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39th meeting of the Third Committee

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39th meeting

Wednesday, 13 September 1978, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Report of the Chairman on the work of the Committee

1. The CHAIRMAN, introducing the report (C.3/Rep.1)¹ which he had prepared on the results of the negotiations on parts XII, XIII and XIV of the informal composite negotiating text² at the conclusion of the resumed seventh session, said that the report should be considered as an addition to the report which he had submitted to the plenary Conference at Geneva, reproduced³ in the informal paper of 19 May 1978 containing the reports of the committees and negotiating groups on the negotiations at the seventh session. He was pleased to note that at the resumed session further progress had been made in the Third Committee, so that there appeared to be a possibility of a consensus on a comprehensive compromise text.

2. As during the first part of the session, the negotiations and discussions had concentrated on the main issues before the Committee, namely, the protection and preservation of the marine environment, marine scientific research and the transfer of marine technology. The negotiations had been conducted, in accordance with the procedure which had now been established, at open-ended informal meetings the results of which had been duly brought to the attention of the Committee as a whole. A selective approach had been adopted and had proved to be a very efficient method of work, and the negotiations had concentrated mainly on the question of vessel-source pollution and on the régime for the conduct of scientific research in the economic zone and on the continental shelf.

3. At the conclusion of the first part of the seventh session, the results of the negotiations on the protection and preservation of the marine environment (part XII of the negotiating text) had been placed under four categories: first, provisions on which consensus had been reached; second, provisions on which compromise formulae had resulted which had received a substantial degree of support and thus offered a prospect for consensus but on which there were still some reservations; third, informal proposals on which, owing to lack of time or divided views, no compromise formulae had emerged and which therefore required further intensive negotiations; and, fourth, provisions which had not been challenged and on which no proposals had been made for substantive modifications and which it was thus assumed should remain as they stood. The results of the negotiations presented in the previous report were reproduced in annex I to the current report, which contained the texts of all the provisions, amendments and informal proposals relating to the articles considered at the seventh session. There was also an annex II which contained the report submitted the previous day by Mr. Vallarta which summed up the prospects for consensus and the differences of opinion which persisted with regard to a number of articles.

4. At the resumed session, again, the negotiations had concentrated mainly on part XII of the informal composite negotiating text, with a view to broadening the area of compromise and building on those texts and amendments. The report under consideration followed the same plan as that

presented at the conclusion of the first part of the session, except that annex I included under the first category only the texts on which a consensus had been reached during the first part of the session. That did not mean that no progress had been made subsequently, but it had been felt preferable not to include in that category provisions regarding which no objections had been made without considering all the other compromise formulae. In effect, the provisions set out in document MP/27 which had emerged from the intensive negotiations during the resumed session and which were listed under the second category in annex I had significantly broadened the basis of a compromise and offered a substantially improved prospect for consensus. Further details in that connexion would be found in annex II to the report under consideration.

5. It was his view that, with respect to the matters relating to the protection and preservation of the marine environment, a stage had been reached where the informal composite negotiating text could provide a good basis for a consensus. The texts could admittedly be improved still further, but it was important to realize that a balance had been reached which should not be disturbed.

6. With regard to parts XIII and XIV, dealing respectively with marine scientific research and the development and transfer of marine technology, it seemed to him that the prospects for consensus had improved substantially. There were many who thought that the delicate balance achieved so far between the interests of coastal States and those of States conducting marine scientific research and between the interests of developing and developed countries had to be preserved and that there should be restraint on any attempt to reopen the negotiations on fundamental issues, especially relating to the régime for the conduct of marine scientific research in the economic zone and on the continental shelf. That did not mean that no effort should be made to improve the texts, but it would seem wise not to propose any amendment relating to the substance unless it was clear that such a proposal had the support of the delegations mainly concerned and that it might thus improve the prospects for consensus. For it was the general feeling that the compromise achieved should be preserved.

7. A number of articles in parts XIII and XIV had given rise to critical observations and suggestions at Geneva. For example, a number of Arab States had made comments with regard to article 264 which were reproduced in document SR/1 and in annex I to the report under consideration, as was the informal proposal submitted by the delegation of Pakistan at Geneva and reproduced in document TT/1 to the effect that a new article 275 *bis* should be included in the negotiating text. Annex I also included a set of informal suggestions submitted at the resumed session, in document MSR/2, by the delegation of the United States of America. Those latter suggestions had been considered at several meetings but had given rise only to preliminary comments which had proved inconclusive. Accordingly, consideration of them should be resumed at the following session and a decision should be taken at that time on the procedure to be applied with regard to them.

8. He hoped that the negotiations to be carried out in the future in the Third Committee would consolidate the results achieved at the seventh session. He would take into account everything that had been said, done and proposed during the

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. X (United Nations publication, Sales No. E.79.V.4) p. 173.

²*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

³*Ibid.*, vol. X, p. 96.

session, both at Geneva and in New York, and would, where necessary, remedy any inaccuracies or omissions that might be brought to his attention.

9. Mr. ATAIDE (Portugal) said that his delegation fully agreed with the draft report of the Chairman, which accurately summed up the work of the Third Committee. His delegation had already indicated the previous day that it accepted the results of the informal meetings on part XII of the negotiating text, in other words, document MP/27 as a whole, with reservations regarding the advisability of introducing the concept of *incinération* in the French text of article 1.

10. Moreover, his delegation was ready to discuss document MSR/2 at the eighth session, as agreed, provided that the existing balance of the informal composite negotiating text was not altered, particularly with regard to the continental shelf, the exclusive economic zone and the territorial sea. It also hoped that, as the Chairman's statement indicated, detailed consideration would be given at the following session to documents SR/1 and TT/1, which contained, respectively, the proposals of the Arab States and Portugal and a proposal submitted by Pakistan.

11. His delegation was convinced that the efforts made by the Chairman and by Mr. Vallarta at the resumed seventh session would lead to positive results which would promote the success of the Conference.

12. Mr. BENMAKHLOUF (France) said that his delegation agreed, in a spirit of compromise, that the draft amendments relating to part XII contained in document MP/27 provided a satisfactory basis for a consensus, with the exception of paragraph 2 of article 231. While the current wording of that provision improved the initial text, it was not acceptable to his delegation, which wished to point out that, under international law, States must be able to apply in their territorial waters—provided that they respected the right of innocent passage—the penalties provided in their legislation, including penalties other than monetary penalties, for offences committed by foreign vessels. The application of that constant principle of positive international law did not appear to have given rise to difficulties in practice. With the exception of that reservation, his delegation supported the efforts made at the current session to achieve agreement.

13. Mr. FIGUEIRÊDO BUSTANI (Brazil) said that not all delegations would necessarily agree with the Chairman that the informal suggestions by the United States contained in document MSR/2 had given rise only to "preliminary" comments and that the considerations of those suggestions had therefore been inconclusive. His delegation would also prefer the Chairman's report to specify that only some of the amendments suggested merited further consideration. He might have some additional comments to make when his delegation had had an opportunity to consider the final version of the report.

14. The CHAIRMAN observed that, as a matter of principle, all suggestions merited consideration with complete objectivity and on more than one occasion. However, it was of course for the Committee to decide whether some of them should be open to formal amendments, provided that the present balance of the text would not be disturbed.

15. Mr. DAHAK (Morocco) said that Morocco, like the other Arab States, welcomed the reports submitted by the Chairman and by Mr. Vallarta and appreciated the efforts they had made to reconcile differences and to formulate a new text in an open-minded spirit. However, his delegation was disappointed with some articles, especially article 264, concerning liability in case of damage resulting from scientific research. That question had not been dealt with in the same way as the question of pollution from vessels in the negotiating text, which in the case of research placed the

emphasis on penal rather than civil liability. Yet the question was very important to countries and individuals suffering damage or pollution as a result of scientific research, and they were more concerned with compensation than with penal sanctions. It was for that reason that nearly all the Arab States—and not "a number of Arab States", as stated in the Chairman's report—had proposed, with the support of Portugal, an amendment to article 264 to bring it into line with article 236.

16. His delegation was therefore disappointed that article 264 had not been discussed either at Geneva or in New York. Since there was no longer time to discuss it, his delegation requested that the report of the Chairman of the Committee should make it quite clear that a majority of the Arab States, and not simply a few of them, had proposed amendments to article 264. Morocco hoped that that draft article would be considered at the eighth session and would not be buried under a mass of less important proposals.

17. Mr. TIKHONOV (Union of Soviet Socialist Republics) said that, in his view, the Chairman's report was very comprehensive and accurately reflected the work of the Third Committee on protection of the marine environment and pollution control. His delegation wished to recall, however, that the Soviet Government had always favoured effective international measures to protect the marine environment, provided that they were reasonable and did not unduly impede international shipping. From that standpoint, part XII of the informal composite negotiating text, which was the outcome of long and arduous negotiations, was well-balanced and took into account the interests of all groups of countries. There was therefore no reason why it should now be re-drafted. The new amendments proposed in document MP/27 concerning the prohibition of pollution from vessels, particularly paragraph 2 of article 231, might alter that balance and hinder the development of shipping. Where amendments which were submitted were the outcome of negotiations in which all delegations had participated, and where they were conducive to a consensus by improving the prospects for agreement, his delegation was prepared to accept them. Thus, while it had been possible at Geneva to place certain proposals in the second category, as compromise formulae which provided a reasonable prospect for consensus, that did not apply now to the set of proposals contained in document MP/27, which many delegations considered should be the subject of a full consensus. The Chairman and Mr. Vallarta had therefore been wise to refrain from automatically including in the Committee's report appraisals which had been valid at Geneva but would now no longer be so.

18. In conclusion, his delegation considered that the seventh session had produced positive results which should make it possible to bring to a close the negotiations concerning marine pollution. Those results were a final compromise and not a starting-point, as some delegations which were anxious to obtain further concessions would have it. It was with that in mind that his delegation had approached the new proposals for amendments to the negotiating text at the last informal meeting of the Committee.

19. Mr. TIWARI (Singapore) said that the Chairman's report faithfully and accurately reflected the status of the negotiations which had taken place in New York. Although document MP/27 did not meet all his delegation's concerns, it was willing to accept it, in a spirit of compromise, as a basis for future negotiations. However, his delegation did not see the point of the penultimate sentence of paragraph 2 *bis* of article 212; why should a State participating in the co-operative arrangements in question want to know whether a vessel was proceeding to another participating State? Singapore did not believe that such a provision had any place in that article.

20. Mr. YUSSUF (Somalia) said that the intensive negotiations which had taken place in New York on the proposals

contained in document MP/27 must be continued in order to improve the prospects for agreement, since many delegations, including his own, had expressed reservations and objections to some of those proposals. Somalia was particularly opposed to the proposal relating to paragraph 2 of article 231 concerning monetary penalties, because it considered any such provision contrary to the rules of international law allowing the coastal State to impose penalties in cases of violation of its territorial waters.

21. With regard to the Chairman's report on part XIII of the negotiating text, his delegation shared the Moroccan delegation's disappointment that the suggestions made by the Arab States and Portugal had not been considered in New York. It hoped that they would be considered at the eighth session.

22. As for the informal suggestions by the United States delegation contained in document MSR/2, his delegation felt that any proliferation of new amendments must be avoided at the present stage of the work, lest the compromise that had been reached should be jeopardized. On the other hand, it would be desirable for the Committee to consider the informal suggestion on the transfer of technology made by Pakistan at Geneva in document TT/1 and for negotiations to be held on it.

23. Mr. MARZIOTA DELGADO (Cuba) said that the provisions contained in document MP/27 definitely strengthened the prospects for consensus. His delegation particularly welcomed the new wording of paragraph 1 of article 231 proposed in that document, which would allow penalties other than monetary penalties to be imposed in case of a serious and deliberate act of pollution committed within the territorial sea. In the view of his delegation, that would constitute a satisfactory compromise formula. He hoped that delegations which at present considered that text unacceptable would weigh its merits and reconsider their decision at the next session. With regard to parts XIII and XIV, his delegation supported the provisions contained in the negotiating text and endorsed the comments made by the representative of Brazil on the Chairman's report.

24. Mr. WULF (United States of America) pointed out that at the current session the Third Committee had given very thorough consideration to the provisions contained in document MP/27, which had been placed in the second category; that a number of them had been appreciably improved; and that some new provisions had been incorporated into the document. In view of that progress, he felt that it would be regrettable if the Committee were obliged at the next session to reconsider those provisions from scratch.

25. His delegation particularly approved of the new wording of paragraph 2 of article 231 proposed in document MP/27, which, in its view, constituted a good compromise formula.

26. With regard to part XIII, concerning marine scientific research, he believed that it would be useful to continue the discussion, but he objected to the representative of Brazil's appraisal of the outcome of the debate on the provisions relating to that question.

27. Mr. SHERMAN (Liberia) said that, in his view, the discussion of parts XII, XIII and XIV of the negotiating text had proved useful and it might soon be possible to reach a compromise on them.

28. With regard to marine pollution, most of the provisions contained in document MP/27 were compromise formulae which his delegation considered acceptable. Its only reservations concerned the provisions which it was proposed should replace paragraphs 2 and 6 of article 221, and the paragraph 2 *bis* which it was proposed should be inserted in article 212 and which his delegation considered hardly acceptable.

29. He regretted that the Committee had been unable to spend enough meetings on part XIII, concerning marine

scientific research. However, apart from article 253, about which it had some reservations, his delegation considered that the provisions of the negotiating text offered an acceptable compromise solution.

30. His delegation supported Pakistan's proposal for the inclusion in part XIV of the negotiating text of an article relating to the establishment of national marine scientific research centres, which would certainly do much to promote the transfer of technology.

31. Mr. JAWAD (Iraq) considered that the provisions of part XII, which were the outcome of difficult and prolonged negotiations, constituted acceptable compromise formulas.

32. His delegation supported most of the provisions in document MP/27, with the exception of paragraph 2 *bis* proposed for insertion in article 212. It would be desirable to allow foreign vessels a certain amount of time before requiring them to comply with the particular requirements established by States and communicated to the competent international organization. Moreover, those requirements should enter into force only with the consent of the international organization to which they were communicated.

33. With regard to the new wording of paragraph 5 of article 221, his delegation considered that the words "or threatening" should be deleted, for it feared that by allowing a State to undertake the inspection of a vessel as appropriate when there was only a threat of pollution the right of navigation might be infringed. For the same reason it also requested the deletion of the words "including detention of the vessel" from paragraph 6.

34. With regard to paragraph 1 of article 231, he considered that the provision proposed in document MP/27 was ambiguous and felt it preferable to retain the wording of the informal composite negotiating text, which was clearer and more concise.

35. Mr. AITKEN (United Kingdom) considered that the informal composite negotiating text was a balanced document which constituted an acceptable compromise solution. The United Kingdom, which engaged in a substantial amount of maritime transport activity, had to bear in mind both its own need and that of the rest of the world for an efficient framework in which to carry out international trade. It set that against its wide interests in ensuring effective international control of pollution. His delegation was in no doubt that the proposals in document MP/27 moved the balance of the text towards coastal interests. Nevertheless, his delegation was willing to accept them in the interests of achieving consensus.

36. He wished to state, however, that his delegation reserved the right to change its position if at forthcoming sessions delegations sought to make further changes in certain provisions of part XII and to disturb the balance achieved with so much difficulty.

37. He was glad to note that in his report the Chairman had reminded the Committee that at forthcoming sessions it would have to resume its consideration of the proposals contained in the MSR documents, and especially those contained in document MSR/2 submitted recently by the United States.

38. Mr. BAKER (Israel) said he had some reservations concerning the new wording of paragraph 6 of article 221 proposed in document MP/27. Authorizing a State to detain a vessel navigating in its exclusive economic zone could have extremely serious consequences and could in particular call in question the delicate balance which had been established between the rights and powers of the coastal State and the right of navigation. Moreover, the principle of detention in the exclusive economic zone was incompatible with the navigation régime applicable in that zone, as defined in the in-

formal composite negotiating text. His delegation therefore requested that the word "detention" be deleted.

39. With regard to paragraph 5 of the same article, his delegation preferred the wording of the informal composite negotiating text to that proposed in document MP/27, which introduced a regrettable discretionary element.

40. His delegation also felt that paragraph 2 *bis* of article 212 was not entirely satisfactory and should be improved on the basis of the many suggestions made in that regard.

41. Generally speaking, his delegation found the other provisions contained in document MP/27 acceptable.

42. Mr. TIMAGENIS (Greece) said that, despite the reservations expressed by some delegations, including his own, the results achieved at the seventh session deserved broad support, for they represented notable progress which improved the chances of reaching a consensus. In his view, it was unnecessary to classify those results according to the categories defined at Geneva, for in fact they did not correspond exactly to any of them.

43. He recalled that his delegation had constantly sought to defend certain principles relating to the matters under consideration, because Greece had the geographical characteristics of a country whose livelihood depended largely on shipping in the fields of trade and tourism. His delegation was thus in a good position to appreciate the need to preserve the marine environment and the importance of international navigation and transportation. In its view, the measures taken for that purpose should be adopted internationally and should be as uniform as possible. Uniformity ensured that navigation would be facilitated and that the measures adopted would be applied, for it was certainly easier to comply with uniform measures. His delegation also favoured an effective enforcement system, provided that it was accompanied by guarantees against abuse. Those principles were reflected more or less in the informal composite negotiating text, but perhaps not as completely as was desirable. Nevertheless, in a spirit of compromise and co-operation, his delegation was prepared to accept most of the provisions worked out in the recent negotiations and embodied in document MP/27. However, it had reservations concerning paragraph 2 *bis* of article 212, which it considered unclear, and paragraph 6 of article 221, since it considered it inopportune to mention detention at that point. It had serious objections to article 222, which in its current form might create confusion and could therefore give rise to interpretations going far beyond the sense intended. Desiring to join the consensus, however, his delegation continued to examine those provisions carefully. Its final decision would depend on future developments in the Conference, but it felt that in any event efforts must be made to preserve the rather precarious balance which had been achieved.

44. His delegation had always favoured the absolute consent of the coastal State to scientific research, but in a spirit of compromise it was prepared to take into account the arguments of other delegations and could accept a compromise.

45. His delegation considered that the informal composite negotiating text in its current form was acceptable and balanced, and it therefore felt that in subsequent negotiations care should be taken not to introduce too many substantive changes which might disturb that balance.

46. Mr. McKEOWN (Australia) said he doubted whether the Third Committee could improve on the many articles considered during the current session in both Geneva and New York. Many of the provisions contained in document MP/27 did not reflect Australia's position exactly, but his country was nevertheless prepared to accept them as compromise solutions. However, his delegation considered that the wording of article 197 was unsatisfactory and that the Committee should be able to improve and clarify it.

47. With regard to marine scientific research, it was prepared to examine any proposal aimed at improving and clarifying the provisions contained in the informal composite negotiating text, but was well aware of the difficulties that might be raised by reopening the debate on the legal status of scientific research installations and equipment in the marine environment which had been discussed at length at the sixth session. Nevertheless, it would seem desirable for the Third Committee to consider at its next session a number of proposals submitted by the United States.

48. With regard to the organization of work at the next session, he considered that the meetings of the Committee should not be spread throughout the session; those devoted to the consideration of parts XII and XIII of the negotiating text in particular could be grouped in the second half of the session, thus enabling representatives to gain time. His delegation hoped that at the next session the Third Committee could devote attention to questions which had been left aside for some time.

49. Mr. HAHM (Republic of Korea) said that the wording of paragraph 5 of article 211 of the informal composite negotiating text was acceptable, for in his view it was desirable that coastal States should consult other States before taking any decision concerning dumping.

50. On the other hand, he found it difficult to accept the text of paragraph 2 *bis* of article 212, proposed in document MP/27, especially the provision in the third sentence of the paragraph, which in his view would be detrimental to navigation and international trade and would tend to create discrimination between vessels flying the flag of States participating in the co-operative arrangements concerned and other States. Paragraph 6 of article 221 caused him some concern. In order to guarantee freedom of navigation, it would be desirable to introduce at that point a provision which would prevent coastal States from abusing the right of detention granted to them. His delegation was prepared to support the other proposals contained in document MP/27, which in its view constituted an acceptable basis for negotiations.

51. With regard to parts XIII and XIV, his delegation considered it advisable not to change the provisions of the informal composite negotiating text, which represented the outcome of long and difficult negotiations.

52. Mr. WALSH (Canada) congratulated the Chairman on the objectivity and impartiality with which he had prepared his report.

53. With regard to part XII of the negotiating text, concerning the protection and preservation of the marine environment, his delegation supported the provisions contained in document MP/27. Those provisions amended and improved upon the negotiating text without departing from it to the point of jeopardizing maritime transport and international trade. His delegation considered that those provisions were fully satisfactory and respected the interests of all States, which must not only defend their economic interests but also protect themselves against pollution.

54. He hoped that at the next session the Committee would be able to complete its work on that subject.

55. With regard to parts XIII and XIV, his delegation would examine carefully the proposals made with a view to improving and clarifying the negotiating text, but felt it was essential to refrain from disturbing the balance achieved with so much difficulty. Furthermore, his delegation saw no point in making substantial changes in a text which constituted an acceptable compromise on that subject.

56. Mr. KEHDEN (Federal Republic of Germany) supported the provisions contained in document MP/27. With regard to article 231, however, he felt that it would be preferable to adopt the text proposed by the French delegation in

document MP/6. The coastal State should have the right to impose all kinds of penalties on vessels which committed offences within its territorial waters, and there should be no exception to that right.

57. He was, however, prepared to accept the provision contained in document MP/27; it represented a notable improvement on article 231 of the informal composite negotiating text, which he found unacceptable.

58. The CHAIRMAN said the Third Committee has completed its work and thanked all representatives for the valuable assistance they had given him and the spirit of compromise they had shown.

The meeting rose at 5.20 p.m.
