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38th meeting of the Third Committee

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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).

might cause pollution of the marine environment, including the coastline and related interests of coastal States.”

8. In paragraph 3, it had been agreed to add the following words at the end of the first sentence: “including vessels exercising the right of innocent passage.”

9. It had been agreed that a new paragraph 6 should be included, and that it should be noted in the record that, in the opinion of the Third Committee, the new paragraph did not in any way restrict the meaning, in article 212 or any other articles of part XII, of the expression: “international rules and standards”. The new paragraph would read as follows:

“The international rules and standards referred to in this article should include *inter alia* those related to prompt notification to coastal States, whose coastlines or related interests may be affected by incidents, including maritime casualties which involve discharges or probability of discharges.”

Article 213

10. It had been agreed to replace the full stop at the end of paragraph 1 by a comma, and to add the following words “and the safety of air navigation”.

11. The second category of proposals consisted of a number of provisions that had emerged from negotiations held during the present session of the Conference. Those texts did not reflect the original positions of delegations but rather constituted intermediate positions. It had been agreed that, by comparison with the informal composite negotiating text, they might offer an improved prospect of a consensus; and, despite the reservations that had been expressed regarding them, he had been authorized to submit them to the Committee in the form in which they now stood.

Article 212

12. The first proposal in the second category was for the addition to article 212 of a new paragraph 2 *bis* as follows:

“States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such co-operative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. The provisions of this article shall be without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of paragraph 2 of article 25.”

Article 221

13. Another proposal was to redraft paragraph 6 of article 221 as follows:

“Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, com-

mitted a violation of applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels, resulting in discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to the provisions of Section 7 of this Part of the present Convention provided that the evidence so warrants, cause proceedings, including arrest of the vessel, to be taken in accordance with its laws.”

Article 222

14. It had also been proposed that article 222 in the informal composite negotiating text should be replaced by the following text:

“1. Nothing in this Part of the present Convention shall prejudice the right of States, pursuant to international law, both customary and conventional, to adopt and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline and related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

“2. For purposes of this article, ‘maritime casualty’ means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.”

15. Doubts had been expressed about the expression “pursuant to international law, both customary and conventional” in the new text; but certain delegations had said that they would be prepared to accept that expression, provided that it was referred to the Drafting Committee for consideration.

Article 231

16. It had been proposed that paragraph 1 of article 231 should be redrafted as follows:

“Only monetary penalties may be imposed with respect to violations of national laws and regulations or applicable international rules and standards, for the prevention, reduction and control of pollution of the marine environment from vessels, committed by foreign vessels beyond internal waters, except in case of a wilful and serious act of pollution in the territorial sea.”

17. The expression “wilful and serious” had been the subject of controversy in connexion with article 19, paragraph 2 (*h*), but delegations which had objected to it there had agreed to the new text of paragraph 1 in article 231 on the understanding that if the expression “wilful and serious” was changed in article 19, paragraph 2 (*h*), it would have to be reconsidered also in article 231, paragraph 1.

18. The third category of proposals consisted of informal proposals on which, owing to lack of time or divided views, no compromise formulae had emerged. Those proposals related to articles 1, 209, 211, 212, 219, 221 (paras. 5 and 8), 227, 229, 234 and 236. A proposal had also been made to introduce a new part XIV *bis* on general guarantees.

19. In conclusion, he thanked all the delegations for their valuable co-operation in the negotiations on the provisions concerning preservation and protection of the marine environment.

20. The CHAIRMAN thanked Mr. Vallarta for his valuable contribution to the negotiations on the informal composite negotiating text. He wished to stress that the formal nature of the present meeting, and the fact that the Third Committee was required to report to the plenary Conference on its work did not in any way affect the informal status of the proposals made or the inconclusiveness of the positions of delegations on many issues. With regard to the second category of proposals put forward by Mr. Vallarta, he himself felt that they offered much more promising ground for achieving a future consensus than the proposals originally made by the delegations concerned.

21. He asked delegations wishing to comment on Mr. Vallarta's report to confine themselves to factual points only, in view of the very short time left to the Committee to conclude its proceedings.

22. Mr. SÖYLEMEZ (Turkey) paid a tribute to Mr. Vallarta for his untiring efforts as Chairman of the informal meetings on protection and preservation of the marine environment. He would like to present his delegation's views on some of the issues that had been considered at those meetings.

23. With regard to pollution, the problem of pollution from vessels was of great concern to his country, particularly in the semi-enclosed Aegean Sea and the Black Sea: his delegation was therefore unable to support the amendment proposed by 11 countries to article 212, paragraph 3, concerning international rules and regulations for the design, construction, manning and equipment of foreign vessels (MP/8),² partly because that amendment was in contradiction with article 21, paragraph 2, and partly because it would hinder the development of the merchant marines of developing countries such as Turkey. His country's position, as expressed in the informal meetings, had therefore been in favour of retaining paragraph 3 as it stood.

24. It was unfortunate that certain proposals, such as the proposal by the French delegation to add a new paragraph to article 212 (MP/1) with a view to encouraging coastal States to conclude bilateral and regional agreements as a new form of joint action against maritime pollution at the regional level, had been denied the necessary support at the informal meetings. The developing countries and coastal States had much to gain from the adoption of such an additional paragraph, since it would help to set regional standards without reducing the rights of the port States and without affecting the right of innocent passage.

25. His delegation had been generally in favour of the suggestion made by Mr. Vallarta in the informal meetings to add to article 212 a new paragraph 2 *bis* on port entry requirements; it also welcomed the consensus achieved in the meetings on the need for prompt notification of coastal States in cases of marine casualties involving discharges, although his delegation would have preferred the original suggestion by the United States delegation that coastal States should be empowered to bring criminal charges against the captain in such incidents.

26. With respect to the improvement of article 234, concerning pollution caused by the passage of vessels through international straits, his delegation supported the view that the major factor to be taken into account was the interest of the riparian States. In the event of major damage to the marine environment, the coastal States should have the right to take enforcement measures against pollution in international straits; but any possibility of action was denied to them by the present wording of the text. Turkey was deeply concerned by the danger of pollution to its marine environment, especially from vessels, in the Turkish straits.

27. His delegation also considered that the Committee was well advised to include a definition of "maritime casualty" in the new formulation of article 222, since the *Amoco Cadiz* incident had indicated the need for coastal States to be able to take measures beyond their territorial sea to protect their coastlines, fishing and other interests from maritime casualties.

28. With regard to monetary penalties or prison sentences in the event of pollution by vessels, his delegation had been in favour of the proposal made by the United States in the informal meetings to enlarge and enhance the jurisdiction of coastal States in respect of penalties against violators. It did not regard monetary penalties alone as a practical deterrent, as certain companies might be only too willing to pay such penalties. A threat of imprisonment might have been the best preventive measure.

29. His delegation endorsed the proposal made by Mr. Vallarta concerning paragraph 6 of article 221, since it provided that the coastal State might take proceedings against a vessel responsible for pollution, including the arrest of the vessel.

30. It was unfortunate that it had proved impossible, owing to lack of time, to discuss at length the problem of damage to the marine environment that might give rise to claims of compensation. His delegation supported in principle the suggestion by some Arab, and other, countries that the obligation to provide compensation for such damage should be institutionalized, and that article 236 of the formal composite negotiating text should to that end be improved (MP/18).³

31. With regard to parts XIII and XIV, his delegation felt that their provisions were now better balanced as a result of the experienced guidance given by the Chairman of the Third Committee, and that any substantive change in either of those parts might upset the delicate balance achieved in encouraging marine scientific research while providing adequate safeguards for the coastal States. He stressed the great importance attached by his country to international and regional co-operation on scientific research, especially in the semi-enclosed Aegean Sea. It was essential that all marine scientific research should be carried out for the benefit of the world as a whole, and such research in the economic zone or on the continental shelf should therefore take into account the interests of land-locked and geographically disadvantaged States.

32. In that connexion, his delegation wholeheartedly supported the proposal made by the delegation of Pakistan concerning the establishment of national marine scientific and technological research centres and the strengthening of existing centres of that kind (see TT/1).⁴ It might be useful to include in the informal composite negotiating text a new article 275 *bis* on that subject.

33. Mr. LADJIMI (Tunisia) thanked Mr. Vallarta for his report, which faithfully reflected the position of most of the delegations that had taken part in the negotiations in question. The Tunisian delegation was satisfied with the amendments proposed which, in its opinion, strengthened the provisions of the negotiating text on the combating of marine pollution, especially from vessels, without disrupting the delicate balance achieved in the text. He was particularly satisfied with the proposed amendment to article 221, which would enable coastal States to protect their exclusive economic zone more effectively by ridding the article of subjective elements that might give rise to dispute, and also with the amendment to article 222, since it was hardly logical to prevent the more vulnerable coastal States from using real and effective powers beyond the territorial sea to protect their coastline and related interests from pollution or threat of pollution as a result of a maritime casualty. His delega-

²*Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 108.

³*Ibid.*, p. 111.
⁴*Ibid.*, p. 115.

tion had only one regret, namely, that the important substantive changes proposed in article 236 by 19 States, including his own, had not been taken into consideration. The idea underlying the proposal was a sound one, and his delegation hoped that it would be taken into consideration in future negotiations.

34. Mr. KATEKA (United Republic of Tanzania) said his delegation fully agreed with Mr. Vallarta's report on the positions adopted by the delegations that had participated in the informal meetings. In its view, the proposals on which a high degree of consensus had been achieved were those relating to paragraph 5 (c) of article 1, to article 195 and to paragraphs 3 and 6 of article 212. With regard to the remaining proposals, however, an incipient consensus might have been reached but certainly nothing more positive than that. Mr. Vallarta had spoken of reservations on certain articles but, in the Tanzanian delegation's view, there had been open opposition, either to the substance of the articles or because delegations had been unable to consult their Governments for lack of time. With respect to article 212, paragraph 2 *bis*, for instance, his delegation realized the importance of publicizing the port entry requirements of different States, but it did not see why the master of a vessel navigating within the territorial sea of a State that was participating in a co-operative arrangement should have to inform that State whether the vessel complied with the port entry requirements of a State of the same region also participating in the co-operative arrangement if its next port of call was in that State. That could be considered as an encroachment on the vessel itself. His delegation would therefore like the relevant sentence to be deleted. Otherwise it could not support the new paragraph 6. With regard to article 213, his delegation had no substantive objection to the change proposed in paragraph 1, but it had no recollection of agreeing to it, either. With respect to article 221, his delegation had expressed misgivings concerning the replacement of the words "clear grounds" by "clear objective evidence", which added nothing to the text. Moreover, the term "evidence" did not need qualification. If more time had been available, some way might have been found of making the text acceptable. His delegation also had difficulty with the new text proposed for article 231, paragraph 1. It considered that the words "beyond internal waters" should be amended to read "beyond the territorial sea", on the grounds that a coastal State had sovereignty over its territorial sea and was entitled to impose penalties other than monetary penalties for violations in that area.

35. In short, while his delegation agreed that there was a nascent consensus on the articles mentioned in Mr. Vallarta's report, it believed that they should remain pending until the next session in view of the difficulties that still subsisted, so that each State would have time to consider their implications more fully and a real consensus could then be achieved.

36. Mr. FIGUEIRÊDO BUSTANI (Brazil) said he assumed that the word "inconclusive", as applied to proposals in the third category, meant that further negotiation was required in order to finalize the results. Proposals in the second and third categories would in that case receive identical treatment, being presented to the plenary if they were able to command a sufficient consensus.

37. He suggested that the documents in the MP series might be annexed to the Chairman's report in view of their possible value in future negotiations.

38. The CHAIRMAN said it was his understanding that certain provisions included in the report of the Chairman of the informal meetings had been qualified as informally agreed. The report also referred to further provisions on which the basis of agreement had been broadened, thus bringing the possibility of consensus closer, although no final

agreement had been reached. The relevant words in recommendation 10 contained in document A/CONF.62/62 were, "offer a substantially improved prospect of a consensus", which left it to the discretion of the Committee, the plenary and the President's team to assess the main trends. There was however a clear difference between the provisions emerging from intensive negotiations and the proposals in the third category, which had not been considered owing to lack of time, or on which the discussions in the informal meetings had been inconclusive, and which could not therefore be submitted either to the Committee or to the plenary.

39. With regard to the future of the documents in the MP series, he said he thought that those proposals, although action was not completed on them, should be retained as informal reference material. Subject to the approval of the Committee, he proposed to instruct the Secretariat to prepare an informal paper incorporating all the proposals in the MP series.

It was so decided.

40. Mr. KOLTCHAKOV (Bulgaria) said that his delegation agreed that a consensus had been reached on the first category of proposals referred to by the Chairman of the informal meetings. His delegation had originally been opposed to the proposal for a new paragraph 2 *bis* in article 212, since the text suggested departed from the previous compromise; but if the Committee as a whole believed that that proposal would lead to a consensus, he would be prepared to examine it further. The same comment applied also to the other proposals in the second category.

41. Mr. ATAIDE (Portugal) said he was not satisfied with the treatment accorded to his delegation's proposal regarding article 1 (MP/11).⁵ It was at the very least necessary to delete the word "aircraft" from article 1, paragraph 5, in connexion with the concept of incineration.

42. Mr. OBAKIN (Nigeria) said that the proposed penultimate sentence of article 212, paragraph 2 *bis*, would undoubtedly hamper maritime activity and would alter the balance in favour of the coastal State. His delegation preferred the version in the informal composite negotiating text.

43. Mr. DIA MASSAMBA (Zaire) said that article 1 was very important for the future interpretation and application of the convention. He believed that article 1 should also include the Portuguese proposal, which had the support of his delegation. He also supported the proposal for the creation of national scientific research centres. He regretted that lack of time had prevented discussion of the proposed amendment on compensation, submitted by Morocco and 18 other countries (MP/18)⁶, and he hoped to see that amendment discussed at the next meeting.

44. Mr. WULF (United States of America) believed that the proposals in document MP/23 and Add.1 offered a good prospect of consensus and should be reflected in the revised negotiating text. His delegation would however have liked to see more extensive changes in the text of part XII on protection and preservation of the marine environment, in particular in article 221, paragraph 6, and articles 229 and 231.

45. On the other hand, he undertook that, if all the proposed changes were made precisely as drafted in document MP/23 and if no other changes were made, his delegation would contribute to the desired consensus by not insisting on further changes in the text of part XII.

46. With regard to article 222, it would certainly be desirable to examine closely the words "international law, both customary and conventional".

⁵*Ibid.*, p. 107.

⁶*Ibid.*, p. 111.

47. He deeply regretted the restrictions and uncertainties in connexion with marine scientific research both in the negotiations and in the negotiating text. His delegation would, however, accept the text of part XIII, if minor modifications were made to bring it into line with the text negotiated at the previous session and presented to the Committee. The articles primarily concerned were articles 247, 250, 253 and 265.

Mr. Gaviria Liévano (Colombia), Vice-Chairman, took the chair.

48. Mr. KEHDEN (Federal Republic of Germany) said that informal discussions between delegations had led to agreement on an amended text of the beginning of paragraph 1 of article 227, which would greatly increase the possibility of consensus in the future. The amended text read as follows:

“1. States shall not delay a foreign vessel longer than is essential for purposes of investigation provided for in Articles 217, 219 and 221 of this Part of the present Convention. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates and records as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying. Following such an examination, an inspection of the vessel may be undertaken only when there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents or when the contents of such documents are not sufficient to confirm or verify a suspected violation or when the vessel is not carrying valid certificates and records. If the investigation....”

49. Mr. MARZIOTA DELGADO (Cuba) supported the amendment proposed by the Federal Republic of Germany.

50. Mr. TIKHONOV (Union of Soviet Socialist Republics) said that, in general, the report presented by Mr. Vallarta faithfully reflected the results obtained at the informal meetings of the Third Committee on the protection of the marine environment and he wished once again to note with satisfaction Mr. Vallarta's efforts to find solutions acceptable to the Third Committee as a whole. Nevertheless, his delegation was not entirely satisfied with the results obtained at the informal meetings. Part XII of the informal composite negotiating text had been a difficult but acceptable compromise, but the amendments which had been considered at the present session tended to impose further restrictions on freedom of navigation.

51. His delegation could accept the new proposals in view of the special problems confronting certain States, in particular France; but it would accept them only if delegations which had obliged the Committee to re-examine the negotiating text would undertake to refrain from introducing further amendments regarding the prevention of pollution from vessels. If any further amendments were submitted at subsequent stages in the work of the Conference, the Soviet delegation would regard the amendments introduced at the seventh session as invalid and would insist on reverting to the formulations arrived at at the end of the sixth session. That comment did not of course apply to proposals which had been submitted at the present session but had not been discussed for lack of time.

52. The Soviet delegation also wished to make clear that the proposed text of article 222 should not be held to give the coastal State more extensive rights of intervention in cases of maritime casualty than the rights of intervention it already enjoyed under the terms of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, signed in Brussels in 1969. The words

“pursuant to international law, both customary and conventional” meant only one thing: they gave States which were not parties to the 1969 Convention the right to intervene within the limits defined by that Convention. The new text of article 222 did not create a right for the coastal State to intervene before the maritime casualty actually occurred, or to intervene in regard to vessels which had not suffered damage.

53. In conclusion, he expressed the hope that the Chairman of the Committee, in his report to the plenary, would draw attention to the proposals by the Soviet delegation.

54. Mr. MUJAHID (Libyan Arab Jamahiriya) supported the Portuguese proposal relating to article 1. He considered that, in general, the text of part XIII reflected a fair balance of the views expressed.

Mr. Yankov (Bulgaria) resumed the Chair.

55. Mr. GAVIRIA LIÉVANO (Colombia) said that his delegation felt that there were still some defects in the proposals mentioned in Mr. Vallarta's report. Under article 212, paragraph 2 *bis*, for instance, the port State could lay down arbitrary conditions; the effect of the paragraph was to expand the scope and content of article 215 and might result in excessively strict requirements being imposed at some future time. He felt that the paragraph should be amended to bring it into line with the content of article 215 and might result in excessively strict requirements being imposed at some future time. He felt that the paragraph should be amended to bring it into line with the content of article 25, paragraph 2, which was already quite sufficiently comprehensive. His delegation would find it difficult to support any provisions which could restrict international traffic, and its preference was for the provisions of the negotiating text.

56. Mrs. RAOELINA (Madagascar) said that her delegation approved the new wording for article 221, paragraph 6, but felt that the redrafted article 231 conflicted with it. She pointed out that the exclusive economic zone was in international waters, and felt that some further consideration should be given to the proposed new wording of article 212, paragraph 2 *bis* and article 222, paragraph 2.

57. Mr. TIMAGENIS (Greece) said that his country's position on marine pollution was based on two main considerations. Greece itself had a very extensive coastline, particularly in the marine area of the Aegean Archipelago, and so was fully aware of the need for protection of the marine environment. At the same time it had also a large shipping industry and was equally aware of the needs of international navigation. It therefore appreciated the need for a balanced approach. His delegation was not completely satisfied even with some of the provisions in the negotiating text, but recognized the need for the compromises incorporated in them, and felt that substantial alterations upsetting the existing delicate balance should not be made. In particular, any protection measures should as far as possible be taken internationally. His delegation would certainly consider the suggestions which had emerged from the informal meetings and all other proposals submitted in the more formal stages which would follow. With regard to the new wording proposed for article 222, he pointed out that neither the new text nor the corresponding provision in the negotiating text established or granted any new right. Both of them merely stated that the new convention should not affect any existing customary or other rights. As he understood it, the general feeling during the negotiations on article 222 had been that the measures referred to were to be enforceable only following a maritime casualty. To make that clear, he suggested as a purely drafting change, that the order of words in paragraph 1 should be changed to read “. . . to adopt and, following upon a maritime casualty or acts relating to such a casualty, which may rea-

sonably be expected to result in major harmful consequences, enforce measures . . .”.

58. Mr. DANUSAPUTRO (Indonesia) said that his delegation in general agreed with the remarks made by the representative of the United Republic of Tanzania. He had some difficulty with the new text proposed for article 231, paragraph 1, since Indonesia was an archipelagic State. He suggested that the words “or archipelagic” should be inserted after the word “internal”.

59. Mr. BALAKRISHNAN (India) said that his delegation felt that the proposals in the first category mentioned by Mr. Vallarta should be accepted, and those in the second category should be carried over to the next session. It was difficult to quantify what amount of support could be considered as suggesting a reasonable possibility of a consensus. His delegation did not feel it could accept the third sentence in the new paragraph 2 *bis* suggested for article 212.

60. Mr. YU Meng-chia (China) said that some improvements had been made in the provisions concerning marine pollution. While the exclusive economic zone, unlike the territorial sea, did not come under a coastal State's full sovereignty, it did nevertheless come within its jurisdiction. The convenience of international interests had to be considered with due regard for the need to ensure a proper balance. There should be no undue restriction on a coastal State's control either of the territorial sea or of the exclusive economic zone. The proposals in the first and second categories were an improvement on the negotiating text, but he agreed with the representative of the United Republic of Tanzania that in article 231, paragraph 1, the words “internal waters” should be replaced by the words “the territorial sea”.

61. Mr. SHERMAN (Liberia) said that while his delegation preferred the informal composite negotiating text, which it regarded as a well-balanced text, it had sought to reconcile its views with the need for consensus, and would support the new formulations of articles 222 and 231 which, it felt, clarified and improved the text. On the other hand, it had reservations concerning the proposed paragraph 2 *bis* of article 212. It could agree with France on the desirability of publicizing port entry requirements and communicating them to the competent international organizations, but it had doubts about the practicability of action by third States, and thought that the reference to a third State confused the issue.

62. His delegation also had reservations concerning the reference to the “arrest of the vessel” in the proposed new paragraph 6 of article 221. Under article 19, paragraph 2 (*h*), of the informal composite negotiating text, the coastal State already had the power of arrest for any act of wilful or serious pollution. The use of the term “arrest” in article 221, paragraph 6, implied that a criminal act was always involved, whereas the risk of pollution might come from a collision in which the vessel was innocent. Deletion of the term would enhance rather than diminish the power of the coastal State. He supported the proposal of Pakistan for the establishment of national maritime scientific research centres, and thought that article 253 should be the subject of further negotiation.

63. Mr. TIWARI (Singapore) said that his country, as a flag State situated on a busy strait, sought a text which would establish a balance between pollution control and freedom of navigation. His delegation had some difficulty with the proposed paragraph 2 *bis* of article 212, and suggested that if that paragraph were to be accepted, the penultimate sentence should be deleted. The convention should not require one State to inform another State whether a vessel complied with the latter's port entry requirements.

64. Mr. DOUAY (France) said that his delegation had noted that, in the case of the second-category proposals relating to article 212, paragraph 2 *bis*, and articles 221, 222 and 231, there had been no formal objection to a consensus, even though some countries had doubts or reservations

regarding the formulation of the proposals, or even preferred the existing texts in the negotiating text to the texts drafted in the informal negotiations.

65. With regard to the substance of the new proposals, his delegation regarded the proposed paragraph 2 *bis* of article 212 as a compromise text, which it had supported to the extent that it was an improvement on the informal composite negotiating text. The interpretation of the paragraph, however, needed to be spelled out. If a ship passing through the territorial waters of State A was asked whether it was making for a port in State B, States A and B being parties to a co-operative arrangement, and if it appeared that the ship did not comply with the requirements for entering a port in State B, the situation—in the French delegation's view—came under the provisions of article 25, paragraph 2, which stated that the coastal State had the right to take the necessary steps to prevent any breach of the conditions to which the admission of a ship to internal waters or port facilities was subject.

66. The new text proposed for article 231, paragraph 1, also could be regarded as an improvement on the negotiating text, though it did not entirely satisfy his delegation, which believed that a coastal State had the right under existing international law to apply its penal law to offending foreign vessels in its territorial sea, subject of course to respect for the right of innocent passage. As it stood, existing international law allowed a coastal State to provide for the penalty of imprisonment in the case of offences which it considered sufficiently serious. Provision for such penalties was made under existing French law which, in view of the recent *Amoco Cadiz* disaster, would have to be further strengthened. His country considered that it was permissible under international law for coastal States in the exercise of their sovereignty in their territorial sea, as recognized in paragraph 3 of article 212 of the negotiating text, to provide for imprisonment in the case of offences under their national laws.

67. Mr. MAHIOU (Algeria) said that his delegation approved the new texts proposed for paragraphs 1, 3 and 6 of article 212. With regard to paragraph 2 *bis* of article 212 and paragraph 1 of article 222, he shared the objections voiced by the delegations of the United Republic of Tanzania and Brazil. Perhaps redrafting might eliminate some ambiguities.

68. Mr. SUKAT (United Arab Emirates) said he had some difficulty with the proposals relating to article 212, especially the proposed new paragraph 2 *bis*, which would have the effect of giving rights to some and taking away rights from others. The negotiating text was already restrictive in its effect; care should be taken not to restrict international navigation unduly in territorial waters. With regard to paragraph 1 of article 231, monetary penalties would not be enough and would not deter acts of pollution for which large companies were responsible. The new wording for article 236 proposed by 19 States would need further discussion at the next session.

69. Mr. ORTIZ (Uruguay) said that his delegation was in general agreement with the remarks made by Brazil and Tanzania with regard to the formulation of article 213.

70. He found the suggestion by the representative of Indonesia pertinent. On the subject of marine scientific research, he felt that articles 247, 253 and 265 established a just and fair balance, and that it would be unwise to contemplate revising them.

71. Mr. BERTELS (Netherlands) said that the texts in document MP/23 and Add.1 represented a valuable contribution on the subject of marine pollution.

72. With regard to maritime research, he reminded the meeting of the statement made by the representative of Denmark at the 37th meeting on behalf of the States of the European Communities, of which his country was one, and noted

the Chairman's undertaking to reflect in his report any amendments agreed upon in the negotiations on parts XIII and XIV. His delegation also supported the statement made by the representative of the United States of America on the subject of amendments in general.

73. Mr. McKEOWN (Australia) said that, in his view, the informal composite negotiating text represented a balance between the interests of coastal States and shipping interests. He felt that the suggested amendments on vessel-source pollution, reflecting recent events, appropriately clarified and amplified the right of coastal States to take action. His delegation could support the inclusion of the first category of proposals, and though the changes in the second category in some respects went beyond his country's position he could accept even those. He welcomed the clarification in the new text proposed for article 222, to the effect that the rights of coastal States to take action were based on customary and conventional international law. With regard to the proposed new paragraph 1 of article 213, his delegation questioned the need for any specific reference to air navigation. The safety of aircraft was normally dealt with in other fora, but he would not oppose the inclusion of the reference. The objective of bringing the enforcement provisions into conformity with article 223 would hardly seem to have been achieved, but perhaps the matter could be considered by the Drafting Committee. On the subject of marine scientific research, his delegation would have preferred to revert to the text produced during the negotiations under Mr. Castañeda's chairmanship.

74. Mr. HUSSAIN (Pakistan) said that his delegation welcomed the amendments in the first category. As regards the second category of changes, his delegation felt that the proposed paragraph 2 *bis* of article 212 contained a new concept, on which he would find it necessary to consult his Government. Harmonization of port entry requirements and enforcement by any one regional State on behalf of another presented some difficulties. The proposed new text of paragraph 1 of article 231 seemed to conflict with paragraph 6 of article 221, where a reference was made to "arrest", whereas paragraph 1 of article 231 referred to "only monetary penalties". He agreed with the proposal that the words "territorial sea" should be substituted for "internal waters". With regard to marine scientific research, he felt that articles 252, 253 and 255 should be deleted from the negotiating text. On the subject of the transfer of technology, his delegation had proposed an article 275 *bis* which had been supported by several delegations and should be incorporated in the revised negotiating text.

75. Mr. AITKEN (United Kingdom) said that the informal composite negotiating text reflected a balanced compromise of differing views on the protection and preservation of the marine environment. Although there were provisions which his delegation would have liked to see changed, it had refrained from submitting amendments in order not to upset the balance. That policy could not however be continued any longer if moves were made at future sessions to upset that delicate equilibrium. With the same reservation, his delegation was prepared to accept the proposals in document MP/23 and Add.1 in the interests of advancing the work of the Committee.

76. He supported the views of the representatives of the United States and the Netherlands in regard to marine scientific research.

77. Mr. FERRER (Chile) supported the views of the representative of Colombia on the proposed text of paragraph 2 *bis* of article 212, but he could not accept the imposition of standards for the design and construction of vessels.

78. Mr. BAKER (Israel) said that he appreciated the need for the coastal State to take action when faced with major damage resulting from discharges from vessels, but he found

difficulty in accepting the proposed new text of paragraph 6 of article 221 and especially the reference to the possibility of the arrest of the vessel in the exclusive economic zone.

79. He was very much in favour of retaining the articles on marine scientific research which had been drafted at the last session.

80. Mr. MACKAY (New Zealand) said that, in his delegation's view, the results of the work of the Third Committee on marine pollution represented an improvement on the articles in the informal composite negotiating text, but he hoped that future discussion would produce even more far-reaching changes in the interests of the protection of the marine environment.

81. Mr. OLSZOWKA (Poland) said that his delegation could not in general accept solutions which would upset the delicate balance achieved in the negotiating text. In the interests of compromise, however, he would accept the proposed paragraph 2 *bis* of article 212, on the understanding that it did not empower coastal States to control vessels which were *en route* to ports in other States.

82. Mr. YUNG (Argentina) said that, in compromises that had been reached at the previous session, many of the rights of coastal States had been taken away. He felt that it would be wrong to amend the text even further in that direction, and any such amendments would be quite unacceptable to his delegation. He believed, in particular, that paragraph 2 of article 255 should be deleted and that the requirement of explicit agreement by the coastal States should be inserted in articles 248 and 253.

83. Mr. FIGUEIRÊDO BUSTANI (Brazil) said that it was his understanding that the question of marine scientific research had already been settled, especially in the light of the summing up by the Chair, which was contained in the summary record of the 37th meeting. He was therefore surprised at the large number of delegations which were now advocating the introduction of amendments formulated outside the Committee. If those delegations wished to reopen the question of marine scientific research, the matter should be discussed within the Committee and on the basis of document A/CONF.62/C.3/L.13/Rev.2,⁷ which he believed to be the only document meriting general support.

84. Mr. YTURRIAGA BARBERÁN (Spain) said that his delegation was unable to agree to the proposed text of paragraph 5 of article 195; it was a confused paragraph covering a wide range of subjects and was not really required. He also felt that full agreement had not yet been reached on article 234 in spite of the wide measure of discussion. He hoped that article 255 would be taken up again at the next session.

85. The CHAIRMAN said that, at the beginning of the Committee's work in the present session, he had alluded to the encouraging fact that at every session the Committee had made some advances. That had again proved true of the present session, although there was still room for further progress. Some proposals had not been discussed sufficiently extensively, and on others no formal agreement had been reached, but it was certainly true that parts XII and XIII constituted a positive contribution to the negotiating text. They had been hammered out in negotiations and constituted a reliable basis for a consensus and a realistic approach to what might be achieved under practical conditions.

86. There was still room for further progress and the ultimate results would depend on the goodwill of participants and their determination to reach the desired goals; but there was no doubt that satisfactory progress had been made and previous areas of disagreement and differences had been narrowed down.

The meeting rose at 6.40 p.m.

⁷*Ibid.*, vol. VI (United Nations publication, Sales No. E.75.V.10).