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INTERNATIONAL CONFERENCE ON MARINE POLLUTION, 1973

SUMMARY RECORD OF THE TENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1;
on Wednesday, 31 October 1973 at 2.10 p.m.

President: Mr. S. BHAVE (India)
Secretary-General: Mr. Colin GOAD (Secretary-General of IMCO)
Executive Secretary: Mr. A. SAVELIEV (IMCO Secretariat)

A list of participants is given in MP/CONF/INF.1/Rev.3

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AGENDA ITEM 7 - CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION
FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973
(MP/CONF/WP.16, MP/CONF/WP.17, MP/CONF/WP.17/Corr.1
and MP/CONF/WP.28) (continued)

The PRESIDENT invited the Conference to consider the text of the Preamble and Articles as agreed by the Drafting Committee (MP/CONF/WP.17 and MP/CONF/WP.17 Corr.1).

Mr. SASAMURA (IMCO Secretariat) drew attention to an error in MP/CONF/WP.17. The Drafting Committee had agreed to retain the original numbering of the Articles until the plenary came to consider their substance; but, through a misunderstanding, the Secretariat had re-numbered Articles 7 to 14. Whenever those Articles were discussed, therefore, the Secretariat would make clear to which Article reference was, in fact, being made.

Preamble

The Preamble was adopted without comment.

Article 1

Article 1 was adopted without comment.

Article 2

Miss GRANDI (Argentina) said her delegation would vote against paragraphs (4) and (5) of Article 2. Argentina considered that the definition of a ship should not include fixed or floating platforms; the fact that such platforms could cause pollution was not sufficient cause for them to be included in the requirements for a ship; they should be dealt with in a separate Regulation. The third sentence of paragraph (5), which provided that for such platforms engaged in exploration and exploitation of the sea-bed, the Administration was the Government of the coastal State concerned, constituted an infringement of the sovereign rights of the coastal State over the continental shelf; in that connexion, she referred to Article 3, paragraph (2). Finally, since the Conference on the Law of the Sea would be dealing with matters related to the continental shelf, it would be prejudging the conclusions of that Conference to take a firm decision on the matter in the present Convention.

Mr. MONDAAL (Netherlands) supported that view. The inclusion of fixed or floating platforms in the definition of "ship" was anomalous, since it did not correspond to the definition used in other Conventions. Such platforms, if included, should be separately defined. He pointed out that there were a number

of Regulations in the Annexes which could not be applicable to fixed or floating platforms; some of those in Annex III, for example, concerned packages carried as cargo, and some in Annex V applied to drilling rigs where located more than twelve miles from land. Apart from technical considerations, legal complications could arise as a result of considering such platforms as ships. He therefore proposed that the Conference should take a separate vote on the phrase "and fixed or floating platforms" in paragraph (4).

Mr. DAVIS (Canada) fully supported the views of the representative of Argentina. Apart from the technical anomalies pointed out by the Netherlands representative, it would be a strange situation if responsibility were imposed on a coastal State for administration when a fixed or floating platform was brought in to operate on the continental shelf of that coastal State.

Mr. WISWALL (Liberia) said that, in view of the provisions contained in the Annexes, he wished to propose the deletion of the words contained within square brackets in paragraph (3)(b)(iii).

Mr. VANCHISWAR (India) also thought that fixed or floating platforms should not be included in the definition of a ship. He suggested that the last sentence of paragraph (5), which defined "Administration" with respect to platforms, should be deleted.

Mr. SJADZALI (Indonesia) and Mr. TRAIN (USA) supported the Netherlands proposal.

Mr. HAREIDE (Norway) also supported that proposal. He further supported the Liberian proposal for the deletion of the phrase within square brackets in paragraph (3)(b)(iii).

Mr. ITURRIAGA (Spain) said he could not share the views of the previous speakers on the deletion of the reference to fixed or floating platforms. The substance of the question had been discussed at length in Committee I, and the Committee had decided against deletion by no fewer than four separate votes. With regard to the procedural aspect, the Netherlands proposal constituted an amendment to the text of the Convention, and it therefore required a two-thirds majority for adoption.

He supported the Liberian proposal, but thought it preferable that not only the phrase within square brackets but the whole sub-paragraph (iii) should be deleted. There had been general opposition to it in the Committee on the grounds that it would be very difficult to verify in practice and would introduce an element of legal uncertainty into the Convention, with the consequent risk of infringement.

Mr. TURKI (Tunisia) supported the Argentinian proposal to delete the reference to fixed or floating platforms in paragraph (4).

Mr. MATOV (USSR) also supported that proposal. He believed, nevertheless, that such platforms ought to come within the scope of the Convention particularly since Committee I had shown, by four separate votes, that it was in favour of their inclusion. He pointed out that the Convention would not attempt to legislate for platforms in respect of their use for exploration of the sea-bed and exploitation of natural resources, but simply in respect of those operations which were the same as those of a normal ship - namely, the disposal overboard of garbage or other harmful substances. It was in the interests of the major oil-processing companies who owned such platforms to have them excluded from the scope of the Convention, since the companies would thereby escape their responsibilities in regard to pollution caused by the platforms.

He supported the Spanish proposal for the deletion of paragraph (3)(b)(iii) in its entirety.

Mr. BREUER (Federal Republic of Germany) supported the views of the representatives of Spain and the USSR. There was no reason to leave platforms out of the scope of the Convention, since the matter had already been discussed at length in Committee I; furthermore, all the Annexes contained provisions relating to platforms. He also supported the Spanish proposal regarding paragraph (3)(b)(iii).

Mr. WISWALL (Liberia) said he could not agree to that proposal. The deletion of the entire sub-paragraph, rather than simply of the phrase within square brackets, would mean that no provision was made to cover scientific research into pollution abatement and control.

Mr. SUGIHARA (Japan) felt that the existing text of paragraph (4) should be retained. He pointed out that the previous day the plenary had adopted certain Regulations applicable to such platforms, notably Regulation 21 of Annex I.

Mr. FRANCHI (Italy) supported the views held by the representatives of Spain and the USSR.

Mr. RAFFAELLI (Brazil) suggested that a separate vote be taken on each of the Articles to ensure that they received the necessary two-thirds majority.

Mr. LIND (Sweden) pointed out that in Annex V, adopted by the plenary the previous day, the word "disposal" had been substituted for "discharge"; he considered that the original word should be retained since it appeared not only in the present Article 2, but in a number of other Articles such as Articles 6, 8 and 9. If the word "disposal" were to be retained in Annex V, he suggested that the word "disposal" should be inserted after "escape" in paragraph (3)(a) of Article 2.

He supported the retention of the reference to fixed or floating platforms in paragraph (4), and also the deletion of paragraph (3)(b)(iii).

Mr. NHIGULA (Tanzania) proposed that paragraph (3) of Article 10 should be transferred to Article 2 (Definitions), since it was applicable not only to Article 10 but also to a number of other Articles, notably Articles 9 and 4.

Mr. YTURRIAGA (Spain) proposed that the definition of "incident" in paragraph (1) of Article 8 should also be transferred to Article 2.

He had no objection to the Swedish proposal concerning paragraph (3)(a), but felt a simpler solution would be to delete the phrase "in relation to harmful substances or effluents containing such substances".

Miss GRANDI (Argentina) asked for clarification of the technical meaning of the word "disposal". Such clarification was important both for port technicians and for shipboard personnel.

Mr. SONDAAL (Netherlands) did not agree with the Spanish representative's view that his proposal required a two-thirds majority in order to be carried. He had not proposed any deletion or addition to paragraph (4), but had simply asked that a phrase in it should be voted on separately; his proposal did not therefore constitute an amendment.

Mr. MATOV (USSR) could not agree that the Netherlands proposal did not constitute an amendment, since the phrase in question was of vital importance to the sense of the paragraph. If it were to be omitted, serious consequences could result, since platforms would not then be obliged to respect the same standards for discharge as ships.

The PRESIDENT ruled that all the suggestions made for changes to the text of Article 2 constituted amendments, and would therefore require a two-thirds majority.

Mr. SONDAAL (Netherlands) challenged that ruling.

Mr. YTURRIAGA (Spain) supported the President's ruling, which in his view was based on Rule 22(a) of the Conference's Rules of Procedure.

Mr. TRAIN (USA) also supported the President's ruling on the procedural aspect of the matter, although as far as the substance was concerned he favoured the deletion of the phrase in question.

Mr. RAFFAELLI (Brazil) considered that it was Rule 21(a) of the Conference's Rules of Procedure, providing that parts of a proposal or amendments thereto should be voted on separately, which was applicable.

Mr. TURKI (Tunisia) proposed that, since the whole point at issue was whether or not the reference to fixed or floating platforms was to be retained in paragraph (4), an immediate vote be taken on that point.

Mr. SONDAAL (Netherlands) said he would not press his challenge of the President's ruling if the Conference agreed to the Tunisian proposal for a separate vote on the issue of fixed or floating platforms. He agreed with the Brazilian representative that it was Rule 21(a) of the Conference's Rules of Procedure that was applicable in that case.

Mr. HAREIDE (Norway) said that the Brazilian representative was correct; Rule 21(a) adequately covered the situation. As, however, the text before the Conference was the text agreed by the Committee there was no proposer in the sense of Rule 21(a); but as there were objections to a separate vote, the President was justified in asking the Conference to vote on whether or not it wished to have such a vote.

Mr. YTURRIAGA (Spain), supported by Mr. WIRMAN (Panama), said that the Brazilian and Norwegian opinions were valid, but it was a matter of interpretation. Since the President had already ruled under Rule 22, the Conference must now vote either on the text before it or on the challenge to his ruling.

Mr. RAFFAELLI (Brazil) supported the President's ruling.

The PRESIDENT said he would take votes on the various proposals. He called first for a vote on the Indian proposal, which was seconded by Mr. DAVIS (Canada), to delete from paragraph (4) the words "and fixed or floating platforms".

There were 17 votes in favour, 32 against, with 9 abstentions. Having failed to obtain the required two-thirds majority, the proposal was rejected.

The PRESIDENT put to the vote the Spanish proposal to delete the whole of sub-paragraph (3)(b)(iii) from Article 2.

Mr. SAVELIEV (Executive Secretary) reminded the Conference that if that sub-paragraph were deleted, it would be necessary to revise all the Annexes for references to it.

Mr. ETURRIAGA (Spain) said that he did not think there need be many consequential changes.

Mr. BREUER (Federal Republic of Germany) seconded the Spanish proposal.

The Spanish proposal to delete sub-paragraph (3)(b)(iii) received 27 votes in favour, 19 against with 11 abstentions. Having failed to obtain the required two-thirds majority, the proposal was rejected.

The PRESIDENT next called for a vote on the Liberian proposal to delete the square brackets and the words contained in them from sub-paragraph (3)(b)(iii).

The Liberian proposal was adopted by 51 votes to 1, with 6 abstentions.

The PRESIDENT called for a vote on the Swedish proposal, seconded by Denmark, to add, in sub-paragraph (3)(a), the word "disposal" after the word "escape".

The Swedish proposal was adopted by 40 votes to 1, with 8 abstentions.

Mr. CABOUAT (France) said that he had abstained from the vote because he considered that it would be difficult to translate into French another word with the same meaning as those already listed.

Mr. ETURRIAGA (Spain) said that his delegation had the same difficulty, but suggested the Spanish word "evacuación".

Mr. SASAMURA (IMCO Secretariat) said that in a working paper the word "disposal" had been translated by the French word "évacuation". It would be advisable to have the same number of words in the list in both French and English.

The PRESIDENT invited comments on the Tanzanian proposal to transfer paragraph (3) of Article 10 to Article 2.

Mr. ARCHER (UK) seconded the Tanzanian proposal. It was not phrased like a definition, but was in the nature of one, as it referred to Articles which followed.

Mr. RAFFAELLI (Brazil) said that the Conference must either debate the substance of that paragraph or leave it in Article 10 until that Article was discussed.

The PRESIDENT said it would be possible to decide immediately where the paragraph should go and decide on its substance when Article 10 was taken up.

Mr. MONTAGNE (Peru) thought that would be a dangerous procedure. Article 10(3) spoke of interpretation of the term "jurisdiction". It was not within the competence of the Conference to define "jurisdiction".

Mr. DAVIS (Canada) said it would be better to wait until Article 10 was considered; if it then appeared that paragraph (3) was a definition, the Conference could decide to transfer it to Article 2. His delegation was not ready to discuss it yet.

Mr. VANCHISWAR (India) and Mr. SUKATON (Indonesia) agreed with the representatives of Peru and Canada.

Mr. NHIGULA (Tanzania) said he would agree to a postponement of a decision on his proposal until Article 10 was reached.

It was so decided.

Mr. YFUHRIAGA (Spain) said that his proposal to transfer paragraph (1) of Article 8 to Article 2 was a matter already agreed on by the Committee; no vote on it was therefore necessary. It was an omission on the part of the Drafting Committee.

Mr. SOLOMON (Trinidad and Tobago), Chairman of Committee I, confirmed that statement.

Mr. SASAMURA (IMCO Secretariat) pointed out that the definition of the "Organization" had been omitted from Article 2.

Mr. SOLOMON (Trinidad and Tobago), Chairman of Committee I, said that was an error. It had been decided in the Committee that the definition of "incident" should be paragraph (6) and that of the "Organization" should be paragraph (7) of Article 2.

Mr. TRAIN (USA) moved the adoption of Article 2 as a whole, as amended.

Mr. SONDAAL (Netherlands) moved that Article 2 should be voted on paragraph by paragraph, and that the words "and fixed or floating platforms" should be voted on separately.

Mr. YTUERRIAGA (Spain), supported by the representatives of Canada, Greece, Italy, Tanzania, Tunisia and the USSR, said that the Conference had already voted on separate paragraphs of the Article. Article 2 as a whole should now be voted on as proposed by the United States representative.

Mr. RAFFAELLI (Brazil), supported by Miss GRANDI (Argentina) and Mr. BUZETA (Chile), said that only amendments to separate paragraphs had been voted on. It would be quite in order to vote on the text paragraph by paragraph, as amended, and then on the Article as a whole.

Mr. BRENNAN (Australia) said that the Netherlands representative was quite entitled to request a paragraph by paragraph vote. Perhaps the Conference should vote on whether it wished to adopt the Articles paragraph by paragraph.

Mr. SONDAAL (Netherlands) said that, in view of the comments made and in a spirit of compromise, his delegation was prepared to withdraw its request for a paragraph by paragraph vote on Article 2. He wished, however, to express his delegation's concern that the President had interpreted such a request as being in the nature of an amendment. He agreed with the Australian representative that it was for the Conference to decide in which way it wished to vote.

Mr. TRAIN (USA) said that he had not made his proposal to vote on Article 2 as a whole as a matter of principle, but was specific to that Article only.

Mr. YANKOV (Bulgaria) supported the United States proposal, not as a principle, but as a matter of procedure in the present case. The right to request a paragraph by paragraph vote must not be denied.

Mr. CABOUAT (France) and Mr. SUGIHARA (Japan) agreed with the views expressed by the preceding speakers.

The PRESIDENT said that he would not rule in every case that a paragraph by paragraph vote was not in order. In the present instance, however, he ruled that Article 2, as amended, should now be voted on as a whole. He invited delegates' co-operation.

Mr. RAFFAELLI (Brazil) said that, after spending so much time and care on the work of the Committees, delegates were not prepared to be rushed into accepting unacceptable solutions.

Article 2, as a whole, as amended, was adopted by 56 votes to none, with 7 abstentions.

Article 3

Article 3 was adopted by 55 votes to none with 2 abstentions.

Articles 4 and 10

Mr. SONDAAL (Netherlands) introduced his first amendment (MP/CONF/WP.16). The amendment was procedural, legal and technical but did not affect the substance of Article 4. Its aim was to prevent double jeopardy - i.e. to ensure that if two Administrations initiated proceedings simultaneously, one of the proceedings should be dropped.

The proposal was seconded by Mr. BREUER (Federal Republic of Germany).

Mr. YTURRIAGA (Spain) said that he could not support the proposal because it was equivalent to declaring the primacy of the flag State in all matters of construction, design and equipment and would override domestic law.

Mr. DAVIS (Canada) found the proposal to be an unacceptable limitation on the jurisdiction of a coastal State; it was also impracticable.

Mr. ARCHER (UK) recalled that, after very lengthy discussion, Committee I had finally decided to treat Articles 4 and 10 (formerly Article 9) as a package and had voted on them together. Should not the same procedure therefore be followed in the present case?

Mr. KOSMATOS (Greece) considered that the package deal concerning Articles 4 and 10 related only to the question of jurisdiction in territorial seas; other parts of the two Articles could be taken separately.

The PRESIDENT suggested that the plenary vote on whether Articles 4 and 10 should be considered together.

It was decided, by 38 votes to 6, with 6 abstentions, that Articles 4 and 10 should be discussed together.

Mr. SONDAAL (Netherlands) said that if two proceedings concerning design or construction or equipment were started simultaneously by two States, one of which was the flag State, the latter, as the State which had to issue certificates, should bear the primary responsibility. The amendment should be acceptable, since it was outside the package deal agreed on previously in Committee I.

Mr. DAVIS (Canada) was worried by considerations of timing. For instance, if proceedings had been initiated and were nearing completion, would the Administration of the flag State have the right to declare the proceedings null

and void and initiate fresh proceedings? What would happen if a ship did not call at its home port for several years and was the subject of proceedings by a Contracting Party and was then suddenly faced by intervention by the flag State?

Mr. KATEKA (Tanzania) said that he was against considering Articles 4 and 10 together. He would like paragraph (3) of Article 10 to be deleted, since the definition in it of "jurisdiction" seemed to pre-empt the next Conference on the Law of the Sea by failing to give particulars about which international law should apply. The paragraph was therefore redundant.

Mr. SJADZALI (Indonesia) agreed with the last speaker, pointing out that an increasing number of countries were finding that the traditional concepts of international law were becoming more and more out of line with modern technological development.

Mr. WISWALL (Liberia) felt sure that the sponsors of the package deal concept had not intended to make it impossible for the plenary to consider elements of the package individually. The Netherlands proposal followed on logically from previous decisions in international law.

Mr. VANCHISWAR (India) agreed with the Netherlands proposal on the grounds that it was very practical and avoided double penalties; the flag State would be vitally concerned, as the authority issuing certificates.

Mr. SUGIHARA (Japan) agreed with the Netherlands proposal to some extent but pointed out that, in many countries, criminal proceedings once started were difficult to stop. Would the Netherlands therefore consider deleting the words "or continued" from line 6 of its proposal?

Mr. SONDAAL (Netherlands) agreed to that deletion.

Mr. CACHO-SOUSA (Peru) said that paragraph (3) of Article 10 should be deleted, since it directly contradicted the preceding paragraph (2).

Mr. BREUER (Federal Republic of Germany) said that the Netherlands proposal, as amended, did not break up the package deal covering Articles 4 and 10; it was the general practice in international law that purely technical matters affecting a ship were the responsibility of the flag State.

Referring to the proposal by Tanzania to delete Article 10(3), it would be inadvisable to disrupt a fundamental part of an agreement which had been reached only after long and difficult discussion. Article 10(3) was not an endeavour to

pre-empt the next Conference of the Law of the Sea; it was not a rule, but merely an indication of how to construe a law. He suggested deleting the words "or interpretation" from the penultimate line in Article 10(3).

Mr. WISWALL (Liberia) feared that if the words "or continued" were deleted from the Netherlands proposal as had been suggested, the protection against double jeopardy might disappear. He suggested inserting the words "prior to the institution of such proceedings" after the word "intentions" in line 3 of the Netherlands proposal, if the Netherlands wanted to delete "or continued".

Mr. KOSMATOS (Greece) said that if "or continued" was deleted, the phrase "With regard...construction and equipment" in lines 3 to 5 of the Netherlands proposal could be deleted too. Also, the words "not later than six months after the institution of proceedings" should be added at the end of the second sentence of the Netherlands' proposal.

Mr. SONDAAL (Netherlands) said that his delegation had drafted the amendment with the emphasis on design, construction and equipment. The Greek proposal could stand on its own, but the Netherlands delegation did not want to make it a joint one.

Mr. ORTIZ (Ecuador) fully supported the Tanzanian proposal to delete Article 10(3); if that proposal was rejected, Ecuador wanted a paragraph by paragraph vote on Article 10.

Mr. ARCHER (UK) said that, while he did not want to block all amendments to Articles 4 and 10, he would be unhappy to see the disruption of the package deal which had taken so long to achieve in Committee I. The Netherlands proposal would probably not cause a major disturbance, but the Spanish and Canadian proposals definitely would, as would the proposal by the Federal Republic of Germany and the proposal by Tanzania and others to delete Article 10(3).

It should be remembered that in the discussion on Article 4 in Committee I, what might be called the traditional maritime countries would have preferred the term "territorial seas" to "jurisdiction" - and their agreement to use "jurisdiction" was a concession which was an essential part of the package deal. The package had been voted by 47 votes in favour and only 4 against - an overwhelming majority which the plenary should therefore be reluctant to alter.

One way of getting round the difficulty would be to suspend the normal Rules of Procedure as permitted under Rule 33, so that the normal order in which proposals were voted on could be suspended and a vote could first be taken on Articles 4 and 10 as a package, after which a vote could, if still necessary, be taken on the various proposed amendments.

Mr. LOPEZ GARCIA (Cuba) supported the Tanzanian proposal.

Mr. MEGRET (France) said that the French delegation could support the Netherlands' amendment (MP/CONF/WP.16), which was in the spirit of paragraph (2) of Article 4, since the measures contained in paragraph (5) as proposed by the Netherlands were intended to facilitate the implementation of the conditions laid down. It would be better, however, to delete the words "or continued" in the third last line and also, to avoid any dilatory action on the part of the flag Administration, to lay down a time limit of two months, for example, in which that Administration would be required to announce that it was instituting proceedings.

Paragraph (3) of Article 10 should be left where it was, as it was essentially bound to the other provisions in Article 10, specially those in paragraph (2). It was not, therefore, a matter of defining the term "jurisdiction" but of making paragraph (2) more precise. Consequently it would be a great mistake to delete paragraph (3) or to transpose it.

Mr. BRENNAN (Australia) stated that the Australian delegation would vote for Articles 4 and 10 as submitted to the Conference, so as to respect the compromise reached in Committee I. He asked those delegations which had requested the deletion of paragraph (3) of Article 10 not to press the point: that paragraph would in short change nothing; and as many delegations were in favour of that provision, it should be retained as it could not have any adverse effect. On the other hand, if it were deleted, the balance of the entire Convention might be appreciably upset.

As they had no definite opinion on the slight amendment put forward by the Federal Republic of Germany (MP/CONF/WP.28), the Australian delegation would abstain on that point.

It could not support the Netherlands' amendment (MP/CONF/WP.16) for the reasons already explained by the representative of Canada. In any case, acceptance would be contrary to the spirit of the compromise reached by Committee I on Articles 4 and 10.

Mr. KATEKA (Tanzania) was categorically opposed to the Conference following the procedure proposed by the United Kingdom: it would be a dangerous precedent to suspend application of the Rules of Procedure under those conditions, and in any case suspension of the Rules required the greatest prudence.

If, as the representative of Australia had said, Article 10(3) contributed nothing, why should it be retained? That provision in fact was intended to prevent the progress of international law which at present, as far as territorial waters were concerned, was by no means satisfactory. Member countries of the Third World would be ill-advised to concur in retaining that provision.

Mr. YANKOV (Bulgaria) stated that fundamentally the difficulty lay in the question of the "jurisdiction" referred to in Articles 4(2) and 10(3). The Bulgarian delegation would have preferred the Conference to retain a far more precise formula in paragraph (2) of Article 4; incidentally, the "territorial sea", whatever its extent, was quite another question. The Bulgarian delegation, however, objected to any hasty classification of participants as conservatives and progressives according to the formula supported. In a spirit of compromise, his delegation supported the use of the term "jurisdiction" but opposed any manifest attempt to deprive that term of any legal value. It was absolutely essential to say in Article 10(3) that the term should be construed "in the light of international law...", because the term "jurisdiction" thus assumed some meaning in law. The formula was doubtless a very general one, but at least it provided a basis for negotiation. Whether a case was referred to customary law or the law of treaties because such law was in force when a question of the interpretation of the Convention arose, it could in no way prejudice the forthcoming United Nations Conference on the Law of the Sea. For that reason, although it was not absolutely satisfied with the wording of Article 4(2), the Bulgarian delegation was in favour of retaining Article 10(3).

Mr. YFURILGA (Spain) said that Japan's amendment to the Netherlands' amendment was a slight improvement on the latter, which was unacceptable in that it forced countries to modify their penal law. The Netherlands' amendment, however, was still unacceptable for other reasons: Article 4(2) gave a choice between the only two possibilities which could be offered; and the Netherlands' amendment would cut out that choice because only the Administration of the ship could finally institute proceedings and because in practice the State which was the victim of a violation committed within its jurisdiction could not.

Mr. DAVIS (Canada) was of the same opinion: the Netherlands' amendment fundamentally affected the requirements of Article 4(2), since any State wishing to take legal action against a ship which had violated the Convention in its territorial waters would have to wait an unspecified time until the Administration of the ship instituted proceedings.

The Canadian delegation therefore supported the procedure proposed by the United Kingdom, which would enable the Conference first of all to decide on Articles 4 and 10 together, the balance of which should not be destroyed.

Mr. MATOV (USSR) unreservedly supported the comments made by the representative of Bulgaria. The Conference had met for the purposes of pollution control, and not to solve the question of "jurisdiction", which would be dealt with by the United Nations body which was preparing the Conference on the Law of the Sea. It was surprising that some delegations wished to delete paragraph (3) of Article 10 on the pretext that it prejudiced the outcome of the Conference on the Law of the Sea, because that was absolutely not the case. Paragraph (3) of Article 10 should be retained immediately following paragraph (2) as the representative of France had requested.

The USSR also supported the procedure proposed by the United Kingdom: the Conference should be able to vote in the first instance on Articles 4 and 10 together, in the form submitted to it following the compromise supported almost unanimously by Committee I, namely with the participation of many developing countries.

Mr. VALLARTA (Mexico) recalled that it was on the initiative of the Mexican delegation that, in the provisions on juridical matters, the term "jurisdiction" replaced the formula "territorial sea", on which agreement was impossible. It was also necessary, however, to make the term "jurisdiction" explicit but not to define it, and for that purpose, international law had to be taken into account. Obviously should a question of interpretation arise, all sources of international law - both at the national and international level - would be called upon, not only the Geneva Conventions. He did not therefore see why the representative of Tanzania should fear that paragraph (3) of Article 10 might endanger the interests of countries of the Third World, which took an active part in the development of international law.

The proposed amendments could in no way facilitate either acceptance or implementation of the Convention. Nothing, therefore, that might affect the package should be done.

Mr. ROH (Republic of Korea) said that in view of the turn taken by the discussion, an "informative" vote should be taken to determine first of all, in accordance with the procedure proposed by the United Kingdom, whether the compromise reached in Committee I was still favoured by the majority.

Mr. RENTNER (German Democratic Republic) supported Bulgaria's comments: Article 10(3) should not be touched.

Mr. TRAIN (USA) said that in view of the Netherlands' amendment, he felt the same misgivings as the representatives of Spain and Canada. It was doubtless justifiable for the Administration of the ship responsible for the violation to want to take proceedings itself; but how could the same and equally justifiable wish of the coastal State meet with a refusal when the violation had occurred in its territorial waters? It had been agreed from the beginning of the Conference that any provisions constituting an effective implementation mechanism should be set forth in the Convention: Article 4 was an essential part of that mechanism.

Moreover, the Netherlands' amendment would substantially alter the notion that Committee I had finally retained of the rules of application which Contracting States were called upon to include in their legislation.

With regard to Tanzania's amendment, the representative of the United States recalled that the solution finally adopted by Committee I was not that recommended by the group of Maritime States, which quite simply wanted to use the expression "international law". Those States, however, in their desire for compromise, had supported the package deal. The United States delegation hoped that the representative of Tanzania would not press the point further.

With regard to procedure, the United States delegation considered that great prudence should be exercised, if a proposal to suspend the application of the Rules of Procedure gave any delegation the impression of yielding to a discreditable motive.

Mr. BREUER (Federal Republic of Germany) unreservedly supported the delegations which had moved that a vote be taken immediately on Articles 4 and 10 together, followed by a consideration of the proposal to amend Article 10(3) (MP/CONF/WP.28), the sole object of which was to make the wording of that paragraph clearer.

Mr. SONDAAL (Netherlands) was also in favour of the plenary Conference putting an end to the theoretical discussions and taking a vote without further delay.

Mr. TIMAGENIS (Greece) withdrew his amendment to the amendment proposed by the Netherlands, in order to expedite the work of the Conference.

The PRESIDENT invited the representative of the United Kingdom to explain whether he in fact meant that Rule 33 of the Rules of Procedure should be amended so as to allow a simultaneous vote on Articles 4 and 10, and subsequently on the proposed amendments to those Articles.

Mr. ARCHER (UK) said that that indeed had been his original intention. However, after carefully considering the views expressed by the representative of the United States, he wondered whether it would not be preferable to take an "informative" vote as suggested by the representative of Korea, which might perhaps be followed - according to the results obtained - by a vote on the two Articles in question. He would be prepared to modify his original proposal in that way.

Mr. DAVIS (Canada) shared the view of the representative of the United States on the need to act with the greatest prudence before departing from the Rules of Procedure, which contained no reference at all to informative voting. In his opinion, it would be better to keep to the original proposal of the United Kingdom.

The PRESIDENT pointed out that a replacement formula would be required to amend the Rules of Procedure. He therefore proposed to proceed to a vote on the proposal to vote simultaneously on Articles 4 and 10 as a package deal before voting on the amendments and on the Articles in their amended form.

Mr. YTURRIAGA (Spain) recalled that the representative of the United Kingdom did not intend to press his original proposal. As he, too, was convinced that extreme caution was required in any matter altering the Rules of Procedure, he moved that an immediate vote be taken.

Mr. SUGIHARA (Japan) supported Spain's notion.

Mr. KATEKA (Tanzania) did not see the need to consider amendments after voting on the Articles themselves. He had never encountered such a procedure before.

Mr. BRENNAN (Australia) shared the view expressed by the representatives of the United States and Spain. If the vote on Articles 4 and 10 taken together obtained a two-thirds majority in accordance with the Rules of Procedure, the procedure to be followed for subsequent discussion would be perfectly clear.

Mr. ARCHER (UK) concurred in the point of view of the representatives of Spain, Japan and Australia in order to accelerate the discussions and to avoid having to amend the Rules of Procedure, on the understanding, however, that the Conference, after voting on a possible package deal, would decide on the amendments to Articles 4 and 10 and then finally take a joint vote on Articles 4 and 10 with any amendments that might have been made.

The PRESIDENT stressed that Spain's notion, strictly speaking, constituted a motion to close the debate under Article 13(a)(iv) of the Rules of Procedure. He therefore put the motion to the vote.

The motion to close the debate was carried.

The PRESIDENT proposed, in accordance with the normal procedure, to proceed to a vote on the amendment proposed by the Netherlands to add a fifth paragraph to Article 4 (MP/CONF/WP.16).

Mr. SONDAAL (Netherlands) recalled that he had already accepted an amendment submitted by Liberia - namely, to add, at the end of the first sentence of the new paragraph (5) (MP/CONF/WP.16) the phrase "...prior to the institution of such proceedings".

The Netherlands' amendment (MP/CONF/WP.16) was rejected by 31 votes to 10 with 14 abstentions.

The PRESIDENT put to the vote the amendment proposed by Tanzania and supported by Indonesia to delete Article 10(3).

The amendment was rejected by 39 votes to 9, with 10 abstentions.

The PRESIDENT proposed that the Conference consider the amendment to Article 10(3) submitted by the Federal Republic of Germany (MP/CONF/WP.28).

In the absence of a seconder, the amendment was not put to the vote.

Mr. KATEKA (Tanzania) returned to Ecuador's proposal to vote paragraph by paragraph on Article 10 as had been done with Article 2.

Mr. ARCHER (UK) pointed out that, by supporting those delegations that wanted to avoid altering the Rules of Procedure, the British delegation had made it quite clear that in that case the vote would cover Articles 4 and 10 simultaneously, a procedure which appeared to exclude Tanzania's proposal.

Mr. LUKASIK (Poland) shared the United Kingdom's point of view. Furthermore, Tanzania's proposal was unacceptable as the plenary conference had already decided against deleting Article 10(3).

Mr. KATEKA (Tanzania) insisted that the Conference should vote paragraph by paragraph on Article 10. In his opinion, any delegation was entitled to request a paragraph by paragraph vote even though, as in the present case, an amendment submitted by the same delegation had been rejected.

Mr. YTURRIAGA (Spain) considered that the proposal put forward by the representative of Tanzania was perfectly acceptable under the terms of Rule 21(a) of the Rules of Procedure. He therefore moved that that proposal be put to the vote.

The motion of Tanzania was rejected by 38 votes to ...

The PRESIDENT invited the Conference to decide on Articles 4 and 10 simultaneously, in accordance with the compromise which had already been negotiated on the matter.

Articles 4 and 10 were adopted by 49 votes to 3, with 5 abstentions.

Mr. ORTIZ (Ecuador) stated that his delegation had been obliged to vote against Articles 4 and 10 as they had never taken part in the negotiations which had resulted in that compromise. The delegation of Ecuador considered, however, that Article 10(3) constituted an infringement of the right of States to determine the extent of their jurisdiction themselves, and prejudiced any solution that might be adopted at the 1974 Law of the Sea Conference.

Mr. KATEKA (Tanzania) stated also that it was only because he had been unable to accept the definition of "jurisdiction" in Article 10(3) that he had been forced to vote against Articles 4 and 10, which he could otherwise have accepted. He said that any attempt to check the development of international law was doomed to failure, and he regretted that the Conference had considered it proper to include a nebulous expression in its attempt to provide an interpretation.

Mr. MATOV (USSR) would not explain his vote in view of the lateness of the hour, but he reserved the right to return to the matter after the vote on the Convention as a whole.

Mr. RAFFAELLI (Brazil) stated that, with regard to Article 10(3), the Brazilian Government considered that an international convention, even if applied by several States, did not constitute international law in relation to States not Parties to that Convention and did not impose rights or obligations on third parties without their consent.

Mr. TIMAGENIS (Greece) stated that, although he had voted for Articles 4 and 10, the words "any violation" at the beginning of Article 4(2) were not necessarily part of the compromise solution that had been adopted. During the discussion in Committee I, the Greek delegation had proposed replacing those words by the following: "any discharge in contradiction of the requirements...".

That proposal had been aimed at clarifying the meaning of Article 4(2), in the terms of which it appeared that a coastal State was only authorized to impose sanctions against foreign ships for violations in relation to discharge.

However, even without that clarification, Article 4(2) could be interpreted in that way for the following reasons: Article 4(2) was inspired by the idea that the Administration could not always give effect to the convention in matters of discharge; but that did not apply to violations of the requirements concerning the design of the ship because, if such a case occurred, the Administration could always invalidate or refuse to renew the ship's certificate. Then again, the words "within the jurisdiction of any Party to the Convention..." in Article 4(2) clearly implied that the violations referred to in the Article could occur in some areas but not in others; that could not happen with violations of the Regulations on ship construction and equipment. If Article 4(2) were to cover violations concerning the design of the ship, it would amount to introducing an almost universal jurisdiction into the Convention, to which a large majority of the members of Committee I were opposed. The Greek delegation considered that it was a question of a possible if not absolute interpretation, which it had taken into account in voting in favour of Article 4.

Mr. MONTAGNE (Peru) said that although his delegation had decided in favour of Articles 4 and 10, it had certain reservations as to the interpretation of the expression "jurisdiction" given in Article 10(3). It was in fact essential that international law should take account of the majority of national legislations and interests with regard to pollution and the protection of deep-sea resources.

Mr. CAZES (Uruguay) stated that he had voted for the separate vote motion put forward by Tanzania; it should be a right open to any delegation. The Uruguayan delegation had also decided in favour of the package deal consisting of Articles 4 and 10, since that had solved one of the main problems which the Conference was called upon to solve. Like Mexico, Uruguay considered that Article 10(3) would not present any undue difficulties as to the interpretation of the international law which it intended to adopt. He also wished to associate himself with the statement made in that connexion by Brazil.

Mr. WISWALL (Liberia) pointed out that, in his opinion, the Committees were not entitled to decide on procedural matters on behalf of the plenary Conference. Despite that, the latter had voted on Articles 4 and 10 simultaneously following the compromise that had been reached in Committee I. In such an irregular case as the present, Liberia could not vote in favour of Articles 4 and 10, as it would have done if a more normal procedure had been followed.

Mr. BUZETA (Chile) said, in explanation of his vote, that his delegation had been obliged to vote against Articles 4 and 10 taken together, as a paragraph by paragraph vote had been turned down; his delegation was not authorized to enter into a discussion on the law of the sea which was not the object of the Conference.

Mr. AGUIRRE (Cuba) said that the Cuban delegation was obliged to vote against Articles 4 and 10 because, in his opinion, paragraph (3) of Article 10 prejudiced the interpretation to be put on paragraph (2) of the same Article.

Mr. SUGIHARA (Japan) wished to associate himself with the statement by Greece on Article 4 and that of Liberia on procedure.

The meeting rose at 7.50 p.m.

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AGENDA ITEM 7 - CONSIDERATION OF THE DRAFT INTERNATIONAL
CONVENTION FOR THE PREVENTION OF
POLLUTION FROM SHIPS, 1973 (continued)
(MP/CONF/WP.17 and MP/CONF/WP.17/Corr.1)

The PRESIDENT drew the Conference's attention to the text of the Preamble and Articles as agreed by the Drafting Committee (MP/CONF/WP.17 and MP/CONF/WP.17/Corr.1).

Mr. SASAMURA (Secretariat) drew attention to an error in document MP/CONF/WP.17. The Drafting Committee had agreed to retain the original numbering of the Articles until the Plenary came to consider the substance of those Articles, but, through a misunderstanding, the Secretariat had re-numbered Articles 7 to 14. Whenever those Articles were discussed, therefore, the Secretariat would make clear to the Conference which Article was in fact being referred to.

The PRESIDENT invited the Conference to consider the text of the Preamble and Articles.

Preamble

The Preamble was adopted without comment.

Article 1

Article 1 was adopted without comment.

Article 2

Miss GRANDI (Argentina) said her delegation would vote against paragraphs (4) and (5) of Article 2. Argentina considered that the definition of a ship should not include fixed or floating platforms; the fact that such platforms could cause pollution was not sufficient cause for them to be assimilated to the condition of a ship, and they should be dealt with in a separate Regulation. The third sentence of paragraph (5), which provided that for such platforms engaged in exploration and exploitation of the sea-bed, the

Administration was the Government of the coastal State concerned, constituted an infringement of the sovereign rights of the coastal State over the continental shelf; in that connexion, she referred to Article 3, paragraph (2). Finally, since the Conference on the Law of the Sea would be dealing with matters related to the continental shelf, it would be pre-judging the conclusions of that Conference to take up a firm decision on the matter in the present Convention.

Mr. SONDAAL (Netherlands) supported that view. The inclusion of fixed or floating platforms in the definition of "ship" was anomalous, since it did not correspond with the definition used in other Conventions. Such platforms, if included, should be separately defined. He pointed out that there were a number of Regulations in the Annexes which could not be applicable to fixed or floating platforms; some of those in Annex III, for example, concerned packages carried as cargo, and some of those in Annex V applied to drilling rigs where located more than twelve miles from land. Apart from technical considerations, legal complications could arise as a result of considering such platforms as ships. He therefore proposed that the Conference should take a separate vote on the phrase "and fixed or floating platforms" in paragraph (4).

Mr. DAVIS (Canada) fully supported the views of the representative of Argentina. Apart from the technical anomalies pointed out by the Netherlands representative, it would be a strange situation if responsibility were imposed on a coastal State for administration when a fixed or floating platform was brought in to operate on the continental shelf of that coastal State.

Dr. WISWALL (Liberia) said that in view of the provisions contained in the Annexes, he wished to propose the deletion of the words contained within square brackets in paragraph (3)(b)(iii).

Mr. VANCHISWAR (India) also thought that fixed or floating platforms should not be included in the definition of a ship. He suggested that the last sentence of paragraph (5), which defined "Administration" with respect to platforms, should be deleted.

Mr. SJADZALI (Indonesia) and Mr. TRAIN (USA) supported the Netherlands proposal.

Mr. HAREIDE (Norway) also supported that proposal. He further supported the Liberian proposal for the deletion of the phrase within square brackets in paragraph (3)(b)(iii).

Mr. POCH (Spain) said he could not share the views of the previous speakers on the deletion of the reference to fixed or floating platforms. The substance of the question had been discussed at length in Committee I, and the Committee had decided against deletion by no fewer than four separate votes. With regard to the procedural aspect, the Netherlands proposal constituted an amendment to the text of the Convention, and it therefore required a two-thirds majority for adoption.

He supported the Liberian proposal, but thought it preferable that not only the phrase within square brackets but the whole sub-paragraph (iii) should be deleted. There had been general opposition to it in the Committee on the grounds that it would be very difficult to verify in practice and would introduce an element of legal uncertainty into the Convention, with the consequent risk of infringement.

Mr. TURKI (Tunisia) supported the Argentinian proposal to delete the reference to fixed or floating platforms in paragraph (4).

Mr. MATOV (USSR) also supported that proposal. He believed, nevertheless, that such platforms ought to come within the scope of the Convention particularly since Committee I had shown, by four separate votes, that it was in favour of their inclusion. He pointed out that the Convention would not attempt to legislate for platforms in respect of their use for exploration of the sea-bed and exploitation of natural resources, but simply in respect of those activities in which it was the same as a normal ship, namely the disposal overboard of garbage or other harmful substances. It was in the interests of the major oil-processing companies who owned such platforms to have them excluded from the scope of the Convention, since they would thereby escape their responsibilities in regard to pollution caused by them.

He supported the Spanish proposal for the deletion of paragraph (3)(b)(iii) in its entirety.

Dr. BREUER (Federal Republic of Germany) supported the views of the representatives of Spain and the USSR. There was no reason to leave platforms out of the scope of the Convention, since the matter had already been discussed at length in Committee I; furthermore, all the Annexes contained provisions relating to platforms. He also supported the Spanish proposal regarding paragraph (3)(b)(iii).

Dr. WISWALL (Liberia) said he could not agree to that proposal. The deletion of the entire sub-paragraph, rather than simply of the phrase within square brackets, would mean that no provision was made to cover scientific research into pollution abatement and control.

Mr. SUGIHARA (Japan) felt that the existing text of paragraph (4) should be retained. He pointed out that the previous day the Plenary had adopted certain Regulations applicable to such platforms, notably Regulation 21 of Annex I.

Dr. FRANCHI (Italy) supported the views held by the representatives of Spain and the USSR.

Mr. RAFFAELLI (Brazil) suggested that a separate vote be taken on each of the Articles to ensure that they received the necessary two-thirds majority.

Mr. LIND (Sweden) pointed out that in Annex V, adopted by the Plenary the previous day, the word "disposal" had been substituted for "discharge"; he considered that the original word should be retained since it appeared not only in the present Article 2, but in a number of other Articles such as 6, 8 and 9. If the word "disposal" were to be retained in Annex V he suggested that the word "disposal" should be inserted after "escape" in paragraph (3)(a) of Article 2.

He supported the retention of the reference to fixed or floating platforms in paragraph (4), and also the deletion of paragraph (3)(b)(iii).

Mr. NHIGULA (Tanzania) proposed that paragraph (3) of Article 10 should be transferred to Article 2 (Definitions) since it was applicable not only to Article 10 but also to a number of other Articles, notably Articles 9 and 4.

Mr. POCH (Spain) proposed that the definition of "incident" in paragraph (1) of Article 8 should also be transferred to Article 2.

He had no objection to the Swedish proposal concerning paragraph (3)(a), but felt a simpler solution would be to delete the phrase "in relation to harmful substances or effluents containing such substances".

Miss GRANDI (Argentina) asked for clarification as to the technical meaning of the word "disposal". Such clarification was important both for port technicians and for shipboard personnel.

Mr. SONDAAL (Netherlands) did not agree with the Spanish representative's view that his proposal required a two-thirds majority in order to be carried.

He had not proposed any deletion or addition to paragraph (4), but had simply asked that a phrase in it should be voted on separately; his proposal did not therefore constitute an amendment.

Mr. MATOV (USSR) could not agree that the Netherlands proposal did not constitute an amendment, since the phrase in question was of vital importance to the sense of the paragraph. If it were to be omitted, serious consequences could result, since platforms would not then be obliged to respect the same standards for discharge as ships.

The PRESIDENT ruled that all the suggestions made for changes to the text of Article 2 constituted amendments, and would therefore require a two-thirds majority.

Mr. SONDAAL (Netherlands) challenged that ruling.

Mr. POCH (Spain) supported the President's ruling, which in his view was based on Rule 22(a) of the Conference's Rules of Procedure.

Mr. TRAIN (USA) also supported the President's ruling on the procedural aspect of the matter, although as far as the substance was concerned he favoured the deletion of the phrase in question.

Mr. RAFFAELLI (Brazil) considered that it was Rule 21(a) of the Conference's Rules of Procedure, providing that parts of a proposal or amendments thereto should be voted on separately, which was the rule that was applicable.

Mr. TURKI (Tunisia) proposed that, since the whole point at issue was whether or not the reference to fixed or floating platforms was to be retained in paragraph (4), an immediate vote be taken on that point.

Mr. SONDAAL (Netherlands) said he would not press his challenge of the President's ruling if the Conference agreed to the Tunisian proposal for a separate vote on the issue of fixed or floating platforms. He agreed with the Brazilian representative that it was Rule 21(a) of the Conference's Rules of Procedure that was applicable in this case.

Mr. HAREIDE (Norway) said that the Brazilian representative was correct: Rule 21(a) adequately covered the situation. As, however, the text before the Conference was the text of the Committee there was no proposer in the sense of Rule 21(a). But as there were objections to a separate vote, the President was justified in asking the Conference to vote on whether or not it wished to have such a vote.

Mr. POCH (Spain), supported by Mr. EHRMAN (Panama), said that the Brazilian and Norwegian opinions were valid, but it was a matter of interpretation. But since the President had already ruled under Rule 22, the Conference must now vote either on the text before it or on the challenge to his ruling.

Mr. RAFFAELLI (Brazil) supported the President's ruling.

The PRESIDENT said he would take votes on the various proposals. He called first for a vote on the Indian proposal, which was seconded by Mr. DAVIS (Canada), to delete from paragraph (4) the words "and fixed or floating platforms".

There were 17 votes in favour, 32 against, with 9 abstentions. Having failed to obtain the required two thirds majority, the proposal was rejected.

The PRESIDENT said he would next call for a vote on the Spanish proposal to delete the whole of sub-paragraph (3)(b)(iii) from Article 2.

Mr. SAVELIEV (Executive Secretary) reminded the Conference that if that sub-paragraph were deleted it would be necessary to revise all the annexes in the places where they referred to it.

Mr. POCH (Spain) said that he did not think there need be many consequential changes.

Mr. BREUER (Federal Republic of Germany) seconded the Spanish proposal.

The Spanish proposal to delete sub-paragraph (3)(b)(iii) received 27 votes in favour, 19 against with 11 abstentions. Having failed to obtain the required two-thirds majority, the proposal was rejected.

The PRESIDENT next called for a vote on the Liberian proposal to delete the square brackets and the words contained in them from sub-paragraph (3)(b)(iii).

The Liberian proposal was adopted by 51 votes to 1, with 6 abstentions.

The PRESIDENT called for a vote on the Swedish proposal, seconded by Denmark, to add, in sub-paragraph (3)(a), the word "disposal" after the word "escape".

The Swedish proposal was adopted by 40 votes to 1, with 8 abstentions.

Mr. CABOUAT (France) said that he had abstained from the vote because he considered that another word with the same meaning as the others in the list would be difficult to translate into the French text.

Mr. POCH (Spain) said that his delegation had the same difficulty, but suggested the Spanish word "evacuación".

Mr. SASAMURA (Deputy Executive Secretary) said that he had noticed in a working paper the word "disposal" translated by the French word "évacuation". It would be advisable to have the same number of words in the list in both French and English.

The PRESIDENT invited comments on the Tanzanian proposal to transfer paragraph (3) of Article 10 to Article 2.

Mr. ARCHER (UK) seconded the Tanzanian proposal. It was not phrased like a definition, but was in the nature of one, as it referred to Articles which followed.

Mr. RAFFAELLI (Brazil) said that the Conference must either debate the substance of that paragraph or leave it in Article 10 until that Article was discussed.

The PRESIDENT said it would be possible to decide immediately where the paragraph should go and decide on its substance when Article 10 was taken up.

Mr. MONTAGNE (Peru) said he thought that would be a dangerous thing to do. Article 10(3) spoke of interpretation of the term "jurisdiction". It was not within the competence of the Conference to define "jurisdiction".

Mr. DAVIS (Canada) said it would be better to wait until Article 10 was considered and if it then appeared that paragraph (3) was a definition, it could be decided to transfer it to Article 2. His delegation was not ready to discuss it yet.

Mr. VANCHISWAR (India) and Mr. SUKATON (Indonesia) agreed with the representatives of Peru and Canada.

Mr. NHIGULA (Tanzania) said he would agree to a postponement of a decision on his proposal until Article 10 was reached.

It was so decided.

Mr. POCH (Spain) said that his proposal to transfer paragraph (1) of Article 8 to Article 2 was a matter already agreed on by the Committee and therefore no vote on it was necessary. It was an omission on the part of the Drafting Committee.

Mr. SOLOMAN (Trinidad and Tobago), Chairman of Committee I, confirmed that that was so.

Mr. SASAMURA (Deputy Executive Secretary) pointed out that the definition of the "Organization" had been omitted from Article 2.

Mr. SOLOMAN (Trinidad and Tobago), Chairman of Committee I, said that was an error. It had been decided in the Committee that the definition of "incident" should be paragraph (6) and that of the "Organization" should be paragraph (7) of Article 2.

Mr. TRAIN (USA) moved the adoption of Article 2 as a whole, as amended.

Mr. SONDAAL (Netherlands) moved that Article 2 should be voted on paragraph by paragraph and that the words "and fixed or floating platforms" should be voted on separately.

Mr. POCH (Spain), supported by the representatives of Canada, Greece, Italy, Tanzania, Tunisia and the USSR, said that the Conference had already voted on separate paragraphs of the Article. Article 2 as a whole should now be voted on as proposed by the United States representative.

Mr. RAFFAELLI (Brazil), supported by Miss GRANDI (Argentina) and Mr. BUZETA (Chile), said that only amendments to separate paragraphs had been voted on. It would be quite in order to vote next paragraph by paragraph, as amended, and then the Article as a whole.

Mr. BRENNAN (Australia) said that the Netherlands representative was quite entitled to request a paragraph by paragraph vote. Perhaps the Conference should vote on whether it wished to adopt the Articles paragraph by paragraph.

Mr. SONDAAL (Netherlands) said that, in view of the comments made, and in a spirit of compromise, his delegation was prepared to withdraw its request for a paragraph by paragraph vote on Article 2. But he wished to express his delegation's concern that the President had interpreted such a request to be of the nature of an amendment. He agreed with the Australian representative that it was for the Conference to decide in what way it wished to vote.

Mr. TRAIN (USA) said that he had not made his proposal to vote on Article 2 as a whole as a matter of principle, but in the case of that Article only.

Mr. YANKOV (Bulgaria) said that he supported the United States proposal, not as a principle, but as a matter of procedure in the present case. The right to request a paragraph by paragraph vote must not be denied.

Mr. CABOUAT (France) and Mr. SUGIHARA (Japan) agreed with the views expressed by the preceding speakers.

The PRESIDENT said that he would not rule in every case that a paragraph by paragraph vote was not in order. But in the present instance he ruled that Article 2, as amended, should now be voted on as a whole. He invited delegates' co-operation.

Mr. RAFFAELLI (Brazil) said that, after spending so much time and care on the work of the Committees, delegates were not prepared to be rushed into accepting unacceptable solutions.

Article 2, as a whole, as amended, was adopted by 56 votes to none, with 7 abstentions.

Article 3

Article 3 was adopted by 55 votes to 0 with 2 abstentions.

Article 4

In response to a request by the PRESIDENT, Mr. SONDAAL (Netherlands) introduced his first amendment (MP/CONF/WP.16). The amendment was procedural, legal and technical and did not affect the substance of Article 4. Its aim was to prevent double jeopardy - i.e. to ensure that if two Administrations initiated proceedings simultaneously, one of the proceedings should be dropped.

The proposal was seconded by Dr. BREUER (Federal Republic of Germany).

Mr. DE YTURRIAGA (Spain) said that he could not support the proposal because it was equivalent to declaring the primacy of the flag State in all matters of construction, design and equipment and would override domestic law.

Mr. DAVIS (Canada) found the proposal to be an unacceptable limitation on coastal State jurisdiction; it was also impracticable.

Mr. ARCHER (UK) recalled that, after very lengthy discussion, Committee I had finally decided to treat Articles 4 and 10 (formerly 9) as a package and had voted on them together. Should not the same procedure therefore be followed in the present case?

Mr. KOSMATOS (Greece) considered that the package deal concerning Articles 4 and 10 related only to the question of jurisdiction in territorial seas; other parts of the two Articles could be taken separately.

At the suggestion of the PRESIDENT, the Plenary Committee decided to vote on whether Articles 4 and 10 should be considered together.

It was decided, by 38 votes in favour, 6 against and 6 abstentions, that Articles 4 and 10 should be discussed together.

Mr. SONDAAL (Netherlands) said that if two proceedings concerning design or construction or equipment were started simultaneously by two States, one of which was the flag State, the latter, as the State which had to issue certificates, should bear the primary responsibility. The amendment should be acceptable, since it was outside the package deal agreed on previously in Committee I.

Mr. DAVIS (Canada) was worried by considerations of timing. For instance, if proceedings had been initiated and were nearing completion, would the Administration of the flag State have the right to declare the proceedings null and void and initiate fresh proceedings? What would happen if a ship did not call at its home port for several years and was the subject of proceedings by a Contracting Party and was then suddenly faced by intervention by the flag State?

Mr. KATEKA (Tanzania) said that he was against considering Articles 4 and 10 together. He would like paragraph (3) of Article 10 to be deleted, since the definition in it of "jurisdiction" seemed to pre-empt the next Conference on the Law of the Sea by failing to give particulars about which international law should apply. The paragraph was therefore redundant.

Mr. SJADZALI (Indonesia) agreed with the last speaker, pointing out that an increasing number of countries were finding that the traditional concepts of international law were becoming more and more out of line with modern technological development.

Mr. WISWALL (Liberia) felt sure that the sponsors of the package deal concept had not intended to make it impossible for the Plenary to consider elements of the package individually. The Netherlands proposal followed on logically from previous decisions in international law.

Mr. VANCHISWAR (India) agreed with the Netherlands proposal on the grounds that it was very practical and avoided double penalties; the flag State would be vitally concerned, as the authority issuing certificates.

Mr. SUGIHARA (Japan) agreed with the Netherlands proposal to some extent but pointed out that, in many countries, criminal proceedings once started were difficult to stop. Would the Netherlands therefore consider deleting the words "or continued" from line 6 of its proposal?

Mr. SONDAAL (Netherlands) agreed to that deletion.

Mr. CACHO-SOUSA (Peru) said that Article 10(3) should be deleted, since it directly contradicted Article 10(2).

Dr. BREUER (Federal Republic of Germany) said that the Netherlands proposal, as amended, did not break up the package deal covering Articles 4 and 10; it was the general practice in international law that purely technical matters affecting a ship were the responsibility of the flag State.

Referring to the proposal by Tanzania to delete Article 10(3), it would be inadvisable to disrupt a fundamental part of an agreement which had been reached only after long and difficult discussion. Article 10(3) was not an endeavour to pre-empt the next Conference of the Law of the Sea; it was not a rule but just an indication of how to construe a law.

He suggested deleting the words "or interpretation" from the penultimate line on Article 10(3).

Mr. WISWALL (Liberia) feared that if the words "or continued" were deleted from the Netherlands proposal as had been suggested, the protection against double jeopardy might disappear. He suggested inserting the words "prior to the institution of such proceedings" after the word "intentions" on line 3 of the Netherlands proposal, if the Netherlands wanted to delete "or continued".

Mr. KOSMATOS (Greece) said that if "or continued" was deleted, the phrase "With regard...construction and equipment" on lines 3 to 5 of the Netherlands proposal could be deleted too. Also, the words "not later than six months after the institution of proceedings" should be added at the end of the second sentence of the Netherlands proposal.

Mr. SONDAAL (Netherlands) said that his delegation had drafted the amendment with the emphasis on design, construction and equipment. The Greek proposal could stand on its own, but the Netherlands delegation did not want to make it a joint one.

Mr. ORTIZ (Ecuador) fully supported the Tanzanian proposal to delete Article 10(3); if that proposal was rejected, Ecuador wanted a paragraph by paragraph vote on Article 10.

Mr. ARCHER (UK) said that, while he did not want to block all amendments to Articles 3 and 10, he would be unhappy to see the package deal which had taken so long to achieve in Committee I disrupted. The Netherlands proposal would probably not cause a major disturbance, but the Spanish and Canadian proposals definitely would, as would the proposal by the Federal Republic of Germany and the proposal by Tanzania and others to delete Article 10(3).

It should be remembered that in the discussion on Article 4 in Committee I, what might be called the traditional maritime countries would have preferred the term "territorial seas" to "jurisdiction", and their agreement to use "jurisdiction" was a concession which was an essential part of the package deal. The package had been voted by 47 votes in favour and only 4 against - an overwhelming majority which the Plenary should therefore be reluctant to alter.

One way of getting round the difficulty would be to suspend the normal Rules of Procedure as permitted under Rule 33 of the Rules of Procedure so that the normal order in which proposals were voted on could be suspended and a vote could first be taken on Articles 4 and 10 as a package after which a vote could if still necessary, be taken on the various proposed amendments.

Mr. LOPEZ GARCIA (Cuba) supported the Tanzanian proposal.

Mr. MEGRET (France) said that the French delegation could support the Netherlands' amendment (MP/CONF/WP.16), which was in the spirit of paragraph 2 of Article 4, since the measures contained in paragraph 5 as proposed by the Netherlands were intended to facilitate the implementation of the conditions laid down. It would be better, however, to delete the words "or continued" in the third last line and also, to avoid any dilatory action on the part of the Administration of the ship, to lay down a time limit of two months, for example, in which it would be required to make it known that it was instituting proceedings.

With regard to paragraph 3 of Article 10 it should be left where it was, as it was essentially bound to the other provisions in Article 10, specially those in paragraph 2. It was not, therefore, a matter of defining the term "jurisdiction" but of making paragraph 2 more precise. Consequently it would be a great mistake to delete paragraph 2 or to transpose it.

Mr. BRENNAN (Australia) stated that the Australian delegation would vote for Articles 4 and 10 as submitted to the Conference, so as to respect the compromise made in Committee I. He asked those delegations that had requested the deletion of paragraph 3 of Article 10 not to press the point: that paragraph would in short change nothing, and as many delegations were in favour of that provision it should be retained as it could not have any adverse effect. On the other hand, if it were deleted the balance of the entire Convention might be appreciably upset.

As they had no definite opinion on the slight amendment put forward by the Federal Republic of Germany (MP/CONF/WP.28) the Australian delegation would abstain on that point.

It could not support the Netherlands' amendment (MP/CONF/WP.16) for the reasons already explained by the representative of Canada. In any case acceptance would be contrary to the spirit of the compromise reached by Committee I on Articles 4 and 10.

Mr. KATEKA (Tanzania) was categorically opposed to the Conference following the procedure proposed by the United Kingdom: it would be a dangerous precedent to suspend application of the Rules of Procedure under

those conditions, and in any case suspension of the Rules required the greatest prudence.

If, as the representative of Australia had said, Article 10(3) contributed nothing, why should it be kept? That provision in fact was intended to prevent the progress of international law which at present, as far as territorial waters were concerned, was by no means satisfactory. Member countries of the Third World would be ill-advised to concur in retaining that provision.

Mr. YANKOV (Bulgaria) stated that fundamentally the difficulty lay in the question of the "jurisdiction" referred to in Articles 4(2) and 10(3). The Bulgarian delegation would have preferred the Conference to retain a far more precise formula in paragraph 2 of Article 4, in the circumstances "territorial sea" whatever its extent, which was quite another question. The Bulgarian delegation, however, objected to any hasty classification into conservatives and progressives according to the formula supported. In a spirit of compromise his delegation supported the use of the term "jurisdiction" but opposed any manifest attempt to deprive that term of any legal value. It was absolutely essential to say in Article 10(3) that the term should be construed "in the light of international law ...", because the term "jurisdiction" thus assumed some meaning in law. The formula was doubtless a very general one but at least it provided a basis for negotiation. Whether a case was referred to customary law or the law of treaties because such law was in force when a question of the interpretation of the Convention arose, it could in no way prejudice the forthcoming United Nations Conference on the Law of the Sea. For that reason, although it was not absolutely satisfied with the wording of Article 4(2) the Bulgarian delegation was in favour of retaining Article 10(3).

Mr. POCH (Spain) said that Japan's amendment to the Netherlands' amendment was a slight improvement on the latter, which was unacceptable in that it forced countries to modify their penal law. The Netherlands' amendment, however, was still unacceptable for other reasons: Article 4(2) gave a choice between two possibilities which were the only ones that could be offered; and the Netherlands' amendment would cut out that choice because only the

Administration of the ship could finally institute proceedings and because in practice the State which was the victim of a violation committed within its jurisdiction could not.

Mr. DAVIS (Canada) was of the same opinion: the Netherlands' amendment fundamentally affected the requirements of Article 4(2) since any State wishing to take legal action against a ship which had violated the Convention in its territorial waters would have to wait an unspecified time until the Administration of the ship instituted proceedings.

The Canadian delegation therefore supported the procedure proposed by the United Kingdom, which would enable the Conference first of all to decide on Articles 4 and 10 together, the balance of which should not be destroyed.

Mr. MATOV (USSR) unreservedly supported the comments made by the representative of Bulgaria. The Conference had met for the purposes of pollution control, and not to solve the question of "jurisdiction", which would be dealt with by the department of the United Nations which was preparing the Conference on the Law of the Sea. It was surprising that some delegations wished to delete paragraph 3 of Article 10 on the pretext that it prejudiced the outcome of the Conference on the Law of the Sea, because that was absolutely not the case. Paragraph 3 of Article 10 should be kept immediately after paragraph 2 as the representative of France had requested.

The USSR also supported the procedure proposed by the United Kingdom: the Conference should be able to vote in the first instance on Articles 4 and 10 together, in the form submitted to it following the compromise supported almost unanimously by Committee I, namely with the participation of many developing countries.

Mr. VALLARTA (Mexico) recalled that it was on the initiative of the Mexican delegation that the term "jurisdiction" in the provisions on juridical matters had replaced the formula "territorial sea", on which agreement was impossible. In addition, however, the term "jurisdiction" should not be defined but made explicit and, for that purpose, international law had to be taken into account. Obviously should a question of interpretation arise, all sources of international law, both at the national and international level

would be called upon, not only the Geneva Conventions. The representative of Mexico did not therefore see why the representative of Tanzania should fear that paragraph 3 of Article 10 might endanger the interests of countries of the Third World, which took an active part in the development of international law.

The proposed amendments could in no way facilitate either acceptance or implementation of the Convention. Nothing, therefore, that might affect the package should be done.

Mr. ROH (Republic of Korea) said that in view of the turn taken by the discussion, an "informative" vote should be taken to determine first of all, in accordance with the procedure proposed by the United Kingdom, whether the compromise reached in Committee I was still favoured by the majority.

Mr. RENTNER (German Democratic Republic) supported Bulgaria's comments: Article 10(3) should not be touched.

Mr. TRAIN (USA) said that in view of the Netherlands' amendment he felt the same misgivings as the representatives of Spain and Canada. It was doubtless justifiable for the Administration of the ship responsible for the violation to want to take proceedings itself, but how could the same and equally justifiable wish of the coastal State meet with a refusal when the violation had occurred in its territorial waters? It had been agreed from the beginning of the Conference that any provisions constituting an effective implementation mechanism should be set forth in the Convention: Article 4 was an essential part of that mechanism.

Moreover, the Netherlands' amendment would substantially alter the notion that Committee I had finally retained of the rules of application which Contracting States were called upon to include in their legislation.

With regard to Tanzania's amendment, the representative of the United States recalled that the solution finally adopted by Committee I was not that recommended by the group of Maritime States, which quite simply wanted to use the expression "international law". Those States, however, in their desire for compromise supported the package deal. The United States delegation hoped that the representative of Tanzania would not press the point further.

With regard to procedure, the United States delegation considered that great prudence should be exercised, since a proposal to suspend the application of the Rules of Procedure gave any delegation the impression of yielding to a discreditable motive.

Dr. BREUER (Federal Republic of Germany) unreservedly supported the delegations which had moved that a vote be taken immediately on Articles 4 and 10 together, followed by a consideration of the proposal to amend Article 10(3) (MP/CONF/WP.28) the sole object of which was to make the wording of that paragraph clearer.

Mr. SONDAAL (Netherlands) was also in favour of the Plenary Conference putting an end to the theoretical discussions and taking a vote without further delay.

Mr. TIMAGENIS (Greece) withdrew his amendment to the amendment proposed by the Netherlands in order to speed the work of the Conference.

The PRESIDENT invited the representative of the United Kingdom to explain whether he in fact meant that Article 33 of the Rules of Procedure should be amended so as to allow a simultaneous vote on Articles 4 and 10 and then on the proposed amendments to those Articles.

Mr. ARCHER (United Kingdom) said that that indeed was what he had originally meant. However, after carefully considering the views expressed by the representative of the United States he queried whether it would not be preferable to take an "informative" vote as suggested by the representative of Korea, which might perhaps be followed according to the results obtained, by a vote on the two Articles in question. He would be prepared to modify his original proposal in that way.

Mr. DAVIS (Canada) shared the view of the representative of the United States on the need to act with the greatest prudence before departing from the Rules of Procedure, which contained no reference at all to informative voting. In his opinion it would be better to keep to the original proposal of the United Kingdom.

The PRESIDENT pointed out that a replacement formula would be required to amend the Rules of Procedure. He therefore proposed to proceed to a vote on the proposal to vote simultaneously on Articles 4 and 10 as a package deal before voting on the amendments and on the Articles in their amended form.

Mr. POCH (Spain) recalled that the representative of the United Kingdom did not intend to press his original proposal. As he, too, was convinced that extreme caution was required in any matter altering the Rules of Procedure, he moved that an immediate vote be taken.

Mr. SUGIHARA (Japan) supported Spain's motion.

Mr. KATEKA (Tanzania) did not see the need to study the amendments after voting on the Articles themselves. He had never encountered such a procedure before.

Mr. BRENNAN (Australia) shared the view expressed by the representatives of the United States and Spain. If the vote on Articles 4 and 10 taken together obtained a two-thirds majority, in accordance with the Rules of Procedure, the procedure to be followed for subsequent discussion would be perfectly clear.

Mr. ARCHER (United Kingdom) concurred in the point of view of the representatives of Spain, Japan and Australia in order to accelerate the discussions and to avoid having to amend the Rules of Procedure, on the understanding however that the Conference, after voting on a possible package deal, would decide on the amendments to Articles 4 and 10 and then finally take a joint vote on Articles 4 and 10 with any amendments that might have been made.

The PRESIDENT stressed that Spain's motion, strictly speaking, constituted a motion to close the debate under Article 13(a)(iv) of the Rules of Procedure. He therefore put the motion to the vote.

The motion to close the debate was carried.

The PRESIDENT proposed, in accordance with the normal procedure, to proceed to a vote on the proposed amendment of the Netherlands to add a fifth paragraph to Article 4 (MP/CONF/WP.16).

Mr. SONDAAL (Netherlands) recalled that he had already accepted an amendment submitted by Liberia to the amendment, to add, at the end of the first sentence of the new paragraph 5, as it appeared in document MP/CONF/WP.16 the phrase "... prior to the institution of such proceedings".

The Netherlands' amendment (MP/CONF/WP.16) was rejected by 31 votes to 10 with 14 abstentions.

The PRESIDENT put to the vote the amendment proposed by Tanzania and supported by Indonesia to delete Article 10(3).

The amendment was rejected by 39 votes to 9, with 10 abstentions.

The PRESIDENT proposed that the amendment to Article 10(3) submitted by the Federal Republic of Germany should be considered (MP/CONF/WP.28).

Owing to the lack of support by another delegation that amendment was not put to the vote.

Mr. KATEKA (Tanzania) returned to Ecuador's proposal to vote paragraph by paragraph on Article 10 as had been done with Article 2.

Mr. ARCHER (United Kingdom) pointed out that by supporting those delegations that wanted to avoid altering the Rules of Procedure, the British delegation had made it quite clear that in that case the vote would cover Articles 4 and 10 simultaneously, a procedure which appeared to exclude Tanzania's proposal.

Mr. LUKASIK (Poland) shared the United Kingdom's point of view. Further, Tanzania's proposal was unacceptable as the Plenary Conference had already decided against deleting Article 10(3).

Mr. KATEKA (Tanzania) insisted that the Conference should vote paragraph by paragraph on Article 10. In his opinion any delegation was entitled to request a paragraph by paragraph vote even though, as in the present case, an amendment submitted by the same delegation had been rejected.

Mr. POCH (Spain) considered that the proposal put forward by the representative of Tanzania was perfectly acceptable under the terms of Article 21(a) of the Rules of Procedure. He therefore moved that that proposal be put to the vote.

The motion of Tanzania was rejected by 33 votes to 11.

The PRESIDENT invited the representatives to decide on Articles 4 and 10 simultaneously, in accordance with the compromise which had already been negotiated on the matter.

Articles 4 and 10 were adopted by 49 votes to 3, with 5 abstentions.

Mr. ORTIZ (Ecuador) stated that his delegation had been obliged to vote against Articles 4 and 10 as they had never taken part in the negotiations which had resulted in that compromise. The delegation of Ecuador considered, however, that Article 10(3) constituted an infringement of the right of States to determine the extent of their jurisdiction themselves, and prejudiced any solution that might be adopted at the 1974 Law of the Sea Conference.

Mr. KATEKA (Tanzania) stated also that it was only because he had been unable to accept the definition of "jurisdiction" in Article 10(3) that he had been forced to vote against Articles 4 and 10, which he could otherwise have accepted. He said that any attempt to check the development of international law was doomed to failure and he regretted that the Conference had considered it proper to include a nebulous expression in its attempt to provide an interpretation.

Mr. MATOV (USSR) would not explain his vote in view of the lateness of the hour, but he reserved the right to return to the matter after the vote on the Convention as a whole.

Mr. RAFFAELLI (Brazil) stated that with regard to Article 10(3) the Brazilian Government considered that an international convention, even if applied by several States, did not constitute international law in relation to States not Parties to the Convention and did not create rights or obligations to third parties without their consent.

Mr. TIMAGENIS (Greece) stated that although he had voted for Articles 4 and 10, the words "any violation" at the beginning of Article 4(2) were not necessarily part of the compromise solution that had been adopted. During the discussion in Committee I, the Greek delegation had proposed replacing those words by the following: "any discharge in contradiction of the requirements ...".