new requirements for ship design and construction. To that extent, the Conference had achieved a positive result.

However, for any system of international norms to function effectively it must remain international, and the original IMCO draft of Article 8(2) had contained provisions to ensure the international character of the norms established by the Convention. It had become clear that that text did not receive majority support, and so a number of countries had worked actively towards producing a revised text, which was now submitted to the Conference as Article 9. That Article laid down a basic principle by defining the extent to which international norms might be replaced or supplemented by national norms in respect of foreign ships. That principle was fundamental in providing a workable international system of norms. In his view, Article 9 succeeded in aligning the interests of all the countries which had collaborated in working out a common set of standards; it also provided reasonable exceptions to the rule, both in regard to discharge (paragraph (1)) and in regard to ship design and equipment in certain waters (paragraph (2)). He believed that those exceptions met real needs, and would permit the taking of exceptional measures for the protection of the environment where exceptional circumstances so required. Those circumstances were not specifically defined in paragraph (2), but he assumed that international environmental protection agencies, such as the United Nations Environment Programme and GESAMP, would in due course supply clear definitions of accepted scientific criteria.

Some representatives had expressed the feeling that adoption of Article 9 would prejudice the outcome of the Law of the Sea Conference. In his view, such fears were unfounded, since Article 9 did not constitute a general statement on international law, and did not impose any limitations on the competence of States to exercise their sovereign powers within areas under their jurisdiction. Article 9 was, on the contrary, an expression of the willingness of States to circumscribe - on a contractual basis - their exercise of sovereign powers with respect to other Parties to the Convention.

His delegation believed that the present text of Article 9 represented a fair balance between conflicting interests, and that it was a workable compromise which would promote environmental interests without unduly impeding the efficiency of world sea-borne trade. He regarded Article 9 as central to the whole Convention, and if it were deleted, this Government's authorities would have to give serious consideration to its attitude to the Convention before deciding upon signature and ratification.

Mr. KATEKA (Tanzania) proposed that in paragraph (1) of Article 9 the words "more stringent" should be replaced by "special"; at the end of that paragraph the phrase "discharge standards" should be replaced by "any matter to which this Convention relates". He further proposed the deletion of paragraph (2) of the Article.

Mr. ADERO (Kenya) supported that proposal. He did not think it right for the present Conference to take any decision on the question in view of the forthcoming Conference on the Law of the Sea. However, if he had to agree to the inclusion of Article 9, he would favour a formula giving coastal States unrestricted rights to establish zones in which they could take anti-pollution measures for the purpose of preventing or minimizing damage to the marine environment.

Mr. LEE (Canada) reiterated his delegation's support for Article 9. That Article had been approved by a large majority in Committee I, comprising many coastal States, shipping States and maritime powers. The Article represented a genuine accommodation between two extreme points of view - the first holding that coastal States, Parties to the Convention should be free to take any measures they chose within their jurisdiction in respect of matters to which the Convention related, and the second holding that coastal States should have no rights to take any such measures.

If Article 9 were to be removed from the Convention, those two opposing viewpoints would be left unresolved, and would represent a potential source of conflict between Contracting Parties. That would run counter to the very purpose of the Convention, which was to promote co-operation between nations.

Some delegations had objected that Article 9 raised issues which should be left to the Law of the Sea Conference to decide, but such objections were without foundation. Article 9 was concerned only with the question of the extent to which Contracting States might individually be prepared to refrain from taking measures within their jurisdiction in respect of matters to which the Convention related. It in no way sought to define the nature and extent of that jurisdiction, since that was a question that came entirely within the competence of the Conference on the Law of the Sea. He considered that such objections only served to obscure the real problems at issue.

He recalled that in Committee I, some representatives had opposed the draft Article on port State enforcement on the grounds that it was more properly a matter for the Conference on the Law of the Sea; subsequently, however, some of those same delegations had joined in defeating the draft resolution referring that very question to the Law of the Sea Conference. He urged that any problem arising out of draft Article 9 should be dealt with within the context of the present Convention, and that those problems should not be avoided on procedural grounds.

Whether or not Article 9 was included in the Convention, every State would still reserve full powers to take measures within its jurisdiction in respect of matters to which the Convention related. However, if the Article were not included, there would be no limitations and safeguards upon those powers, which would mean a serious setback to one of the main objectives of the Conference, namely the greatest possible uniformity of rules of standards for the prevention of pollution. Not only would it be a setback to the work of the Conference but also to the work of IMCO in general, and would seriously reduce chances of arriving at an acceptable solution of the marine pollution problem at the Law of the Sea Conference. He urged all representatives to consider those consequences before voting on Article 9.

Since Article 9 had been drafted after long negotiations, and represented a fair and well-balanced compromise, he proposed that it should be voted on as a whole.

Mr. ARCHER (UK) said that the Conference had spent more time on Article 9 than on any other issue. His delegation had come to the Conference with two aims: first, to produce a Convention which would effectively combat pollution, and secondly, to avoid prejudicing in any way the Conference on the Law of the Sea. In considering Article 9, those two aims had tended to come into conflict. The Article as now drafted made it possible for States in certain circumstances to introduce special construction standards applying to all ships within its jurisdiction, and he was opposed to that provision. The second sentence of paragraph (2) of the Article, if confirmed, would represent a new development in the Law of the Sea; if it had provided that international agreement should be required in such cases, he could have accepted it; but attempts in the Committee to provide for such agreement had failed. He thought the phrase

"accepted scientific criteria" was too vague, and would lead to confusion. He did not agree with the Canadian representative that the Article had gained general acceptance in Committee I, and pointed out that there had been no opportunity to vote for or against the retention of the Article. The rights of coastal States vis-à-vis flag States was a matter that concerned the Law of the Sea Conference, and he did not think it was for a technical Conference such as the present one to decide it. His delegation therefore favoured the deletion of Article 9.

Some delegations had claimed that deletion of the Article would give States unlimited rights to take additional measures within their jurisdiction; he did not share that view, but thought that it would be useful, at a later stage, to adopt a resolution on the lines of that contained in document MP/CONF/WP.24.

In conclusion, he stressed that his delegation did not wish its opposition to Article 9 to be interpreted as a lack of confidence in the Convention as a whole.

Mr. LINDENCRONA (Sweden), Vice-Chairman of Committee I, in reply to a point of order raised by Mr. LEE (Canada), said that the voting on Article 9 in Committee I had been 29 in favour, 10 against, with 9 abstentions.

Mr. SUGIHARA (Japan) stated that it was not his intention to re-open the discussion on the complex issues concerning coastal States' jurisdiction, which was obviously outside the purview of the Conference. He was, however, compelled to point out that the fundamental issue involved in the present formulation of Article 9, paragraph (1) and the second sentence of paragraph (2) was to what extent, if at all, a coastal State could take action under international law; that was the well known juxtaposition in the Law of the Sea Conference, namely national standards versus international standards. Discussion of that point had continued for over three years in the preparatory work in the United Nations Sea-Bed Committee. Japan's basic attitude was that, in the field of prevention of pollution, every effort should be made to develop international rules and standards so that recourse to unilateral national action should be restrained in any part of the sea, whether within the jurisdiction of a State or not. Even an advocate of national standards in so-called pollution zones could easily recognize that the application of completely different standards by different coastal States would be highly detrimental to maritime transport especially in the major international sea routes. Japan hoped that the issue could be satisfactorily solved at the Law of the Sea Conference.

He wished to stress that the present Conference was not the proper forum for settling such a problematical issue. As earlier speakers had repeatedly pointed out, the Conference should not prejudice the outcome of the Law of the Sea Conference; and the present formulation of Article 9 as a whole was indeed prejudicial in that it gave coastal States the powers to take unilateral action, which was a complete infringement of the competence of the Law of the Sea Conference.

Mr. KATEKA (Tanzania) was also opposed to the inclusion of Article 9 in the Convention. The second sentence of paragraph (2) of the Article was too open-ended and provided no safeguard against abuse, since nothing would prevent States formulating their own criteria unilaterally. He thought that the appropriate international body should review and sanction any arbitrary action by coastal States in respect to pollution control. The fundamental issue involved in the Article was the extent to which coastal States could take action under international law, and that very issue had been under discussion for three years in the UN Sea-Bed Committee; it was therefore a matter for the Conference on the Law of the Sea.

Mr. BRENNAN (Australia) agreed that Article 9 was one of the most important Articles in the Convention. In his view, however, the issue it raised was only a contractual one, defining the obligations of Parties to the Convention to one another; it did not raise any jurisdictional issue. It did not, in fact, define the authority of coastal States to take measures to protect the environment within their jurisdiction, nor did it pre-judge decisions on that question which might be taken by the Conference on the Law of the Sea. He pointed out that the Article should be interpreted in the context of Article 10, paragraph (2), which overrode every other Article in the Convention. It had been clear that, under the 1954 Oil Pollution Convention the adoption of international rules in no way affected the authority of coastal States to legislate within their jurisdiction, and the same would be true for the present Convention.

Article 9 simply meant that coastal States undertook not to impose higher discharge standards than those required by international rules without good reason, and would only impose higher constructional standards in extreme cases.

Australia was particularly concerned with discharge standards, since the nature of some of its coastal waters, which were very shallow with considerable tidal movement, were such that even the permitted level of discharge might have harmful effects. It was also concerned with constructional standards, in view of the many deleterious and highly toxic substances that were being carried by sea in increasing quantities. Since a very substantial measure of agreement had been reached on the question of reservations on the authority of a coastal State, he believed it should be included in the Convention.

With regard to the objections of substance that had been raised to Article 9, he thought that very reasonable safeguards had been provided against possible abuse by coastal States of the reservation provided in paragraph (2). First, the reservation applied only to specifically defined waters; secondly, Parties were obliged to report measures taken to the Organization without delay; thirdly, duly documented notification was required under Article 12(g); and fourthly, there was provision for compulsory arbitration.

With regard to the jurisdictional objections, he did not think that the reference to constructional standards was in any way prejudicial to the Conference on the Law of the Sea; on the contrary, the deletion of Article 9 from the Convention would introduce an element of uncertainty, since it would not be clear whether or not Contracting States had surrendered their rights to impose additional standards.

He strongly urged the adoption of Article 9, and stated that, should it not be included in the Convention, his Government would reserve the right to impose whatever measures it found necessary to protect Australia's marine environment.

Mr. TRAIN (USA) said that his delegation would vote against Article 9. It would vote on any amendment on its merits, but that did not mean that it was in any way in favour of adoption of the Article.

Article 9 was an attempt to define States' own jurisdiction over their own waters. It therefore purported to decide issues which were not within the competence of the Conference, but were to be dealt with by the forthcoming United Nations Conference on the Law of the Sea. In that connexion, the present Conference should not disregard the letter sent to the Secretary-General by the Chairman of the Sea-Bed Committee (MP/CONF/INF.7/Add.1). Moreover, by specifying what States could or could not do, Article 9 seriously prejudiced Article 10(2).

The issue of jurisdiction was a very complex one to which the Conference had not given adequate consideration and could not do so, as General Assembly Resolution A/RES/3029(XXVII) indicated that the subject formed an integrated whole. The United States delegation had, throughout the Conference, consistently opposed any prejudging of the issues to be decided at the Law of the Sea Conference and which, moreover, needed further consideration by Governments. Article 9, as drafted, was too simplistic to be accommodated in the Convention and was not necessary to it.

His delegation requested a roll-call vote on Article 9.

Mr. SJADZALI (Indonesia) said he fully understood the anxiety of many delegations over Article 9 because of their genuine belief that it was not in accordance with international interest. His delegation, however, was convinced that the Article in its present form was the best possible compromise formula. It accommodated the interests both of countries fearing pollution from ships and of actual or potential polluters. Indonesia was an example of a country which fell into both categories: it was an archipelagic State with many waterways, but also had an infant shipping industry which it hoped to develop. It considered the provisions of Article 9 to be reasonable and, while understanding the various reasons of those who wished Article 9 to be deleted, firmly believed that it should stand.

He therefore supported the Canadian proposal, supported by Australia, that the Article should be put to the vote as a whole.

Mr. DEL CAMPO (Uruguay) said that the statements already made revealed that a crucial stage had been reached regarding the situation of the world's seas. His delegation had worked to find a generally acceptable solution for the present Convention, but realized that there was no sufficient consensus. It would vote against the adoption of Article 9 because it was giving rise to so many doubts and objections and to adopt it would, therefore, be contrary to the aims of the Conference. Meanwhile, his country would continue to work on the basis of the regionally applied concept concerning jurisdiction governing the seas until the Law of the Sea Conference had completed its work.

Mr. VALLARTA (Mexico) said that his delegation was convinced that an IMCO Conference was not the appropriate forum to discuss jurisdiction, especially on the eve of the United Nations Law of the Sea Conference. It was not yet prepared to discuss jurisdictional matters which were still being studied by various branches of the Mexican Government. Moreover, adoption of Article 9 might have unforeseeable consequences for developing countries which must be further studied.

He regretted that it had not been possible to devote more time during the Conference to study of the problem, but understood the point of view of other delegations and considered they were justified in attempting to protect their own interests. The developing countries must look to theirs too.

Although his delegation would prefer Article 9 not to be included in the Convention, when the vote was taken it would abstain rather than vote against. He hoped that those in favour of Article 9 would understand Mexico's abstention to be a friendly gesture since, under Rule 19 of the Rules of Procedure, abstentions were not counted as votes.

Mr. TURKI (Tunisia) said that his delegation supported Article 9. The provisions of the Convention were a first step towards combating pollution from oil and other harmful substances. But present knowledge of the environment did not enable it to be certain that those measures were sufficient to protect exceptionally vulnerable areas.

Paragraph (1) of Article 9 provided a safeguard in case certain States felt that more protection was needed, but it also restricted more stringent measures to those where specific circumstances warranted them. It was, therefore, well balanced. In accordance with paragraph (2), additional requirements with regard to ship design and equipment were only to be sanctioned by accepted scientific criteria, while paragraph (3) provided that Parties were to be informed about such measures without delay. Article 9 did leave the door open for the future.

His delegation therefore supported the Canadian proposal and approved of Article 9. It thought that paragraph (2) would be improved by the addition of the word "However" at the beginning of the second sentence, to provide a connecting link between the two sentences.

Mr. KATEKA (Tanzania) said that the plenary need not be bound by arguments adducing the voting figures in the Committee and the time spent on the question there. Some delegations opposed to Article 9 had stated that it would prejudice the Conference on the Law of the Sea. Yet, when, at the previous meeting, he had said that Articles 4 and 10 might also prejudice that Conference, nobody had then agreed. It would appear that those delegations were guided by self-interest and not by concern for the Law of the Sea Conference. They should be consistent.

Reference had also been made to the letter from the Chairman of the Sea-Bed Committee. He himself had participated in the meeting which had drafted that letter. The Sea-Bed Committee had indicated that there was an overlap between the subjects of the two Conferences but had made no attempt at a demarcation line. As his delegation understood it, certain aspects of jurisdiction needed to be clarified in order to resolve issues connected with the control of pollution. The present Conference was, therefore, competent to discuss those aspects in such a way as to leave open the whole question to be dealt with by the Law of the Sea Conference. Article 9 did not attempt to define jurisdiction and did not prejudice that Conference.

As the phrasing of the text was causing concern, his delegation's proposed amendment was aimed at eliminating uncertainties in terminology. He asked the Conference to approve it.

He also requested a paragraph by paragraph vote in addition to the roll-call vote on the Article, regardless of the results of the voting on the amendments. He further requested that the debate should be closed immediately.

The PRESIDENT said that, in accordance with Rule 13 of the Rules of Procedure, he would give permission to one more speaker in favour of the proposal and then to two against it.

Mr. ADERO (Kenya) said he thought there had been sufficient debate on Article 9; he therefore supported the motion to close the debate and to vote on the amendments as they had been received.

Mr. CABOUAT (France) said that Article 9 was one of the most important texts in the Convention. The representative of Tanzania had spoken on it several times while others had not yet had an opportunity to do so. All delegations which wished to speak should be allowed a chance.

Mr. YTURRIAGA (Spain) agreed with the French representative. His own delegation had been asking for the floor for three quarters of an hour. He begged the Tanzanian representative not to press his proposal. Instead, he moved the closure of the list of speakers.

Mr. KATEKA (Tanzania), speaking on a point of order, said that in view of the appeal just made, and with the permission of the Kenyan representative, he would withdraw his motion for closure of the debate.

The PRESIDENT said that he accepted the Spanish suggestion to close the list of speakers. His list so far contained the representatives of France, Spain, Greece and the Federal Republic of Germany.

The representatives of Denmark, Trinidad and Tobago, New Zealand and Ghana indicated their wish also to speak on Article 9.

The PRESIDENT declared the list of speakers closed.

The meeting rose at 12.50 p.m.

TER-GOVERNMENTAL MARITIME
ONSULTATIVE ORGANIZATION

MP/CONF/SR.11
1 November 1973
Original: ENGLISH

IMCO

FOR PARTICIPANTS ONLY

INTERNATIONAL CONFERENCE ON
MARINE POLLUTION, 1973

PROVISIONAL SUMMARY RECORD OF THE ELEVENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1,
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President:	Mr. S. BHAVE (India)
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Executive Secretary:	Mr. A. SAVELIEV

A list of participants is given in MP/CONF/INF.1/Rev.2

N.B. Corrections to be incorporated in the final summary record of the meeting should be submitted in writing (two copies in English or French), preferably on a copy of the provisional summary record, to IMCO Secretariat, 104 Piccadilly, London W1V 0AE not later than 23 November 1973.

CONTENTS

AGENDA ITEM 7 - CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 (MP/CONF/WP.17)(continued)

The PRESIDENT invited the Plenary to consider Article 5.

The Brazilian delegation made the following statement:

"The Brazilian delegation has been authorized by the Brazilian Government to approve the language of paragraph (4) of Article 5. However, in so doing, the Brazilian Government wishes to leave on record that they would not agree to the said paragraph being interpreted as granting Parties to the Convention the right to discriminate against ships of non-Contracting States. In other words, while paragraph (4) of Article 5 forbids that ships of non-Contracting States receive a more favourable treatment than ships of Parties to the Convention, it does not warrant a less favourable treatment to ships of non-Contracting States."

Mr. POCH (Spain) suggested the following amendments:

Paragraph (2). The word "another" in line 3 should be amended to "a".

Paragraph (3). Line 1 should be amended to read: "If a Party denies a foreign ship access to its ports or", to make it agree with the terminology used in the other Articles.

Paragraph (3). The words "of the ship concerned" should be added after the word "Administration" in line 3 from the end.

Paragraph (4). The English text did not seem to concord with the French and Spanish texts. The word "discriminación" in Spanish always had a pejorative meaning. The Spanish and French texts were preferable to the English.

In response to a request by the President, the Chairman of Committee I gave it as his opinion that the changes to paragraphs (2) and (3) were satisfactory. The English wording of paragraph (4) was satisfactory since

"discrimination" was not necessarily pejorative in English. However, the difficulty could be circumvented by amending the last line of paragraph (4) of the English text to read: "that no more favourable treatment is given to such ships."

Mr. POCH (Spain) had a further three comments to make on the Spanish text. First, the word "reglamentos" in line 3 should be amended to "reglas" and the same change should be made throughout the Convention and Annex. Second, the word "adecuado" (appropriate) had been omitted from the last line of paragraph (2) and should be inserted. Third, the word "threat" in paragraph (2) line 4 from the end of the English text had been mistranslated as "riesgo" and should be amended to "amenaza".

Mr. ARCHER (UK) proposed amending "its ports" in line 1 of paragraph (3) to "the ports".

Dr. BREUER (Federal Republic of Germany) and Mr. PIERACCINI (Italy) were worried by the amount of work still to be done on the substance of the draft Convention and strongly urged representatives to leave minor drafting points to be settled later on in the Drafting Committee.

Mr. KOH ENG TIAN (Singapore) wanted to know, in connexion with paragraph (3), line 5, how a flag State could be informed before proceedings were started if there was no representative of the flag State in the country where the alleged offence occurred.

After some discussion in which the USSR, Singapore, Switzerland and the United Kingdom participated, it was decided to add the following words after "fly" at the end of line 5 of paragraph (3): "or, if this is not possible, the Administration of the ship concerned".

Mr. YANKOV (Bulgaria) complained of the Plenary's repeated failures to observe the Rules of Procedure. It was very difficult to know whether or not an amendment was actually before the Plenary. At the present rate of progress a further week would be needed to adopt the Convention. In the present case he was prepared to vote on the whole of Article 5, as at the present meeting, but only on the understanding that any proposals to change the remainder of the text should be treated as amendments and dealt with accordingly.

The PRESIDENT invited the Plenary to vote on Article 5.

Article 5 was adopted by 55 votes to none, with 2 abstentions.

Article 6

The PRESIDENT invited the Plenary to consider Article 6.

Mr. POCH (Spain) said that he wanted to give an explanation of his vote after the voting.

Mr. TIKHONOV (USSR) said that under the Rules of Procedure Article 6, paragraph (5), should be voted on separately.

Mr. RENTNER (German Democratic Republic) agreed.

It was agreed to vote on paragraph (5) separately.

Mr. TRAIN (USA) asked whether there would have to be a vote approving Article 6 as a whole if paragraph (5) was voted on separately.

The PRESIDENT said that that was the case.

He invited the Plenary to vote on paragraph (5).

Paragraph (5) of Article 6 was adopted by 42 votes to 9, with 6 abstentions.

The PRESIDENT invited the Plenary to vote on the whole of Article 6.

Article 6 as a whole was adopted by 48 votes to none, with 8 abstentions.

Mr. POCH (Spain), explaining his vote, said that Spain had voted in favour on the understanding that the rights granted to the port authority were not the only ones and did not affect its rights in territorial seas nor exclude the other rights of port States under international law.

Article 7 (formerly 6(b))

The PRESIDENT invited the Plenary to vote on Article 7 (formerly 6(b)).

Article 7 was adopted by 56 votes to none, with 1 abstention.

Article 8 (formerly 7)

The PRESIDENT invited the Committee to consider Article 8 (formerly 7).

Mr. SASAMURA (IMCO Secretariat) announced a number of amendments which had been agreed on by the Plenary.

It had been decided to transfer paragraph (1) to Article 2 as paragraph (6). The remaining paragraphs (2) to (5) of Article 8 therefore had to be renumbered (1) - (4).

In paragraph (1) (formerly (2)) the latter part of line 2 after "provisions of" and line 3 had been amended to read "Protocol 1 to the present Convention." In paragraph (4) (formerly (5)) the words "to the present Convention" had been added after "Protocol 1" in line 3.

The PRESIDENT invited the Plenary to vote on Article 8.

Article 8, as amended, was adopted unanimously.

Article 9 (formerly 8)

The Brazilian delegation made the following statement:

"The Brazilian delegation has been instructed by the Brazilian Government to abstain in the vote on Article 9, as they believe it necessary to proceed to a deeper examination of this Article. This is due to doubts arising as to the meaning of expressions such as 'the particular characteristics' of certain waters and 'accepted scientific criteria'. While said expressions correspond to legitimate preoccupations on the part of certain delegations, it is the Brazilian Government's contention that they introduce a measure of ambiguity into the Convention".

Mr. GOWLAND (Argentina) thought that the Article was a confusing compromise which limited the power of the coastal State, provided inadequate freedom of navigation and dealt with matters which were more the province of the next Conference on the Law of the Sea. Argentina had consistently held that all anti-pollution measures were a matter for maximum international agreement. Article 9 was unnecessary and should therefore be deleted.

Mr. TRESSELT (Norway) said the whole object of the Conference's work was to create new international standards in order to minimize pollution from ships. The rules established in the Convention and the Annexes would lead to a very considerable reduction of vessel source pollution, by imposing strict regulations in respect of discharges and by introducing new requirements for ship design and construction. To that extent, the Conference had achieved a positive result.

However, for any system of international norms to function effectively it must remain international, and the original IMCO draft of Article 8(2) had contained provisions to ensure the international character of the norms established by the Convention. It had become clear that that text did not receive majority support, and so a number of countries had worked actively towards producing a revised text, which was now submitted to the Conference as Article 9. That Article laid down a basic principle by defining the extent to which international norms might be replaced or supplemented by national norms in respect of foreign ships. That principle was fundamental in providing a workable international system of norms. In his view, Article 9 succeeded in aligning the interests of all the countries which had collaborated in working out a common set of standards; it also provided reasonable exceptions to the rule, both in regard to discharge (paragraph (1)) and in regard to ship design and equipment in certain waters (paragraph (2)). He believed that those exceptions met real needs, and would permit the taking of exceptional measures for the protection of the environment where exceptional circumstances so required. Those circumstances were not specifically defined in paragraph (2), but he assumed that international environmental protection agencies, such as the United Nations Environment Program and GESAMP, would in due course supply clear definitions of accepted scientic criteria.

Some representatives had expressed the feeling that adoption of Article 9 would prejudice the outcome of the Law of the Sea Conference. In his view, such fears were unfounded, since Article 9 did not constitute a general statement on international law, and did not impose any limitations on the competence of States to exercise their sovereign powers within areas under their jurisdiction. Article 9 was, on the contrary, an expression of the willingness of States to circumscribe - on a contractual basis - their exercise of sovereign powers with respect to other parties to the Convention.

His delegation believed that the present text of Article 9 represented a fair balance between conflicting interests, and that it was a workable compromise which would promote environmental interests without unduly impeding the efficiency of world sea-borne trade. He regarded Article 9 as central to the whole Convention, and if it were deleted, his Government's authorities would have to give serious consideration to its attitude to the Convention before deciding upon signature and ratification.

Mr. KATEKA (Tanzania) proposed that in paragraph (1) of Article 9 the words "more stringent" should be replaced by "special"; at the end of that paragraph the phrase "discharge standards" should be replaced by "any matter to which this Convention relates". He further proposed the deletion of paragraph (2) of the Article.

Mr. ADERO (Kenya) supported that proposal. He did not think it right for the present Conference to take any decision on the question in view of the forthcoming Conference on the Law of the Sea. However, if he had to agree to the inclusion of Article 9, he would favour a formula giving Coastal States unrestricted rights to establish zones in which they could take anti-pollution measures for the purpose of preventing or minimizing damage to the marine environment.

Mr. LEE (Canada) reiterated his delegation's support for Article 9. That Article had been approved by a large majority in Committee I, comprising many Coastal States, shipping States and Maritime Powers. The Article represented a genuine accommodation between two extreme points of view, the first holding that Coastal States, Parties to the Convention should be free to take any measures they chose within their jurisdiction in respect of matters to which the Convention related, and the second holding that Coastal States should have no rights to take any such measures.

If Article 9 were to be removed from the Convention, those two opposing viewpoints would be left unresolved, and would represent a potential source of conflict between Contracting Parties. That would run counter to the very purpose of the Convention, which was to promote co-operation between nations.

Some delegations had objected that Article 9 raised issues which should be left to the Law of the Sea Conference to decide, but such objections were without foundation. Article 9 was concerned only with the question of the extent to which Contracting States might individually be prepared to refrain from taking measures within their jurisdiction in respect of matters to which the Convention related. It in no way sought to define the nature and extent of that jurisdiction, since that was a question that came entirely within the competence of the Conference on the Law of the Sea. He considered that such objections only served to obscure the real problems at issue.

He recalled that in Committee I some representatives had opposed the draft Article on port state enforcement on the grounds that it was more properly a matter for the Conference on the Law of the Sea; subsequently, however, some of those same delegations had joined in defeating the draft resolution referring that very question to the Law of the Sea Conference.

He urged that any problem arising out of draft Article 9 should be dealt with within the context of the present Convention, and that those problems should not be avoided on procedural grounds.

Whether or not Article 9 was included in the Convention, every State would still reserve full powers to take measures within its jurisdiction in respect of matters to which the Convention related. However, if the Article were not included, there would be no limitations and safeguards upon those powers, which would mean a serious setback to one of the main objectives of the Conference, namely the greatest possible uniformity of rules and standards for the prevention of pollution. Not only would it be a setback to the work of the Conference but also to the work of IMCO in general, and would seriously reduce chances of arriving at an acceptable solution of the marine pollution problem at the Law of the Sea Conference. He urged all representatives to consider those consequences before voting on Article 9.

Since Article 9 had been drafted after long negotiations, and represented a fair and well-balanced compromise, he proposed that it should be voted on as a whole.

Mr. ARCHER (UK) said that the Conference had spent more time on Article 9 than on any other issue. His delegation had come to the Conference with two aims, first, to produce a Convention which would effectively combat pollution, and secondly, to avoid prejudicing in any way the Conference on the Law of the Sea. In considering Article 9, those two aims had tended to come into conflict. The Article as now drafted made it possible for States in certain circumstances to introduce special construction standards applying to all ships within its jurisdiction, and he was opposed to that provision. The second sentence

of paragraph (2) of the Article, if confirmed, would represent a new development in the Law of the Sea; if it had provided that international agreement should be required in such cases, he could have accepted it, but attempts in the Committee to provide for such agreement had failed. He thought the phrase "accepted scientific criteria" was too vague, and would lead to confusion. He did not agree with the Canadian representative that the Article had gained general acceptance in Committee I, and pointed out that there had been no opportunity to vote for or against the retention of the Article. The rights of Coastal States vis-à-vis Flag States was a matter that concerned the Law of the Sea Conference, and he did not think it was for a technical Conference such as the present one to decide it. His delegation therefore favoured the deletion of Article 9.

Some delegations had claimed that deletion of the Article would give States unlimited rights to take additional measures within their jurisdiction; he did not share that view, but thought that it would be useful, at a later stage, to adopt a resolution on the lines of that contained in document MP/CONF/WP.24.

In conclusion, he stressed that his delegation did not wish its opposition to Article 9 to be intrepreted as a lack of confidence in the Convention as a whole.

Mr. LINDENCRONA (Sweden), Vice-Chairman of Committee I, in reply to a point of order raised by Mr. LEE (Canada), said that the voting on Article 9 in Committee I had been 29 in favour, 10 against, with 9 abstentions.

Mr. KATEKA (Tanzania) was also opposed to the inclusion of Article 9 in the Convention. The second sentence of paragraph (2) of the Article was too open-ended, and provided no safeguard against abuse, since nothing would prevent States formulating their own criteria unilaterally. He thought that the appropriate international body should

review and sanction any arbitrary action by Coastal States in respect to pollution control. The fundamental issue involved in the Article was the extent to which Coastal States could take action under international law, and that very issue had been under discussion for three years in the UN Sea-Bed Committee; it was therefore a matter for the Conference on the Law of the Sea.

Mr. BRENNAN (Australia) agreed that Article 9 was one of the most important Articles in the Convention. In his view, however, the issue it raised was only a contractual one, defining the obligations of Parties to the Convention to one another; it did not raise any jurisdictional issue. It did not, in fact, define the authority of Coastal States to take measures to protect the environment within their jurisdiction, nor did it pre-judge decisions on that question which might be taken by the Conference on the Law of the Sea. He pointed out that the Article should be interpreted in the context of Article 10, paragraph (2), which over-rode every other Article in the Convention. It had been clear that under the 1954 Safety Convention the adoption of international rules in no way affected the authority of Coastal States to legislate within their jurisdiction, and the same would be true for the present Convention.

Article 9 simply meant that Coastal States undertook not to impose higher discharge standards than those required by international rules without good reason, and would only impose higher constructional standards in extreme cases. Australia was particularly concerned with discharge standards, since the nature of some of its coastal waters, which were very shallow with considerable tidal movement, were such that even the permitted level of discharge might have harmful effects. It was also concerned with constructional standards, in view of the many deleterious and highly toxic substances that were being carried by sea in increasing quantities. Since a very substantial measure of agreement had been reached on the question of reservations on the authority of a Coastal State, he believed it should be included in the Convention.

With regard to the objections of substance that had been raised to Article 9, he thought that very reasonable safeguards had been provided against possible abuse by Coastal States of the reservation provided in paragraph 2. First, the reservation applied only to specifically defined waters; secondly, Parties were obliged to report measures taken to the Organization without delay; thirdly, duly documented notification was required under Article 12(c); and fourthly, there was provision for compulsory arbitration.

With regard to the jurisdictional objections, he did not think that the reference to constructional standards was in any way prejudicial to the Conference on the Law of the Sea; on the contrary, the deletion of Article 9 from the Convention would introduce an element of uncertainty, since it would not be clear whether or not Contracting States had surrendered their rights to impose additional standards.

He strongly urged the adoption of Article 9, and stated that, should it not be included in the Convention, his Government would reserve the right to impose whatever measures it found necessary to protect Australia's marine environment.

Mr. TRAIN (USA) said that his delegation would vote against Article 9. It would vote on any amendment on its merits, but that did not mean that it was in any way in favour of adoption of the Article.

Article 9 was an attempt to define States' own jurisdiction over their own waters. It, therefore, purported to decide issues which were not within the competence of the Conference, but were to be dealt with by the forthcoming United Nations Conference on the Law of the Sea. In that connexion, the present Conference should not disregard the letter sent to the Secretary-General by the Chairman of the Sea-Bed Committee (IP/CONF/INF.7/Add.1). Moreover, by specifying what States could or could not do, Article 9 materially prejudiced Article 10(2).

The issue of jurisdiction was a very complex one to which the Conference had not given adequate consideration and could not do so, as General Assembly resolution A/RES/3029 (XXVII) indicated that the subject formed an integrated whole. The United States delegation had, throughout the Conference, consistently opposed any prejudging of the issues to be decided at the Law of the Sea Conference and which, moreover, needed further consideration by Governments. Article 9, as drafted, was too simplistic to be accommodated in the Convention and was not necessary to it.

His delegation requested a roll-call vote on Article 9.

Mr. SJADZALI (Indonesia) said he fully understood the anxiety of many delegations over Article 9 because of their genuine belief that it was not in accordance with international interest. His delegation, however, was convinced that the article in its present form was the best possible compromise formula. It accommodated the interests both of countries fearing pollution from ships and of actual or potential polluters. Indonesia was an example of a country which fell into both categories: it was an archipelagic State with many waterways, but also had an infant shipping industry which it hoped to develop. It considered the provisions of Article 9 to be reasonable and, while understanding the various reasons of those who wished Article 9 to be deleted, firmly believed that it should stand.

He therefore supported the Canadian proposal, supported by Australia, that the article should be put to the vote as a whole.

Mr. DEL CAMPO (Uruguay) said that the statements already made revealed that a crucial stage had been reached regarding the situation of the world's seas. His delegation had worked to find a generally acceptable solution for the present Convention, but realized that there was no sufficient consensus. It would vote against the adoption of Article 9 because it was giving rise to so many doubts and objections and to adopt it would, therefore, be contrary to the aims of the Conference. Meanwhile, his country would continue to work on the basis of the regionally applied concept concerning jurisdiction governing the seas until the Law of the Sea Conference had completed its work.

Mr. VALLARTA (Mexico) said that his delegation was convinced that an IMCO Conference was not the appropriate forum to discuss jurisdiction, especially on the eve of the United Nations Law of the Sea Conference. It was not yet prepared to discuss jurisdictional matters which were still being studied by various branches of the Mexican Government. Moreover, adoption of Article 9 might have unforeseeable consequences for developing countries which must be further studied.

He regretted that it had not been possible to devote more time during the Conference to study of the problem, but understood the point of view of other delegations and considered they were justified in attempting to protect their own interests. The developing countries must look to theirs too.

Although his delegation would prefer Article 9 not to be included in the Convention, when the vote was taken it would abstain rather than vote against. He hoped that those in favour of Article 9 would understand Mexico's abstention to be a friendly gesture since, under Rule 19 of the Rules of Procedure, abstentions were not counted as votes.

Mr. TURKI (Tunisia) said that his delegation supported Article 9. The provisions of the Convention were a first step towards combating pollution from oil and other harmful substances. But present knowledge of the environment did not enable it to be certain that those measures were sufficient to protect exceptionally vulnerable areas.

Paragraph (1) of Article 9 provided a safeguard in case certain States felt that more protection was needed, but it also restricted more stringent measures to those where specific circumstances warranted them. It was, therefore, well balanced. In accordance with paragraph (2) additional requirements with regard to ship design and equipment were only to be sanctioned by accepted scientific criteria, while paragraph (3) provided that Parties were to be informed about such measures without delay. Article 9 did leave the door open for the future.

His delegation therefore supported the Canadian proposal and approved of Article 9. It thought that paragraph (2) would be improved by the addition of the word "However" at the beginning of the second sentence, to provide a connecting link between the two sentences.

Mr. KATEKA (Tanzania) said that the Plenary Meeting need not be bound by arguments adducing the voting figures in the Committee and the time spent on the question there. Some delegations opposed to Article 9 had stated that it would prejudice the Conference on the Law of the Sea. Yet when, at the previous meeting, he had said that Articles 4 and 10 might prejudice it too, nobody had then agreed. It would appear that those delegations were guided by self-interest and not by concern for the Law of the Sea Conference. They should be consistent.

Reference had also been made to the letter from the Chairman of the Sea-Bed Committee. He himself had participated in the meeting which had drafted that letter. The Sea-Bed Committee had indicated that there was an overlap between the subjects of the two Conferences but had made no attempt at a demarcation line. As his delegation understood it, certain aspects of jurisdiction needed to be clarified in order to resolve issues connected with the control of pollution. The present Conference was, therefore, competent to discuss those aspects in such a way as to leave open the whole question to be dealt with by the Law of the Sea Conference. Article 9 did not attempt to define jurisdiction and did not prejudice that Conference.

As the phrasing of the text was causing concern, his delegation's proposed amendment was aimed at eliminating uncertainties in terminology. He asked the Conference to approve it.

He also requested a paragraph by paragraph vote in addition to the roll call vote on the article, regardless of the results of the voting on the amendments.

He further requested that the debate should be closed immediately.

The PRESIDENT said that, in accordance with Rule 13 of the Rules of Procedure, he would give permission to one more delegate to speak in favour of the proposal and then to two to speak against it.

Mr. ADERO (Kenya) said he thought there had been sufficient debate on Article 9 and therefore supported the motion to close the debate and to vote on the amendments as they had been received.

Mr. CABOUAT (France) said that Article 9 was one of the most important texts in the Convention. The representative of Tanzania had spoken on it several times while others had not yet had an opportunity to do so. All delegations which wished to speak should be allowed a chance.

Mr. POCH (Spain) agreed with the French representative. His own delegation had been asking for the floor for three quarters of an hour. He begged the Tanzanian representative not to press his proposal. Instead, he moved the closure of the list of speakers.

Mr. KATEKA (Tanzania), speaking on a point of order, said that in view of the appeal just made, and with the permission of the Kenyan representative, he would withdraw his motion for closure of the debate.

The PRESIDENT said that he accepted the Spanish suggestion to close the list of speakers. His list so far contained the representatives of France, Spain, Greece and the Federal Republic of Germany.

The representatives of Denmark, Trinidad and Tobago, New Zealand and Ghana indicated their wish also to speak on Article 9.

The PRESIDENT declared the list of speakers closed.

The meeting rose at 12.50 p.m.