assistance to each other in the investigation of the offences. which may include, inspection of the oil record book; the ships official log-book and the engine-room log-book.

The Paris Convention for the Prevention of Marine pollution from Land-based Sources. concluded in December 1973, obligates the twelve Western European nations to prevent and control pollution of the North-East Atlantic from land-based sources situated in their territories through direct discharges and watercourses. By the terms of the Convention. the parties undertake to enact specific regulations governing the quality of the environment, discharges into the seas and watercourses flowing into these seas.

The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, 22 March 1974

A Diplomatic Conference on the Protection of the Marine Environment of the Baltic Sea Area was held in Helsinki from 18 to 22 March 1974. The delegates from seven Baltic States, namely Denmark, Finland, the German Democratic Republic. the Federal Republic of Germany. Poland Sweden and the U.S.S.R. participated in the Conference. On 22 March. 1974. the Conference adopted a "Convention on the Protection of the Marine Environment of the Baltic Sea Area."

Article 3 of the Convention obligates the Contracting Parties to take individually or jointly all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution and to protect and enhance the marine environment of the Baltic Sea Area.

Another important obligation of the Contracting States is stipulated in Article 6 of the Convention. It contemplates that the Contracting Parties would take all appropriate measures to control and minimise land-based pollution of the marine environment of the Baltic Sea Area. In particular, they would take all appropriate measures to control and strictly limit pollution by noxious substances and materials in accordance with the provisions of Annex II of the Convention.

Article 7 of the Convention prohibits any pollution by deliberate, negligent or accidental release of oil, harmful substances other than oil, and by the discharge of sewage and garbage from ships.

Article 9 stipulates provisions to regulate dumping in the Baltic Sea Area.

Article 12 envisages establishment of "the Baltic Marine Environment Protection Commission." Article 13 defines the duties of the Commission. Article 17 obliges the Contracting Parties, jointly to develop and accept rules concerning responsibility for damage resulting from acts or omissions in contravention of the Convention, including, *inter-alia*, limits of responsibility, criteria and procedures for the determination of liability and available remedies.

Principle 21 (of the Stockholm Declaration) provides that, in accordance with the Charter of the United Nations and the principles of international law, States have the sovereign right to exploit their own resources pursuant to their own environmental policies. The co-relating duty of the States is incorporated in the text of the same Principle. It stipulates that "(States have) the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

Principle 22 is a corollary of Principle 21. While Principle 21 stipulates the obligation of States to control the matters within their jurisdiction, Principle 22 broadens that obligation. Principle 22 clearly lays down that States must co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

The responsibility not to damage the environment of other States is a universally recognised principle. However, the international law on this issue is still in the embroynic stage of development. The most frequently quoted award in the

Trail Smelter Arbitration[22] stated that, ".....no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence." However, as observed: "The famous Trail Smelter decision has been interpreted in many ways. Some, for example, have argued that it introduced the concept of strict (or absolute) liability into international law. Some maintain that it merely invokes the rudimentary principle of *sic utere tuo*. Others have suggested that it hints at an acceptance of the doctrine of equitable utilisation. As this decision was an arbitral award, the controversy will never be authoritatively resolved."[23] Nevertheless, "the Trail Smelter heritage has now been appropriate, by the international community in the Stockholm Declaration on the Human Environment, whether the language of the Declaration is wholly faithful to the Trail Smelter doctrine is now academic : it has transcended it."[24]

The "Helsinki Rules" adopted by the International Law Association at its fifty-second Conference in 1966, propound "the doctrine of equitable utilisation." It states that "each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin." Article X, dealing with the pollution aspect provides that, "consistent with the principle of equitable utilisation" a State

(a) must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and

22. The question in issue was determination of Canada's liability for the damage done to the United States as a result of the emission of sulphur dioxide fumes by a Smelter located in Trail (Canada).

23. See James Barros and Doughlas M. Johnston. *The International Law of Pollution* 1974, Page 75.

24. *Ibid.*, Page 76.

(b) should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

The vast literature on the subject of radioactive contamination of human environment resulting from nuclear testing, disposal of radioactive wastes and accidental dispersion of radioactivity may also provide some useful guidance. However, the most relevant treaty on the subject under consideration is the "Treaty banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water" concluded on 5 August 1963. The objective of the Treaty is "to achieve the discontinuation of all test explosions of nuclear weapons for all time and.....to put an end to the contamination of man's environment by radioactive substances." Each of the contracting party undertakes the obligation: "to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control :

(a) in the atmosphere; beyond its limits, including outer space; or underwater including territorial waters or high seas; or

(b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted."

Several multilateral conventions deal specifically with the problem of determination of liability for damages. The following part of the discussion includes a survey of these conventions. The survey covers the developments in the field of:

(i) Civil Aviation;

(ii) Maritime Activities;

(iii) Space Activities; and

(iv) Nuclear Activities.

(i) *Civil Aviation:*

Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, concluded at Rome in October 1952

Article 1 of the Convention provides:

"Any person who suffers damage on the surface shall upon proof only that the damage was caused by an aircraft in flight or by any person or things falling therefrom be entitled to compensation."

Article 2 channelizes responsibility upon the operator of the aircraft, i.e. the one who utilizes the aircraft, or authorises his servants or agents to use the aircraft. Article 11 limits the operator's liability in accordance with the weight of the aircraft. Further, Article 5 lays down certain exceptions. It states that "any person who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance, or if such person has been deprived of the use of the aircraft by an act of public authority." Finally, Article 26 provides that operators of military, customs or police aircraft would not come within the purview of the Convention.

(ii) *Maritime Activities:*

International Convention on Civil Liability for Oil Pollution Damage, 1969

Under this Convention, liability for oil pollution damage is placed on the owner of the ship transporting the oil. Although the ship-owner's liability is strict, he is relieved of the liability if he can prove that the escape of oil was due to one of the exceptional causes listed in the Convention. The liability of the shipowner is limited in respect of each incident. The Convention contains provisions to determine the jurisdiction of courts to deal with cases where pollution damage occurs in more than one

State. The Convention obliges shipowners of contracting States to carry insurance or other acceptable guarantee to cover their liability under the Convention.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

The 1969 Liability Convention was inadequate for two reasons: (i) the regime established was based on the strict liability of the shipowner for the damage which he could not foresee, thus making a clear departure from the traditional maritime law on liability; and (ii) system of liability limitation as contemplated in the Convention was inadequate to meet cases of oil pollution damage involving large oil carrying ships and tankers. In order to remedy this situation, IMCO convened another international conference in Brussels from November 29 to December 18, 1971. The conference adopted a Convention supplementary to the 1969 Convention. Under the 1971 Convention, an International Oil Pollution Fund is established to ensure adequate compensation for victims of pollution damage who are unable to obtain any or adequate compensation under the 1969 Convention. It will also provide some relief to shipowners in respect of part of additional financial burden imposed on them by the 1969 Convention. Under the Convention, a shipowner can claim compensation only when his ship complies with certain international conventions establishing safety and anti-pollution standards. In certain circumstances, it may also apply to the guarantor or insurer of the shipowner. However, the Convention would not protect any claim where the damage results from the wilful misconduct of the owner.

The contracting parties recognise the legal personality of the Fund. For the administration of the Fund, the Convention envisages establishment of three bodies — an Assembly, an Executive Committee and a Secretariat headed by a Director. The source of income of the Fund will be the initial and annual contributions from companies importing oil by sea into a contracting State. The amount of contribution will be fixed by the Assembly.

(iii) *Space Activities:*

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer-Space, including the Moon and other Celestial Bodies

Under Article VII, the Convention stipulates broad principles of liability for damage. It states :

> "Each state party to the Treaty that launches or procures the launching of an object into outer-space, including the moon and the other celestial bodies, and each state party from whose territory or facility an object is launched, is internationally liable for damage to another state party to the Treaty or to its natural or juridical persons by such object or its component parts on the earth, in airspace or in outer space, including the moon and other celestial bodies."

Article I(a) of the Convention defines the term "damage" as "loss of life, personal injury or other impairment of health; loss of or damage to property of States or of persons, natural or juridical, or property of international inter-governmental organisations". Further, Article XI provides that if damage occurs to a space object elsewhere than on the surface of the earth by a space object of another State, the latter State shall be liable only if the damage is due to its fault or fault of persons for whom it is responsible. Article VI(1) exonerates the launching State from absolute liability if the damage results from the gross negligence or the international act or omission of either the State making the claim for compensation or the person its represents.

Articles IX and X deal with certain procedural aspects of the damage recovery process. Accordingly, a State which suffers such damage is entitled to present, through diplomatic channels, a claim for compensation to the responsible State, i.e. the launching State; presentation of such claim would not require the prior exhaustion of any local remedies that may be available to a claimant State or to natural or juridical persons it represents. The Convention provides that any claim for

compensation should be presented within one year following the date of the occurrence of damage.

The Convention on International Liability for Damage caused by Space Objects concluded in March 1972

This Convention further elaborates the principles incorporated in the 1967 Treaty. The new Convention contemplates liability for damage under the following four conditions:

(i) where damage is caused by the launching State's space object on the surface of the earth or to an aircraft in flight;

(ii) where damage is caused by the launching State's space object to the space object of another launching State elsewhere than on the surface of the earth;

(iii) where damage is caused by one launching State's space object to another launching State's space object elsewhere than on the surface of the earth and as a result, damage is caused to a third State on the surface of the earth or to an aircraft in flight; and

(iv) to a third State's space object elsewhere than on the surface of the earth.

In the first and third situations, the liability of the launching State is absolute, subject to one condition where the damage has been caused either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of the claimant state or of natural or juridical persons it represents. This exonerates the launching State from any liability for damage.

In the second and fourth situations, liability is one of fault. Further the Convention elaborates that in the third and fourth situations, the first two States shall be jointly or severally liable and the amount to compensation will be in proportion to the extent that they are at fault.

(iv) *Nuclear Activities:*

Paris Convention on Third Party Liability in the field of Nuclear Energy (1960) and the Vienna Convention on Civil Liability for Nuclear Damage (1963)

The two Conventions provide, as one of the basic general principles, for the exclusive liability of an operator of a nuclear installation and for no other person to be liable for damage caused by a nuclear incident. However, these Conventions lay down an exception to the above rule to provide for the cases, where, under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of the nuclear convention any other person might be held liable.[25] The only reason to make this exception was to preserve the possibility of carrier's liability under international transport conventions. The nuclear operators' liability was not affected at all.

The Brussels Convention on the Liability of Operators of Nuclear Ships, 25 May 1962

The Convention follows the pattern established by the Paris and Vienna Conventions mentioned earlier. It also provides for the objective and sole liability of the operator for nuclear damage caused by a nuclear incident involving the nuclear fuel of, or radio-active products or wastes produced in his ship (Article II). Articles III and V stipulate details regarding limitation of the operator's liability in amount and time. Article III(2) obligates the operator to cover his liability by insurance or other financial security.

The Brussels Supplementary Convention of 31 January 1963

This Convention is supplementary to the Paris Convention of 29 July 1960, on Third Party Liability in the field of Nuclear Energy. The basic object of the Supplementary Convention is to set up a system of compensation providing for joint liability on

25. Article 6(b) of the Paris Convention, and Article II(5) of the Vienna Convention.

the national and international level as between all the contracting parties. It provides for broader compensation from public funds to supplement the compensation payable in respect of the maximum liability of the operator.

Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material, Brussels, December 1973

In 1971, the IMCO and the IAEA jointly convened a conference which adopted a Convention to regulate liability in respect of damage arising from the maritime carriage of nuclear substances. The Convention provides that a maritime carrier is not liable for damage caused by a nuclear incident in the course of maritime carriage if an operator of a nuclear installation is liable for such damage under the nuclear conventions. In other words, the Convention reinforces the principle of the exclusive liability of the operator of a nuclear installation.

(3) SUMMARY RECORD OF DISCUSSIONS ON THE LAW RELATING TO HUMAN ENVIRONMENT

The Asian-African Legal Consultative Committee took up for a preliminary exchange of views the topic of "Law relating to Human Environment" in the third plenary meeting of the Tehran Session held on the 29th of January, 1975. The Delegate of *Japan* referring to the Stockholm Declaration of 1972 invited the Committee to examine Principles 21 and 22 embodied in the aforesaid Declaration. Principle 21 affirms the responsibility of States in accordance with the U.N. Charter and the principles of International Law to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. Principle 22 calls upon States not only to ascertain but to further develop International Law in regard to liability and compensation for the pollution or environmental damage caused by activities within the national jurisdiction or control in the area beyond the national jurisdiction. Commenting on Principle 21, the Delegate observed that the responsibility referred to therein was the one prescribed by international law. and therefore unless international law on environmental issues was ascertained, the content of that responsibility would not be clear. In that context he referred to the Trail Smelter arbitration and said that the same could be taken as a precedent for it laid down two norms, namely (i) no State has a right to use or permit the use of its territory in such a manner as to cause injury to the territory of another; and (ii) it also embodied the element of forseeability which was relevant in imputing liability. He urged the Committee to reflect on these points while considering the development of environmental law.

Further the Delegate pointed out that Principle 21 listed activities not only within the jurisdiction of the State but also

within its control. He wondered if this control was based on territorial jurisdiction, and if it was so. to what extent. Under customary international law a State could be held responsible only if it failed to exercise diligence, but with regard to pollution damage, the Delegate felt, it would be desirable to hold the State responsible even if there was no fault on its part.

Commenting on Principle 22, the Delegate observed that on the compensation question, two approaches could be used, one was to use the concept of State responsibility. In his view, that was a reasonable approach when State activities caused damage, but when activities of private persons caused damage, it would be inappropriate to hold the State responsible only because the offending persons belonged to it. Another approach was to use the concept of civil liability whilst preserving the concept of State responsibility in the existing international law intact — which implied that the private person was obliged to pay compensation and the State was obliged to take necessary measures to ensure payment of compensation. To decide which approach would be the best, the nature of activities should be looked into before adopting any specific approach. Human activities, the Delegate said, which caused damage to the environment were quite diverse in their nature. He was, therefore, inclined to suggest that the study of the specific fields of environmental law should precede the formulation of general legal principles. Finally, he suggested that the Secretariat of the Committee continue the study of the subject and compile the relevant materials.

The Delegate of *India* considered the maintenance of human environment and the enchancement of its quality a matter of concern to the world community as a whole. The urgency of its protection was well realised by industrially advanced nations and it was a matter of concern to developing countries too. Surveying the work done on the subject, the Delegate stated that the question of human environment was comprehensive and complex and therefore it would have to be handled and promoted carefully. The preservation of human environment appertained to the land. the sea and the air. The sea constituted 5/7th of the globe, but much of the pollution

of the sea was caused not by the use of ships or by the exploitation of the continental shelf by the States, but the bulk of the pollution of the sea was from the land and the air. And since the land was occupied by sovereign States, any rules and regulations regarding the protection of human environment on the land would have to be, in the initial stage, in the form of recommendations for State actions. The State action in preserving the human environment might relate to innumerable aspects of human activity all of which might not be regulated by the State. Nevertheless in almost all the countries the State was new assuming a greater role in several aspects of human activity. The framework within which social and economic progress should be maintained and increased was already set out in the Stockholm Declaration on Human Environment, and against the background of its principles, it was necessary to develop programmes of action and a general legal framework for regulating such action.

As regards suggestions for further study by the Secretariat of the Committee, the Delegate stated that preservation of marine environment should be left out since the question was already under study by several organisations such as IMCO, FAO, IAEA and also by UNEP. However, the Committee might concern itself with the coordination of work of all these bodies after some time. For the immediate future, the Committee might concentrate on some aspects of the preservation of human environment on the land and in the air. The Delegate put forward two suggestions for consideration of the Committee : (i) The Committee might prepare a draft of a general convention on the human environment on the basis of the principles adopted in the Stockholm Declaration and on the other evidence of State practice; (ii) The Committee might also prepare draft provisions, either as part of general convention or in form of separate articles on the following aspects:- (a) the provision and preservation of clean water; (b) the preservation of the quality of clean air; (c) the organisation and maintenance of human settlements and (d) the preservation and protection of wild life, particularly the endangered species of wild fauna and flora. The Delegate also requested the Committee's Secretariat to collect the relevant information.

The Delegate of *Pakistan* endorsed the point made in the Founex Report that the current concern with environmental issues was a sequel to the distorted economic development of the industrially advanced countries. The Delegate cautioned the countries represented in the Committee to take a lesson from the case of the developed countries and advised them to start to plan their development within the context of their own environmental problems. It was with that objective that the Delegate proposed that the Committee constitute a special study group of experts to examine the issues relating to Human Environment and to submit its recommendations at the next session of the Committee.

At this stage the President drew attention of the Members that two suggestions had been put forward: one by the Delegation of India requesting the Secretariat to study particular aspects of Human Environment, and another by Pakistan on the formation of a special study group to study the problems relating to Human Environment and to report to the next session of the Committee. The Delegate of *Iraq* wondered if it was possible to reconcile the two suggestions so as not to duplicate the work. The Secretary-General pointed out that the past practice had been that initially material was collected and drafts were prepared by the Secretariat and thereafter, the expert group was formed to go into the matter. So in his view the suggestions made by India and Pakistan were not incompatible, but he wondered if time was ripe for the setting up of a special study group particularly when Foreign Offices of member countries were involved in the negotiations for the Law of the Sea Treaty.

In the fourth plenary meeting held on the 1st of February, 1975, the President invited the Representative of the UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) to address the Committee. At the outset the UNEP Representative urged the Committee to consider the possibility of establishing closer inter-secretariat cooperation with the UNEP in the field of the development of international environmental laws. The Representative stated that one of the chief concerns of the UNEP was the protection and preservation of the marine environment and that since its very first session in June 1973, the UNEP had been engaged *inter alia* in the following tasks:

(1) to carry out objective assessments of problems affecting the marine environment and its living resources in specific bodies of water;

(2) to assist nations in identifying and controlling land-based sources of pollution, particularly those which reach oceans through rivers;

(3) to stimulate international and regional arrangements for the control of all forms of pollution of the marine environment and especially agreements relating to particular bodies of water;

(4) to urge IMCO to set a time-limit for the complete prohibition of international oil discharges in the seas, as well as to seek measures to minimize the possibility of accidental discharges;

(5) to develop a programme for the monitoring of maritime pollution and its effects on marine ecosystems, paying particular attention to the special problems of specific bodies of water including some semienclosed seas, if the nations concerned so agree; and

(6) to promote the development on an entirely voluntary basis of a register of clean rivers.

Further, the Representative pointed out, UNEP had submitted 16 specific recommendations relating to the protection of the marine environment including the prevention and control of marine pollution and marine scientific research for consideration at the Caracas meeting on the Law of the Sea. He felt that those recommendations would be of considerable importance to the Delegations at the forthcoming Geneva meeting on the Law of the Sea.

On the question as to what role could be assigned to UNEP within the provisions of the proposed Law of the Sea Convention, the Representative, after briefly reviewing the functions and responsibilities of UNEP as laid down by the U.N. General Assembly, said that it would further the aims and objectives of General Assembly Resolution 2997 (XXVII) which

had established UNEP, if its role in the protection and preservation of the marine environment was expressly affirmed in the proposed Convention. This affirmation and recognition, he added, ought to extend both to the general as well as to the specific functions and responsibilities of UNEP. With respect to general functions, the Representative said, the Convention could recognise the role of the UNEP in providing the overall integrated framework for comprehensively coordinating, reviewing and guiding activities of States and international organisations that might affect the quality of the marine environment. As for specific responsibilities, the Representative felt that the Convention could recognise the UNEP as the appropriate forum for the international community of States in its endeavour to establish, both at the regional and global levels, standards, rules and regulations for the prevention of marine pollution from land-based sources. This particular responsibility, the Representative pointed out, at present did not fall within the specific competence of any other U.N. organisation and therefore UNEP under its mandate had already initiated action in that regard.

In the fifth plenary meeting held on the 2nd of February, 1975, the Committee decided on the proposal of Pakistan to appoint an expert Study Group on the subject of Human Environment, composed of the representatives of the Arab Republic of Egypt, Bangladesh, Ghana, India, Iran, Pakistan and Sri Lanka. It was agreed that the expert group would meet after a study and relevant documentation had been prepared by the Committee's Secretariat. The UNEP Representative informed the Committee that his organisation would like to cooperate with the Study Group.

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