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35th meeting of the Third Committee

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THIRD COMMITTEE

35th meeting

Thursday, 20 April 1978, at 10.50 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. The CHAIRMAN said it had been stated on many occasions that the work of the Third Committee had an important place in the framework of the Conference. At the present critical stage in the current session, the Committee's contribution to the final results of the Conference might well have a special significance as an impetus to further endeavours, in view of the wide measure of agreement that had been reached on the text which the Committee was discussing. Even a brief assessment of the Committee's work showed that it had made substantial progress at every session, particularly the two preceding ones. In his personal view, the informal composite negotiating text¹, in particular parts XII, XIII and XIV which came within the Committee's terms of reference, constituted an important advance in the negotiating process on matters relating to the protection and preservation of the marine environment, marine scientific research and development and transfer of marine technology; those parts of the text deserved appreciation as an important positive contribution to the future convention on the law of the sea.

2. It was generally admitted that the provisions on those matters struck a proper balance between environmental considerations and the requirements of expanding international navigation, between the jurisdiction of coastal States and the jurisdiction of flag States, between the interests of States conducting marine scientific research and the interests of other States, between the interests of developing and developed States, and between existing and newly emerging concepts and legal rules. The negotiating text reflected an effort to accommodate national legislation and enforcement measures with international standards and regulations on the prevention of marine pollution, and to meet the challenge of present and prospective uses of the sea which might have an adverse effect on the marine environment. It attempted, for the first time, to indicate the growing role of international organizations in the protection of the marine environment and the promotion of marine scientific research and it included specific provisions on marine scientific research projects undertaken in co-operation with international organizations.

3. Those and other positive results achieved at the sixth session of the Conference justified the generally favourable reaction, both official and unofficial, to the texts on marine pollution and marine scientific research. The problems relating to parts XII, XIII and XIV of the informal composite negotiating text had not in fact been listed in the category of outstanding hard-core issues, either during the two interses-

sional meetings held in December 1977 and February 1978, or in the decisions taken by the Conference at its 90th meeting and set forth in document A/CONF.62/62. In his opinion, recommendation 2 in that document did not apply to the Third Committee, since none of the issues within its terms of reference had failed to receive sufficient consideration. The Committee had from the outset decided to concentrate its efforts and spend most of the time available on those key issues; negotiations had been extensive and had been conducted in a spirit of understanding and mutual accommodation. It was noteworthy that the Committee had spent very little time on procedural matters.

4. He had drawn attention to the Committee's achievements in order to substantiate his suggestions and recommendations regarding the procedure for the present session. In his opinion, there was no need for a general debate at the present stage. He was aware that events had occurred which were a cause of deep concern to the international community as well as to the countries directly affected. In that connexion, he wished to extend to the French delegation his own and the Committee's sincere sympathy and understanding in connexion with the disaster which had occurred and whose effects still persisted. The Committee would appreciate and understand any efforts by that delegation to improve the legal framework of any institution which could meet the challenge of such disasters. He believed, however, that questions of that kind were of such magnitude that they should not be the subject of an emotional reaction or be used as a general challenge to the draft convention on the law of the sea. It would be inappropriate to try to measure the capacity of a general and comprehensive convention to deal specifically with the prevention of such hazards and the settlement of problems arising from them. He appreciated the French delegation's dignified, wise and realistic reaction. Personally, he felt that the convention should provide a general framework on the basis of which other international instruments should be adopted and applied to meet the technical and operational aspects of prevention and enforcement. Accordingly, when the Committee considered the negotiating text in the light of current events, it should bear in mind that function of an umbrella convention on the law of the sea.

5. There was, he believed, no need for an overall revision of the existing text, which might upset the delicate balance or undermine the compromise achieved through very extensive negotiations. The Committee should adopt the selective and restrictive approach in considering specific matters relating to the provisions of parts XII, XIII and XIV as required by the decisions of the plenary Conference set forth in recommendation 8 of document A/CONF.62/62. It would be counter-productive to reopen questions which had already been discussed and on which compromises had been accepted, even if only informally. If, however, any amend-

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

ments of substance were to be made, he suggested that their sponsors should hold prior consultations with the delegations most concerned and should submit amendments to the Committee only if they were the result of a compromise. Proposals designed to improve the wording of existing provisions should also be considered with great care, lest they led to undesirable substantive changes.

6. Regarding procedure, he suggested that the Committee should again adopt its established pattern of informal negotiations on the protection and preservation of the marine environment under the chairmanship of Mr. Vallarta of Mexico and, that if informal negotiations were required on any aspects of marine scientific research or marine technology, they would be conducted by the Chairman of the Committee, as at the previous session. In accordance with the Committee's normal practice, informal negotiations would be conducted in open-ended meetings, with the full involvement of all interested delegations and with the flexible use of different means of negotiation, on the understanding that results should always be brought to the notice of the open-ended negotiating group and of the Committee as a whole. He suggested that about six meetings—subject to requirements—should be allocated for the consideration of matters relating to the protection and preservation of the marine environment; about two meetings—subject to requirements—to matters relating to marine scientific research and marine technology, and two meetings for reporting to the Committee as a whole.

7. He appealed to members of the Committee to act with their customary sense of responsibility and wisdom, to avoid unnecessary procedural debates and to proceed with their substantive work as they had always done in the past.

8. Mr. DE LACHARRIÈRE (France) said that the Chairman's introductory statement confirmed the view which his delegation had expressed in the plenary, that there was no need to set up a negotiating group to consider the important problems of pollution. There would be ample opportunity for effective discussion in the Committee, under the able guidance of the Chairman, and for the introduction of any necessary improvements in the informal composite negotiating text.

9. On behalf of his Government and himself, he thanked the Chairman for the sympathy expressed to his country, which was still suffering from the effects of the *Amoco Cadiz* disaster. He hoped that his delegation would act with the wisdom and realism attributed to it by the Chairman.

10. Obviously, there were lessons to be drawn from the disaster. But despite its unprecedented extent, it was not an isolated case. Pollution from oil tankers in recent years had unfortunately been so widespread and had affected so many parts of the world that the lessons would have to be drawn from a whole series of disasters. However, the *Amoco Cadiz* case was a very special one and merited some comment.

11. The real problem that must be considered was the building of giant tankers, since they produced giant pollution. Moreover, in the present case, the ship had been flying a flag of convenience. It had gone out of control and, having only one system of propulsion and only one steering system, it had gone aground. The latter point was important, since the international community had hitherto concentrated its efforts on the problem of collisions and had in that connexion adopted measures which had so far appeared to be satisfactory. Perhaps too much attention had been paid to collisions and not enough to the risk of shipwreck.

12. Everyone was agreed on the importance of the problems of pollution and on the exceptional seriousness of the *Amoco Cadiz* affair; but he could not help noticing the sparse attendance at the present meeting. He hoped it was not because delegations were more interested in the issues before the First and Second Committees than in pollution, and

he would prefer to think that it was because delegations felt that more or less satisfactory solutions had already been found in the parts of the informal composite negotiating text which came within the competence of the Third Committee.

13. As for the lessons to be drawn, his delegation intended to take up the relevant issues in the competent international organizations. It had already raised the question of safety standards and navigation rules in the Inter-Governmental Maritime Consultative Organization; and it would raise the question of flags of convenience in the International Labour Organisation or the United Nations Conference on Trade and Development. At the present Conference he would deal with the lessons to be drawn in respect of the informal composite negotiating text.

14. The text contained important provisions on measures to combat pollution and protect the environment. His delegation was particularly interested in the measures concerning special areas within the economic zone. That was a new idea, which might be a useful means of combating pollution. He agreed with the Chairman that it would be wrong to disturb the balance of the informal composite negotiating text. He merely had in mind the possibility of extending and developing certain ideas already existing in the text, particularly in part XII. His delegation would circulate specific proposals in due course. For the time being he would merely outline the two main lines of thought he had in mind.

15. In the first place, the right of States to take measures in relation to maritime casualties, under article 222, needed to be clarified. The obvious lesson of the *Amoco Cadiz* and other disasters was that remedies for pollution were not enough: what was important was the prevention of pollution. It must therefore be made clear that measures referred to in article 222 could be taken at an early stage, before it was too late for them to be effective.

16. The second idea concerned the right of the coastal State to control navigation in its territorial sea. The composite negotiating text already contained a provision concerning ships passing through the territorial sea of a State for the purpose of proceeding to its internal waters or calling at its port facilities; and he thought that that provision might be modified to provide for the possibility of concluding reciprocal, possibly regional, agreements whereby one coastal State would be able to control the passage through its territorial sea of ships proceeding to the ports of another coastal State if the latter State agreed and had signed a reciprocal agreement to that effect with the former coastal State.

17. Those two main lines of thought were without prejudice to his delegation's sympathetic consideration of any other proposals for a legal régime which would ensure adequate protection of the marine environment, and would give appropriate powers to coastal States.

18. Mr. FIGUEIRÊDO BUSTANI (Brazil) expressed his delegation's pleasure at seeing Mr. Yankov once again in the Chair. The quality of the informal composite negotiating text was a reflexion of Mr. Yankov's able chairmanship over the past few years.

19. The wording in recommendation 8 of the Conference on the organization of work, which provided that the Committee "could" be convened to deal with specific matters concerning pollution, scientific research and development and transfer of technology which in its view called for further negotiation, was most appropriate since the sections on those subjects in the negotiating text showed a careful balance between the different interests. His delegation was prepared to consider proposals on articles within the Committee's competence from other delegations, such as the delegation of France—to whom he reiterated his sympathy in connexion with the recent disaster.

20. He was in favour of reconvening the negotiating group under the chairmanship of Mr. Vallarta. He supported the

Chairman's proposals regarding the organization of work, although he felt that it might not be necessary to hold as many meetings as suggested.

21. The negotiating text on marine pollution was well balanced, but he intended to propose some minor amendments to two articles in particular. In the first place, article 209 (Pollution from sea-bed activities) did not cover everything that it should. In its present form, it appeared to relate only to the installations referred to in articles 60 and 80; and it gave the impression that there might be other installations which would not come under the jurisdiction of the coastal State, even for the purposes of controlling pollution. While the core of the matter was a question for the Second Committee, he felt that, without prejudicing the issue, some attempt might be made to enable coastal States to take measures with a view to preventing pollution from installations that might not be under their jurisdiction. In the Second Committee, his delegation had supported the idea that all installations in the exclusive economic zone should be under the jurisdiction of the coastal State.

22. With regard to article 211 (Dumping), he appreciated the general approach adopted, but felt that paragraph 5 tried to apply internationally a principle which in his view was more appropriate for bilateral or multilateral negotiations. A provision along the lines of paragraph 2 of article 195 should suffice as a general principle in the context.

23. His delegation's position on scientific research was well-known and was set forth in document A/CONF.62/63/L.13/Rev.2,² to which it attached great importance. His delegation still had great difficulty with the articles on the subject in the negotiating text; but it understood that the wording represented an enormous effort at compromise, and it was considering the possibility of accepting it as a compromise, on the understanding that it was left unchanged.

24. His delegation was ready to negotiate, particularly on the question of marine pollution, and would co-operate with the group under the chairmanship of Mr. Vallarta.

25. Mr. RICHARDSON (United States of America) recalled that, during the General Committee's discussions on the organization of work for the current session, his delegation had proposed—and its proposal was reflected in recommendation 8 contained in document A/CONF.62/62—that the Third Committee should consider holding further negotiations as necessary, on scientific research and the preservation of the marine environment. His delegation had made that proposal because it had concluded after a careful review that, unless the relevant sections of the informal composite negotiating text were improved, they might have the effect of impeding rather than promoting progress towards the Conference's goal of producing a convention which would be widely ratified and generally accepted as law. That did not mean that his delegation felt that the whole of the text which the Committee had so far elaborated on the two issues he had mentioned should be unravelled; on both subjects, the overall integrity and balance of interrelated texts and packages, and the large majority of articles, could and should be respected. What his delegation sought were informal means, such as those suggested by the Chairman, for co-operation with other delegations in effective efforts to produce improved texts of parts XII and XIII at the present session.

26. There was no more important substantive challenge before the Conference than that of elaborating an adequate legal régime for the protection of the marine environment. The lesson of the tragic accident involving the *Amoco Cadiz* was that all coasts must be better protected against pollution damage. While much of the effort to achieve that goal must be undertaken elsewhere, the Conference had a duty to contribute to it by improving the rules of the law of the sea

concerning pollution from ships. In that respect, several clarifications and improvements were required in the negotiating text in order to better protect both environmental and navigational interests. Unnecessary ambiguities and restrictions had been introduced in relation to the rights of the coastal State in the territorial sea. His delegation felt that the resolution of those matters would make it easier to avoid reopening old issues of contention.

27. For example, it was his delegation's understanding that the Committee had long decided that a coastal State had the right to apply its own discharge standards to vessels in innocent passage through its territorial sea, that those standards might be stricter than international standards, and that the right in question was not limited by any requirement that the discharge must be wilful and serious. The Committee should look with sympathy on the reasonable request of those who had not participated in its work for reaffirmation of that conclusion. In addition, it was possible to interpret the negotiating text as permitting neighbouring coastal States to pool their rights in the territorial sea in order to ensure compliance with environmental conditions for port entry, including conditions relating to the design, construction, manning and equipment of vessels. Since there was, in any case, no doubt that a State had complete discretion to fix port entry requirements, his delegation agreed with that of France that clarification in the negotiating text of the right of neighbouring States to take joint measures to prevent pollution in the territorial sea might better serve both environmental and navigational interests than would a situation in which conflicting interpretations could be advanced. The Committee should also look afresh at the fact that the negotiating text had eliminated the right of coastal States to impose any penalties other than monetary ones for pollution of the territorial sea.

28. With respect to the economic zone, the theory on which the negotiating text was based was that navigation could best be protected by the maintenance of exclusively international and unambiguously set forth in the text. The current provision could best be protected by rigorous enforcement of those standards. If such a system was to be fully accepted, there must be a commitment on the part of the maritime countries to seek ever higher international standards within the competent international organization: all States must respect those standards, and the system itself must be fairly and unambiguously set forth in the text. The current provisions of the text regarding arrest in the economic zone were based on subjective standards, whereas it was important that an objective set of circumstances should be present before an arrest could occur. Subjective criteria were not likely either to protect shipping adequately from abuse of discretion or to give any real guidance to coastal States attempting to act strictly in accordance with the requirements of the future convention. The text must therefore be clarified in that respect and also, as the representative of France had stated, with regard to the right of the coastal State to intervene in cases of maritime casualty.

29. Similarly, while his delegation recognized that the idea that the flag State could pre-empt proceedings in the courts of other States was a part of the overall package produced by the Committee, it could not but note that the manner in which that idea was stated had caused considerable concern. For example, the question had been asked whether a coastal State might be required to suspend proceedings in its own courts with respect to discharges that threatened the resources of its own economic zone. Clearly, a sensible answer to that question would be "no". In view of the importance of that point with respect to the reaction to the overall concept of flag State pre-emption, the wording of the text must be free from ambiguity.

30. Since the system advocated in the negotiating text relied heavily on the duty of all States to respect international

²*Ibid.*, vol. IV (United Nations publication, Sales No. E.75.V.10).

rules and standards, particularly in the economic zone, it would be helpful if the text was more specific concerning the scope of those rules and standards. For example, consideration might be given to including in the text express references to the adoption of appropriate routing systems and to requirements to notify the coastal State in the event of discharge.

31. His delegation had repeatedly stressed the importance of free and open scientific research to all mankind. Although it had hoped that the Conference would have been able to negotiate a régime considerably more favourable to scientific research, its proposals for clarification and improvement of the relevant provisions of the negotiating text were quite circumscribed and modest: bearing in mind its own commitment to the integrity of the negotiating process, it proposed that the results of arduous package negotiations which had been submitted to the Second and Third Committees at the last session of the Conference should be more precisely reflected in part XIII of the negotiating text, as they were in part V thereof. He trusted that the Committee and the Conference would accept those changes in the spirit of accommodation and restraint in which his delegation was proposing them.

32. Mr. MEJÍA GALLEGOS (Peru) said that his delegation sympathized with the concern expressed by the representative of France at the recent pollution of his country's coastal waters through an incident which might have untold consequences for the living resources of the region. The Third Committee should pay heed to problems such as that which France was now experiencing, and should ensure that the negotiating text would afford coastal States better protection against damage resulting from the exploitation of vessels or installations in their territorial seas and would define more clearly their right of intervention.

33. Mr. HASHIM (Malaysia) said that Malaysia attached the greatest importance to the preservation of the marine environment through the prevention and control of pollution from vessels; and it therefore sympathized deeply with France in the latter's efforts to combat the effects of the tragedy of the *Amoco Cadiz*. His delegation would be most interested to hear what measures France was taking to combat the oil spill since, if such an incident were to occur in the Malacca Straits, which were busier, more restricted and shallower than the waters around Brittany, its consequences would be catastrophic, especially in view of Malaysia's limited capacity for fighting such pollution.

34. In order to prevent any recurrence of a tragedy such as that which France had suffered, it might be helpful if the Committee were to re-examine certain provisions of the informal composite negotiating text, in order to improve their language and correct their substance as might be necessary. His delegation would pay careful attention to any concrete proposals by the delegation of France in that respect. He also felt that provision should be made for flag States and owners of vessels to be constantly reminded of their heavy responsibility, that more emphasis should be placed on the enforcement of national standards in order to protect the marine environment, and that the right of coastal States to intervene to protect that environment should be clarified.

35. Mr. TIKHONOV (Union of Soviet Socialist Republics) said that his delegation had concluded, after careful study of the informal composite negotiating text, that part XII thereof faithfully reflected the compromise which had been worked out in the Committee after many years of effort. It found many of the provisions of that part far from satisfactory, some because they would place undue difficulties in the way of international navigation, and others because they provided inadequate protection for the marine environment against pollution from sources other than vessels. However, it appreciated that the Conference was now in the final stage

of its work and that the most important provisions of part XII of the negotiating text represented a compromise, package-deal solution to the complex and grave problems with which the Third Committee had been faced. It recalled the efforts which the delegations of India, Brazil, Mexico, Norway, Kenya, Canada and many other States had made to reconcile the differences within the Committee, and it appreciated that the text represented a mean on which the majority of delegations, in their concern for the fate of the Conference as a whole, had found it possible to agree. In the light of those circumstances, his delegation had been instructed not to put forward any proposals which might destroy the compromise. It was convinced that, having come so far, the Third Committee must ensure that issues relating to part XII of the text did not become yet another obstacle to the success of the Conference.

36. At the same time, his delegation shared the concern which had been expressed by the representative of France regarding the recent disaster which had occurred off the French coast, and it was prepared to co-operate with him in elaborating suitable formulations, if that accident should have any consequences which ought to be taken into account in part XII of the negotiating text, and primarily in article 222. If, however, such new proposals as might be made showed that their sponsors rejected the compromise which had been reached, his delegation would feel obliged, in order to protect its own interests, to put forward again the proposals it had made at earlier sessions and which it had later withdrawn in the interests of reaching agreement. He sincerely hoped that the reopening *ab initio* of the discussion on the question of pollution from vessels would not be necessary.

37. It was his delegation's deep conviction that part XIII of the negotiating text, which contained provisions designed to regulate marine scientific research in legally distinct areas of the world's oceans, represented a fully balanced compromise. Naturally, as a compromise, the text was not wholly satisfactory to everybody, and there were indeed points on which his own delegation would like to see improvement. Nonetheless, the text did offer a flexible mechanism for the legal regulation of inter-State relationships with respect to marine scientific research, a mechanism which would make it possible to combine effective national control over that type of foreign activity in the economic zone and on the continental shelf with comprehensive support for the efforts of the scientists of various countries to study the phenomena and processes of the marine environment. To reopen the discussion on marine scientific research would be an inadmissible waste of the small amount of time which remained to the Conference.

38. Mr. ATAIDE (Portugal) said that his delegation considered that the texts produced by the Third Committee should be improved as far as possible, even if that meant giving attention to matters of detail, since it was to the conventions elaborated by universal bodies such as the Conference that regional treaty-making organs looked for guidance on fundamental problems. Consequently, consideration should be given, as the representative of France had mentioned, to the question of the design of ships. The Committee should also give attention to the matter of the sovereignty of the coastal State over shipping lanes along its coasts and to the very important subject of crews which, it was certain, were often responsible for accidents because they were ill-trained or kept inadequate watch. For example, there were now 2,000 tons of acetone in the sea off Portugal because all members of the crew of the carrier vessel had been asleep.

39. It would be recalled that, at the sixth session of the Conference, his own delegation and that of France had proposed that the future convention should include references to incineration at sea. In that respect, the reference in article 1,

paragraph (5), subparagraph (a) (i), of the composite negotiating text to incineration from aircraft was illogical and should be amended. Articles 195, 211, 212 and 217 of the composite text, which referred to matters of great concern to his delegation, must also be discussed. Incineration should be clearly referred to as such. Article 212 should be supplemented by a provision to the effect that vessels engaging in incineration must keep away from the normal shipping lanes and migration routes of the major species of pelagic fish, such as tunny-fish. All the points he had mentioned were directly linked with article 238 of the negotiating text, and he would have concrete proposals to make in that respect in the negotiating group on marine pollution to which the Chairman had referred.

40. Mr. BEESLEY (Canada) said he concurred fully with the Chairman's assessment of the significance of the results of the work of the Third Committee, which reflected a wide measure of support for the provisions of parts XII, XIII and XIV of the convention. It was well known that the preservation of the marine environment, and specifically the elaboration of an umbrella treaty laying down as a fundamental rule of international law the obligation to preserve that environment, had been one of Canada's major objectives since the outset of the Conference. The informal composite negotiating text now contained a series of provisions establishing a global legal régime for the preservation of the marine environment, much of which represented new law in a field where there had previously been a virtual vacuum; it could therefore be said that the Third Committee had gone a long way towards the fulfilment of its mandate. He agreed with other delegations that there was no need for any major restructuring of the articles which the Committee had drafted; but it was necessary to introduce certain clarifications and improvements, while retaining the basic scheme and balance of the text.

41. There was a particular need for improvements to the articles on pollution from vessels, an area in which the issues of major concern to his delegation were those of the standard-setting powers of coastal States in the territorial sea, the powers of enforcement enjoyed by coastal States in the economic zone, and the right of coastal States to intervene to prevent pollution from maritime casualties. He also wanted to be associated with statements of representatives of France and the United States of America concerning areas of law needing further attention. He felt that, following the tragedy of the *Amoco Cadiz*, there was a new awareness within the Conference, and indeed within the international community, of the need for a new legal order for the oceans which would promote the common interest of all States in preserving the marine environment. His delegation extended its sympathy to the Government and people of France in connexion with the catastrophe, which was unfortunately only one in a long series that would inevitably continue. In view of those considerations, the Committee must examine certain articles in the negotiating text to ensure that they did in fact represent the balance between coastal and navigational interests which it had been sought to create. To that end, delegations should work together to evolve an objective and functional approach to the problem. His own delegation would continue to place the emphasis on preventive rather than remedial powers for coastal States, on regulation rather than prohibition, and on clarity rather than ambiguity. In that connexion, article 19, paragraph 2, subparagraph (h), article 21, paragraph 2, and articles 221 and 222 needed to be made clearer because they did not sufficiently recognize the coastal States' major interest in, concern for, and ability to achieve the harmonization of navigational and environmental interests.

42. In the case of article 19, his delegation was concerned that the reference in paragraph 2, subparagraph (h), to an element of intent might have the effect of excluding from the

scope of the future convention instances of pollution which were due, as was most often the case, to negligence, error or the malfunctioning of equipment. The effect of article 21 represented a significant erosion of the sovereign rights which coastal States had traditionally exercised within their territorial sea under existing international law, as it then limited the coastal States' regulatory powers to the implementation of "generally accepted international rules and standards" concerning design, construction, manning and equipment. Coastal States could not be denied the right to enact national standards for the design, construction, manning or equipment of vessels when the relevant international standards were non-existent or inadequate, or perhaps were contained in an international legal instrument which had not yet entered into force. The proposals which had already been made on that matter at the current meeting seemed constructive, but he remained open to other suggestions.

43. Article 221 provided, in part, that when a vessel was within the territorial sea or economic zone of a State, and when the coastal State had clear grounds for believing that the vessel, while in the economic zone, had violated "applicable international rules or standards", that circumstance alone was not sufficient to permit the coastal State to undertake physical inspection. Physical inspection could be undertaken only if four conditions were first met: the first was that the vessel was subject to an applicable international standard; the second was that it must have violated that standard; the third was that the violation had resulted in a substantial discharge, and the fourth was that significant pollution of the marine environment had occurred. There was no preventive aspect to the provision even if there were clear grounds for believing that serious pollution was imminent. The coastal State must await the occurrence of significant pollution before it could inspect the ship to gain knowledge as to the seriousness of the situation and the best way to combat the pollution that was already taking place.

44. There were a number of ways to approach those serious defects in the text. Canada had already made clear its views as to the best solution, but was willing to explore all proposals to correct the remaining shortcomings in the provisions concerning the preservation of the marine environment. His delegation had listened with interest to the proposals of France and the United States of America regarding regional standard-setting arrangements and was fully prepared to consider that as one possible solution. For example, it had suggested deleting paragraph 2 of article 21. It had also tried to focus discussion on the question whether the need for setting standards in manning and equipment should be treated in the same way as the need for standard-setting in design and construction. With respect to article 221, paragraph 5, Canada had suggested including words to recognize the coastal State's right to inspect the vessel when there were clear grounds to believe that serious pollution was imminent. Another alternative was to permit the coastal State to take the necessary enforcement action when the international standard had been violated and when either substantial discharge or significant pollution had occurred or was imminent. His delegation attached importance to the use of the word "or" between "substantial discharge" and "significant pollution". Canada's concern over the enforcement provisions arose from the realization that it was at best useless, and, at worst, dangerously misleading, to adopt sound international rules without ensuring that there were effective means of enforcing compliance. The Third Committee had not only a clear mandate but an obligation to ensure the orderly development and enforcement of international rules and standards to combat vessel source pollution.

45. He wished to emphasize that a major part of the Committee's work had been accomplished, and that only a few gaps remained to be filled. He was confident that the remain-

ing problems could be solved in a way which, with respect to the territorial sea, would maintain the balance between coastal State sovereignty and navigation rights and, with respect to the economic zone, would maintain the basic rule of the development of international standards coupled with a system for the shared enforcement of such international rules and standards by the coastal State, port State and flag State. His delegation looked forward to making a constructive contribution to the completion of the Committee's work in preparing a global convention establishing an effective system of law to ensure the preservation of the marine environment.

46. Mr. AITKEN (United Kingdom) said that there appeared to be an acceptable compromise on the articles in the informal composite negotiating text dealing with pollution. While there was room for improvement, his delegation realised that it was in the interests of the existing text as a whole not to press for changes.

47. The United Kingdom was greatly disturbed by the wrecking of the *Amoco Cadiz*. As a close neighbour, it had sought to co-operate closely with France in mitigating the effects of the disaster, and was taking the lead with France in considering, in the Inter-Governmental Maritime Organization (IMCO), how the relevant traffic separation schemes needed to be altered. The United Kingdom delegation would study carefully any proposals put forward in the light of the recent disaster. It wished to see pollution of the seas controlled effectively internationally. The negotiating text provided the proper framework to allow the technical expertise of IMCO and other relevant international organizations to be brought to bear on measures which might now or in the future be thought necessary. In connexion with the section of the negotiating text dealing with marine scientific research, including in particular article 247, he said the formulation worked out in difficult negotiations at the end of the previous session had been better balanced than that which ultimately appeared in the negotiating text. The United Kingdom would therefore welcome any movement towards the earlier negotiated text.

48. Mr. YTURRIAGA BARBERÁN (Spain) said that he agreed in general with the Chairman's proposals on the programme of work, although he had some comments to make. He considered parts XIII and XIV of the negotiating text satisfactory, but not part XII. All the members of the Third Committee must have been shocked by the effects of the *Amoco Cadiz* disaster, and he wished to extend his deep sympathy to France for the damage caused. However, some good might have emerged from that disaster if it acted as an alarm signal to prevent complacency over pollution. The work that had been done on part XII by the Third Committee and by the negotiating group was impressive; but that did not mean that the results were beyond improvement. There had already been two major oil spills, and he hoped that no third incident would occur before the Conference had had time to reconsider the points in part XII that had not been fully dealt with. The Conference now had an opportunity to reconsider the marine protection provisions, and to avoid the pitfall of leaving them incomplete so that they would have to be re-drafted in another few years. The articles in part XII that needed careful re-examination were articles 212, 221, 234 and 236. He appreciated that the main substance of the articles, which represented a compromise, could not be questioned; but he did not agree that only drafting or cosmetic changes could be made. In some cases the rules must be made more effective.

49. Problems relating to the protection and preservation of the marine environment were primarily the task of the Third Committee; but, as the Canadian representative had stated, some changes were necessary in the text of the articles drafted by the Second Committee, in particular article 21, paragraph 2; article 19, sub-paragraph 2(a); article 39, para-

graph 2 and article 42, sub-paragraph 1(b). At some stage, the texts drafted by the Second and Third Committees would have to be co-ordinated.

50. He agreed with the representative of Portugal that the Conference had a heavy responsibility to shoulder. Technical problems could be referred to international technical bodies, but all international bodies concerned with maritime problems were looking to the present Conference for guidance. The interests of various States must be clearly defined in the proposed Convention, and above all the jurisdictional aspects must be clearly defined.

51. He was pleased to be able to conclude on an optimistic note by announcing that on 12 February 1978 the Convention for the Protection of the Mediterranean Sea against Pollution signed in Barcelona in 1976, as well as its two Protocols, had entered into force. The conclusion of that Convention was proof that a group of coastal States sincerely desired to contribute to the fight against pollution and to the preservation of the marine environment.

52. Mr. HUSSAIN (Pakistan) agreed with the Chairman that the Third Committee had made notable progress. Its aim in drafting the relevant sections of the negotiating text had been to strike a balance between environmental considerations and marine activities. He felt that further improvements were needed, particularly in the text regarding marine pollution. Pakistan extended its sincere sympathy to the Government of France on the very serious pollution disaster that had occurred on the French coast. In his view, such incidents would continue unless preventive measures were taken by international organizations, and they could be even more disastrous if they took place off the coasts of developing States, which did not have the technology or material equipment to deal with such disasters. Accordingly, the Third Committee should review the text of the articles on pollution and on the transfer of technology to see whether any gaps or ambiguities relating to such serious incidents could be removed, and whether special provisions could be included to enable coastal States to deal with such situations. The delegation of Pakistan would study the French proposals carefully.

53. His delegation fully agreed with the Chairman's suggestions regarding the work programme, and welcomed the attention being given to marine pollution and marine scientific research. However, the Committee should not ignore the question of the transfer of technology, and should allocate at least one meeting to that subject. The work programme should not be too rigid, and should be adjusted in accordance with changing circumstances.

54. Mr. MARZIOTA DELGADO (Cuba) said that his delegation could give its general support to the present text of the negotiating text, which reflected a compromise resulting from much hard work in the Third Committee. Speaking as the representative of a developing country and a coastal State, he supported the text as an effort to preserve the marine environment, through the application of international rules, without undue interference with marine activities, which were essential to Cuba's development.

55. He associated himself with representatives who had extended their sympathy to France in connexion with the recent disastrous effects of pollution on the French coast. Cuba would carefully examine the French proposals.

56. Mr. GAVIRIA LIÉVANO (Colombia) said he welcomed the proposals for the organization of the Committee's work and was pleased to note that, as in the past, the working methods were to be based on open-ended negotiating groups dealing with the main subjects referred to the Third Committee.

57. His delegation was generally satisfied with the present wording of the relevant sections of the negotiating text,

which maintained a fairly good balance; but it would be prepared to consider amendments to improve certain provisions in the text.

58. Colombia wished to extend its deepest sympathy to France in connexion with the disastrous effects on the French coast of the wreck of the *Amoco Cadiz*. Colombia understood the feelings of France because it, too, had suffered the ill effects of pollution from tankers, although on a smaller scale. His delegation was accordingly prepared to accept changes in the text that would allow a coastal State to prevent and control pollution off its coast.

59. Mr. SHERMAN (Liberia) said he agreed that the Third Committee had produced a well-balanced text, although it was still capable of improvement. He would like to see some improvements made on the key issues of marine scientific research, pollution, and the transfer of technology. The wording of article 253 on implied consent was not acceptable to his delegation, which would be proposing changes in the text.

60. With reference to the wreck of the *Amoco Cadiz*,¹ he said that Liberia, as the flag State, had been co-operating with France in dealing with that regrettable incident. He supported the proposal that technical problems should be referred to IMCO, as suggested by France and the United Kingdom.

61. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation had come to the conclusion that the present text of parts XII, XIII and XIV, which had been elaborated in the Third Committee as a result of long and difficult negotiations, was a finely-balanced compromise which could in its entirety be acceptable to all delegations. Like all compromises, of course, it could not be to the liking of every delegation in every respect. His own delegation, in

fact, was not altogether satisfied with the text and, like other delegations, it had specific proposals and observations to make on many articles. However, it believed that, in the present final stage of the Conference's work, it would be inadvisable to start a further general discussion, which might upset the delicate balance that had been achieved with so much difficulty. Many delegations had made a number of concessions with a view to arriving at compromise formulations; and it would be unfair and even dangerous to ask them now for further concessions, since such a request might merely induce them to revert to their original positions.

62. Many delegations had said that there was a need for further discussion on problems of preventing pollution, and particularly vessel source pollution, because of the recent wrecking of the *Amoco Cadiz* off the coast of France. On learning of that tragic event, his delegation had felt great sympathy and understanding for France. However, as the French representative himself had said, such cases were numerous; and events relating to the Conference's work (shipwrecks, arrests of vessels, imposition of fines, etc.) could happen every day. The Conference would never be able to conclude its work if, after every such event, it decided to reopen its discussion on issues relating to the event. Even when the Third Committee had first begun its work, there had already been sufficient examples of such incidents to provide a basis for elaborating provisions for preventing pollution of the marine environment.

63. The foregoing observations did not, of course, mean that his delegation was opposed altogether to any negotiations in the Third Committee. The Committee might discuss the need for additions to article 222 in the light of the disaster which had occurred on the French coast.

The meeting rose at 1 p.m.

36th meeting

Thursday, 20 April 1978, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. Mr. LUKASIK (Poland) said his delegation was prepared to consider ways in which the proposals made by the French delegation (35th meeting) following the *Amoco Cadiz* disaster could be incorporated in the informal composite negotiating text.¹ Some delegations seemed to find a great deal to criticize in the existing text of part XII (Protection and preservation of the marine environment), but it would be dangerous to use the *Amoco Cadiz* affair as a pretext for reintroducing proposals that had already been considered and might disrupt the compromise which the Committee had reached with so much difficulty. If that were to happen, his delegation would feel free to revert to its former positions and to revive old proposals as well.

2. The real cause of catastrophes such as the *Amoco Cadiz* disaster was not the lack of international rules and standards—of which there were enough already—but the failure of the countries concerned to comply with international rules, and also the attitude of the oil companies which were anxious to make as much profit as possible and were using flags of convenience to circumvent the laws and regulations in force.

It was essential for certain countries to compel the owners of oil tankers, whether they were nationals of those countries or companies registered there, to comply with the international rules and standards. There was no need to add a new provision to the informal composite negotiating text for that purpose. As the French delegation had suggested, minor amendments could be made in the text to take into account the events that had occurred: his delegation considered that the best course would be to amend article 222 (Measures relating to maritime casualties to avoid pollution) but not to touch the other articles, so as not to jeopardize a delicate compromise.

3. Mr. APPLETON (Trinidad and Tobago) said that the provisions of the informal composite negotiating text on marine pollution and marine scientific research were clearly far from perfect, and his delegation was inclined to be sceptical about several articles, notably articles 21, 212 and 247. At the present stage, it shared above all the concern that had been expressed by a number of delegations with respect to the power of the coastal State to enact laws and regulations governing the innocent passage of foreign vessels in its territorial sea and, in particular, the design, construction, manning and equipment of such vessels. The disasters that had occurred in the last few years had made it even more obvious that it was necessary to strike a balance between the powers of coastal States in their territorial sea on the one hand, and respect for the right of innocent passage on the other hand.

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