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40th meeting of the Third Committee

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THIRD COMMITTEE

40th meeting

Monday, 23 April 1979, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Report of the Chairman on the work of the Committee

1. The Chairman said that the meeting was being held in accordance with the principle of full involvement of all interested delegations in the negotiations on matters within the terms of reference of the Third Committee. Since the Caracas session, negotiations had been conducted in open-ended meetings with flexible use of various methods of negotiation, but always on the condition that the results should be brought to the attention of the Committee as a whole. The negotiations and discussions which had taken place during the current session had concentrated on the main pending issues within the mandate of the Third Committee, namely part XII of the informal composite negotiating text¹ (Protection and preservation of the marine environment), part XIII (Marine scientific research) and part XIV (Development and transfer of marine technology). At the first meeting of the Third Committee at the current session of the Conference, held on 2 April, he had reviewed the outstanding issues and enumerated all the informal proposals before the Committee. Although most of the proposals had been the subject of extensive discussion at previous sessions, it had been decided to provide their sponsors with an additional opportunity to present them to the Committee and to hear the reactions of interested delegations. That procedure had been adopted in order to allow the Committee to assess the chances of acceptability and to enable the sponsors to consider how to pursue matters of special interest to them in the future. It had also been decided that the informal proposals which had not been thoroughly examined during previous sessions would be taken up again and negotiated at the eighth session.

2. During the eighth session, the Third Committee had held 10 meetings at which 220 statements had been made. Since at the seventh session priority had been accorded to matters relating to part XII of the negotiating text, and effort had been made at the current session to give some priority also to the pending issues in part XIII. A number of meetings had been scheduled to discuss that issue, to give sponsors an opportunity to present their informal proposals and to enable members of the Committee to comment on them. He had thought that further consideration would help the Committee to ascertain the possibilities of broadening the existing area of agreement.

3. Since the Committee had wished to conclude the discussion of part XII during the current session, it had been decided that he would chair the meetings on some of the pending amendments on the protection and preservation of the marine environment which had been considered during the informal negotiations at the previous session under the chairmanship of Mr. Vallarta of Mexico, and also all the meetings on marine scientific research.

4. The basic aim of those negotiations and of the procedure followed had been to broaden the area of compromise and to try to retain and improve those texts and amendments which, after prolonged and exhaustive negotiations, had proved to offer a substantially improved prospect of consensus, thus avoiding the need to come back repeatedly to the same proposals.

5. The present report followed in general the same pattern as the earlier reports submitted to the Third Committee during previous sessions. However, in view of the requirements set forth in documents of the Conference relating to the organization of work, and particularly in paragraph 10 of document A/CONF.62/62,² paragraph 7 of document A/CONF.62/69² and recommendations 6 and 7 in document A/CONF.62/BUR.11, the present report incorporated only those provisions which had emerged from intensive negotiations and offered substantially improved prospects of a consensus as compared with the negotiating text.

6. Under his chairmanship the Committee had discussed the informal proposal by Brazil³ relating to article 209, paragraphs 1 and 5, the informal proposal by Bahamas, Barbados, Canada, Iceland, Kenya, New Zealand, Philippines, Portugal, Somalia, Spain and Trinidad and Tobago³ on article 212, paragraph 3, the informal proposal by Spain⁴ on article 234, the informal proposals submitted by the United Republic of Tanzania on article 212, paragraph 5, and article 229 and the general proposal submitted by the same country for the replacement of the expression "competent international organization" by the expression "competent international organizations" wherever it appeared in the text.⁵ The Committee had also discussed the French proposal submitted at the current session with respect to article 231, paragraph 1 (MP/29). In his view, the negotiations on part XII had been exhaustive and, under the existing guidelines as contained in document A/CONF.62/62, the informal proposals listed in category III in his previous report⁶ could not be considered as commanding widespread and substantial support offering an improved prospect of consensus.

7. In addition, the Committee had held four informal meetings under the chairmanship of Mr. Vallarta at which it had tried to amalgamate the provisions of article 236 of the negotiating text with those proposed by a number of Arab countries and Portugal concerning that article (MP/18/Rev.1). He was pleased to inform members that those negotiations had been successful thanks to Mr. Vallarta and also to the sense of co-operation and moderation displayed by the spon-

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

² *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

³ *Ibid.*, pp. 182 and 183.

⁴ *Ibid.*, p. 185.

⁵ *Ibid.*, p. 184.

⁶ *Ibid.*, p. 173.

sors of the amendment to article 236. The new text of article 236 would read as follows:

“Article 236. *Responsibility and liability*

“1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

“2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

“3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation such as compulsory insurance or compensation funds.”

8. The only remaining proposal on part XII was the proposal submitted by the Soviet Union for a new “Part XIV *bis*—General safeguards”.⁷ From the personal contacts he had had with various interested delegations and from the discussions on the proposals at the seventh session, he had the feeling that the Committee would prefer not to discuss the last-mentioned matter, because of the close link between the Soviet proposal and matters pertaining to the Second Committee. In the circumstances he assumed that the Committee would wish him to discuss the matter with the Chairman of the Second Committee, so that they could together agree on the best procedure to be suggested for dealing with the Soviet proposal.

9. In view of the progress made in the negotiations during the current session and the very important positive results that had been achieved, he ventured to state that the substantive negotiations on part XII of the negotiating text could be considered as completed. In that connexion, he wished to reiterate what he had said in paragraph 10 of his previous report, namely that: “. . . with respect to matters relating to the protection and preservation of the marine environment, we have reached a stage where the informal composite negotiating text thus constitutes a good basis for a consensus. This does not mean that there is no room for further negotiations aiming at improving the texts. But at the same time we should take into account the fact that we have reached a balance which should not be disturbed.”

10. Turning to the results of the negotiations on part XIII, which had been the subject of a number of formal and informal meetings at the seventh session, he said that the Third Committee had devoted a substantial amount of time to such negotiations at the present session. Differences of opinion regarding the régime of marine scientific research still persisted. In that connexion, the Committee had discussed the revised version of the proposals submitted by the United States delegation (MSR/2/Rev.1) and two new proposals tabled during the discussion, one by the USSR on article 256 (MSR/3) and the other by France on article 248 (MSR/4). The discussions had been exhaustive although, in the view of several delegations, they could not be considered as conclusive. He felt that there was substantial support for the negotiating text and for maintaining the delicate balance so far achieved on the over-all package with regard to marine scientific research. However, several delegations maintained that they should have the opportunity to continue the negotiations on that vitally important

issue, and considered that all efforts to reach a compromise on some of the outstanding questions in part XIII had not been exhausted. More than 50 statements had been made on the United States proposals, some of them opposing any change in the negotiating text, and others advocating certain drafting, stylistic or substantive improvements in the text. In his view, and without prejudice to the interpretation given by the sponsors, some of the United States proposals, particularly those concerning the conduct of marine scientific research on the continental shelf, were of a substantive nature while others simply entailed clarification of the wording of existing provisions. It was his personal view therefore that the Third Committee might at a later stage, and in the light of negotiations in the other Committees, try at an appropriate time to broaden the basis for agreement on those other pending issues. Since all the elements required for a revision of part XIII had not been attained, it was important not to preclude the possibility of another attempt to improve the prospects for a consensus.

11. There was still a pending informal proposal relating to article 264, submitted by a number of Arab States and Portugal.⁸ He understood that the sponsors of that proposal had earlier expressed a preference for awaiting the outcome of the negotiations on article 236. He assumed that, in the light of the results of the negotiations on article 236, no modification of article 264 was needed since paragraph 3 of article 264 contained an explicit reference to article 236.

12. Turning to the results of the negotiations on part XIV, he reminded the Committee that, during a previous session, Pakistan had submitted an informal proposal for the addition of a new article 275 *bis*.⁹ That proposal had been discussed at length by the Committee during the current session, and his impression was that it was overwhelmingly supported and met the requirements set forth in document A/CONF.62/62. Suggestions had been made for certain changes which had been favourably considered by the Committee. On the basis of those proposals and the comments which had been made, he proposed to include in part XIV an amended article 275 *bis* as follows:

“New article 275 *bis*

“New Section 3: *Establishment of national centres*

“1. States, through competent international organizations, and the Authority shall, individually or jointly, promote the establishment especially in developing coastal States, of national marine scientific and technological research centres and strengthening of the existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and for strengthening their national capabilities to utilize and preserve their marine resources for their economic benefit.

“2. States, through competent international organizations, and the Authority shall give adequate support to facilitate the establishment and strengthening of such national centres, for the provision of advance training facilities and necessary equipment, skills and know-how as well as to provide technical experts to such States which may need and request such assistance.”

13. During the seventh session, the delegation of the United States of America had submitted amendments to articles 274 and 276¹⁰ which did not appear in the revised version of its informal proposals (MSR/2/Rev.1). He therefore assumed that the United States delegation would not insist on maintaining those amendments. In that case, the negotiations on part XIV could also be considered as completed.

⁷ *Ibid.*, p. 186.

⁸ *Ibid.*, p. 188.

⁹ *Ibid.*, p. 195.

¹⁰ *Ibid.*, p. 194.

14. In conclusion, he wished to reiterate his view that, with regard to the provisions within the terms of reference of the Third Committee, further progress had been made to broaden the areas of agreement and the basis had been set for a reasonable compromise offering a substantially improved prospect of consensus.
15. Finally, he wished to thank all members of the Third Committee for their co-operation and sense of goodwill which had enabled the Committee to arrive at a successful conclusion of its work. He also expressed his sincere thanks to the secretariat.
16. Mr. ATAÍDE (Portugal) said that he approved the Chairman's report. The compromise reached on article 236 was a considerable step forward, and the consensus obtained regarding the Pakistani delegation's proposal for an article 275 *bis* was an indication of the spirit of co-operation which had characterized the work of the Third Committee.
17. Mr. GHARBI (Morocco) stated that if the Conference decided to revise the negotiating text in accordance with the amendments made to article 236, paragraphs 1 and 3, his delegation was prepared to withdraw its own amendments to articles 236 and 264.¹¹
18. Mr. PFIRTER (Argentina) said that his delegation agreed with the Chairman's assessment of the negotiations on parts XII and XIV and also thought they could be considered as completed.
19. With regard to part XIII, the revised United States proposal (MSR/2/Rev.1) had been exhaustively discussed and the provisions of the negotiating text had received substantial support. Accordingly, negotiations on marine scientific research should also be considered as completed since, according to the guidelines formulated by the General Committee, the negotiating text could not be revised on the basis of the results of the negotiations.
20. About 50 delegations had spoken during the debate on the United States amendment, and one of them, the Honduran delegation, had spoken on behalf of the Group of 77. The Group of 77 regretted the submission of the United States amendment, which was designed to change the substance of the text at a time when the question of marine scientific research had already been the subject of thorough negotiations. The provisions of the negotiating text enjoyed wide support and the United States proposal was not likely to lead to a consensus. If the door were left open to new proposals, the delicate balance achieved was bound to be upset.
21. Finally, his delegation reiterated its view that the Third Committee alone was competent to discuss issues concerning marine scientific research, and that it should not therefore leave its work in abeyance pending decisions by other organs of the Conference which had no competence in the matter.
22. The CHAIRMAN observed that it was his duty to report everything to the Committee. He had made no assessment of the support or lack of support obtained by specific proposals, but had merely ventured to suggest that no opportunity should be missed for improving the prospects of reaching a consensus, since certain delegations considered that not everything had been done to attain that objective. In his capacity as Chairman of the Third Committee, he must not exclude any possibility of improving the prospects of consensus.
23. Mr. DE LACHARRIÈRE (France) said that his delegation was reasonably satisfied with the results obtained. It was sorry, however, that its proposed amendment to article 231 (MP/29) on penalties for the violation of rules on pollution had not been accepted. Under existing international law persons violating those rules were liable to imprisonment, and it seemed paradoxical that an attempt was being made to change the law in the direction of greater indulgence towards offenders. His delegation noted, however, that many positive results had been obtained in the particularly important area of pollution control.
24. Mr. MALIK (Pakistan) welcomed the outcome of the negotiations, particularly on articles 236 and 275 *bis*. He hoped that the spirit of compromise and mutual understanding that had marked the work of the eighth session would also prevail in the Committee's future work.
25. Mr. KATEKA (United Republic of Tanzania) agreed with the conclusions submitted by the Chairman with regard to the Committee's work on the protection of the marine environment. He regretted that the new wording of article 236 and the text of article 275 *bis* had not been circulated to delegations.
26. He also stated that, as long as other delegations insisted that the Committee should consider all the amendments they had submitted, his delegation would adopt a similar attitude for reasons of principle.
27. Mr. YTURRIAGA BARBERÁN (Spain) welcomed the fact that appreciable improvements had been made in a text as complicated as that of article 236. Such progress in the important area of responsibility and liability augured well for the continuation of the work. However, there were still many issues outstanding, including the question of article 234, which his delegation could not accept without a number of changes since the provision it contained limited the powers of intervention by the coastal State in very serious circumstances. He hoped that other delegations would adopt a level-headed and realistic attitude, so that a solution satisfactory to all could be reached.
28. He reminded the Committee that his delegation was opposed to the wording of article 255 and had suggested that the words "land-locked and other geographically disadvantaged" should be deleted from paragraphs 1 and 2. The use of that expression seemed to be redundant in the context of marine scientific research, and he was prepared, if necessary, to submit a written amendment.
29. The CHAIRMAN observed that the various points mentioned by the representative of Spain had been duly considered by the Committee in the course of its work.
30. Mr. TIWARI (Singapore) said he thought that the Chairman's report accurately reflected the course of the negotiations and the results obtained.
31. With regard to the proposal by the USSR delegation for including a new part XIV *bis*, his delegation believed that the Chairman should hold consultations on the matter with the Chairman of the Second Committee.
32. He reminded members that it had been agreed to await the outcome of the negotiations on article 236 before considering the proposal by a number of Arab States and Portugal concerning article 264. Since consideration of article 236 had now been completed, he wondered whether the above-mentioned proposal still stood.
33. With regard to the comments by the representative of Spain on the text of article 255, his delegation recalled that that provision had been the subject of detailed negotiations, and he regretted that he was unable to accept any amendment to the agreed text.
34. The CHAIRMAN said that, in view of the results of the negotiations on article 236, there was no need to change article 264, paragraph 3 of which expressly referred to article 236. He had therefore considered that the proposal mentioned by the representative of Singapore was no longer applicable.
35. Mr. MARZIOTA DELGADO (Cuba) approved the Chairman's report and said that he too considered that the negotiations on parts XII and XIV were completed. With regard to part XIII, his delegation supported the existing compromise formulations.

¹¹ *Ibid.*, pp. 185 and 188.

36. Mr. GAVIRIA LIÉVANO (Colombia) approved the Chairman's report and noted with satisfaction that the negotiations on part XII had been completed. With regard to part XIII, no new element had arisen that would justify any change in the balance that had been so laboriously achieved on that part. His delegation wished to re-state its view that prior consent of the coastal State should be obtained for all marine scientific research in the exclusive economic zone and on the continental shelf.
37. Mr. AL-HAMID (Iraq) said that his delegation had certain reservations regarding new article 275 *bis* but would refrain from expressing them publicly, so as to maintain unanimity and avoid prolongation of the discussion.
38. His delegation supported the views expressed by the representative of Singapore on the Spanish proposal relating to article 255.
39. Mr. LOHANI (Nepal) noted with satisfaction the considerable progress made by the Third Committee. He reminded members of his delegation's proposal for the establishment of a common heritage fund,¹² and expressed the hope that that proposal would receive all the attention it deserved.
40. His delegation supported the views of the representative of Singapore concerning article 255.
41. The CHAIRMAN pointed out that the Nepalese delegation's proposal had not been submitted to the Third Committee and did not come within its competence.
42. Mr. MANANSALA (Philippines) said that his delegation approved the Chairman's report but was sorry that the proposal it had sponsored concerning article 212, paragraph 3, on pollution from vessels had not received the widespread support it deserved. Nevertheless, he welcomed the many advances made in the field of responsibility and liability and with respect to the Pakistani delegation's proposal for the establishment of national centres.
43. Mr. YUSUF (Somalia) regretted that, in part XII, the Committee had not accepted the 11-Power amendment to article 212, paragraph 3, which would have been fully in keeping with contemporary international law; the text as it stood undermined the sovereignty of coastal States. With regard to part XIII, he agreed in general with the Chairman's assessment, but thought it would be dangerous to modify the existing text. He did not share the Chairman's optimism concerning the chances of reaching a better compromise later. With regard to part XIV, his delegation was pleased with the consensus that had emerged on the Pakistani proposal for an article 275 *bis* on the establishment of national technological research centres.
44. Mr. MAHIOU (Algeria) said he supported the amendments to article 236 and also the inclusion of article 275 *bis*. He agreed with the comments by the delegation of Singapore on article 255.
45. He regarded the work of the current session as encouraging because, in spite of the apparent meagreness of the results obtained, the Committee had achieved a satisfactory balance in the text of parts XII, XIII and XIV and it seemed difficult to reach a consensus on further changes.
46. Mr. TIKHONOV (Union of Soviet Socialist Republics) said he was glad that the Committee had found an acceptable compromise on the proposal of the Arab States and Portugal regarding pollution and that it had not adopted another proposal which might have upset the balance achieved in the matter of prevention. The articles of part XII represented an extremely delicate compromise formula which his delegation could accept only as part of a package agreement on all marine pollution problems.
47. His delegation approved the Chairman's report as a whole and agreed with him that negotiations on parts XII and XIV were completed.
48. Mr. BOHTE (Yugoslavia) noted that the progress made on the subject of responsibility and liability for marine pollution had been given practical expression in the consensus on articles 236, paragraphs 1 and 3. He was pleased that the Pakistani proposal on the establishment of national research centres, with his delegation's amendments, had received general support. Any attempt to change the substance of the text of part XIII would legitimately result in counter-proposals by the Group of 77, particularly on article 247, paragraphs 3 and 4, and articles 253, 255 and 277 on scientific research. In conclusion, he said that his delegation agreed with the Chairman that the Soviet proposal for introducing a part XIV *bis* on general safeguards should not be considered by the Third Committee.
49. Mr. ARIAS SCHREIBER (Peru) shared the views of the representative of Argentina on marine scientific research. The amendment proposed by the United States delegation presented difficulties of substance on which it had not been possible to reach agreement. Several delegations had considered making further proposals on scientific research, but, as it had not been possible to hold further consultations, it was preferable to leave the text as it was, without excluding the possibility of reverting to it at the next session.
50. With regard to article 255, his delegation endorsed the comments by the representative of Spain, and not those of the representative of Singapore, because there had never been a consensus in the Committee on the precise definition of "geographically disadvantaged States" and the group of coastal States had always been opposed to that term. Also, there was no reference, either in paragraph 1 or in paragraph 2 of the article, to the need to consult coastal States on the question of participation in research by the States mentioned in the article. The absence of consensus on article 255 should, therefore, be noted in the records of the Conference. His delegation would submit amendments which would not affect the substance but would supplement the text by specifying procedures for genuine co-operation between all interested States, and particularly the coastal State in whose exclusive economic zone the research was to be undertaken.
51. Mr. EL-IBRASHI (Egypt) considered that the Chairman's report gave a faithful account of the Committee's discussions. He recalled that the specific problems of marine pollution had led his delegation and the delegations of other Arab States and Portugal to submit amendments to the provisions concerning responsibility and liability. He was pleased that Pakistan's proposal for the introduction of an article 275 *bis* had been accepted.
52. Mr. WULF (United States of America) said that his delegation could have accepted article 236 in the negotiating text as it stood; but it could also accept the amendment to the article inasmuch as it did not harm the interests of any party. It considered that the text made it necessary to conduct further negotiations on the subject of scientific co-operation.
53. Mr. CALERO RODRIGUES (Brazil) approved the Chairman's report but did not think that the debate on the articles which had been referred to the Committee for consideration was concluded. An attempt should be made to broaden the consensus; but, in present circumstances, the results obtained at the current session were the best possible.
54. Mr. MacKAY (New Zealand) drew attention to an omission, more accidental than intentional, in article 226 on the enforcement powers of States. Unlike other safeguards articles, the article did not include a reference restricting its application to those parts of the negotiating text which came within the terms of reference of the Third Committee. That omission might imply that article 226 applied also to other parts of the

¹² *Ibid.*, vol. IX (United Nations publication, Sales No. E.79.V.3), document A/CONF.62/65.

negotiating text, and it could have implications for Second Committee articles. For example, the ban on causing any hazard to a vessel might lead to an erosion of the sovereign rights of coastal States in their territorial sea; in particular, it might prevent a coastal State from taking enforcement measures to stop a vessel which had infringed its customs regulations in the territorial sea. Accordingly, if the omission was accidental, his delegation hoped that article 226 would be corrected, without reference to the Drafting Committee, when the negotiating text was revised.

55. The CHAIRMAN said that he would consult the secretariat and his colleagues on that point and would report on his consultations in due course.

56. Mr. ATTYA SULEIMAN (Kuwait) associated himself

with delegations which had requested that Conference documents should be circulated in all languages. He was glad that the proposal by the Arab States and Portugal on article 236 had resulted in certain changes being made to the negotiating text. The sponsors would have preferred their proposal to be accepted in its entirety but, in a spirit of conciliation, they had not objected to the course adopted. He was also pleased to note that the Pakistani proposal for an article 275 *bis* had been accepted.

57. After an exchange of courtesies and thanks, the CHAIRMAN said that the Third Committee had concluded its discussions for the eighth session of the Conference.

The meeting rose at 5.25 p.m.

**DOCUMENTS ISSUED DURING THE
EIGHTH SESSION**

