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37th meeting of the Third Committee

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37th meeting

Tuesday, 2 May 1978, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Report by the Chairmen of informal meetings

1. The CHAIRMAN said that the Committee had met to hear the reports on the informal negotiations which had been held on parts XII, XIII and XIV of the informal composite negotiating text.¹ The presentation of those reports to the Committee did not necessarily mean that the informal negotiations were concluded; further informal meetings might prove necessary on certain points. It would be for the Conference—which was to meet in plenary on the following day—to grant the Committee, if it thought fit, some additional time for continuing the negotiations. It was, however, appropriate to take stock of the situation: Mr. Vallarta, Chairman of the informal meetings on protection and preservation of the marine environment, would therefore present his report on those meetings, and the Chairman who had presided over the work of the informal meetings on marine scientific research and the development and transfer of marine technology would also present his report on those deliberations.

2. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on protection and preservation of the marine environment, presented his report on those meetings. He expressed his appreciation of the spirit of co-operation and flexibility which delegations had displayed during the informal negotiations; however, the time available for the last stage had been sufficient only to allow participants to submit comments on certain proposals, but not to hold genuine negotiations. He also mentioned that it was difficult to summarize the contents of some proposals in a few words; consequently, he invited sponsors of proposals to correct him if his statement contained any inaccuracies.

Article 222

3. The majority of delegations had been satisfied with the negotiating text and were in favour of a clause which was in keeping with international law on the subject. Some delegations believed that changes should be made in existing international law, since they contested the principle that, for an intervention to be justified, there must be "grave and imminent danger". There had been no agreement on the subject and the question had been controversial.

Article 231

4. Several proposals had been made for amending the text, and the proposals had also been controversial. There had been insufficient time to examine a so-called "conciliation" proposal to authorize penalties other than monetary penalties in the case of a wilful and serious act of pollution in the territorial sea of a State. Another proposal referred to the severity of the penalties, the need for them to be proportionate to the gravity of the actual violation and also the need to observe the rights of the accused. It had not been possible to reach agreement on the subject, owing to lack of time, but the last-mentioned proposal might be a useful element for future work.

Article 212

5. It had been agreed to add the following text to the end of the first sentence in paragraph 1: "and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal States".

6. It had also been agreed to add the following phrase to the end of the first sentence in paragraph 3: "including vessels exercising the right of innocent passage". The purpose of the second addition was to clarify the text, since some delegations had taken the view that it was necessary to specify that the sovereignty of coastal States over their territorial sea applied to all vessels, whether or not they were exercising a right of innocent passage.

7. Some delegations had proposed that a paragraph 2 *bis* should be added to article 212 in order to harmonize at the regional, subregional or bilateral levels the conditions for the admission of vessels to ports, and to enable States to take the necessary measures to prevent any breach of those conditions and to ensure the collective application of the provisions of paragraph 2 of article 25. Those proposals had been controversial and no agreement had been reached on the question.

8. A proposal had also been made for adding a new paragraph 6 to article 212, stating that the international rules and standards referred to in the article included those related to notification to coastal States, by the master of a vessel, of incidents involving discharge or probable discharge. The proposal had also specified that the contents of a report made by a master in compliance with such a requirement might not be used against him.

9. The second part of that proposal had been controversial and its sponsors had not insisted on it. With regard to the first part, agreement had been reached on the substance; there remained some points to be clarified with regard to the scope of the proposal, but a negotiated text could very probably be formulated at the current session.

10. Several delegations had proposed amendments to paragraph 3 of article 212. The substantive question was identical to that which the Second Committee was studying in connexion with paragraph 2 of article 21, although it related solely to the protection and preservation of the marine environment. Those proposals had been controversial.

Article 221

11. A proposal had been made to amend paragraph 5 of article 221, since some delegations had considered that the conditions in which an inspection could be undertaken should be limited. The fundamental question was whether an inspection was justified only in the case of a violation of international standards or of national regulations, or whether it was also justified in order to prevent such a violation. That proposal had been controversial. With regard to paragraph 5, he observed that the French version of the negotiating text contained an error, since the English words "and if" in the penultimate line had been translated by "*ou lorsque*".

12. A proposal relating to paragraph 6 contained certain amendments concerning the use and meaning of adjectives, but it too had been controversial.

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).

Article 229

13. It had been proposed that the provision regarding suspension of proceedings should not be applicable in case of a violation committed in the exclusive economic zone, but that proposal had been controversial. A further proposal had been made that the provision regarding suspension of proceedings should be retained, but that the conditions for suspension should be modified. That second proposal had also been controversial.

Article 234

14. A proposal relating to article 234 had been controversial and the discussion had shown that certain points of the text needed to be clarified.

Article 209

15. The proposal relating to article 209 had also been controversial.

Article 211

16. A proposal had been submitted on the question of consultations with interested States prior to the dumping of waste. That proposal had been controversial.

Article 1

17. It had been proposed that article 1 should contain a provision specifying that the expression "marine environment" included the concept of marine life. Agreement had been reached on that issue and it had been decided to request the Chairman to mention that point in his report to the plenary Conference.

18. It had also been proposed that the definition of the term "dumping" should be amended to eliminate the reference to incineration, which would be defined separately; owing to lack of time, it had not been possible to examine that proposal.

19. It had not been possible, either, to consider the proposal to delete subparagraph 5(c) of paragraph 1.

20. In another proposal which had been submitted, the text of several articles was reproduced almost without change, but the articles were to be incorporated in a separate part of the convention. That was a proposal which would involve a structural change; and it had not been possible to consider since it had been received only that morning. Lastly, he said that the French delegation thought that the expression "*prévention, réduction et maîtrise de la pollution*" should be retained in the French version, since the French word "*contrôle*" did not correspond to the English word "control"; "*contrôler la pollution*" was an Anglicism which had no meaning or suggested wrongly that the provisions in question were concerned with inspection or verification operations.

21. The CHAIRMAN, speaking as Chairman of the informal meetings on marine scientific research and the development and transfer of marine technology, presented the report on those meetings. He expressed his appreciation of the wisdom and realism shown by the overwhelming majority of delegations, which had tried not to undermine the compromise reached at previous sessions. No written proposal had been submitted which could be considered as an objection to the existing text. However, the large number of speakers was evidence of the great interest generated by the questions under consideration.

22. Several suggestions had been made with regard to articles 247, 248, 253, 255 and 265. With regard to articles 247

and 265, references had been made to a compromise package on several issues, including the régime for the conduct of marine scientific research, which had been negotiated by a small group of delegations representing a wide range of interests during the last session. Some delegations which had participated in those negotiations had considered that the compromise text should be inserted intact in the negotiating text or in its revised version. But a number of delegations had raised serious objections to any reference to a compromise formula which had not been discussed and brought to the attention of the Committee as a whole, as had been the case with all the other draft provisions contained in the informal composite negotiating text. In his opinion, the results of the discussion had been encouraging and showed that the disagreements that had been repeatedly witnessed during previous sessions had yielded to expressions of concern over possible improvements but did not amount to a rejection of the text. He thought that, with a few minor improvements, the text could be accepted not only as a basis for negotiations, but also as offering a substantially improved prospect of a compromise formula which could lead to a consensus. Several delegations had made specific reference to article 265 in relation to article 296 and had objected to the use of the word "right" in the two articles. He thought that there was no difference of substance between the articles as they stood at present, and that the deletion of the word "right" would inevitably lead to a substantive and not merely a drafting change. The relationship between those two articles might be considered subsequently during the process of harmonization of the articles. A suggestion had been made to delete article 265, of which the substance was repeated in article 296, paragraph 3, subparagraph (a), but that suggestion had met with objections. He was therefore of the opinion that as there was no consensus for the deletion of article 265, it should be retained as it stood.

23. Some delegations had, with regard to articles 274 and 275, made suggestions which amounted to substantive amendments. In his view, the comments made on that issue by several delegations were more appropriate for the discussion in the First Committee on the functions of the International Sea-Bed Authority. The articles in question were fairly general and did not prejudice any decision which might be taken by the First Committee on that subject.

24. On part XIV, the representative of Pakistan had made an informal proposal, the underlying idea of which was that States, competent international organizations and the Authority should make arrangements for the establishment of national marine scientific and technological research centres, especially in developing coastal States, and for the provision of adequate financial facilities for such centres. Some delegations had supported that proposal and others had expressed objections.

25. With regard to the proposals, he again drew the Committee's attention to the recommendations adopted by the Conference regarding the organization of work (see A/CONF.62/62), in particular, recommendation 10, which stipulates that any modifications or revisions to be made in the negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person unless presented to the plenary and found to offer a substantially improved prospect of a consensus.

26. He thought that there was overwhelming support for the suggestion during the discussion that an attempt should be made to keep the package of parts XIII and XIV as contained in the negotiating text, without proceeding to unnecessary changes; but he was referring to that predominant trend without prejudice to the position of delegations which might hold different views, or to further negotiations on a compromise which might be reached at a later stage. Some suggestions of a purely drafting nature should and would be

taken into consideration when the time came to revise the negotiating text; in that context, he drew attention to various errors of translation and said that in any event the French version needed to be brought into line with the English text.

27. He was far from suggesting that the existing text of parts XIII and XIV was perfect and could not be improved. He understood that negotiations were at present in progress and would continue. He was convinced that if a compromise emerged from the new negotiations, such a compromise would be acceptable and would be helpful for the final results. At the present stage, however, and in view of the recommendations of the Conference, he did not feel competent to submit any amendments to parts XIII and XIV of the negotiating text.

28. In conclusion, he said that the Committee was not required to adopt the reports which had just been presented to it, and that it would be sufficient to take note of them, on the understanding that that would not mean the end of the informal negotiations. In the absence of objections, he would take it that delegations were ready to make comments on the two reports together, a procedure which would enable the Committee to save time.

It was so decided.

29. Mr. DOUAY (France) thanked the chairmen of the informal meetings for mentioning the drafting questions which had been raised during the work, such as the need to replace the word "armement" by "équipement" in the French version of the relevant texts. He noted that negotiations on the protection and preservation of the marine environment were continuing, that some proposals had not been considered, and that for lack of time other proposals had been the subject only of superficial exchanges of views. His delegation, which had the feeling that some of its proposals had not been considered thoroughly, hoped that negotiations would resume as soon as possible, not to allow delegations to submit new texts, but to enable them to consider proposals which had already been submitted and thereby to arrive at a compromise.

30. Mr. FIGUEIRÊDO BUSTANI (Brazil) said he would like first to point out that his delegation's proposal concerning article 209 referred to pollution of the marine environment arising not only from installations on the sea-bed, as the chairman of the informal meetings on protection and preservation of the marine environment had implied, but also from all activities relating to the sea-bed. Secondly, with regard to recommendation 10 contained in document A/CONF.62/62, he drew attention to the word "controversial" which Mr. Vallarta had used in connexion with certain proposals concerning the articles under consideration. If that term meant merely that a proposal had given rise to an objection, and if it did not imply any value judgement on the objection, he was in full agreement with that way of presenting matters. Lastly, referring to the possibility of making some minor amendments to the text, a possibility that had been mentioned by the chairman of the informal meetings on marine scientific research and the development and transfer of marine technology, he asked how, when and on what basis the articles could be amended. In the case of article 255, for example, there was not merely a question of minor amendments.

31. The CHAIRMAN, replying to the representative of Brazil, said that minor drafting amendments, to which no objections were raised, could be made to the text at a later stage. On the other hand, if there was a question of revising the text, only those amendments which had been the subject of a compromise could be adopted. In any case, it was the Conference which would have the last word. If, at the conclusion of the informal negotiations, the Committee were to adopt several compromise formulations, he could submit them to the Conference.

32. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on the protection and preservation of the marine environment, said that he had not thought it necessary to repeat in detail the comments of delegations on the various proposals submitted at the informal meetings. When speaking of proposals which were controversial, he simply meant to say that it had not been possible to reach an agreement. In his report, he had merely indicated cases of agreement and disagreement.

33. Mr. WULF (United States of America) said that his delegation found itself in a difficult position, since its attitude to the reports of the chairmen of the informal meetings depended on whether the Third Committee would or would not recommend the plenary to give it more time to continue its negotiations.

34. The CHAIRMAN said that if the Committee wished to ask the Conference to allow it a few more days, he would be in a better position to present that request than if it came solely from him. If the Committee objected to such a course, he would likewise inform the Conference accordingly.

35. Mr. WULF (United States of America) asked the Chairman to consult the Committee immediately on that question, since it would otherwise be difficult for his delegation to express its views on the reports of the informal meetings.

36. The CHAIRMAN pointed out that he had clearly explained the recommendation which he was proposing to make to the Conference, unless the Committee objected, and he thought it would be better to wait until the end of the meeting before taking a decision, so that delegations would have an opportunity to express their opinions on the question.

37. Mr. KATEKA (United Republic of Tanzania) said he was in favour of the procedure proposed by the Chairman.

38. Mr. WULF (United States of America) said that he would at present merely make some preliminary comments on the reports, but he reserved the right to make further comments on them later. Mr. Vallarta had said that the amendment to paragraph 3 of article 212 was necessary in order to make it clear that the legislative powers of the coastal State covered all vessels, whether or not they were exercising the right of innocent passage. In fact, the United States delegation, and probably other delegations also, intended by that amendment to make it clear that the informal composite negotiating text could not limit the jurisdiction of the coastal State over discharges of wastes from vessels in its territorial sea, whether or not the said vessels were exercising the right of innocent passage. Secondly, while it was indeed difficult to define what was meant by a controversial proposal, it was not easy to say that a proposal had received substantial support when it had been endorsed by only six delegations, as was the case with the amendments to article 209. Thirdly, his delegation wished to emphasize that the text on marine scientific research, although negotiated outside the Committee, had been submitted to the latter, had been explained to it in detail and had met with no objection. Consequently, it was that text, involving articles 247, 250, 253 and 265, which should be reflected unchanged in the negotiating text. His delegation accordingly requested the Chairman to mention the views of the United States delegation in his report, as he had done in the case of the Pakistan proposal. Lastly, when the Chairman came to submit his report to the Conference, he should make it clear that the report reflected his own views and not necessarily those of the Committee.

39. The CHAIRMAN said that he had not mentioned any delegation in his report apart from one which had submitted a written proposal. In connexion with articles 247 and 265, to which the United States representative had referred, he had stated that "references had been made" in the informal meetings "to a compromise package on several issues, including the régime for the conduct of marine scientific re-

search, which had been negotiated by a small group of delegations representing a wide range of interests during the last session". He had added: "Some delegations which had participated in those negotiations had considered that the compromise text should be inserted intact in the negotiating text or in its revised version. But a number of other delegations had raised serious objections to any reference to a compromise formula which had not been discussed and brought to the attention of the Committee as a whole, as has been the case with all other draft provisions contained in the informal composite negotiating text".

40. He regretted that a delegation should not think it sufficient that he had emphasized on several occasions in his statement that the report reflected his own personal view of the negotiations.

41. Mr. WULF (United States of America) said that articles 247 and 265 were not the only ones involved in the compromise package, which also covered articles 250 and 253. He repeated his request that the Chairman should mention expressly in his report that, in the opinion of the United States delegation, the informal composite negotiating text should reproduce in full the negotiated text submitted to the Committee at the previous session.

42. The CHAIRMAN said that he would take account of the comments by the United States delegation by adding the words "including the United States delegation," after the phrase "Some of those delegations which had participated in those negotiations".

43. Mr. JACOBSEN (Denmark), speaking on behalf of the European Economic Community, said, with respect to the report on parts XIII and XIV of the negotiating text, that the chairman of the informal meetings had succeeded in reflecting in his report the delicate balance that had been established during the informal negotiations. At the same time, the European Economic Community was unable to accept some of the provisions of the negotiating text, particularly articles 265, 274 and 275. In that connexion, he noted the undertaking by the Chairman of the Committee that amendments concerning the content of those articles, agreed upon in other negotiating groups, would be duly reflected in the final version of parts XIII and XIV of the negotiating text.

44. Mr. ATAIDE (Portugal) drew the attention of delegations to the Portuguese proposal (MP/11)² that the words "incineration at sea" should be defined in article 1, a proposal which had not been considered during the informal meetings. It was not enough merely to reproduce the definition of the word "dumping", as given in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, signed in London in 1972, and to add that that definition also included incineration, since it was impossible to conceive of incineration from aircraft. At the time when that convention had been signed, incineration had been less common than it was now. It had been decided in September 1977 that the provisions for the control of incineration at sea should be implemented by the contracting parties to the convention on a mandatory basis, in the form of a legal instrument adopted within the framework of the convention. To that end, the contracting parties had been invited to submit proposals for such a legal instrument to the competent body, with a view to the consideration and possible adoption of a protocol which would put an end to the confusion between two different sources of pollution—namely, dumping and incineration. It was in that spirit that his delegation urged that its proposal be considered.

45. The CHAIRMAN said he realized that several proposals submitted during the informal meetings had not been considered. That was the reason why he would like to ask the

Conference to authorize the informal meetings to continue their work for a few more days.

46. Mr. YTURRIAGA BARBERÁN (Spain) thanked the Chairman and Mr. Vallarta for their excellent reports.

47. His delegation had noted some technical errors in the negotiating text, some of which had already been pointed out. It shared the concern of the French representative with regard to the rendering, in other languages, of the English word "control". Also, in the Spanish text of paragraph 1 of article 219, the words "international rules and standards" were not qualified by the word "applicable". With respect to article 234, which in its present form was totally unacceptable to Spain, he thanked Mr. Vallarta for saying that it might be possible to introduce some clarifications to improve the article. For instance, in the Spanish text of subparagraph 1(b) of article 42 to which article 234 referred, the words "reduction and control" had been omitted. The secretariat should therefore go over the text to eliminate those major discrepancies which made the negotiations difficult, since delegations using different working languages were examining texts that were not the same. He hoped that the establishment of a drafting committee would help to settle those questions. Mr. Vallarta had also made a brief reference to subparagraph 5(c) of article 1, which had been criticized by various delegations. Spain was one of the countries which were concerned about that article, since it thought that subparagraph 5(c) had no place in the text. It had been taken word for word from the 1972 London Convention and was pointless in the convention now being drafted. It stated that the disposal of wastes or other matter arising from the exploration, exploitation and off-shore processing of sea-bed mineral resources would not be covered by the convention. The fact was, however, that the convention contained some special provisions on that type of contamination.

48. With respect to the Chairman's report, he wished merely to draw attention to article 255, which was unsatisfactory in three respects. In the first place, there was an error of translation. As the Cuban representative had pointed out when the matter was under discussion, the term "neighbouring" in the Spanish text, unlike the corresponding term in the English text, did not govern the words "geographically disadvantaged States". Secondly, article 255 did not correspond to the equivalent article 70 which was being considered by the Second Committee. As the Brazilian representative had pointed out, a parallel formula would have to be found for both articles. Thirdly, in his delegation's view, the rights and powers accorded to the so-called geographically disadvantaged States were completely devoid of any justification. He agreed with the delegations of France, the United States and other countries that the negotiations should continue.

49. Mr. TIWARI (Singapore) thanked the Chairman and Mr. Vallarta for their patience and tact during the negotiations on parts XII, XIII and XIV of the negotiating text, and said he agreed that the Chairman should ask for more time for the negotiations.

50. Mr. KOVALEV (Union of Soviet Socialist Republics) said that he had no comments to make on the substance of the two reports just presented, which his delegation fully approved. However, that comment in no way modified the position adopted by the Soviet Union during the consideration of certain specific questions in the informal negotiations.

51. He, too, thought that there were still some drafting problems which would have to be settled before a final text could be established. With respect to proposal MP/16³ which had been submitted by his delegation, he thought, as Mr. Vallarta had noted, that section 7 of part XII should be made into a separate part to be entitled "Safeguards in respect of

²*Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 107.

³*Ibid.*, p. 114.

pollution control", since that section referred not only to the enforcing powers provided for in part XII but also to the possibilities of enforcement arising from other provisions of the convention.

52. When introducing his report, the Chairman had stated that he intended to make some drafting amendments to the proposals put forward during the consideration of parts XIII and XIV of the draft convention and, in particular, to delete the word "other" before the words "geographically disadvantaged States" in article 255. The Soviet delegation wished also to draw attention to another suggestion, namely, the suggestion by Yugoslavia that article 278 should not state that the competent international organizations should take all appropriate measures, but should say that States should take appropriate measures "through" the competent international organizations, the remainder of the text being unchanged.

53. Like the French and Spanish delegations, the Soviet delegation had some difficulties with the translation of the English word "control". The expression "*lutte contre la pollution*" had been used in the French text and the corresponding expression had been adopted in Russian. It now appeared that another solution might be considered in French. The question would thus have to be reconsidered, when the Russian text was being prepared, in order to bring the texts in the various languages as closely as possible into line with one another.

54. He agreed with Mr. Vallarta that, on certain issues, the Committee had come very close to a consensus. Nevertheless, some more time was required and it would therefore be advisable for the Chairman to request permission to continue the negotiations for a few more days.

55. Mr. SCHRAM (Iceland) thanked the Chairman and Mr. Vallarta for the very competent and impartial manner in which they had carried out their task, but said that he was regretfully obliged to express his delegation's deep concern with regard to part XII. There were two particular reasons for that concern: first, despite the negotiations, the text did not place sufficient emphasis on the urgent measures necessary to protect the marine environment, especially the living resources thereof. In other words, it was a legal instrument which did not provide the means for effective protection of the oceans. Secondly, and the second problem was linked to the first, the text did not settle the question of the enforcement of legislation on pollution, which would of course involve establishing standards and defining enforcement measures. The difficulties arose from the fact that it was essential to decide what enforcement powers should be given to coastal States, which were the main victims of discharges or other maritime pollution. Iceland regretted the fact that the Committee had not clearly recognized that, unless the coastal States had extensive powers in the matter, any legislation against pollution would remain ineffective.

56. On the previous day, with reference to the enforcement powers of coastal States (article 221), one delegation had opposed an amendment which would permit the coastal State to undertake physical inspection of a vessel in the exclusive economic zone or the territorial sea when there was a threat of significant pollution of the marine environment. Obviously, that delegation believed that the coastal State could act only after pollution had occurred. The delegation of Iceland did not share that view. Similarly, with regard to article 212, contemporary international law authorized the coastal State to impose regulations on vessels passing through its territorial sea. Many delegations refused to recognize that basic right of the coastal State, even in cases where no generally accepted international rules existed on the subject.

57. Those considerations had led his delegation to conclude that the Committee had negotiated a text which lacked the necessary effectiveness for protecting the marine environ-

ment. In the case of supertankers in particular, existing legislation was absolutely inadequate. He expressed the hope that States would agree to amend the existing text of part XII, firstly, in order to strengthen the articles relating to the obligation of States to protect the marine environment and, secondly, in order to introduce the necessary changes in the articles on enforcement and to give coastal States effective means to enforce anti-pollution measures in the territorial sea and the economic zone.

58. Mr. KOLTCHAKOV (Bulgaria) said that the time had come to take stock of the situation. His delegation had taken note of Mr. Vallarta's report; it approved his analysis and was prepared to contribute to the preparation of a final text. It wished to declare, however, that in its opinion the informal composite negotiating text represented a good compromise text and that the negotiations had shown that very few proposals had been regarded as representing an improvement on that text. His delegation therefore supported the informal composite negotiating text and would not be able to approve any text that departed from it.

59. Mr. KATEKA (United Republic of Tanzania) thanked the Chairman and Mr. Vallarta for their reports and said that he shared the concern expressed by the representative of Iceland concerning the environment. At times he wondered whether the Third Committee was a committee on shipping or a committee on the environment.

60. With regard to procedure, his delegation thought that the Committee might ask for permission to continue negotiations on certain aspects of marine pollution in respect of which it had appeared that a compromise was attainable, and also on aspects which, owing to lack of time, had not yet been discussed—but only on them. To reopen the discussion on points that had been categorically rejected would be a waste of time. As to the question of scientific research, the Chairman had summed up the situation very well when he had said that, with some minor changes, the informal composite negotiating text could be accepted as a compromise text. His delegation was not fully satisfied with that text but was prepared to accept it provided that others also accepted it as it stood. If amendments were requested, however, his delegation would consider that it had been released from any commitment and would submit amendments which would be of a radical and very far-reaching nature. It had been said that certain texts negotiated outside the group should be incorporated in the informal composite negotiating text. Each delegation could, of course, request that a specific text should be incorporated; but, in accordance with recommendation 10 contained in document A/CONF.62/62, any modifications or revisions of the negotiating text should emerge from the negotiations themselves in the competent organs. It did not seem possible, therefore, to incorporate the Castañeda text because a number of delegations, including his own, had expressed objections to it when it had been submitted at the previous session. Since the opposition of a single delegation was sufficient to destroy consensus, it would now be necessary to take a vote on the incorporation of that text.

61. The Chairman had also referred to articles 265 and 296 and to the question where they were to be placed. His delegation had nothing to say on the subject but was opposed to any amendment of those articles on the pretext of improving them.

62. Ms. WALSH (Canada) said that she shared the concern of the representative of Brazil concerning the expression "controversial" which Mr. Vallarta had used in his report in connexion with certain proposals; she realized, however, that it was difficult to keep an exact count of delegations which had supported or criticized a particular proposal. She agreed with Mr. Vallarta that the term "controversial"

should be used whenever a proposal had been criticized, even if only by one delegation.

63. As a sponsor of the amendment relating to paragraph 5 of article 221 and submitted in document MP/12⁴ her delegation did not agree with the way in which Mr. Vallarta had interpreted that amendment in his report. The purpose of the amendment was, of course, to prevent marine pollution; but the amendment maintained the two conditions on which a coastal State would be permitted to undertake physical inspection of a vessel, i.e., first, there must have been a violation, in the exclusive economic zone, of international rules and standards for the prevention, reduction and control of pollution and, second, the violation must have resulted in a substantial discharge into, or significant pollution of, the marine environment. It was only if those two conditions were met that the coastal State could take measures.

64. Like the representatives of Iceland and the United Republic of Tanzania, she considered that the informal composite negotiating text did not provide for adequate protection of the marine environment, and she fully supported the Chairman's recommendation that the Committee should continue its work on protection and preservation of the marine environment. It seemed particularly important to continue negotiations in areas where the Committee had a chance of reaching a compromise at the present session.

65. Mr. MARZIOTA DELGADO (Cuba) thanked delegations which had supported the amendment to article 231 submitted by Cuba in document MP/13. Part XII of the informal composite negotiating text was a balanced text, which took account of the interests of coastal States by allowing them to ensure protection of their marine environment. The main articles—particularly articles 212, 221, 229 and 234—were fair articles which resulted from a compromise between the various interests involved. Also, the amendments to those articles had been rejected by the majority of delegations, thanks mainly to the developing countries which had recognized that the amendments represented a threat to their interests, particularly in regard to shipping. Article 212 could be clearer, as the representative of Brazil had said.

66. He fully approved the report on marine scientific research.

67. Mr. HASHIM (Malaysia) thanked the Chairman and Mr. Vallarta for their reports, which gave an objective account of the manner in which the negotiations had proceeded. He recognized that parts XII, XIII and XIV of the informal composite negotiating text were not perfect and contained some provisions which did not satisfy his delegation, but he considered that they maintained a delicate balance which must be preserved.

68. As a State bordering a strait, Malaysia was particularly exposed to pollution from vessels, and was particularly interested in protection of the marine environment. It was prepared, however, in a spirit of compromise, to accept the existing text with a few minor drafting amendments. It did not believe that further negotiations would improve the text, but it would not be opposed to a continuation of the negotiations if the Committee so wished. It fully shared the Chairman's opinion concerning the establishment of national scientific research centres.

69. Mr. TIMAGENIS (Greece) considered that the reports by the Chairman and Mr. Vallarta gave an accurate account of the negotiations which had taken place. In his opinion, however, a more optimistic conclusion might be drawn from the negotiations by noting that, in many cases, the impossibility of reaching an agreement on certain amendments simply showed that most delegations were in favour of the informal composite negotiating text. It should also be noted that during the negotiations some delegations had taken the

view that, under existing international law, coastal States could not unilaterally impose design, construction, manning or equipment standards on foreign vessels exercising the right of innocent passage. In the opinion of his delegation, that was the correct statement of present international law.

70. He recognized that some proposals had not been considered and that it had not been possible to reach agreement on others; but he did not think it was necessary to take a decision in the Committee on the question whether the informal negotiations needed to continue. Since the plenary Conference consisted of the same delegations as the Committee, participants would be able to express their views in plenary, and in the light of the progress achieved in the other committees.

71. Mr. BOHTE (Yugoslavia) congratulated the Chairman and Mr. Vallarta on the objective manner in which they had presided over the negotiations. With regard to part XIII of the informal composite negotiating text relating to marine scientific research, he recalled that his delegation had been among the many delegations which were opposed to the so-called "compromise text". It was incorrect, in his opinion, to say that that text had not met with any significant objection, because the text proposed by the Group of 77 in document A/CONF.62/C.3/L.13/Rev.2⁵ had, on the contrary, commanded considerable support in the Third Committee itself.

72. He therefore considered that certain articles, in particular articles 247, 253, 255 and 257, should be improved in the light of the text proposed by the Group of 77, with a view to defining more clearly the régime relating to marine scientific research in the exclusive economic zone and on the continental shelf. Amendments should be made, in particular, to paragraphs 3 and 4 of article 247 and to article 253 on implied consent. In addition, article 255 should be placed in its true context by bringing it into line with paragraphs 1 and 2 of article 247, and with the relevant provisions of the other parts of the negotiating text.

73. With regard to article 257 on marine scientific research in the area, he considered that the provision which appeared in paragraph 7 of article 151 should not be omitted from the provisions of part XI to which article 257 referred. In addition, article 143 should be improved by mentioning the role of the International Sea-Bed Authority in respect of marine scientific research in the area. The provision in article 265 concerning the settlement of disputes should not be amended or deleted.

74. As to part XIV, relating to the development and transfer of marine technology, he considered that article 274 should be brought into line with paragraph 8 of article 151, taking into account the increased competence of the Authority in that area. His delegation was, in fact, among those which had supported the proposal by Pakistan for the establishment of national scientific research centres and the transfer of marine technology.

75. His delegation thought that the exchange of views on part XII of the negotiating text, relating to the protection and preservation of the marine environment, had been fruitful, but it regretted that it had not been possible, owing to lack of time, to achieve better results. It considered that the negotiations had made it possible to reach a certain consensus on parts XII, XIII and XIV of the text, but that some articles could be further improved.

76. Mr. WULF (United States of America) said that he could not agree with the Tanzanian representative's interpretation of the term "consensus" or of his interpretation of the procedures adopted by the plenary Conference. He did not consider, either, that article 234 should be clarified, as Mr.

⁴*Ibid.*, p. 109.

⁵*Ibid.*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Vallarta had stated in his report. Lastly, he reiterated his request concerning article 250.

77. Ms. WALSH (Canada) said she wished to emphasize, in connexion with an observation made by the representative of Greece, that some delegations, including her own, considered that existing international law did authorize a coastal State to establish rules and standards applicable in its territorial sea and did not, in that respect, contain any restriction of the kind which it had been proposed to include in the new convention.

78. Mr. EL-IBRASHI (Egypt) considered that the informal composite negotiating text, and especially parts XII, XIII and XIV thereof, represented a praiseworthy attempt at a compromise, but he had some misgivings about certain articles relating to the protection of the marine environment. He had supported certain proposals in that connexion, particularly those intended to increase the powers of the coastal State to take measures to ensure the protection of its marine environment. He had also supported the proposal by Pakistan for the establishment of national centres for marine scientific research. Lastly, he supported the Chairman's recommendation that the informal negotiations should be continued.

79. Mr. HUSSAIN (Pakistan) said he fully endorsed the reports by the Chairman and Mr. Vallarta and appreciated their objectivity. He wished to associate himself with the observations made by the representatives of Yugoslavia and the United Republic of Tanzania concerning marine scientific research, in particular with regard to article 247. He regretted that it had been impossible, owing to lack of time,

to consider in detail his delegation's proposal concerning the establishment of national centres for marine scientific research (see T7/1)⁶ and he thanked all those delegations which had supported it.

80. The CHAIRMAN said he understood, from the discussion which had just taken place, that the Committee was in favour of continuing the informal negotiations. He would therefore recommend that the plenary Conference should authorize the Committee to hold a few more informal meetings, in particular to consider the proposals relating to part XII of the negotiating text. However, the Committee would consider only those proposals on which a compromise seemed possible.

81. In his opinion, it was not necessary for the time being to devote any further meetings to parts XIII and XIV of the text, because there was at present only one written proposal relating to those parts, although some very important ideas concerning them had been expressed during the negotiations. He was nevertheless prepared to consider the possibility of reopening the negotiations on those two parts if delegations so requested. In his opinion, however, the Committee should now devote all its efforts to part XII of the text, on which it had some chance of reaching a compromise at the present session. If there was no objection, he would take it that the Committee approved that procedure.

It was so decided.

The meeting rose at 6.30 p.m.

⁶*Ibid.*, vol. X, p. 115.

38th meeting

Friday, 12 May 1978, at 3.30 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Report by the Chairman of the informal meetings on protection and preservation of the marine environment

1. The CHAIRMAN welcomed the Secretary-General of the Inter-Governmental Maritime Consultative Organization, who was present at the meeting, and he expressed the Committee's appreciation for the international activities of IMCO in the protection of the marine environment from pollution by vessels.

2. Since the last formal meeting of the Committee, the informal meetings conducted under the chairmanship of Mr. Vallarta on protection and preservation of the marine environment had continued to consider proposals made with respect to part XII of the informal composite negotiating text.¹ On some of those proposals, a high degree of consensus had been reached; others had commanded support although it could not be considered that a consensus had been reached on them, and others again had not been fully considered owing to lack of time. He invited Mr. Vallarta to present his report on the informal negotiations on part XII.

3. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on protection and preservation of the marine environment, said he hoped that delegations that had reserved their position during the negotiations—on the grounds that they had not had enough time to study the

proposals or that the proposals were not available in their working languages—would not maintain those reservations at the present meeting, since the texts had now been translated into all languages.

4. The first category of proposals he would refer to were those on which substantial consensus had been reached.

Article 1

5. It had been agreed to delete subparagraph 5 (c). He would also recall, with respect to article 1, that it had been decided to recommend to the Chairman of the Third Committee to mention, in his report to the plenary Conference, that it had been agreed that the term "marine environment" included the concept of marine life.

Article 195

6. Agreement had been reached on the addition of a new paragraph 5, reading as follows:

"The measures taken in accordance with the present Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species and other marine life."

Article 212

7. In paragraph 1, it had been agreed to add the following text at the end of the first sentence: "and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which

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).