

Third United Nations Conference on the Law of the Sea

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99th Plenary meeting

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99th meeting

Wednesday, 17 May 1978, at 12.05 p.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

REPORT OF THE THIRD COMMITTEE

1. The PRESIDENT said that the Conference's next business was to consider the reports of the committees on their work during the seventh session. He noted in that connexion that the report of the First Committee was not ready.

2. Mr. AGUILAR (Venezuela), Chairman of the Second Committee, said that he would submit the report of the Second Committee at the following meeting.

3. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, said he was happy to note that, during the current session, the Committee had made further progress on the main issues within its terms of reference. The results of the negotiations, which had taken place at informal meetings open to all delegations and about which the Committee, meeting in plenary, had been kept informed, might, he thought, serve as a basis for a consensus.

4. Part XII of the informal composite negotiating text¹ (Protection and preservation of the marine environment) had been the subject of intensive negotiations conducted in a spirit of understanding and co-operation, with the objective of reaching a compromise; he expressed his gratitude to all delegations and to Mr. Vallarta for their efforts. The negotiations had concentrated on the key issues relating to vessel source pollution and had taken into account some new developments in the field of marine pollution control, the magnitude of the possible hazards—as evidenced by the recent *Amoco Cadiz* disaster—and the need for improving preventive measures by strengthening both the procedure for establishing standards and the enforcement measures. During the deliberations, efforts had been made to keep a viable balance between ecological considerations and the legitimate demands of expanding international navigation, between national legislation and enforcement measures on the one hand, and the international rules, standards and regulations on the other, between the jurisdiction of the coastal State and that of the flag State, between the interests of developed maritime powers and those of developing countries.

5. The results of those negotiations, reproduced in document MP/24,² could be divided into four categories. The first category comprised provisions on which consensus had been reached, in particular: article 1, paragraph 4, of the informal composite negotiating text, where it was understood that the term "marine environment" included the concept of marine life; the deletion of article 1, paragraph 5, sub-paragraph *c*; a new paragraph 5 to be added to article 195; some new passages to be added to article 212, paragraphs 1 and 3, as well as a new paragraph 6; and amendments to article 213, paragraph 1.

6. The second category comprised provisions which had emerged from intensive negotiations, resulting in compro-

mise formulae with sufficient support to provide a reasonable prospect for a consensus but on which consensus had not actually been reached. The provisions in question were: an additional paragraph 2 *bis* in article 212, on which there were reservations and objections as to the competence of a State to require the master of a vessel flying its flag or on its registry, when navigating within the territorial sea of a State participating in co-operation arrangements, to furnish, upon the request of that State, the information mentioned in that paragraph; amendments to article 221, paragraph 6, in connexion with which objections had been made to the use of the word "objective" in the expression "clear objective evidence" and to the use of the words "arrest of the vessel"; a new text, to replace article 222, which had met with widespread support but which was still subject to reservations and objections regarding the use of the words "both customary and conventional [international law]"; and a proposed redraft of article 227, paragraph 1. He explained that some issues were still pending in connexion with article 227 which were mentioned under the third category, but he thought that the text in document MP/24 had received significant support. Amendments proposed to article 231, paragraph 1, should also be included in the second category. In that connexion, some delegations had made reservations and objections to the use of the expression "internal waters", preferring the expression "territorial sea or archipelagic waters".

7. The third category covered informal proposals before the Committee on which no compromise formulae had emerged, owing to lack of time or divided views. The proposals in question related to article 1, paragraph 5, subparagraph (*a*), (*i*); article 209, paragraphs 1 and 5; article 211, paragraph 5; article 212, paragraph 3; article 219, paragraphs 1, 2 and 4; article 221, paragraphs 5 and 8; article 227; article 229, paragraph 1; and articles 234 and 236.

8. He mentioned that a document (MP/16)³ had been circulated in which it had been proposed to include in the convention a part XIV *bis* on general safeguards, relating to navigation and other uses of the sea, and not solely to marine pollution; the proposed part would be made up of articles 225, 226, 228, 231, paragraph 2, 232, and 233 with amendments. There would remain in part XII, in section 7, under the heading "Safeguards in respect of pollution control", articles 224, 227, 229, 230, 231, paragraph 1, and 234. He considered that that proposal went beyond the terms of reference of the Third Committee and that a decision on it should be taken by the plenary Conference or by some other appropriate procedure.

9. The final category comprised the provisions of the informal composite negotiating text which had not been debated and to which no substantive amendment had been proposed. In his view, those provisions should stand as drafted.

10. Reporting on the results of the negotiations on part XIII, "Marine scientific research" and part XIV "Development and transfer of marine technology", he said that those parts had been discussed at an informal meeting over which he had presided and had also been the subject of comments and suggestions by delegations at the Committee's 35th to 38th meetings. The aim had been to strike a balance between the interests of coastal States and States conducting marine

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), p. 104.

³*Ibid.*, p. 112.

scientific research, as well as between developed and developing States. It had also been emphasized in that regard that international co-operation and the contribution of international organizations to the promotion of marine scientific research were playing an increasingly important role.

11. The observations and suggestions made had related particularly to articles 247, 248, 250, 253, 255, 264 and 265 of the informal composite negotiating text. The Chairman of negotiating group 5 had referred to article 265 in his report and had, in addition, suggested that article 266, on "Interim measures", should be placed elsewhere in the draft. In his own (Mr. Yankov's) opinion, that article should remain in part XIII. Remarks and suggestions had also been made regarding articles 274, 275 and 276. In addition, an informal proposal had been submitted in writing on the question of responsibility and liability, and for a new article 276 *bis* concerning the establishment of national marine scientific and technological centres in developing States.

12. The results of the discussions on parts XIII and XIV of the informal composite negotiating text were encouraging, and the majority of delegations were of the opinion that those two parts should be retained as they stood. Some delegations considered, however, that further negotiations would be necessary in order to make some substantive changes in the text. That would mean, however, reopening the negotiations on basic issues relating to the regime for the conduct of marine scientific research in the economic zone and on the continental shelf, a course of action which could only be justified with the support of delegations interested in the consideration in the Committee, meeting in plenary, of outstanding issues with a view to reaching a new compromise formula.

13. In conclusion, he suggested, first, that in the revised part XII of the informal composite negotiating text the provisions he had mentioned under the first category should be incorporated; secondly, that the possibility should be considered of incorporating in the revised informal composite negotiating text most if not all of the compromise formulae in the second category, taking into account the views expressed at the meetings of the Third Committee and in the plenary Conference; thirdly, that further intensive negotiations should be undertaken on issues which were still pending, as indicated in the third category.

14. He took the opportunity of thanking all delegations for their co-operation and the Secretariat for its valuable assistance.

15. The PRESIDENT invited comment on the report submitted by the Chairman of the Third Committee. He suggested that, if the members of the Conference agreed, the provisions in the first category on which consensus had been reached should be adopted. That might imply a revision of the informal composite negotiating text.

16. Mr. ARIAS SCHREIBER (Peru) pointed out that the Conference had not yet decided whether the informal composite negotiating text would be revised at the current session. In his opinion, the Conference could hardly adopt the provisions in question and incorporate them in the relevant parts XII, XIII and XIV of that text, for such action would involve, in effect, a partial revision of the text.

17. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, in reply to the representative of Peru, explained that in offering the suggestions he had made in his report he had meant simply to obtain the reactions of the members of the Conference and to see whether the provisions comprised in the first category could be approved in plenary. Should those new provisions be incorporated in the informal composite negotiating text, the delegations would in any case have an opportunity later on to reconsider the provisions as a whole. The matter had been the subject of an informal discussion at the 38th meeting of the Third Committee.

18. The PRESIDENT said that, as he had mentioned earlier, the only question at that stage was whether the new provisions could constitute an acceptable basis for negotiation. The stage for their final acceptance would come later.

19. Mr. RUIVO (Portugal) said that the Third Committee had made gratifying progress. He would be in favour of approving the provisions in the first category relevant to the three parts of the informal composite negotiating text mentioned by the Chairman of the Third Committee. His delegation was disappointed to note that in document MP/24 the Portuguese proposal for amending article 1 (use of terms) concerning "incineration at sea" had been included in the third category. After an analysis of the discussion, the delegation of Portugal had expected it to be incorporated in the second category.

20. Mr. ARIAS SCHREIBER (Peru) said he would not object to the acceptance of the new provisions in question, on the understanding that their acceptance did not imply that they would be definitively incorporated in the informal composite negotiating text.

21. Mr. DE LACHARRIÈRE (France), speaking on the whole of the Third Committee's work on the subject of pollution, said that when the Committee had begun consideration of the subject his delegation had urged the Conference, in the light of the *Amoco Cadiz* disaster, to introduce into the informal composite negotiating text provisions designed to prevent the recurrence of any like disaster. He was glad to note that considerable progress had been made in that direction. It was not however progress towards a "compromise", for that term was particularly inappropriate in the circumstances, and the search for a compromise would not have much sense. It was vital that all necessary measures should be taken to prevent a repetition of such an ecological disaster. The Conference had defined—and in that respect there was noticeable progress—the legal provisions which ought to be taken in the matter.

22. The French delegation hoped that the provisions in categories I and II mentioned by the Chairman of the Third Committee would be incorporated in the informal composite negotiating text when the text was revised.

23. Mr. RICHARDSON (United States of America) said that his delegation had consistently favoured extensive amendments to the informal composite negotiating text. It would be able to accept the provisions contained in document MP/24, on the understanding that those mentioned under the first and second categories would be incorporated in the informal composite negotiating text or would replace the present provisions to serve as a basis for fresh negotiations. The provisions in the second category were apparently, as the title suggested, considered appropriate because they were in keeping with the criteria initially defined by the Conference in recommendation 10 of document A/CONF.62/62. In his opinion, it would not be constructive to incorporate the provisions in the first category into the informal composite negotiating text without also incorporating those in the second category, for they formed a series of interlinked provisions.

24. Mr. TORRAS DE LA LUZ (Cuba) said that, like other representatives of developing countries, he felt bound to formulate reservations with regard to paragraph 2 *bis* of article 212. Even if the new text proposed in document MP/24 was very different from the version in the informal composite negotiating text, there was still a risk of a spread of the tendency to adopt unilateral national or regional measures which might in fact lead to discriminatory practices liable to interfere with the sea-borne trade of the developing countries and to restrict freedom of navigation.

The meeting rose at 1 p.m.