Ⅰ. 이 책자는 国土統一院의 政策調査研究計劃에 依拠한 自体研究 報告書임.

Ⅱ. 收録된 内容은 共産圈 研究를 위한 参考資料로서 提供되는 것임.

中·蘇의 海洋法 関聯資料集

—Communist Chinese and Soviet Attitudes towards the Law of the Sea—

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序　　言

우리 나라는 西海와 東支那海를 사이에 두고 中共과 隣接해 있으며, 東海를 두고 蘇聯과 接境하고 있다. 따라서 이러한 地政学的 位置는 韓半島 周辺 水域의 法的 地位 問題 등, 韓·中, 韓·蘇 関係의 여러 分野에 있어서 重要한 問題들을 惹起하고 있다.

中共의 경우에 있어서, 그들이 현재 추진하고 있는 四個 現代化計劃을 성공적으로 수행하기 위해서는 막대한 外資導入이 필요한데 이에 대한 代価로서의 石油 輸出이 不可避하며, 이 石油가 바로 西海의 海底油田에서 生産될 것이라는 데에 韓·中間의 問題가 생길 素地가 있는 것이다. 앞에서도 언급하였듯이 四個現代化 計劃의 추진은 막대한 外資와 技術導入을 필요로 하고 있는데, 近代化의 総費用은 대개 6000억달러에 達하며, 이 중 3,500억달러 이상이 資本投資라고 추정되고 있다.[1] 1977年初의 中共의 外貨保有高가 25억달러가 채 못되고 金保有高가 20억달러 정도이며 78年의 輸出이 100억달러 정도 밖에 안된다는 사실을 고려하면 現代化의 総費用 6,000억달러가 얼마나 방대한 資金인가를 알 수 있을 것이다.

中共은 이러한 방대한 資本需要를 주로 石油, 石炭 그리고 軽工業製品의 輸出에 의해 충당하려고 하고 있다. 특히 石油가 外貨獲得源으로서 차지하는 비중은 거의 압도적이며 따라서 10個年計劃(1976-1985)에서 새로운 油田의 개발, 특히 近海油田의 개발에 큰 비중을 두고 있다.

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1)「世界経済評論」, 1979.1.P.76

現在 中共의 石油는 대부분 內陸의 油田에서 나오고 있으며 특히 東北地方의 大慶油田은 全生産量의 半 以上을 생산하고 있다고 한다. 그러나 문제는 大慶油田이 이제 老朽段階에 접어 들어 生産量의 증가를 기대하기 힘들며, 그 밖의 內陸地方에서 石油埋藏이 가장 많은 곳으로 알려진 西北地方과 티벳, 蒙古, 新疆地方은 지역적으로 消費地와 너무 떨어져 있어 輸送費가 많이 들 뿐 아니라 蘇聯에 가까운 接境地方이라는 戰略的 見地에서도 不利하다는 점이다.[2)]

中共의 近海는 西海(渤海湾 포함), 東支那海, 南支那海의 셋으로 구분되는데 이 세 地域이 모두 대량의 石油를 매장하고 있을 가능성이 농후하다고 하는 사실은 이미 60年代初의 地質探査에서 밝혀졌다. 또한 우리와 관계지워볼때 가장 중요한 문제인 開発技術上의 문제에 있어서 東支那港와 南支那海와는 달리 西海는 대개 水深이 200피트 이내이기 때문에 石油開発技術도 문제가 비교적 간단하다.[3)]

따라서 中共은 현재 渤海湾과 珠江下流 등 国際法上 비교적 분쟁이 적고 또 開発技術上 問題가 없는 近海에서 美·日과 共同으로, 또는 中共 単独으로 開発作業을 벌리고 있으며 一部 近海油田에서는 이미 生産段階에 들어갔다고 알려져 있다. 그러나 四個 現代化 計劃의 규모로 미루어 볼 때, 中共은 머지 않아 보다 水深이 깊고 매장량이 많은 深海로 진출할 가능성이 다분히 있으며 西海 등 中共 近海의 地質学上 構造가 내포하고 있는 国際法上의 領有権問題 등을 고려하면 이것이 韓

Selig S.Harrison, China Oil & Asia:Conflict Ahead? (New York: Columbia University,1977).PP.38-41 参照

2) 中共이 內陸의 石油보다 海底石油를 開発해야하는 問題에 対해서는

3) Ibid.

半島에 미치는 영향은 至大할 것으로 豫測할 수 있다.[4]

蘇聯의 경우에 있어, 東海가 갖는 重要性은 시베리아開発과 蘇聯領 極東 開発이라는 経済的인 側面과 太平洋艦隊의 強化라는 軍事的인 側面으로 나누어 考察해 볼 수 있다.

시베리아 開発은 蘇聯経済의 死活이 걸린 重大한 問題로서 그 重要性은 다음과 같이 요약될 수 있다.

① 蘇聯의 欧洲地域이 全 에너지 生産量의 80%를 消費하고 있는데 우랄 以東地域은 第1次 에너지 埋蔵量의 80%를 保有하고 있다. ② 蘇聯의 欧洲地域에서 生産되는 에너지는 주로 東欧諸国의 需要에 응해야 한다. ③ 蘇聯의 欧洲地域의 에너지 埋蔵量은 고갈되고 있으며, 그 開発費用은 보다 더 増加하고 있다. ④西시베리아의 尨大한 埋蔵量으로부터의 石油生産増加는 5～6年 以内에 감소될 것이고 또 다른 油田의 개발을 東시베리아나 蘇聯의 極東地域에서 수행하여야 한다. ⑤ 蘇聯은 経済開発에 있어서 西方의 技術과 장비가 必要하여 그 輸入이 不可避하여 1975年의 경우 貿易赤字는 60億달러를 초과하고 있다. 따라서 시베리라의 石油와 가스, 그외 地下資源의 輸出로써 貿易赤字를 補塡할 수 있다. ⑥ 시베리아의 資源과 電力에 의한 化学工業과 그외의 工業発展은 西方으로부터의 輸入依存을 경감시킬 수 있다는 점 등이다.[5] 이러한 시베리아開発에 있어서 또하나의 중요한 것은 Ust-Kut와 Sovietskaya Gavan을 연결하는 BAM 鉄道의 建

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4) 鄭蓮旭, "中共의 外交政策과 韓半島"「社会科学과 政策研究」第1巻, 第2号(1979.9), p.55

5) A.B.Smith;"Soviet Dependence on Siberian Resource Develop-ment", Soviet Economy in a New Perspective:A Compendium of Papers Submitted to the Joint Committee Congress of the United States(Dec.14,1976),p.482; 金容九,"蘇聯의 東南亜政策"「社会科学과 政策研究」"第1巻, 第2巻(1969.9),p.65에서 再引用

設인게, 그 完工目標年度는 1983年으로서 2年間의 試驗運行을 거친 후에 商業的인 輸送은 1985年부터 始作될 것이라고 한다. 이 BAM은 現存의 시베리아 橫斷鉄道의 200 Km以北에 위치하고 있는 것으로 軍輸送能力을 현저히 增強시킨다는 軍事的인 側面 이외에, 시베리아 地域에서의 東西間 物資輸送 및 BAM 鉄道의 沿道에의 TPK(Territorial Production Complexes) 建設等 経済開発과 密接히 関係되어 있다. 이와 같은 BAM이 完工될 경우 蘇聯은 시베리아의 資源과 에너지 多消費生産品을 太平洋諸国에 輸出하게 될 것이며, 이와 더불어 시베리아의 工業製品이 蘇聯領 極東을 거쳐 世界市場에 진출하게 될 것이다. 또한 이로 인해 시베리아와 極東의 生産的 連結이 強化될 것이다.

한편 시베리아 開発이라는 経済的인 側面과 함께, 우리의 관심을 끄는 것은 太平洋艦隊의 戰力 增強 等, 東北亜에 있어서의 軍事力增強이다. 蘇聯 海軍은 현재 발틱艦隊 黒海艦隊 北海艦隊 카스피안 小艦隊와 더불어 太平洋艦隊로 구성되어 있는데 太平洋艦隊는 발틱艦隊에 비견할 位置로 그 重要性이 높을 뿐 아니라, 1960年代 末부터 계속 增強되어 65年의 海軍力을 거의 3倍 增強시켰다고 전해지고 있다. 더구나 航空母艦 민스크号의 配置 등으로 太平洋艦隊의 戰力이 大幅 增強되어 가고 있는 바, 이것이 東北亜 勢力均衡에 미치는 영향은 至大하다 할 수 있다.

이러한 蘇聯의 太平洋艦隊의 증강과 더불어 注目되는 것이 東海의 法的 地位 問題이다. 蘇聯은 1950年代 初부터, ① 沿岸国의 数가 제한되어 있고 ② 国際航路가 存在하지 않으며 ③ 그 入口가 比較的 地理的으로 狭少하면서 ④ 蘇聯의 国家安保에 중대한 海域으로서 발틱, 黒海, 北海의 一定 地域 및 東海를 소위 「封鎖水域」이라고 주장하

고 있다. 그 法的 地位에 대해서는 商船인 경우, 公海와 별다름이 없겠으나 非商船인 경우에는 沿岸国들의 事前承認을 얻어야 그 出入이 가능하다는 것으로서, 이는 東海의 排他的인 支配를 目的으로 하고 있는 見解이며 이 問題는 장차 韓·蘇間의 争点으로 抬頭될 것이다.

本 資料集은 이러한 韓半島 周辺 水域을 위요한 国際法的인 問題点등을 研究하기 위한 資料로 作成하는 것으로써, UN海洋法会議(1次～3次 8期会議)에서의 中共과 蘇聯代表들의 発言内容을 抜萃·編輯한 것이다.

本 資料集을 엮는데는 주로 UN海洋法会議의 公式記録文書인 UN official Record를 参照하였다. 우리나라의 将来 問題와 관련, 中共 및 蘇聯의 海洋法을 研究하시는 분들에게 다소나마 도움이 되길 빈다.

1979. 12.

編者 識

解　　題

Ⅰ. UN海洋法会議의　経過

中世後期以後 海洋이 一国의 利用対象이었던 것이 国際的인 利害의 対象으로 性格을 달리하게 됨에 따라, 海洋이 갖는 国際的, 法的 地位를 確定하고, 여기에서 発生하는 諸 紛争을 解決하기 為한 法의 原則 및 그 具体的 規制内容을 必要로 하게 되었다. 이에 関한 最初의 努力이 Hugo Grotius의 「海洋自由論」이었다. 여기에서 그로티우스는 「海洋은 自然이 모든 人類의 共同使用에 提供한 것이므로 永久히 人類가 共有하여야 할 것」이라고 말함으로써 海洋이 一国 또는 一私人의 所有가 될 수 있다는 観念을 배제하고 모두가 共同으로 自由롭게 利用·収益할 수 있음을 論述하였다. 反面 英国의 셀덴(John Selden)은 「閉鎖海論」(1635)에서 英国이 그 近海에 領有権을 가지고 있음을 例示하면서 海洋은 古来로 私的 領有가 認定되었음을 主張하였다. 이러한 相反되는 두 見解는 오늘날 一国의 排他的 管轄権下에 놓이는 領海와 「公海自由의 原則」이 成立되고 있는 公海라는 두 法制度의 基礎가 되었다.

이러한 海洋에 関한 가장 基本的인 法的 原則이 主張된 以後 海洋의 法的 諸問題를 規制할 구체적인 法을 定立하려는 試図는 여러차례 있어 왔으나, 国際的인 立法機関이나 그 執行機関이 存在하지 않는다는 점에서 그 試図는 実効性을 갖지 못하고 学術的인 次元에 머물러 왔던 것이다.

1. 第一, 二次 UN海洋法會議

不文의 慣習法的인 形態로 存在하던 成文의 国際条約形態로 編成하려는 努力이 「政府次元」의 国際的인 海洋法典制定의 方向을 띄게 된 것은 国際聯盟의 法典編纂事業에서 비롯된다. 여기에서는 領海制度, 海洋資源의 開発등의 討議主題를 採択하였는 데, 1930年 国際法法典編纂会議

에서는 준비관계로 海洋資源開発問題를 다룰 수 없었을 뿐 아니라, 領海의 幅에 관하여도 意見의 一致를 보지 못하여 具体的인 成果를 이루지 못하였던 것이다

二次大戦以後 国際聯合은 第2次総会(1949年)의 決議에 따라 国際法의 漸進的 発展과 그 法典化를 任務로 하는 国際法委員会를 構成하였다 国際法委員会는 1949年 発足段階에서 法典化하기 為한 여러 主題를 採択하였는데, 公海制度와 領海制度가 여기에 包含되어 있었다 이 公海 및 領海制度가 優先的인 審議의 対象이 되어 準備·討議·草案起草, UN 加盟国의 意見聴取의 過程을 反復한 뒤, 1956년에는 이 両制度를 合한 海洋法 草案73個案의 原案(Text)이 採択되어 領海, 公海, 漁業, 大陸棚 制度를 包含한 広範囲한 「正統的」 海洋法 草案이 마련되었다 1956~57年 UN第11次 総会에서는 各国의 全権代表로 構成되는 国際会議가 이案을 基礎로 하여 適当한 国際条約 또는 其他 文書를 作成하도록 決定하였다

이에 依拠하여 1958年2月28日 제네바에서 開催된 第一次 UN海洋法会議는 同年4月27日까지 約 2個月間 86個国(当時 中国의 代表는 中華民国(自由中国)의 代表임)代表의 参席下에 審議를 거듭하여 国際法委員会의 海洋法草案을 基礎로 하여 領海協約(領海 및 接続水域에 관한 協約), 公海協約(公海에 관한 協約), 漁業協約(漁業 및 公海生物資源의 保存에 관한 協約), 大陸棚協約(大陸棚에 관한 協約)의 4個協約을 採択하는 데 成功하였다 그러나 가장 基本的인 領海의 幅, 漁業水域등의 問題에 관하여는 解決을 보지 못하였다 同年 UN第13次 総会는 領海의 幅, 漁業水域의 範囲등을 審議하기 為한 第2次UN海洋法会議의 開催를 決定하였다 이에 따라 1960年 3月17日부터 4月26日까지 約1

個月間에 걸쳐 88個国代表(이때에도 中国의 代表는 自由中国의 代表임)가 모인 가운데 開催되었으나 아무런 具体的인 結論이 없이 閉幕되었다.

第一, 二次 海洋法会議의 結果가 갖는 이러한 弱点에도 불구하고, 그것은 「国際法으로 確立된 諸原則을 一般的으로 宣言한 것」이라는 点에서 海洋法 発展에 하나의 転機를 가져온 것이었다. 이리하여 1958年부터 約10年間은 海洋法에 있어서는 暫時의 安定期였다고 볼수 있을 것이다.

2. 第三次 UN海洋法會議

急速한 科学의 発達, 특히 海洋技術의 発展으로 因한 海底探査 및 海洋開発의 拡大에 따라서 종래의 大陸棚範囲에 있어 一応의 기준이었던 「開発可能性」의 概念의 修正이 不可避하게 되고, 大陸棚以遠에 대한 関心이 増大해감에 따라 종래에는 크게 関心을 끌지 못하던 深海底의 開発問題가 抬頭하게 되었다.[1)]

特히 이에 관하여 劃期的인 기여를 한 것은 1967年11月1日 UN第22次総会 第1委員会에서 行한 Malta의 UN大使 Pardo의 演説이었다. 그는 「深海海底를 全人類의 共同財産으로 두어, 이것을 国際管理하자」는 것이었다.[2)] 이 提案은 美国을 비롯한 先進海洋国에는 不安을 안겨준 것이었으나, 開発途上国들로부터 큰 呼応을 불러일으켰다. 이리하여 同年 「UN総会의 決議2340」으로 「UN海底平和利用委員会」가 設立되었

1) 이에 관한 詳細한 研究는 李漢基, "深海底의 開発에 관한 国際法的 研究", 「大韓国際法学会論叢」 第17巻第2号 所収 参照.
2) A/C. 1/pv. 1515, pp.2-68, A/C 1/pv, 1516, pp2-7. 参照

다. 同 委員会는 臨時(ad hoc)委員会에서 常設機構로 바뀌어(1968年) 海底制度에 대한 審議를 거쳐 大陸棚以遠의 深海海底의 国際管理라는 方向을 決定하였다.

1970年 「総会決議 2750」은 이 委員会의 構成国을 86個国으로 늘리고 審議対象을 大幅拡大하여 海洋法一般; 다시 말해서 海洋法四協約의 包括的인 再検討를 委任하고, 새로 開催하기로 예정된 第3次UN海洋法会議의 準備委員会의 性格을 갖도록 하였다. 同 委員会는 約二年間의 活動을 通하여 第3次UN海洋法会議의 審議対象目録을 作成하였다. 이 目録을 바탕으로 第三次UN海洋法会議가 開催되었다. 이 会議는 3個의 分科委員会를 設置하여 問題를 分担하여 審議하게 하였다. 第一委員会는 深海海底開発의 方式과 그 分配問題를 토의하고, 第二委員会는 経済水域, 国際海峡의 通航権問題, 大陸棚, 島嶼, 領海, 経済水域, 大陸棚에 대한 境界劃定등을 심의하고, 第三委員会는 海洋汚染防止, 科学調査등을 検討하도록 하고 있다.

Ⅱ. UN海洋法会議에서 論議된 諸問題 및 이에 関한 蘇·中共의 立場

1. 第一, 二次 UN海洋法會議

一, 二次会議에서는 中国代表는 中華民国代表이며, 三次会議에서 비로소 中共代表가 中国의 代表로 参席하게 되었다. 따라서 一, 二次会議에 나타난 中共의 見解는 事実上 없는 셈이다. 그러나 特別한 경우 예컨대 大陸棚問題와 같은 것은 韓国·日本과의 関係上 中華民国의 見解도 本資料集에 수록하였다. 一次海洋法会議에 나타난 소련의 見解를 主要論点과 関聯하여 概観하면 다음과 같다. (一次海洋法会議에서 論議된 諸問題는 前述한 四個의 協約으로 具体化되었으므로 4個 協約의 内容을 中心으로 살펴본다)

(1) 公海

公海에 관하여는 2가지의 原則이 宣言되고 있다. 그 첫째는 公海自由의 原則이며, 둘째는 公海使用自由의 原則이다.

a. 公海自由의 原則

公海自由의 原則이란 어떠한 国家도 公海의 어느 部分을 自国의 主権下에 두는 것을 有効하게 主張할 수 없다는 것을 의미한다. 어떠한 国家도 公海上에 있는 外国船舶에 대하여 主権을 行使할 수 없다. 海賊行為 또는 奴隷去来등 国際的인 措置가 要請되는 例外的인 경우를 除外하고는 軍艦이라고 하더라도 他国船舶을 公海上에서 臨検한다는 것은 許容되지 않는다. (「帰属으로부터의 自由」, 公海에 관한 条約 § 2)

b. 公海使用自由의 原則

公海가 어느 国家의 主権下에도 들어가지 않는다는 原則의 当然한 帰結로서 모든 国民은 他国의 干渉을 받지 않고 公海를 自由로이 使用할 수 있다

이것을 「公海使用의 自由」라고 한다 이 「公海使用의 自由」中 代表的인 것으로는 航行의 自由, 漁業의 自由, 海底電線과 파이프라인 敷設의 自由, 公海上空 飛行의 自由등이 있다 (公海에 관한 条約 2) 물론 이 以外의 行為들이 禁止되고 있는 것은 아니다 예컨대 公海上에서의 各種 実験行為나 海軍의 演習등은 前述한 自由를 合理的으로 考慮하여 그 適法性을 認定하여야 할 것이다 (이에 관하여는 特히 三次海洋法会議에서 問題된다)

公海使用의 自由를 侵害하는 行為는 国際法違反으로 생각되고 있다 海賊行為는 그 典型的인 例이다 公海自由의 原則의 例外로서 모든 国家의 軍艦은 海賊船을 公海上에서 拿捕하여 그 軍艦의 所属国에서 処別할 수 있는 것은 国際慣習法上 古来로 確立되어 있다 公海協約은 이에 関하여 相当히 詳細하게 規定하고 있다

海水의 汚染도 公海使用의 自由를 妨害하는 것으로서 公海協約은 모든 국가는 이를 規制하기 為한 規則을 国内法으로 制定할 것을 義務化하고 있다 油類에 依한 汚染 이외에 放射能에 依한 海水汚染이 問題된다 放射能에 依한 海水汚染에 관하여 公海協約은 이의 防止를 為한 措置를 取하여야 한다고 規定하고 있으나, 原子力利用으로 因하여 不可避하게 発生되는 放射能廃棄物의 海洋投棄와 放射能物質 또는 其他 有害作用物質을 수반하는 実験의 結果에 관하여는, 各国은 이러한 事態로 発生되는 海水 또는 그 上空의 汚染을 防止하기 為한 措置를 取함에 있어 権限있는

国際機関과 協力하여야 한다고 하는 規定으로 그치었다 公海에 관한 소련의 見解는 海洋先進国으로서의 立場과, 美国과 対決하고 있는 政治的 立場이 反影된 것이었다

即 소련은 公海自由 및 公海使用의 自由의 原則이 数世紀間 確固히 再確認되어온 国際法上의 原則이며, 이러한 原則에 대한 侵害에 대하여 容認되지 않고 있음을 主張하면서 核実験 및 軍事用 海軍의 船舶 및 航空機의 活動이 公害自由의 原則을 侵害하고 있다고 지적, 美国을 攻撃하였다

다음 소련은 모든 企業이 国家所有의 形態로 되어있는 企業形態를 고려하여 商行為目的의 政府所有 船舶에 대한 免除(Immunity)를 強力하게 主張하였다 商易活動이 이와같은 国家所有의 船舶에 依해서 이루어지기 때문에 이에 대한 制限은 소련 経済에 커다란 타격을 줄 것이기 때문이었다

公海의 汚染에 관하여는 특히 放射能汚染과 関聯하여 国際原子力機構(IAEA)가 国家에 대한 規制力이 없음을 고려하여 各国이 放射能流出物質投棄를 禁止할 規律을 정할 것을 義務化하고 이러한 規律下에서 各国이 協力하도록 하자는 案을 主張하였다

(2) 沿岸国利益의 保護 ; 接続水域과 継続追跡権

公海自由의 原則의 例外로서 沿岸国의 権力을 領海以遠에 미치게 할 수 있는 制度가 認定되고 있는 바 接続水域과 継続追跡権이 그것이다

領海協約에 의하면 沿岸国은 12海里接続水域에서 自国의 領土内 또는 領海内에 있어서의 関税上, 財政上, 移民上, 또는 衛生上의 規則違反을 방

지하는 것과 自国의 領土内 또는 領海内에서 行해진 이들 規則違反을 処罰하는 것등 두가지에 대해서는 必要한 管理行為를 取할수 있게 되어 있다.

그러나 이와같은 権限의 認定은 公海自由의 原則을 「制限」하는 취지의 것이 아니라, 沿岸国의 法益을 그 侵害로부터 保護하자는 데 있는 것이다.

소련은 이에 관하여, 領海의 範囲를 12海里内에서 決定한 国家는 12海里까지의 接続水域을 認定하여야 한다고 主張하였다(二次会議) 이 水域에서의 沿岸国의 法的地位는 漁業 및 生物資源의 保護에 있어서 領海에서와 같은 排他的 権利를 갖는다고 主張하였다.

(3) 領海의 幅에 관한 문제

領海라 함은 陸地周辺의 狭小한 帯状의 海域을 意味하는 경우와 그것을 包含한 湾이나 内海등의 内水도 모두 包含시켜 意味하는 경우가 있는 바, 領海의 幅이라고 말할 때의 領海는 前者의 경우 즉 沿岸海를 意味하며 基線(Baseline)으로 劃線된다 基線은 通常沿岸의 低潮線이지만, 内水가 있는 경우에는 그 外側이 된다 沿岸海가 깊이 들어가 突入되어 있거나 또는 至近 水域内에 一連의 島嶼가 있는 경우에는 그곳에서 適当한 諸点을 直線으로 連結해서 그것을 基線으로 하고 그 内側을 内水로 하는 直線基線의 原則도 나타나고 있다 湾이 内水로 되기 為하여서는 相当하게 깊이 陸地에 陥入하고 湾의 入口間連結線을 직경으로 하는 半円의 面積과 같거나 혹은 그 以上의 水域이어야 하며, 한편으로 湾口가 24海里以下이어야 한다.

그러나 이러한 条件을 갖추지 않았다 하더라도 歴史的 湾은 内水로

看做된다 어떠한 것이 歷史的 湾에 해당되는 가는 実際로 判断하기가 困難하나, 一般的으로 말하면 오랜 기간을 걸쳐 沿岸国이 自国의 湾이라고 主張하고 実際로 権力을 行使하고 있었으며, 다른 国家도 그것을 承認한 湾을 指称한 것이라 하겠다

内海란 周囲의 陸地가 1個国領土로서 그것의 모든 入口가 一定한 距離, 大体로 24海里보다 狭小한 경우에는 内水로 認定된다

領海의 幅에 관하여는 18世紀以後 着弾距離를 기준으로한 領海3海里의 観念이 固定化되는 듯이 보였다 그러나 이 3海里説이 유일한 것이었던 것은 아니다 스칸디나비아제국은 3海里観念以前부터 4海里를 維持해왔다고 하며, 또 蘇聯이 帝政러시아를 이어받아 12海里를 主張하였다 이러던 것이 第二次世界大戦以後 칠레, 페루, 에쿠아도르를 선두로 中南美의 大部分의 国家들은 戦後에서부터 1950年頃에 걸쳐 잇달아 海洋主権을 宣言하였고, 이중에는 沿岸에서 200海里까지 宣言한 国家가 상당수 있었다 1952년에는 前紀3個国의 代表가 산티아고에 모여 領海200海里를 共同으로 宣言하였다 이러한 状況下에서 開催된 第一次UN海洋法会議에서 領海의 幅問題는 6海里案이 10数個国의 支援을 얻는데 그치고, 12海里案도 可否同数로 否決되었으며, 12海里의 漁業管轄水域構想만이 先進海洋国의 反対에도 불구하고 数 差로 分科委員会를 通過하였으나, 이案도 本会議에서 2/3의 지지를 얻지 못하여 否決되었던 것이다

第二次UN海洋法会議에서는 領海6海里와 그 外側에 漁業管轄水域6海里를 認定하는 見解와 領海12海里案이 対決하였는 바, 12海里案도 찬성 54, 반대28로 2/3에서 불과 1표의 차이로 否決되었다

소련은 前述한 바와같이 領海12海里案을 主張하면서, 다만 沿岸国은, 歷史的, 地里的 条件, 経済的 利益, 安保利益, 国際航行의 利益을 考慮하여 3

~12 海里의 範囲内에서 領海의 幅을 決定할 수 있다고 하였다. 湾에 관하여는 入口間 連結線 24海里以内의 것은 内水로 認定하기를 主張하고 있다. 船舶의 停止 및 定船権은 좌초 또는 기상条件上 不可避한것이 아닌한 無害航行権에 包含되지 않는다고 主張하였다.

軍艦, 其他 軍事用 船舶은 申告 및 許可에 依해서만 通行이 可能하다는 立場을 取한다.

海峡 및 対岸国에 있어서의 境界劃定은 먼저 当事国間의 協定에 依하여 決定하도록 하고, 이 協定이 체결되지 못한 경우, 両側基線으로 부터 最短거리를 잇는 線의 中点을 연결한 선으로 境界를 삼는다는 国際法委員会의 草案을 支持하고 있다.

(4) 漁業 및 生物資源의 保存

公海에 있어서 漁業 및 生物資源의 保存에 관하여 소련은 公海에 있어서의 漁業의 自由를 最大限으로 保障해야 할 것을 主張하면서 国際法委員会의 草案에 나타난 「抑制의 原則」이 海洋生物資源의 保護라는 側面에서는 意味가 있으나 公海上에서의 漁業自由라는 見地에서 特히 「新入国newcomers」에 대해서 差別없이 適用되어야 할 것이라고 主張, 既存조업国들이 新入国에 대하여 不均等한 대우를 할 것에 우려를 表明하였다.

海洋生物資源保存에 관해서는 漁獲高에 依한 制限方式을 主張하였다. 領海以遠의 水域에 대한 沿岸海의 生物資源保存에 관하여, 沿岸国은 이에 대하여 特別한 利益을 가지며, 따라서 沿岸国은 이를 위하여 다음의 4가지 条件下에서 一方的 措置를 취할 수 있다고 하였다. 그것은 ① 科学的 証拠에 의해서 保存 措置를 取할 긴급한 필요가 있다고 認定되

는 때. ② 取해진 措置는 適切한 科学的 調査結果에 根拠하여야 한다. ③ 外国의 漁業人을 差別하지 않는다. ④ 取해진 措置가 実効的이어야 할것 등이다.

(5) 大陸棚

大陸棚이라함은 海岸에 隣接하고 있으나 領海外에 있는 海底地域의 海床 및 그 地下로서 上部水域의 水深이 200 m의 地域 또는 그 限度를 超越하는 경우에는 上部水域의 水深이 그 海底地域의 天然資源의 「開発의 可能」케하는 곳까지의 것이다. 여기에서 問題가 되는 것은 海底의 開発可能한 地点이 있다면 어떤 沿岸国家라도 独占的으로 大陸棚을 宣布할 수 있다는 点이다. 大陸棚 協約에는 沿岸国의 大陸棚에 대한 権利는 公海로서의 上部水域에는 影響을 미치지 않는다고 規定되어 있다. 그러나 国際行為自体가 海上에서 行해지는 以上 限定的이라고는 하지만 沿岸国의 管轄権이 事実上 不可避하게 延長되는 것이다.

大陸棚協約체결에 이르기까지 소련이 取한 立場은 沿岸国은 大陸棚을 開発·利用하는데 있어서 主権的 権利(sovereign right)를 가진다는 것이다. 단, 領海以遠의 大陸棚開発·利用에 있어서 公海自由의 原則이 준수되어야 한다는 立場을 견지하고 있다. 이에 대하여 참고로 当時 中国의 代表로 会議에 参席했던 中華民国 代表의 立場을 보면, 大陸棚에 대한 沿岸国의 法律上의 地位는 領海에서와 같은 主権的인 것은 아니며, 開発·利用의 優先的 権利(prior or preferential right)라는 立場을 取하고 있다. 그리고 이 우선적 権利의 内容은 管轄 및 統制権(right Control and jurisdiction)이라는 것이다. 소련의 立場은, 美国의 立場을 反影하고 있는 中国의 立場에 대하여, 広域의 大陸棚을 가진 開発途上의 立場을 옹호하면서도, 公海에 있어서의 軍事的 戦略的 要求는 充足시키려는 努力으로 보여진다.

2 . 第三次 UN海洋法會議

第三次 UN海洋法会議는 아직까지 完結되지 않은 상태이나, 이 会議가 갖는 特徵을 概略的으로 살펴보면 첫째, 弱小国의 国際舞臺에의 進出이 크게 두드러진다는 점이다. 77 그룹, 第3世界등을 중심으로한 国家集団이 그 国家利益을 主張하고 나섬으로써 弱小国家들의 큰 呼応을 불러일으키고 있으며, 이에 대하여 強大国들도 同調하지 않을 수 없는 国際的 状況이 展開되고 있다.

둘째로는 이와같은 추세에 乘하여 새로이 国際社会에 나타난 中共은 第一, 二次会議当時의 中国代表이던 自由中国을 逐出하고 代表로 參席하여 이들 第三世界国家들의 立場을 強力하게 支持하고 나서고 있다. 特히 中共은 美·蘇両強大勢力 그중에도 蘇聯의 海洋政策을 海洋帝国主義 또는 覇権主義라고 猛攻하면서 일관하여 소련의 立場에 反対되는 立場을 堅持하고 있다.

셋째, 이러한 国家的 状況의 変化에 따라 그간 国家間의 平等한 関係를 前提로한 西欧的 国際法 概念에 立脚하여 主張되어온 国際法의 諸原則들이 国家間의 平等하지 못한 現実을 考慮하여 修正·制限되고 있다는 点이다.

第三次 UN海洋法会議에서 懸案이 된 問題를 概観하면 다음과 같다.

(1) 領海와 経済水域

第一, 二次 海洋法会議에서 決定되지 못한 領海의 幅 및 領海以遠의 水域에 관한 沿岸国의 法的 地位의 問題가 우선 解決해야 할 懸案이 되었다.

12 海里의 領海인가 좁은 領海인가의 選択이 문제되었던 一, 二次海

洋法会議以後 国際的인 状況의 変化로 말미암아 오늘 날 12 海里 領海가 거의 原則이 되다시피한 感이 있다.

이 12 海里의 領海와 関聯하여, 종래 漁業管轄水域이라고 論議 되 던 水域이 意味를 잃게 되고, 経済水域이라는 領海以遠에 대한 沿岸国의 特別한 権利가 중요한 문제로 抬頭하게 되었다. 이것은 과거 200 海里領海를 主張하던 南美諸国의 見解와 같은 脈을 이루는 것이라고 하겠다.

領海의 範囲에 관하여 소련은 12 海里案을 一貫하여 支持하고 있으며, 中共은 各 沿岸国이 独自的으로 決定할 수 있다는 立場을 取하고 있다.

経済水域에 관하여 소련은 200 海里의 経済水域을 認定하되, 이 水域에 対한 沿岸国의 権利는 「排他的 権利」가 아니라 「우선적 権利」임을 主張하고 있는 반면, 中共은 200海里 経済水域은 沿岸国의 排他的 権利에 종속된다고 하고 있다. 이는 第三世界国家들이 主張하고 있는 「主権的」 経済水域을 支持하고 있는 것으로써, 第三世界国家間에는 200 海里경제수역을 「領海的 性格」으로 規定하고 있는 国家들과 「排他性」만을 認定하려고 하는 国家들의 見解差異가 있는 바, 이는 절충하여 解決할 수 있다는 立場을 表明하고 있다.

(2) 漁業資源의 保存과 配分

1958 年의 「漁業 및 公海의 生物資源保存協約」은 主로 이의 保存만을 指向하고 있었기 때문에, 限定된 資源을 如何히 分配할 것인가하는 配分原則은 別다른 考慮의 対象이 되지 않았다.

다시 말하자면 沿岸国은 漸次 漁業으로 부터 많은 利益을 自国에 確保시키는 데 関心을 가지게 되었던 것이다. 특히, 漁業水域(

Fishing Sea), 世襲水域(patrimonial sea), 経済水域(economic zone)의 概念的 変遷을 거치면서 이 지역에서의 生物資源의 保存이라는 태도는 生物資源의 効率的 管理라는 立場을 넘어서서 生物資源의 沿岸国에의 独点的 帰属으로 発展해나가고 있다. 이에 대한 諸国家의 태도를 大別해보면 다음과 같다.

① 魚種的 接近方法(Species approach)

美国의 発想으로 沿岸魚族, 回游魚族, 潮河性魚族으로 魚種을 区分하여 各己 다른 정도의 管轄権을 限定하는 方法이다. 即 沿岸魚族의 경우에는 沿岸国에게 統制権을 賦与하고 沿岸国의 操業能力分에 대해서만 優先的 権利를 認定하고, 그 以外에는 伝統的으로 操業을 해온 국가, 隣接地域国家 및 其他의 国家順으로 資源을 配分하며, 入漁料는 資源統制에 所要되는 費用에 局限하자는 内容이며, 国游性 魚族, 潮河性 魚族에 대해서는 沿岸国의 管轄権을 배제하고 関係国間의 協定 또는 国際機関의 管理下에 資源保存 利用을 하자는 것이다.

② 遠洋漁業的 接近方法(distant water fishing approach)

日本의 発想으로 沿岸国을 漁業先進国과 漁業後進国으로 나누어 前者의 경우 最大持続漁獲量(maximum sustain able yield) 를 決定하고, 後者의 경우에는 沿岸国의 漁業成長을 考慮한 操業能力에 限해서만 우선적 権利를 인정하기로 한것이다.

③ 経済漁業水域的 近接方法(economic fisheriss zone)

開発途上国의 発想으로 沿岸国에게 排他的 資源圏을 認定하고 이에 主権的 権利를 부여하여 所有権化하는 内容이다. 이 領域의 幅円은 대체로 200 海里로 하고 이를 넘어선 部分에 까지도 沿岸国에게 우선권을 행사할 수 있도록 하여 資源에 관한 한 独占的 権限을 부여

하자는 것이다. 他国의 入漁를 인정하는데 있어서도 보상주의를 채택하여, 資源統制費用뿐만 아니라, 水産資源自體에 대한 価格을 入漁料로 支払하도록 하자는 것이다.

이러한 立場들은 다음과 같이 조정되어가고 있다.

① 200 海里経済水域에 대한 沿岸国権利의 法的 性格은 「主権的権利」로 規定되고 있으며, 이는 探査, 開発, 保存, 管理를 위한 包括的管轄権으로 解析하고 있다.

② 生物資源의 保存措置는 沿岸国의 排他的 관할에 속하고 濫獲防止를 為하여 沿岸国의 特殊한 経済的 必要를 包含한 関聯環境的·経済的要素, 漁獲方法, 魚種間의 相互関係 및 地域的, 世界的 最小基準을 根拠로 한 最大持続漁獲量을 設定하는 것으로 決定되어가고 있다.

이러한 立場은 대체로 中共의 立場에 가까운 것이며, 소련이 先進海洋国으로서 主張하던 公海使用 自由原則에 立脚한 経済水域의 非排他国管轄権(우선的 権利)은 説得力을 잃어간다고 하겠다.

(3) 海狭

領海의 幅이 12 海里로 決定될 可能性이 높아지면서, 戦略的으로 重要한 海峡의 通行 問題가 発生하게 되었다. 실상 領海의 幅을 좁은 範囲内에 두려고하는 努力은 이와같은 戦略上의 문제가 크게 고려된 것이었다.

美·蘇는 国際通航에 使用되는 海峡에서는 通航中인 모든 船舶 및 航空機는 公海上에 있어서와 같은 通航의 自由를 갖는다는 것이다. 물론 그 底意는 軍艦이나 軍内域에 있다고 하겠다.

이에 대하여 개발도상국들은 「公海에서와 같은 自由通行」은 主権侵害라는 立場에서 海峡通過問題는 伝統的인 無害通行制度로서 충분하다고 하

면서 1958年의 領海協約에 비하여 더 상세한 규정을 두어 事故時 큰 피해가 예상되는 原子力船舶, 탱커등에 대해 事前通告내지 許可, 保険証明提示, 등의 要件을 設定하고, 軍艦에 관하여는 더욱 厳重한 規制를 加하고 있다.

海峡에 관하여 소련은 公海와 公海를 連結하는 国際海峡에 있어서는 모든 船舶에 대하여 自由通航権(Right of free transit)을 認定하기를 主張하고 단, 沿岸国의 安保 및 其他 利益의 보장을 為하여는 적절한 国際的 規制를 할 特別規定이 必要하다는 見解를 取하고 있다. 公海와 領海를 連結하는 海峡에 있어서도 当該海峡의 特性을 고려하여 無船航行権(right of innocent passage)을 認定할 것을 主張하고 있다.

中共은 国際航行의 必要性 및 合理的 国際的 基準을 고려하여 沿岸国은 自国의 安保 및 其他利益에 따라 海峡에 관하여 規制할 수 있는 権利를 갖는다고 主張하면서 他国의 非軍事団 船舶은 無害航行権을 가지나, 沿岸国의 法律과 関係諸法規에 따라야 한다고 主張하고, 他国의 軍事用 船舶에 대하여는 事前通告를 하게하거나, 事前許可를 얻도록 할 수 있다고 主張하고 있다.

(4) 海洋環境保存

바다의 生産力은 単位面積当 陸上의 数倍에 이른다. 따라서 海洋은 그 生産力을 維持하기 為해서는 汚染으로 부터 保護되지 않으면 아니 될것이다.

現在 海洋의 汚染의 原因은 陸上에서 発生한 것과 海上에서 発生한 것으로 나눌 수 있다. 陸上汚染은, 都市下水,, 工場의 廃棄物, 農地에서

使用되는 化学薬品, 其他 廃油등으로서 통상 河川에 의해서 바다로 運搬되든가, 沿岸으로 부터 直接 투기되기도 한다.

海上汚染의 주된 原因은 油類의 流出이다. 油類의 流出原因은 事故에 依한 것(예 트리카니온号의 事故)과 바라스트投棄로 因한 것과 같은 故意的·意図的인 것이있다.

陸上原因에 의한 汚染의 규제를 為한 努力은 1972年 「海洋投棄規制条約」에서 그 例를 찾을 수 있겠고, 海上原因에 依한 汚染対象으로서는 「油濁事故時의 公海上에 있어서의 介入権에 관한 国際条約」을 그例로 들 수 있겠다.

海洋法会議에서는 汚染을 船舶起因汚染과 陸上起因汚染으로 区分하여 船舶起因汚染에 있어서는 沿岸国側의 主張을 받아들여, 経済水域内에서의 違反에 대하여서는 司法措置를 包含한 団束権을 沿岸国側에 맡기고 있으나, 経済水域外에서의 汚染防止基準의 設定만은 先進海運国의 主張(旗国主義)을 받아들이기로 하고 있다. 陸上起因汚染에 관해서는 国家는 이것을 防止하기 為해서 国内法을 国際基準을 考慮하여 設定토록 하고 있다.

소련은 海洋環境汚染에 관하여 연안국에게 200海里内에서의 資源保護를 為한 諸権利를 부여하는 것이 妥当하다고 主張하면서 ① 航海의 障碍가 되지 않는限 国際的 汚染防止措置를 취해야할 것. ② 船舶에 의한 汚染防止에 관한 国際的인 協定에 立脚하여 해결해야 할 것.
특히 貨物船은 寄港国에서 검색을 받을 수 있게하고, 12海里 領海内에서 沿岸国은 他国船舶에 대하여 自国法에 따른 적절한 法的 行政的 措置를 取할 수 있다. 이때 船長 및 乗務員에게는 無差別 罰金刑을 과할 수 있고, 自由刑은 旗国에 依해서만 賦課되어야 한다. 旗国은 沿岸国에 대하여 그 取한 措置를 通報해야 한다고 주장하고 있다.

中共은 環境汚染에 대한 国内的 管轄権을 反対하고 国際的 基準, 国際的 措置를 主張하는 強大国의 見解에 反하여 国内的 管轄権을 認定하여야 한다고 主張하고 各 沿岸国은 海洋環境政策을 立案할 権利가 있으며 海洋環境을 保護하고 海洋의 汚染을 방지하기 為하여 必要한 모든 措置를 取할 수 있다고 主張하고 있다.

(5) 海底의 開発

大陸棚協約에 있어서 大陸棚이란 200 m 水深 或은 「開発可能」한 곳을 意味하였다. 따라서 論理的으로 볼 때 「開発이 可能한 限」 沿岸国의 海底支配는 늘어난다고 할 수 있겠다. 그러므로 200m 水深以遠의 開発도 可能하게 된 現時点에서 「開発可能」이라는 大陸棚協約上의 規定은 바람직하지 못하다는 점에서 「大陸棚以遠」의 海底를 国際管理下에 두려는 생각이 抬頭되었다. 1970年 UN総会에서는 深海海底法原則宣言이 満場一致로 채택되었다. 「大陸棚以遠」의 海底 및 그 資源을 人類의 共同財産으로서 어떠한 国家의 支配에도 맡기지 않고 全人類를 為해 開発하자는 것이었다.

여기에서 문제가 되는 것은 ①「大陸棚以遠」의 国際海底에 있어서의 国際制度의 具體的인 内容, ②「大陸棚以遠」이라고 불리워지는 海底의 범위는 무엇인가라는 것이었다.

이에 대하여 미국은 1969 年 大陸棚을 200 m의 水深까지로 하고, 그 外側의 (수심 300 ~ 400 m에 이르는) 大陸斜面을 国際信託地帯로서 沿岸国의 支配를 받게하고, 그 収益의 一部를 国際社会에 提供시키려고 하는 構想을 示唆한 바 있다.

日本은 沿岸国海底를 沿岸으로부터의 距離에 의하여서만 決定하여야 한다다고 主張하였다.

소련은 500m 水深 或은 100海里의 範囲를 提案하고 있으며, 中共은 沿岸国이 그 地理的 特殊性에 의하여 合理的으로 決定할 수 있으나 最大限 関係国의 協議에 맡겨야 한다고 主張하고 있다.

国際海底의 制度는 무엇이어야 하는가에 관하여는, 여러가지 主張이 百出하고 있으나 중요한 것을 열거하여 보면, ① 国際海底의 資源開発을 위하여 国際機関을 設立하고 이 機関의 許可를 얻어야만 開発할 수 있다. 開発의 具體的 形態는, 国家 또는 民間企業이 이 国際機関으로 부터 権利를 얻을 수 있으나, 이때 어떠한 基準下에서 利権이 申請企業 또는 申請国에 割当될 것인가는 아직 정해지지 않고 있다. 또 다른 방법으로는 国際機関만에서 開発会社를 만들고 企業은 단순히 国際機関과의 用役契約에 의해서만 관여하게 하는 方法도 있다.

② 国際機関의 直接開発 또는 国際機関의 厳格한 統制下에 開発하는 方法등이 考慮되고 있다.

소련은 이 制度에 관하여 海洋法加盟国 및 国際機関은 모두 深海海底探査 및 探鉱活動을 할 수 있으며 国際海底機関은 스스로의 活動領域을 決定할 수 있다고 主張하고 있다. 国家의 活動은 国際海底機関과의 契約에 의거하여 執行되어야하며 同機関으로 부터 財政 및 行政的 監督을 받아야 한다. 国家는 国家企業 또는 国家에 登録되었거나 後援을 받는 法人(民間企業包含)을 통해 活動을 遂行한다고 主張함으로써 第一案을 支持하고 있다.

中共은 同 機関에게 資源의 探査와 利用에 関与할 수 있는 直接的이고도 実質的인 権限이 부여되어야 한다고 主張하고 当事国과 同 機関과의 계약이나 民間企業과의 契約締結의 自律性은 부정되어야 한다고 主張함으로써 特定国家의 横担을 막으려는 立場을 보이고 있다.

(6) 海의 国境

国家가 서로 隣接해 있고 바다를 対向하고 있는 경우 바다의 경계를 어떻게 정할 것인가의 문제는 1958年의 海洋法協約에 大體로 規定되어있다.

領海 및 接属수역에 관해서 両国間의 別途의 合意가 없는 限 어떠한 国家도 中間線을 넘어서 그 領海를 拡張해서는 안되는 것으로 되어 있다. 단 歷史的 権原 및 其他 特別한 事情에 의해서 必要한 때는 이 規定은 적용하지 않는다. 그런데 同一한 大陸棚에 接하고 있는 경우에는 合意에 의한 決定이 原則이 된다. 合意가 없는 경우에는 特別한 事情에 의해서 다른 境界線이 正当하다고 인정되지 않는 限, 対向하는 国家의 경우는 中間線(等距離線)으로 하고, 隣接하는 国家의 경우는 등거리 中間線의 原則을 적용하도록 되어있다.

그런데 海岸線의 形状에 따라서(例 北海大陸棚事件의 덴마아크와 네델란드) 또는 島嶼의 存生에 따라서 획일적으로 해결하기 어려운 相当한 문제점을 内包하고 있다.

海岸의 굴곡에 따라서는 中間線이 형평에 反할 수 있겠고, 島嶼가 境界획정에 基準이 되는 경우 어느 정도 크기의 도서가 考慮의 対象이 될 것인가가 問題된다.

또 海底의 경계선에 관하여서 現在의 方向은 대체로 自然的으로 陸地로 形成된 섬은 크기를 막론하고 영해와 경제수역을 가질 수 있고, 단 大陸棚에 있어서 人間이 居住할 수 없는 섬은 自體大陸棚을 가질 수 있는 方向으로 決定되고 있다. 大陸棚의 境界는 거리 基準보다 自然延長의 概念이 優勢하다.

이에 대하여 소련은 대체로 종래의 견해에 따르는 立場을 取하고 있

으나 中共은 大陸棚에 관하여 沿岸国間 協議하에서 決定할 수 있다는 見解를 取함으로써 特히 韓国과의 大陸棚境界劃定에 있어서 政治的·法的 문제점을 남기고 있다.

凡 例

1. 本 資料集은 第一次, 第二次, 第三次 8期까지의 UN海洋法会議에서 表明된 中·蘇의 公式見解를 抜萃하여 会期順·問題別로 収録한 것이다.

2. 資料로서는 다음 資料를 参照하였다.

가. United Nations Conference on the Law of the Sea, official Records Vol Ⅰ ~ Vol Ⅶ (第一次会議分)

나. Summary Record of plenary meetings of the Committee of the whole ; Annexes and Frinal Act (第二次会議分)

다. Third United Nations, Conference on the Law of the Sea, official Records, Vol. Ⅰ ~ Ⅶ., X

라. Selected Documents released at the 8th Session of the 3rd United Nations Confernce on the Law of the Sea (Genava & New York, 2 Vols.) (以上 3次会議分)

3. 掲載順序는 発言順序대로 하였다. (原資料에 수록 된 순)

4. 実質的 内容과 관계없는 단순한 의사진행 発言은 省略하였다.

5. 各 発言의 序頭에 붙어 있는 숫자는 当該会議席上에서 表明된 発言의 paragraph 번호이다. 이 숫자는 최초의 発言者의 発言内容부터 paragraph로 나누어 일련번호로 붙여져 있는 것이므로 발언자의 発言順序와 반드시 一致하는 것은 아니다.

6. 長文의 参照事項은 부록으로 添附하였다.

7．ＵＮ海洋法会議　日程

第一次　ＵＮ海洋法会議

1958.2.24 ～ 4.27　Geneva

第一委員会（領海　및　接続水域）

第二委員会（公海　一般制度）

第三委員会（公海　漁業，生物資源保存）

第四委員会（大陸棚）

第五委員会（内陸国의　海洋自由接近問題）

第二次　ＵＮ海洋法会議

1960.3.17 ～ 4.29, Geneva

第三次　ＵＮ海洋法　会議

第一次会期		1973.12. 3 ～ 1973.12.25 , New York
第二次会期		1974. 6.20 ～ 1974. 8.29 , Caracas
第三次会期		1975. 3.17 ～ 1975. 5. 9 , Geneva
第四次会期		1976. 3.15 ～ 1976. 5..7 , New York
第五次会期		1976. 8. 2 ～ 1976. 9.17 , New York
第六次会期		1977. 5.23 ～ 1977. 7.15 , New York
第七次会期	一次会議	1978. 3.21 ～ 1978. 5.19 , Geneva
	二次会議	1978. 8.21 ～ 1978. 9.15 , Geneva
第八次会期	一次会議	1979. 3.19 ～ 1979. 4.27 , Geneva
	二次会議	1979. 7.19 ～ 1979. 8.24 , New York

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I. TERRITORIAL SEA AND CONTIGUOUS ZONE

1. Text of Articles 1 to 25 and 66 Adopted by the International Law Commission at its Eighth Session (A/3159)

Territorial Sea

Section I. General

Juridical Status of the Territorial Sea

Article 1

1. The sovereignty of a State extends to a belt of sea adjacen to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the conditions prescribed in these articles and by other rules of international law

Juridical Status of the Air Space Over the Territorial Sea and of Its Bed and Subsoil

Article 2

The sovereignty of a coastal State extends also to the air spac over the territorial sea as well as to its bed and subsoil.

Section II. Limits of the Territorial Sea

Breadth of the Territorial Sea

Article 3

1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territoria sea should be fixed by an international conference.

NORMAL BASELINE

Article 4

Subject to the provisions of article 5 and to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the low-water line along the coast, as marked on large-scale charts officially recognized by the coastal State.

STRAIGHT BASELINES

Article 5

1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

2. The coastal State shall give due publicity to the straight baselines drawn by it.

3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic.

Outer Limit of the Territorial Sea

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Bays

Article 7

1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

4. The foregoing provisions shall not apply to so-called "historic" bays, or in any cases where the straight baseline system provided for in article 5 is applied.

PORTS

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

ROADSTEADS

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must give due publicity to the limits of such roadsteads.

Islands

Article 10

Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark.

Drying Rocks and Drying Shoals

Article 11

Drying rocks and drying shoals which are wholly or partly within the territorial sea, as measured from the mainland or an island, may be taken as points of departure for measuring the extension of the territorial sea.

Delimitation of the Territorial Sea in Straits and Off Other Opposite Coasts

Article 12

1. The boundary of the territorial sea between two States the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be fixed by agreement between those States. Failing such agreement and unless another boundary line is justified by special circumstances, the boundary is the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured.

2. If the distance between the two States exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Novertheless, if, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.

3. The first sentence of the preceding praragraph shall be applicable to cases where both coasts belong to one and the same coastal State. If, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may be declared by the coastal State to form part of its territorial sea.

4. The line of demarcation shall be marked on the officially recognized large-scale charts.

Delimitation of the Territorial Sea at the Mouth of a River

Article 13

1. If a river flows directly into the sea, the territorial sea shall be measured from a line drawn inter fauces terrarum across the mouth of the river.

2. If the river flows into an estuary the coasts of which belong to a single State, article 7 shall apply.

Delimitation of the Territorial Sea of Two Adjacent States

Article 14

1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest points on the baseline from which the breadth of the territorial sea of each country is measured.

2. The boundary line shall be marked on the officially recognized large-scale charts.

Section III. Right of Innocent Passage

Sub-section A. General Rules

Meaning of the Right of Innocent Passage

Article 15

1. Subject to the provisions of the present rules, ships of all States shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage is innocent so long as a ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law.

4. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

5. Submarines are required to navigate on the surface.

Duties of the Coastal State

Article 16

1. The coastal State must not hamper innocent passage through the territorial sea. It is required to use the means at its disposal to ensure respect for innocent passage through the territorial sea, and must not allow the said sea to be used for acts contrary to the rights of other States.

2. The coastal State is required to give due publicity to any dangers to navigation of which it has knowledge.

Rights of Protection of the Coastal State

Article 17

1. The coastal State may take necessary steps in its territorial sea to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which the admission of those ships to those waters is subject.

3. The coastal State may suspend temporarily in definite areas of its territorial sea the exercise of the right of passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. Should it take such action, it is bound to give due publicity to the suspension.

4. There must be no suspension of the innocent passage of foreign ships through straits normally used for international navigation between two parts of the high seas.

Duties of Foreign Ships During their Passage

Article 18

Foreign ships exercising the right of passage shall comply with the laws and regulations enacted by the coastal State in conformity with the present rules and other rules of international law and, in particular, with the laws and regulations relating to transport and navigation.

Sub-section B. Merchant Ships

Charges to be Levied upon Foreign Ships

Article 19

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may only be levied upon a foreign ship passing through the territorial sea as payment for specific services rendered to the ship.

Arrest on Board A Foreign Ship

Article 20

1. A coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the ship during passage, save only in the following cases:

(a) If the consequences of the crime extend beyond the ship; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship lying in its territorial sea or passing through the territorial sea after leaving internal waters.

3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

Arrest of Ships for the Purpose of Exercising Civil Jurisdiction

Article 21

1. A coastal State may not arrest or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. A coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea passing through the territorial sea after leaving the internal waters.

Sub-section C. Government Ships Other Than Warships

Government Ships Operated for Commercial Purposes

Article 22

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Government Ships Operated for Non-commercial Purposes

Article 23

The rules contained in sub-section A shall apply to government ships operated for non-commercial purposes.

Sub-section D. Warsships

Passage

Article 24

The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally, it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18.

Non-observance of the Regulations

Article 25

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which may be brought to its notice, the coastal State may require the Warship to leave the territorial sea....

The High Seas

Section II. Contiguous Zone

Article 66

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to

(a) Prevent infringement of its customs, fiscal or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measure

2. Consideration of the draft Articles Adopted by the International Law Commission at its eighth Session (Articles 1 to 25 and 66) (A/3159)

a. General Debate

(12 March 1958, 12th meeting, 1st Committee)

1. Mr. Tunkin (Union of Soviet Socialist Republics) said that his country, being wedded to a policy of peaceful co-operation and having a coast-line of over 25,000 miles, a considerable tonnage of shipping and a large fishing industry, was interested in the international settlement of the fundamental problems appertaining to the law of the sea -- an achievement which would contribute to international co-operation generally. In carrying out its task, the Conference should take account of the interests of all countries, and of the fact that many countries had different economic, political and legal systems. Among the countries taking part in the Conference were many which had only recently obtained their independence and which were now taking part, on an equal footing with other States, in the drafting of international rules for the law of the sea.

2. The rules of international law were not being framed in vacuo, for a number had already received general sanction and were in accord with present-day needs; but that might not necessarily be true of enactments promulgated in the national legislation of individual countries during the sixteenth, seventeenth and eighteenth centuries.

3. In drafting and codifying international rules for the law of the sea consideration must be shown for the interests of all States, both large and small, both coastal and land-locked, both ancient and newly founded. The trend towards collaboration must be developed and solutions acceptable to all countries found, bearing in mind that rules of international law were created by agreement between States as sovereign and equal subjects of international law.

4. The regimé of the territorial sea obviously affected the vital interests of coastal States for economic and security reasons. In the past, the crucial issue of the breadth of the territorial sea had been determined by each coastal State in accordance with geographical and other considerations, so that different limits had been fixed. At the present time there existed limits of three, four, five, six, nine, ten and twelve miles for the territoral sea. The USSR, together with many other States, had applied the twelve-mile limit; that breadth had been determined by Russia half a century ago. Few had laid claim to a wider belt. Thus, there had arisen a practice whereby coastal States themselves fixed the breadth of the territorial sea within limits ranging ordinarily from three to twelve sea miles.

5. As had been recognized by the International Law Commission after exhaustive study, international law did not permit extensions beyond twelve miles, in other words, it allowed the breadth of the

territorial sea to be fixed within a limit of twelve miles. Some delegates who had addressed the conference, particularly the representatives of the United Kingdom and the United States of America, had claimed that the three-mile limit for the territorial sea was the only one generally recognized and accepted in practice and that it must be the starting point for settling the question of the breadth of the territorial sea at the present conference. History refuted the assertion that the three-mile limit was the only universally accepted rule in theory and practice. According to the available information, out of 63 countries, some 40 claimed a territorial sea of over three miles and the Norwegian and Swedish delegations to The Hague Conference of 1930 had contended that the four-mile limit had the advantage of seniority. The attempt to impose the three-mile limit at The Hague Conference had failed, and more recently, at the eleventh General Assembly, it had been described as anachronistic and as having failed to receive general recognition. His delegation upheld that view.

6. The Soviet Union Government was firmly convinced that the problem of delimitation could only be solved by respect for the sovereign rights and legitimate interests of every State and by taking account of realities. In settling the question of the breadth of the territorial sea, it was obviously essential to keep in mind the interests both of coastal States and of international shipping, and not to make the use of international sea-ways more difficult. The Soviet Union was a consistent champion of the freedom of the high seas and had already, in the Second Committee (seventh meeting), made constructive proposals for the reinforcement of that principle. It therefore held that the Conference should decide, in accordance with existing practice and international law, that each coastal State should fix its territorial sea in accordance with established practice, within limits ordinarily ranging from three to twelve sea miles, after takin into account historical circumstances, geographical, economic and security interests and also the interests of international shipping. There was no foundation whatever for the allegation that a twelve-mil limit would cause difficulties for international navigation and aeria communications, and the attempt by the few protagonists of the three-mile limit to represent themselves as the only ones concerned with th common interest, while the rest were concerned solely with advancing their own interests, did not stand up to examination. As some speakers had quite clearly and convincingly shown the previous days such contentions were a cover for the special interests of individual maritime powers.

7. The attitude of the Soviet Union concerning the delimitation

of the territorial sea was prompted not only by the fact that it had itself adopted the twelve-mile limit, but also by its policy of helping small and economically less advanced countries to develop their national economies and improve their standards of living. In advocating the adoption of the proposal he had put forward for fixing the breadth of the territorial sea, he was guided by his country's attitude of principle; at the same time, he was convinced that his proposal offered the most equitable solution of a problem in which all States were interested.

8. With regard to the closing lines of bays, as had been confirmed by the International Court of Justice in its judgement in the Anglo-Norwegian fisheries case, there was no generally accepted international rule concerning the maximum length of such lines.[1] His government believed that from both the legal and the practical viewpoints a rule could be based on the breadth of the territorial sea and that the maximum length for the closing line of a bay should be fixed at double that dimension -- i.e., 24 miles.

9. His government favoured recognition of the right of innocent passage, which was such an important element in the régime of the territorial sea and was one of the essential conditions for normal international navigation. That right entitled merchants ships to enter the territorial sea of a coastal State for the purpose of entering or leaving a port or following a normal sea route; it did not include the right to stop or anchor, unless such action was necessitated by a breakdown or by weather conditions. Such stipulations did not constitute a restriction on peaceful passage and were a guarantee for the coastal State that the right would not be used for other purposes prejudicial to its interests.

10. His delegation could not agree with the contention that foreign warships could pass through the territorial sea without the consent of the coastal State, because that could entail a security risk for the latter and had in practice given rise to abuse. His delegation considered that the requirement of a number of coastal States that the passage of warships should be subject to authorization or notification provided some protection, particularly for smaller countries, and that it should not be circumscribed in the process of codification.

11. Apart from those general considerations on the régime of the territorial sea, he would at that stage mention only briefly his delegation's views -- already expounded in detail in the Second

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[1] See I.C.J. Reports, 1951, p. 131.

Committee -- on the prohibition of nuclear tests on the high seas. He could not agree that the Conference was not the proper place for the consideration of that matter, since the prohibition of such tests on the high seas, though a separate issue, was one which directly affected the régime of the sea and which the Conference therefore could not overlook. Nuclear tests were a patent violation of the principle of freedom of the seas and, consequently, of the freedom of navigation and fishing, as well as of the principle of conservation of the living resources of the sea. They should, accordingly, be declared illegal in order to reinforce that fundamental freedom and, at the same time, safeguard international peace and security.

(19 March 1958, 21st Meeting 1st Committee)

10. Mr. Koretsky (Ukrainian Soviet Socialist Republic) said that the long and arduous work accomplished by the International Law Commission, the comments of governments on its draft, the discussions at the eleventh session of the General Assembly and the general debate at the present conference would undoubtedly have helped to ascertain the attitude of participating States, and to reveal the questions which could be settled without difficulty. Attention could thus be concentrated on contentious issues which were not so numerous. Provided that each delegation was inspired by the desire to co-operate, agreement should be possible on all the fundamental problems.

11. Clearly, the coastal State itself fixed the breadth of its territorial sea in accordance with historical and geographical circumstances as well as economic and security requirements. Opinions differed as to the permissible limits of that delimitation, and having regard to the Commission's finding that international practice was not uniform in that respect his delegation supported the Soviet Union view that each coastal State was entitled to fix its territorial sea within reasonable limits -- namely, three to twelve miles.

12. There was no need to stress the importance of the territorial sea both for security and economic reasons to countries which had recently acquired their independence, and which had formerly been debarred from enjoying the resources of those waters.

13. The present trend was obviously towards an extension of limits, and he regretted the delay in the preparation by the Secretariat of a summary table of the present practice and attitude of States which would give a full picture of the situation. As stated in the principles of Mexico on the juridical régime of the sea, the three-mile limit was insufficient, and did not constitute a general rule of international law. Even its supporters had in fact sought

by circuitous means to extend the zone in which they exercised sovereign rights -- as for instance, when for the enforcement of prohibition laws, United States patrol ships had pursued and arrested ships flying foreign flags beyond the territorial sea. Such States were devoting increasing attention to special zones, such as that dealt with in article 66 of the Commission's draft, the real purpose of which was to enlarge the territorial sea. In the final analysis rights exercised in such zones were the same as those possessed by the coastal State in the territorial sea and the effort to justify those claims on the ground that very were necessary solely for purposes of administration, control and jurisdiction carried no weight because those were precisely the functions discharged by a State in virtue of its sovereignty. It would be better to have a clear and precise régime covering territorial waters than fragmentary rights over different contiguous zones.

14. The problem of straits was naturally of great interest to the Ukrainian SSR, whose only outlet from the Black Sea was through the Bosphorus and the Dardanelles. The provision contained in article 17, paragraph 4, of the Commission's draft was inadequate, and must be replaced by a clear statement to the effect that the régime of international straits was in each case determined by international convention and established practice.

15. The Commission, while admitting its importance, had offered no solution to the problem of archipelagos. As had been demonstrated by the representative of Indonesia, subject to the requirements of international navigation, the sea should be a unifying element for a country consisting of 13,000 islands which had won its struggle for independence.

b-1) Articles 1, 2, 3 and 66

i) (Judicial Status of the Territorial Sea; Judicial Status of the Air Space over the Trritorial Sea and of its bed and Subsoil; Breadth of the Territorial Sea; Contiguous Zone)

(3 April 1958, 36th Meeting, 1st Committee)

4. Mr. Nikolaev (Union of Soviet Socialist Republics) introducing his delegation's proposal relating to article 3 (A/Conf. 13/C.1/L.80) recalled that the International Law Commission had been unable

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2 Document A/Conf.13/C.I/L.80 Union of Soviet Socialist Republics: Proposal

to reach agreement on a text for that article, and had contented itself with recognizing that international practice was not uniform as regards the delimitation of the territorial sea. The Commission has considered, however, that international law did not permit an extension of the territorial sea beyond twelve miles.

5. The draft synoptical table in document A/CONF. 13/C.1/L.11 showed that nineteen States had adopted the three-mile limit, that twenty-six had adopted limits ranging from three to twelve miles and that three had adopted limits exceeding twelve miles. Six governments had failed to state what breadth of territorial sea they had adopted, and eighteen had enacted no laws on the matter.

6. The new text for article 3 proposed by the delegration of the Soviet Union gave the coastal State the power to determine the breadth of its territorial waters within the limits of three to twelve miles, having regard to the various conditions and interests specified in the proposal. In addition to its own interests, the coastal State must bear in mind the interests of international navigation, which was a means of ensuring peaceful collaboration between peoples.

7. The States which had adopted the three-mile limit had endeavoured to prove, quite wrongly, that that rule was the only admissible one, and much had been said about the danger of interference with the freedom of navigation on the high seas which adoption of a twelve-mile limit would entail. Charts had even been circulated to support the contention that if the twelve-mile limit were adopted the Aegean Sea, the Malacca Straits and other straits would become territorial seas. But, in every such case, the right of innocent passage could be invoked.

8. He recalled that resolution XIII adopted by the Inter-American Council of Jurists at its third meeting at Mexico City in 1956 stated in part that "Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological and biological factors, as well as the economic needs of its population, and its security and defence." In the general debate in the present committee, many speakers had

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Article 3

The article to read as follows:

"Each State shall determine the breadth of its territorial waters in accordance with established practice within the limits, as a rule, of three to twelve miles, having regard to historical and geographical conditions, econimic interests, the interests of the security of the coastal State and the interests of international navigation."

agreed with the principle according to which the coastal State itself defined the breadth of its territorial waters within limits of from three to twelve miles. The joint amendment submitted by India and Mexico (A/CONF.13/C.1/L.79)[3] and the Yugoslav amendment (A/CONF.13/C.1/L.135)[4] expressed the same principle. All that went to show that the principle was one which was widely recognized and firmly founded in international law. The Soviet Union proposal was based on that very principle.

9. The proposal submitted by the Soviet Union covered such amendments as those submitted by Canada (A/CONF.13/C.1/L.77/Rev.1),[5]

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3 Document A/CONF.13/C.1/L.79 India and Mexico: proposal

Article 3

The article to read as follows:

"Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the baseline which may be applicable in conformity with articles 4 and 5."

4 Document A/CONF.13/C.1/L.135 Yugoslavia: proposal

Article 3

The article to read as follows:

"1. Every State has the right to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the baseline drawn as provided in articles 4 and 5.

"2. The breadth of the territorial sea cannot be less than three nautical miles.

"3. It is the duty of the coastal State to publish in due form the provisions relating to the determination of the breadth of the territorial sea."

5 Document A/CONF.13/C.1/L.77/Rev.1 Canada: proposal

Article 3

The article to read as follows:

"The territorial sea extends to three nautical miles from the baseline drawn in the manner provided for in articles 4 and 5..

Article 66

Paragraph 2

1. Add the following as paragraph 2 (the present paragraph 2 being renumbered 3):

Poland (A/CONF.13/C.1/L.78)[6] and the Philippines (A/CONF.13/C.1/L.13).

10. Turning to the United Kingdom proposal (A/CONF.13/C.1/L.134),[7] he noted with satisfaction that a State which for many years had been an advocate of the three-mile limit now proposed that the limit should be increased to six miles. However, the proposal had serious shortcomings. It ignored the fact that many States had already adopted a breadth greater than six miles, and, although

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"2. The coastal State has the same rights in respect of fishing and the exploitation of the living resources of the sea in this zone as it has in its territorial sea."

2. Substitute the words "extends to" for the words "may not extend beyond" in paragraph 2 (renumbered 3).

Comment

In the view of the sponsor the above constitutes a single proposal and should be discussed and voted upon as such.

6 Document A/CONF.13/C.1/L.78 Poland: proposal

Article 66

Paragraph 1

Replace by following text:

"In a zone of the high seas contiguous to its territorial sea, the coastal State may take the measures necessary to prevent and punish infringements of its customs, fiscal or sanitary regulations and violations of its security."

7 Document A/CONF.13/C.1/L.134 United Kingdom of Great Britain and Northern Ireland: revised proposal

Article 1

Amend to read as follows:

"1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast described as the territorial sea.

"2. This sovereignty is exercised subject to the provisions of this convention and to other rules of international law."

stating that the limit of the breadth of the territorial sea should not extend beyond six miles, provided that such extension should not affect existing rights of passage for aircraft and vessels, including warships, outside three miles. It would seem from that proposition that the coastal State would be able to exercise all its rights within a three-mile limit, but very few between three and six miles. He was therefore convinced that the Soviet Union proposal offered the best possible solution to the problem of the breadth of the territorial sea.

(12 April 1958, 44th Meeting, 7th Committee)

32. Mr. Zabigailo (Ukrainian Soviet Socialist Republic) said that, after studying all the proposals on article 3, he had come to the conclusion that many of them represented no effort to arrive at a compromise but merely sought to impose a formula that would benefit only a few States. The two most defective proposals were those of United Kingdom and Canada, which were juridically unsound and disregarded the basic facts of international life. The United Kingdom amendment purported to propose a limit of sic miles, but the provisos were so substantial that every ship would be free to roam the seas within three miles of a foreign coast. The United Kingdom proposal thus showed a flagrant disregard for a State's right to protect its security interests. To a country like the Ukraine, which had often been the victim of a-saults from the sea, that fault was sufficient to make the whole proposal worthless. The same criticism could be levelled against the Canadian proposal, which would oblige many coastal States to abandon certain rights which they had long exercised.

33. The Ukrainian delegation believed that no proposal would stand a chance of success unless it took into account the fact that most coastal States had already fixed the breadth of their territorial sea in the light of all the varied historical and economic considerations applicable to their particular coasts. It consequently favoured the proposals which confirmed a State's right to fix the breadth at any distance between three and twelve miles. A formula along those lines would harmonize the principle of the freedom of the high seas with that of the coastal State's sovereign rights over the waters washing its shores.

Article 3

The article to read as follows:

"1. The limit of the breadth of the territorial sea shall not extend beyond six miles. Extension to this limit shall not, however, affect existing rights of passage for aircraft and vessels, including warships, outside three miles.

"2. For the purposes of this convention, the term 'mile' means nautical mile (1,852 metres) reckoned at sixty to one degree of latitude."

42. Mr. Nikolaev (Union of Soviet Socialist Republics) replied[8] that the normal limits of three to twelve miles reflected the conclusions of the International Law Commission. The words "as a rule" merely recognized that special cases might on occasions arise. Lastly, the purpose of listing the various factors which should be taken into account had been to stress that, in fixing their territorial sea, States should at all times respect the general interests of international navigation.

2) Article 5 (Straight baselines)

(17 April 1958, 51st Meeting, 1st Committee)

16. Mr. Nikolaev (Union of Soviet Socialist Republics) said that his delegation could not accept the four-power proposal because it was based on the so-called ten-mile rule for the drawing of straight baselines, a rule which the First Committee had already rejected.

17. With regard to the revised United Kingdom proposal, he said that his delegation had no objection to paragraph 1, which did not differ in substance from the corresponding passage in the International Law Commission's text.

18. His delegation opposed paragraph 2 of the revised United Kingdom text, even if the length of the straight baseline was increased to fifteen miles. His delegation preferred the International Law Commission's formulation in the relevant passage of article 5.

19. With regard to paragraph 4 of the revised United Kingdom proposal, he said that his delegation also preferred the International Law Commission's formulation in the fourth sentence of article 5, paragraph 1, which constituted a better safeguard of the interests of the coastal State.

20. His delegation had no objection to paragraph 5 of the revised United Kingdom proposal.

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8 Mr. Ulloa Sotomayor (Peru) asked whether the Soviet Union delegation's proposal (A/CONF.13/C.1/L.80) meant that, as a rule, the territorial sea should only be fixed within the limits of three to twelve miles but that, in certain special circumstances, a State might be justified in exceeding the twelve-mile maximum. The text also seemed to suggest that the various conditions and interests which would justify a given breadth within the generally admissible limits would also be the decisive factors when it came to an exception.

21. His delegation would vote against paragraph 6 of the revised United Kingdom proposal because it had intended to vote against paragraph 3 of the International Law Commission's text containing similar provisions.

22. For all those reasons, his delegation would vote against the revised United Kingdom proposal as a whole.

3) Article 7 (Bays)

(15 April 1958, 47th Meeting, 1st Committee)

13. Mr. Nikolaev (Union of Soviet Socialist Republics), speaking as one of the co-sponsors of the three-power proposal (A/CONF.13/C.1/L.103), said that the International Court of Justice had held in the Anglo-Norwegian fisheries case that the distance of ten miles was accepted as the closing line by only a few States and did not consitute a general rule of international law.[9]

14. The fact that the International Law Commission had adopted first a distance of twenty five miles and then a distance of fiteen miles showed that its decisions on the closing line did not rest on any very strong basis. The closing line of twenty-four miles would correspond to an established international practice, and would protect the vital interests of the States concerned.

33. Mr. Nikolaev (Union of Soviet Socialist Republics) said that, in view of the terms of the draft resolution submitted by India and Panama (A/CONF.13/C.1/L.158)[10] concerning the régime of historic waters, consideration of the Japanese amendment to paragraph 4 (A/

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9 I.C.J. Reports, 1951, p. 131.

10 Document A/CONF.13/C.1/L.158 India and Panama: draft resolution

Régime of Historic Waters

The First Committee,

Considering that the International Law Commission has not provided for the régime of historic waters including historic bays,

Recognizing the importance of the juridical status of such areas.

Decides to request the Secretary-General of the United Nations to arrange for the study of the régime of historic waters including historic bays and the preparation of draft rules which may be submitted to a special conference.

CONF.13/C.1/L.104)[11] should be deferred for the time being.

34. He considered that the United Kingdom proposal should be put to the vote as a whole in accordance with the rules of procedure.

Article 7 (Bays)

(15 April 1958, 48th Meeting, 1st Committee)

13. Mr. Koretsky (Ukrainian Soviet Socialist Republic) said that all the Committee's decisions had to be endorsed by the Conference as a whole. He pointed out that the régime of each historic bay had been developed by, and was the result of, special historical circumstances. Accordingly, it was impossible to request the preparation of general rules applicable to all historic bays; steps could only be taken to determine whether such rules could be drafted. In any case, the text of the operative part of the draft resolution needed revision and a decision on the draft should accordingly be deferred.

12. The Chairman noted that, although the Conference might request the Secretary-General of the United Nations to take certain action, the First Committee was not qualified to make such a request. In any case, it was more seemly for the Conference to address itself to the General Assembly than to the Secretary-General. He therefore suggested that the operative part of the draft resolution should be replaced by the following text:

"Recommends:

"That the Conference should refer the matter to the General Assembly of the United Nations, with the request that the General Assembly should make appropriate arrangements for the further study and preparation of draft rules on the régime of historic waters, including historic bays".)

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11 Document A/CONF.13/C.1/L.104 Japan: proposal

Article 7

Paragraphs 2 and 3

Replace the word "fifteen" by the word "ten."

Paragraph 4

Replace by the following text:

"4. The foregoing provisions shall not apply to historic bays. The term 'historic bays' means those bays over which coastal State or

States have effectively exercised sovereign rights continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States."

16. Mr. Koretsky (Ukrainian Soviet Socialist Republic), invoking the second sentence of rule 29 of the rules of procedure, proposed that the vote on the draft resolution should be deferred to enable delegations to study the matter further.

17. Mr. Nikolaev (Union of Soviet Socialist Republics) supported the Ukrainian representative's proposal. The operative part of the draft resolution was certainly unclear and the Committee should take extreme care in its wording.

4) Article 12 (Delimitation of the Territorial Sea in Straits and of other Opposite Coasts): Article 14 (Delimitation of the Territorial Sea of Two Adjacent States)

(22 April 1958, 61st Meeting, 1st Committee)

24. Mr. Nikolaev (Union of Soviet Socialist Republics) said that the idea[12] proposed by the Norwegian delegation of dealing in a

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12 A/Conf.13/C.1/L.97 Norway: proposal

Article 5

Paragrah 1

1. Insert the words "In these cases" before the words "Account may nevertheless" at the beginning of the fourth sentence.
2. Delete the last sentence.

Article 7

Paragraph 2

Replace the word: "shall" by the world "may."

Paragraph 3

Replace the word "shall" in the first sentence by the word "may."

Replace the words "that line shall be chosen" in the second sentence by the words "the coastal State may only choose that line."

Article 8

Replace the word "shall" by the word "may."

single paragraph with the delimitation of the territorial sea between States with opposite coasts and of that of States with adjacent coasts was not a sound one. The International Law Commission's text dealt in two separate articles with those two different situations and was therefore preferable to the Norwegian text.

25. His delegation preferred the objective formulation of the median line rule by the International Law Commission to the text of the Norwegian proposal.

26. The second sentence of paragraph 1 of the Norwegian proposal appeared to deny the principle embodied in the first sentence of that same paragraph. In addition, it referred to "prescriptive usage," without giving any criteria for its practical application.

Article 9

Replace the words "are included" in the first sentence by the words "may be included."

Article 12 and 14

These two articles should be merged into one article worded as follows:

"Delimitation of the Territorial Sea between States with Opposite or Adjacent Coasts

"1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line whose demarcation is determined in such a way that every point of the line is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured. This provision shall not apply, however, where one of the States concerned through prescriptive usage has acquired the right to delimit its territorial sea in a way which is at variance with the provision.

"2. If the two States in delimiting the outer boundaries of their territorial seas enclose an area of the sea which would normally be part of the high seas, they may by bilateral agreement divide this area between them and thus give it the character of terrotirial sea, provided that the breadth of the enclosed area does at no point exceed two miles.

"3. The preceding paragraph shall also be applicable to cases where both coasts belong to one and the same coastal State.

"4. The line of demarcation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on the officially recognized large-scale charts."

27. In 1957, the Soviet Union and Norway had satisfactorily settled by agreement the question of the delimitation of the territorial sea in the north of the two countries. The agreement had been ratified. That example showed that innovations in the matter were not necessary.

5) Article 15 (Meaning of the Right of Innocent Passage)

(27 March 1958, 28th Meeting, 1st Committee)

38. Mr. Nikolaev (Union of Soviet Socialist Republics) said he shared the misgivings expressed by several representatives regarding the revised United States proposal, which, by referring to the passage itself as not being prejudicial to the security of the coastal State, made a subjective interpretation of the rule possible. The text drafted by the International Law Commission was much more objective because it referred to a ship using the terrotirial sea for committing acts prejudicial to the security of the coastal State.

39. Another reason why the International Law Commission's text was preferable was that it did not separate the reference to "the present rules" from the main provision, whereas the revised United States text consisted of two separate clauses.

40. Lastly, the Soviet Union delegation considered that a reference to "other rules of international law" was essential; such rules existed, and should not be ignored.

41. His delegation was prepared to accept any drafting improvements, such as that put forward by the Burmese delegation.

6) Article 16 (Duties of the Coastal State)

(26 March 1958, 26th Meeting, 1st Committee)

19. Mr. Nikolaev (Union of Soviet Socialist Republic) pointed out that the amendment (A/Conf.13/C.1/L.46)[13] submitted jointly by

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13 Document A/Conf.13/C.1/L.46 Bulgaria and Union of Soviet Socialist Republics: proposal

Articles 16 and 18 A

1. In sub-section B, before article 19, insert a new article 18 A as follows:

the delegations of the U.S.S.R. and Bulgaria proposed the deletion of the first sentence of paragraph 1 and the addition of a wholly new article. Since article 16 appeared in subsection A, which contained general rules, it would apply not only to commercial and other non-military vessels but also to warships. The latter, however, were subject to a special regime, as was confirmed by article 24, and the distinction between the two categories of craft should be emphasized. That could best be achieved by the removal of the first sentence of article 16 out of its present context and its reinsertion in a wholly separate provision, which would expressly state that the duty not to impose restrictions did not apply in the case of warships. Moreover, the new draft article also stressed that the coastal State must permit innocent passage without discrimination and that ships must adhere to regular channels and observe the rules laid down by the coastal State. Such a provision was wholly consistent with international law and the practice of States.

7) Article 18 (Duties of Foreign Ships During their Passage)

(1 April 1958, 33rd Meeting, 1st Committee)

21. Mr. Nikolaev (Union of Soviet Socialist Republics) believed that the Mexican representative had convincingly demonstrated the superiority of the Mexican amendment over the six-power proposal.

22. At the 30th meeting he had drawn attention to the shortcomings and imprecise phrasing of the six-power amendment to article 17, paragraph 1, and he regretted that those shortcomings had not been made good in the six-power proposal relating to article 18.

"Right of Passage

"Article 18A

"The coastal State must not hamper the innocent passage through its territorial sea of merchant and other ships, other than warships, of any nationality, in accordance with the principles of equality, provided that such ships use the usual or specified navigational channels and observe the rules of passage laid down by the coastal State."

2. Consequentially delete from article 16, paragraph 1, the words:
"The coastal State must not hamper innocent passage through the territorial sea."

23. Under the Mexican amendment, foreign ships exercising their right of passage would be obliged to comply, first with the present rules; second, with other rules of international law; and third, with the laws and regulations of the coastal State. In the six-power proposal, on the other hand, ships exercising their right of passage would only be obliged to comply with the rules and regulations of the coastal State. There was, it was true, a reference in the latter proposal to the present and other rules of international law, but it occurred in such a context that it was not the foreign ships which would have to comply with those rules, but the coastal State in the enactment of its laws and regulations. His delegation regarded the Mexican amendment as more precise and would therefore vote for it.

(3 April 1958, 36th Meeting, 1st Committee)

42. Mr. Nikolaev (Union of Soviet Socialist Republics) said that the words "as a rule" had been inserted in the Soviet Union proposal in order to allow for the possibility of making exceptions in special circumstances. He would go into greater detail later.

8) Article 24 (Passage of Warships)

(11 April 1958, 42th Meeting, 1st Committee)

8. Mr. Nikolaev (Union of Soviet Socialist Republics) said that the International Law Commission's text of article 24 was the fruit of long and careful study, and the principle stated therein reflected the practice of many States which considered the passage of warships as a problem apart because of the element of risk involved. Even the very incident in the Corfu Channel to which the United Kingdom representative had referred showed that a coastal State was obliged to take certain measures in the interests of its security.

9. At the preceding meeting, the Netherlands representative had cited several authorities in support of his thesis that the passage of warships should be unfettered. But an equal number of scholars held the opposite view, and it was an established fact that many States believed that the imposition of certain conditions was the sole means of safeguarding their vital interests. The Netherlands representative had also contended that the requirement of previous authorization could prove prejudicial because of possible delay. The U.S.S.R. delegation could not accept that view, since the paramount interests of a State should not be subordinated to a desire for haste in some other quarter.

10. For these reasons, his delegation would vote against the amendments of the Netherlands and the Federal Republic of Germany, and would support the first sentence of the Commission's text, which safeguarded the coastal State's interests without hampering the freedom of navigation. With regard to the second sentence of the article, he would support the logical Polish proposal (A/Conf.13/C.1/L.35)

20. Mr. Nikolaev (Union of Soviet Socialist Republics) observed that the Netherlands amendment[14] as modified was dimetrically opposed to the Commission's text and to the conditions laid down in article 17, paragraph 3. The fundamental defect of that amendment lay in its first sentence, and his delegation remained opposed to it. Nor could it support the amendment of the Federal Republic of Germany.

c. Text of the Articles and the Resolution Adopted by the First Committee (A/Conf.13/C.1/L.168/Add. 1, annex)

I. Articles Adopted by the First Committee

Territorial Sea

Section I. General

Article 1

Juridical Status of the Territorial Sea

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

Juridical Status of the Air Space Over the Territorial Sea and of its Bed and Subsoil

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

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14 Mr. Verzijl (Netherlands) said that the Colombian representative was perfectly correct in having drawn attention to the inconsistency between the Netherlands amendment and the text of article 17 as now adopted. The last sentence of that amendment should therefore be modified to read: "It may suspend such passage under the conditions envisaged in article 17, paragraph 3."

Article 3

Fishing Zone

A State has a fishing zone contiguous to its territorial sea extending to a limit twelve nautical miles from the baseline from which the breadth of its territorial sea is measured in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

Section II. Limits of the Territorial Sea

Article 4

Normal Baseline

Except where otherwise provided in these articles, the baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on largescale charts officially recognized by the coastal State.

Article 5

Straight Baselines

1. In localities where the coastline as a whole is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Except where justified on historical grounds or imposed by the peculiar geography of the coast concerned, the length of the straight baseline provided for in paragraph 1 shall not exceed fifteen miles.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanetly above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts to which due publicity must be given.

Article 5 A

Internal Waters

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 5 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 15 to 25, shall exist in those waters.

Article 6

Outer Limit of the Territorial Sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7
Bays

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and consitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "hostiric" bays, or in any cases where the straight baseline system provided for in article 5 is applied.

Article 8

Ports

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads

1. Buyoed channels giving access to ports, and roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and buoyed channels and indicate them on charts together with their boundaries, to which due publicity must be given.

2. This article shall not apply to buoyed channels giving access to ports of more than one State.

Article 10

Islands

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

Low-Tide Elevations

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is wholly or partly at a distance, from the mainland or an island, not exceeding the breadth of the territorial sea, the low-water line on that elevation may be used as the baseline for measuring the territorial sea.

2. Where a low-tide elevation is situated wholly at a distance, from the mainland or an island, exceeding the breadth of the territorial sea, it has no territorial sea of its own.

Article 12

Delimitation of the Territorial Sea Between States with Opposite or Adjacent Coasts

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured. This provision shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

Delimitation of the Territorial Sea at the Mouth of a River

1. If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line on the banks.

2. If the river flows into an estuary the coasts of which belong to a single State, article 7 shall apply.

Article 14 (Eliminated)

Section II. Right of Innocent Passage

Sub-Section A. Rules Applicable to all Ships

Article 15

Meaning of the Right of Innocent Passage

1. Subject to the provisions of the present articles, ships of all States shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage, shall take place in conformity with the present rules and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent them from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 16

Duties of the Coastal State

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation within its territorial sea of which it has knowledge.

Article 17

Rights of Protection of the Coastal State

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which the admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 18

Duties of Foreign Ships During
Their Passage

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Sub-Section B. Merchant Ships

Article 19

Charges to be Levied Upon Foreign Ships

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 20

Arrest on Board a Foreign Ship

1. The criminal jurisdiction of the coastal State should, generally, not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies, or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, before taking any steps advise the consular authority of the flag State and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 21

Arrest of Foreign Ships for the Purpose of Exercising Civil Jurisdiction

1. A coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. A coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving the internal waters.

Sub-Section C. Government Ships Other than Warships

Article 22

Government Ships Operated for Commercial Purposes

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Article 23

Government Ships Operated for Non-Commercial Purposes

The rules contained in sub-section A and in article 19 shall apply to government ships operated for non-commercial purposes.

Sub-Section D. Warships

Article 24

Passage

1. The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification.

Normally it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18.

2. During passage, warships have complete immunity from the jurisdiction of any State other than its flag State.

Article 25

Non-Observance of the Regulations

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

Article 66

Contiguous Zone

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may take the measures necessary to prevent and punish infringements of its customs, fiscal, immigration or sanitary regulations, and violations of its security.

2. This contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. The delimitation of this zone between two States the coasts of which are opposite each other at a distance less than the breadth of their contiguous zones, or between two adjacent States, is constituted, in the absence of an agreement, by the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

II. Resolution Adopted by the First Committee

Régime of Historic Waters

The First Committee,

Considering that the International Law Commission has not provided for the régime of historic waters including historic bays,

Recognizing the importance of the juridical status of such areas,

Recommends that the Conference should refer the matter to the General Assembly of the United Nations with the request that the

General Assembly should make appropriate arrangements for the study of the juridical régime of historic waters including historic bays, and for the result of these studies to be sent to all Member States of the United Nations.

3. Consideration of the Report of the First Committee

a-1) (Part I: Articles 3 and 66) and of Proposals Relating to Articles 3 and 66 (A/Conf.13/L.28/Rev.1, L.29, L.30, L.31, L.34)

(25 April 1958, 14th Plenary Meeting)

33. Mr. Tunkin (Union of Soviet Socialist Republics), introducing the proposal submitted by his delegation (A/Conf.13/L.30), emphasized that the breadth of the territorial sea was one of the main problems facing the Conference, and that, in reaching a decision on it, delegations must bear in mind not only the interests of their own governments, but also those of all other governments.

34. The International Law Commission had clearly indicated the diversity of practice with regard to the breadth of the territorial sea, and the synoptic table prepared by the Secretariat at the request of the First Committee (A/Conf.13/C.1/L.11) clearly showed that no uniformity existed in that respect. He was convinced that the International Law Commission had intended paragraph 2 of article 3 to imply that it saw no obstacle to an extension of the breadth of the territorial sea to twelve miles.

35. The discussions in the Conference had shown that there was no rule in international law governing the breadth of the territorial sea. The three-mile rule had not been accepted by all governments, and consequently was not a rule in international law. The twelve-mile rule was far better qualified to be called a rule of existing international law. The United States proposal suggested a six-mile limit. That was a backward step which could not succeed, whatever decision the Conference might reach on the proposal.

36. In submitting its proposal, the Soviet Union delegation was firmly convinced that the only living, realistic rule on the territorial sea must provide that governments had the right to establish the breadth of their territorial sea between limits of three and twelve nautical miles. The proposal was intended to reflect existing international practice and the complex situations which might, and which did, arise. The expression "as a rule" meant that in certain exceptional cases the breadth of the territorial sea might exceed twelve miles.

37. His delegation also supported the eight-power proposal (A/Conf.13/L.34)[15].

(Part I: Articles 3 and 66) and of Proposals Relation to Articles 3 and 66 (A/Conf.13/L.28/Rev.1, L.29, L.30, L.31, L.34)

(25 April 1958, 15th Plenary Meeting)

3. Mr. Tunkin (Union of Soviet Socialist Republics) said he had voted for the eight-power proposal (A/Conf.13/L.34) as well as for his own delegation's proposal. He was convinced that it was the right of each State to establish the width of its own territorial sea. A width of three to twelve miles satisfied historical, geographic and economic interests, as well as those of coastal States and of international navigation.

a-2) (Part II: Articles 1, 2 and 4 to 25)

(27 April 1958, 19th Plenary Meeting)

Article 22

14. Mr. Nikolaev (Union of Soviet Socialist Republics), Mr. Fiser (Czechoslovakia) and Mr. Radouilsky (Bulgaria) said that they

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15 Document A/Conf.13/L.34

Burma, Colombia, Indonesia, Mexico, Morocco, Saudi Arabia, United Arab Republic and Venezuela: proposal

Article 3 to read as follows:

"1. Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the baseline which may be applicable in conformity with articles 4 and 5.

"2. Where the breadth of its territorial sea is less than twelve nautical miles measured as above, a State has a fishing zone contiguous to its territorial sea extending to a limit twelve nautical miles from the baseline from which the breadth of its territorial sea is measured in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea."

had voted against article 22 for the same reasons as the representative of Romania.[16]

(Part II: Articles 1, 2 and 4 to 25)

(27 April 1958, 20th Plenary Meeting)

Article 24

22. Mr. Nikolaev (Union of Soviet Socialist Republics), speaking to a point of order, said that the Danish proposal[17] was in fact not a proposal but an amendment, seeking the deletion of the words "authorization or" from paragraph 1. That amendment should therefore be voted upon before a decision was taken regarding a separate vote on the words "authorization or".

29. Mr. Nicolaev (Union of Soviet Socialist Republics) explained that he had voted for the retention of the words "authorization or" in article 24, paragraph 1, because he considered that in the exercise of its sovereign rights every coastal State could claim the right to subject foreign warships wishing to enter its territorial waters to the requirement of prior authorization. That principle was consecreated in international law and in State practice. His delegation would vote against article 24 as a whole because those words had been deleted.

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16 Mr. Lazareanu (Romania) explained that he had voted against article 22 because it took no account of the immunity from civil jurisdiction which all government ships should enjoy, regardless of the purpose for which they were used.

17 Mr. Sörensen (Denmark) introduced his delegation's proposal (A/Conf.13/L.39) that, in the event of the text proposed by the First Committee for article 24 not being adopted, that article should be worded as follows:

"1. The coastal State may make the passage of warships through the territorial sea subject to previous notification. Such passage shall be subject to the provisions of articles 15 to 18.
"2. During passage warships have complete immunity from the jurisdiction of any State other than the flag State.

44. Mr. Tunkin (Union of Soviet Socialist Republics) was surprised that the United States representative now considered that the passage of warships through territorial waters was a right.[18] The position of the United States delegation to the Conference for the Codification of International Law held at The Hague in 1930 had been that such passage was based on international courtesy and was not a right. He (Mr. Tunkin), too, was unable to agree that article 25 adequately protected the rights of coastal States.

b. Adoption of the Convention of the Territorial Sea and the Contiguous Zone

(27 April 1958, 20th Plenary Meeting)

56. Mr. Nikolaev (Union of Soviet Socialist Republics) and Mr. Loutfi (United Arab Republic) supported the Indian representative's proposal.[19] The Second Committee had dealt with all articles relating exclusively to the high seas, which should be embodied in a single convention, whereas the First Committee had dealt with the territorial sea and contiguous zone.

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18 Mr. Dean (United States of America) said that it was generally recognized, and laid down in many authoritative legal texts, that innocent passage for warships through the territorial waters of other States was admissible in time of peace.

He drew the Romanian representative's attention to article 25, under which warships were called upon to comply with coastal regulations. The rights of coastal States were fully protected by that article in accordance with the customary provisions of international law. The United States of America had never required prior authorization for warships entering its territorial waters, and that practice was followed by many other countries.

19 Mr. Sikri (India) observed that since almost all the articles adopted by the Second Committee had been approved by an overwhelming majority, a separate convention embodying them was perfectly feasible. Although some articles considered by the First Committee remained in dispute and it was still possible that several of them might have to be reconsidered after a short interval, he proposed that each of the two sets of articles should be embodied in a separate convention, one covering the results of the work of the First Committee.

63. Mr. Nikolaev (Union of Soviet Socialist Republics) said that he was surprised at the apparent reversal of their position by the United Kingdom and United States representatives[20]; in the past, they had treated article 66 as being related to article 3.

Reservation

(27 April 1958, 20th Plenary Meeting)

87. Mr. Nikolaev (Union of Soviet Socialist Republics) expressed the opinion that, if the convention did not contain a clause debarring reservations, reservations were permissible under the accepted rules of international law.

Revision

120. Mr. Nikolaev (Union of Soviet Socialist Republics) agreed with the representative of the United Kingdom that it would be wrong to delete the provision for an initial five-year period during which no revisions could be requested. Although the question of the breadth of the territorial sea had not been settled, many of the decisions that had been reached related to the régime of the territorial sea, and some time should be allowed to elapse before those decisions could be revised. He was therefore in favour of adopting a revision clause similar to that adopted in the case of the convention prepared by the Second Committee.

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20 Sir Gerald Fitzmaurice (United Kingdom) said that, while he had no wish to oppose the idea of separate conventions, he felt very strongly that article 66 should be in the convention dealing with the régime of the high seas. To include it in a convention dealing with the territorial sea would be bound to create the mistaken impression that the contiguous zone was an extension of the territorial sea, whereas in fact it was part of the high seas, as was clear from the opening phrase of article 66, paragraph 1: "In a zone of the high seas contiguous to its territorial sea..." The provision on the contiguous zone dealt only with customs, fiscal, immigration or sanitary regulations, and did not involve the concept of sovereignty, inherent in the concept of the territorial sea.

Mr. Dean (United States of America) endorsed the United Kingdom representative's position with regard to article 66.

21 Sir Gerald Fitzmaurice (United Kingdom objected to the Indian proposal. The chief object of the Conference had been to bring some stability and certainty into the international law of the sea. It was desirable at least to allow for the expiry of an initial period, during which the practical operation of the convention could be observed, before States could ask for revision.

II. HIGH SEAS: GENERAL REGIME

1. Articles 26 to 48 and 61 to 65 of the Draft of the International Law Commission (A/3159)

Part II

High Seas

Section I. General Regime

Definition of the High Seas

Article 26

1. The term "high seas" means all parts of the sea that are not included in territorial sea, as contemplated by part I, or in the internal waters of the a State.

2. Waters with the baseline of the territorial sea are considered "internal waters".

Freedom of the High Seas

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, inter alia:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

Sub-Section A. Navigation

The Right of Navigation

Article 28

Every State has the right to sail ships under its flag on the high seas.

NATIONALITY OF SHIPS

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship.

2. A merchant ship's right to fly the flag of a State is evidenced by documents issued by the authorities of the State of the flag.

Status of Ships

Article 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

Ships Sailing Under Two Flags

Article 31

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Immunity of Warships

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Immunity of Other Government Ships

Article 33

For all purposes connected with the exercise of powers on the high seas by States other than the flag State, ships owned or operated by a State and used only on government service, whether commercial or non-commercial, shall be assimilated to and shall have the same immunity as warships.

Safety of Navigation

Article 34

1. Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea with regard, inter alia, to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The crew, which must be adequate to the needs of the ship and enjoy reasonable labour conditions;

(c) The construction, equipment and seaworthiness of the ship.

2. In issuing such regulations, each State is required to observe internationally accepted standards. It shall take the necessary measures to secure observance of the regulations.

Penal Jurisiction in Matters of Collision

Article 35

1. In the event of a collision or of any other incident of nativation concerning a ship on the high seas involving the penal or discipinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which the accused person is a national.

2. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Duty to Render Assistance

Article 36

Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

Slave Trade

Article 37

Every State shall adopt effective measures to prevent and punish the transport of staves in ships authorized to fly its colours, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its colours, shall ipso facto be free.

Piracy

Article 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 39

Piracy consists in any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or against persons or property on board such a ship;

(b) Against a ship, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of incitement or of intentional facilitation of an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 40

The acts of piracy, as defined in article 39, committed by a government ship or a government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private vessel.

Article 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 42

A ship or aircraft may retain its national character although it has become a pirate ship or aircraft. The retention or loss of national character is determined by the law of the State from which the national character was originally derived.

Article 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 45

A seizure on account of piracy may only be carried out by warships or military aircraft.

RIGHT OF VISIT

Article 46

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade; or

(c) That, though flying a foreign flag or refusing to show is flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's title to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible considertion.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Right of Hot Pursuit

Article 47

1. The hot pursuit of a foreign ship may be undertaken when the compentent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State, and may only be continued outside the territorial sea if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea receives the order to stop, the ship giving the order should likewise be within the territorial sea. If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by bearings, sextant angles or other like means, that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or airctaft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of the present article shall apply mutatis mutandis;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely

on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

Pollution of the High Seas

Article 48

1. Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

2. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste.

3. All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radioactive materials or other harmful agents.

Sub-section C. Submarine Cables and Pipelines

Article 61

1. All States shall be entitled to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

Article 62

Every State shall take the necessary legislative measures to provide that the breaking or injury of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine high-voltage power cable or pipeline, shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precaution to avoid such break or injury.

Article 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost.

Article 64

Every State shall regulate trawling so as to ensure that all the fishing gear used shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines.

Article 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

2. Consideration of the Draft Articles Adopted by the International Law Commission at its Eighth Session (Articles 26 to 48 and 61 to 65)

a. General Debate

(10 March 1958, 7th meeting, 2nd committee)

9. Mr. TUNKIN (Union of Soviet Socialist Republics) observed that the Conference's task of codification and progressive development of the law of the sea carried with it the obligation to ensure that the resulting instruments would establish rules of international law acceptable by all states. Since the fundamental problem of contemporary international relations was that of ensuring peaceful co-existence among states, co-operation on the basis of equal rights must be secured in international law as well. There could be no doubt that the Conference's work would be evaluated according to the measure of its success in achieving that objective.

10. The Second Committee was in a more favourable position than some others because the principle of the freedom of the high seas had been for centuries reaffirmed in the effort to combat attempts by states to secure mastery over large maritime areas. The freedom of the high seas meant that they were open to all states on an equal footing, and that no state could claim sovereignty over them to the detriment of others; it was satisfactory to note that in modern times that principle had acquired a new and practical meaning for the peoples of countries which had recently won their independence.

11. The Soviet delegation was in general agreement with the provisions of article 27 of the International Law Commission's draft, and supported the statement in paragraph 1 of the commentary that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states. Members of the United Nations, bound by the Charter to promote the interests of peace and the development of international co-operation, must strive to strengthen that principle and must not allow the freedom of the high seas to be violated. In that connexion, the first question that arose was the question of the prohibition of tests of nuclear weapons on the high seas. The movement to secure the prohibition of all tests of nuclear weapons was undoubtedly spreading steadily. The Soviet Union, which had consistently striven to secure the unconditional probhition of nuclear weapons, supported the view that tests of nuclear weapons must be immediately discontinued. Thousands of scientists throughout the world, including scientists in the United States of America, the United Kingdom, France and other countries, were speaking in support of these demands, which

were upheld by the peoples of the whole world. International organizations such as the World Council of Peace, the World Federation of Trade Unions, the World Federation of Democratic Youth and the international women's organizations were demanding that tests of these frightful weapons should be discontinued. It should be borne in mind that the Conference was concerned, not with the prohibition of nuclear tests, but with the separate question of outlawing such tests in the open seas, because they undoubtedly constituted a violation of the principle of the freedom of the high reas. Recent tests of atomic and hydrogen weapons in the Pacific Ocean had affected vast maritime areas, rendering them unfit for navigation and fishing, and killing and injuring people more than a thousand miles away from the places where the tests were held. The states conducting the tests were therefore using the high seas as part of their internal waters. It was not surprising that some eminent jurists of the International Law Commission and many representatives at the eleventh session of the General Assembly had advocated outlawing nuclear tests on the high seas, and that the Commission as a whole had taken steps, however inadequate, to censure such tests.

12. The Soviet delgation also felt obliged to point out that certain states were violating the principle of the freedom of the high seas by taking over large areas for naval and air force manoeuvres. Thus, for some years the United States had used areas in the southern part of the Sea of Japan, including the Korean Straits, in the north-west Pacific, south and east of Japan, and in the Yellow Sea and Carribean Sea for such purposes, and, at the end of 1957, the United Kingdom had taken over for submarine manoeuvres large areas of the English Channel which were situated on international shipping routes. The freedom of the high seas was also frequently violated by military aircraft. With a view to developing friendly relations between states, it would be fitting that the Conference should adopt, on the basis of the principle of the freedom of the high seas, a decision prohibiting the establishment of military manoeuvre areas on the high seas near foreign shores and on international shipping routes, for such manoeuvre areas restricted the freedom of navigation and created a threat to the security of other states.

13. Turning to article 33, he pointed out that merchant shipping was a matter of government concern for countries whose commercial vessels were state-owned. Consequently, all measures of compulsion exercised against state merchant vessels, including measures for the purpose of securing claims advanced against the said vessels, were impermissible. The opponents of that view based their objections on the 1926 Brussels Convention, but the limited number of parties to that convention in itself implied the intention to establish an exception to the general rule, and it was obvious that the

exception applied exclusively to those parties. The measures concerned could be applied to other states only in accordance with international agreements to which they had adhered. From the practical point of view, legal formulae to protect the interests of persons having claims on government merchant vessels could be worked out on the basis of a recognition of the immunity of such vessels and the consequent inapplicability to them of such measures of compulsion as arrest or detention.

(19 March 1958, 13th meeting, 2nd committee)

19. Mr. KORETSKY (Ukrainian Soviet Sociallist Republic) observed that the general debate had clarified the positions held by various countries and had shown that comparatively few of the articles allocated to the Second Committee were controversial. There was therefore reason to hope that agreement could be reached, particularly if the Committee based its further deliberations on the principle of the peaceful co-existence and co-operation of sovereign states.

20. In that connexion, he said that nuclear tests on the high seas were a violation of the principle of the freedom of the high seas It was well known that the Union of Soviet Socialist Republics yielded to no other state in its insistence on the prohibition of such tests and had made practical proposals for the reduction of armaments and prohibition of nuclear weapons. The Soviet Union could not be blamed for the failure to settle the problem of disarmament. The Committee was, however, concerned not with disarmament but with the prohibition of nuclear tests on the high seas. It was the right and duty of the conference to consider such prohibition, for nuclear tests certainly violated all the four freedoms set forth in article 27. The legality of nuclear tests on the high seas had been challenged by learned jurists in the United States of America, the United Kingdom and France.

21. The principle of the freedom of the high seas was also violated by military exercises conducted in the vicinity of the coasts of countries other than those carrying out the exercises.

22. With regard to the definition of the freedom of the high seas in article 27, he said that special regulations governing navigation could be established in respect of some seas and straits under generally accepted international law and multilateral agreements. If a small number of states had jurisdiction over certain seas and areas of sea leading only to the coastal waters of those states, special regulations might be necessary to maintain the security of those states. Accordingly, some reference to such special provisions should be inserted in the articles.

23. His delegation considered that some of the provisions of the International Law Commission's draft articles were anachronistic. As the representative of the United Arab Republic had stated, the provision in article 46 concerning the search of ships suspected of engaging in the slave trade in "suspect" zones was unjustified. In the past, that right of search had given certain maritime states an opportunity of controlling shipping in its own interests, but even at that time the right to search commercial ships had been regarded as an exception to the principle of international law that the right could not be exercised except by warships of the state of nationality of the suspected ship.

24. The International Law Commission's draft provisions on piracy were equally anachronistic. Piracy in the strict sense of the word was hardly known in modern times; but it had now taken the form of aggressive acts perpetrated or engineered by various states. For example, such acts had been committed in the Mediterranean against ships of the Spanish Republican Government in 1935 and 1937; and more recently the Chiang Kai-Shek régime had committed such acts in the Pacific. Such open acts of aggression, however, fell within the competence of the Security Council and should not be dealt with in detail in the articles before the conference. The whole matter could be dealt with adequately in a single article.

b. Consideration of the Draft Articles Adopted by the International Law Commission at its Eight Session (A/3159)

1) Article 26 (Definition of the high seas) and 27 (Freedom of the high seas)

(24 March 1958, 14th meeting, Second Committee)

26. Mr. Zabigailo (Ukrainian Soviet Socialist Republic) said that the joint amendment to article 26 (A/Conf.13/C.2/L.26)[1] had been submitted in order to remedy a defect to which attention had been drawn in the general debate. He emphasized that for certain seas, such as, for instance, the Black Sea, and the waters surrounding archipelagoes, a special regime of navitation should be established for historical reasons or by virtue of international agreements. In support of the amendment, he quoted the last sentence of paragraph 2 of the International Law Commission's commentary or article 26.

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1 Document A/Conf.13/C.2/L.26 Romania and Ukrainian Soviet Socialist Republic: Proposal

Article 26

Paragraph 1

(25 March 1958, 15th Meeting, 2nd Committee)

43. Mr. Keylin (Union of Soviet Socialist Republics) said that an objective study of the question was not greatly helped by the note of passion which some delegations had introduced into the debate on the joint amendment put forward by the Ukrainian S.S.R. and Romania (A/Conf.13/C.2/L.26).[2] It was necessary to adopt a judicial viewpoint and not resort to journalistic methods.

44. The attitude of the Soviet Union delegation to the juridical status of the high seas was very clear. It approved article 27 of the International Law Commission's draft with the Polish delegation's amendment (A/Conf.13/C.2/L.29).[3] The high seas should be open to all nations on a basis of equality, and no state whatever should lay claim to sovereignty over any part of the high seas or use the freedom of the high seas to the detriment of the rights and interests of other states. That was his delegation's conception of the freedom of the high seas; it was well known, and attempts to distort it were fruitless.

45. As regards article 26, the Soviet Union delegation was not opposed to paragraph 2 being referred to the First Committee for insertion in part I of the draft.

46. The amendment to article 26 submitted by the Ukrainian and Romanian delegations was perfectly clear. It dealt with the special regimes of navigation which might be required for seas bounded by a

Add the following:

"For certain seas a spacial regime of navigation may be established for historical reasons or by virtue of international agreements."

2 See supra.

3 Document A/Conf.13/C.2/L.29 Poland: Proposal

Article 27

The article to read as follows:

"1. All nations have the right to use the high seas freely. Freedom of the high seas comprises, inter alia:

(a) Freedom of navigation;

(b) Freedom of fishing;

(c) Freedom to lay submarine cables and pipelines;

(d) Freedom to fly over the high seas.

"2. The high seas being open on a basis of complete equality to all nations, no State may validly purport to subject any part of them to its sovereignty.

"3. States are bound to refrain from any act which might adversely affect the use of the high seas by nationals of other States."

limited number of states and communicating with the high seas only by a channel skirting the shores of the coastal states. It should not be overlooked that those waters had in the past been used for aggressive purposes by states which did not border the sea in question. The importance of a special régime of navigation for those seas was due to the security requirements of the coastal states which had to be borne in mind in consequence of numerous historical circumstances or the conclusion of international agreements. He would also remind the Committee of the statement on that subject contained in paragraph 2 of the Commission's commentary on article 26, where it was pointed out that the rules defining the regime of navigation might be modified "for historical reasons or by international arrangement". The joint proposal of the Ukrainian S.S.R. and Romania was thus well founded and the Committee would be fully justified in adopting it.

47. As regards the amendment submitted jointly by the Albanian, Bulgarian and U.S.S.R. delegations (A/Conf.13/C.2/L.32),[4] the head of the Soviet Union delgation had drawn the attention of the Committee in the general debate (7th meeting) to the fact that certain states were violating the principle of the freedom of the high seas by establishing huge manoeuvre and training zones on the high seas for air and naval forces. In view of those facts, the Committee should take its stand on the principle of the freedom of the seas and decide to prohibit the designation of military training areas in the neighbourhood of the coasts of foreign states and on international sea routes which curtailed the freedom of navigation and menaced the security of other states. The Soviet Union delegation had no doubt that those delegations which sincerely subscribed to the principle of the freedom of the high seas would support the three-power proposal.

(26 March 1958, 16th Meeting, 2nd Committee)

1. Mr. Keylin (Union of Soviet Socialist Republics) suggested that the proposal submitted by Poland, U.S.S.R., Czechoslovakia and Yugoslavia (A/Conf.13/C.2/L.30)[5] should be considered separately.

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4 Document A/Conf.13/C.2/L.32 Albania, Bulgaria, Union of Soviet Socialist Republics: Proposal

Article 27

At the end of the article, add the following:

"No naval or air ranges or other combat training areas limiting freedom of navigation may be designated on the high seas near foreign coasts or on international sea routes."

5 Document A/Conf.13/C.2/L.30 Czechoslovakia, Poland, Union of Soviet Socialist Republics and Yugoslavia: Propsal

41. Mr. Pushkin (Ukrainian Soviet Socialist Republic) speaking in support of the three-power amendment [6] submitted, pointed out that, while all states clearly had a right to carry out naval training in the open sea, the amendment referred not to training in the open sea but to naval and other exercises conducted for long periods of time near foreign coasts or on international sea routes. Training of that nature was clearly illegal under existing international law, since the designation of training areas by a state was tantamount to subjecting a part of the high seas to its sovereignty. Article 27 should therefore contain a specific provision forbidding the designation of training areas.

43. Mr. Keilin (Union of Soviet Socialist Republics) insisted that, if any working party were established to discuss the amendments to article 27, all delegations which had submitted amendments should be represented on it. Any classification of the amendments by conten was legally unsound.

2) New Article, to be inserted after Article 27

(26 March 1958, 17th Meeting, 2nd Committee)

29. Mr. Keilin (Union of Soviet Socialist Republics) said that the competence of the Committee to discuss nuclear tests on the high seas was unquestionable. The Conference was dealing with the codification of all questions concerning the law of the sea; one of those questions was that of nuclear tests on the high seas.

30. The United Kingdom draft resolution [7] could only be construed as a suggestion that it was not appropriate for the Committee to consider a problem which was being dealt with by the General Assembly. It did not appear to raise an issue of competence. The

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Article 27

After article 27 insert a new article worded as follows:

"States are bound to refrain from testing nuclear weapons on the high sea."

6 See supra A/Conf. 13/C.2/L.32.

** 1. Sir Alec Randall (United Kingdom) introduced his delegation's draft resolution (A/Conf.13/C.2/L.64). The Conference was not of a political nature, and should therefore not pronounce upon any question relating to nuclear tests, a matter which was under consideration in the General Assembly and the Disarmament Commission. That fact had also to be borne in mind by the Committee when it considered the fourpower proposal (A/Conf.13/C.1/L.30).

arguments advanced in support of it would seem to lead, rather, to the conclusion that the Committee should deal with the question of nuclear tests on the high seas.

31. With reference to the statement of the Japanese representative, he said that the Soviet Union had been striving for a long time to arrive at an immediate prohibition of nuclear weapons and an immediate discontinuance of all nuclear tests. The four-power proposal[8] referred only to the high seas simply because the Conference was dealing with the law of the sea. Hence, he could not understand how anyone who wished to see nuclear tests stopped could possibly abstain from voting on that proposal.

(27 March 1958, 18th Meeting, 2nd Committee)

23. Mr. Tunkin (Union of Soviet Socialist Republics), speaking in support of the joint proposal, said that there was a growing movement in the world in favour of the prohibition of the testing, manufacture and use of nuclear weapons. The peoples of the world wanted nuclear inventions to be used for peaceful purposes, not for destruction. It had been argued that the Committee should pass over the question of nuclear tests on the high seas; but surely, being engaged on the drafting of a definition of the freedom of the seas, the Committee could not ignore a question directly relevant to that freedom.

24. It was remarkable that, although it had been suggested several times that nuclear tests were an infringement of the principle of the freedom of the high seas, no one had tried to demonstrate that they were compatible with that principle. The United States representative had said that such tests were beneficial to mankind; that was a paradoxial conclusion.

25. It had been said that the Committee should not encroach on subjects which were the concern of the General Assembly. But the Committee had a duty to formulate provisions banning nuclear tests, not only because of public opinion, but because of the logic of law; for the freedom of the high seas would be a hollow thing unless it were safeguarded against violations.

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2. The question of nuclear tests had to be viewed as a whole and not as an isolated problem; so long as there were nuclear weapons, there would be nuclear tests. The real problem was that of disarmament.

8 See supra A/Conf. 13/C.2/L.30.

33. There was yet another reason that militated against the United Kingdom draft resolution, that the accession of a State to any given convention depended on that State alone, and its decision was influenced by many considerations. The Soviet Union was probably a party to all the conventions listed in the United Kingdom resolution and his delegation would certainly regard with satisfaction any increase in the number of States parties to them, according to the general policy of international co-operation practised by his government; however, particularly in view of the fact that a certain number of recently-constituted States were participating in the Conference, it was not the course indicated bu the United Kingdom delegation but that outlined by the International Law Commission that should be followed.

(28 March 1958, 20th Meeting, 2nd Committee)

15. Mr. Tunkin (Union of Soviet Socialist Republics) said that the Soviet delegation had abstained from voting on the Indian resolution [9] because it believed that the Conference should deal with the question of nuclear tests and should adopt a positve rule, arising from the principle of the freedom of the high seas, which would prohibit such tests. Mere statements were not enough, and the U.S.S.R. had always advocated taking concrete steps. The Indican proposal fell short of the required minimum, and the Conference would better serve the cause of peace if it adopted the joint proposal.

3) Article 28 (The Right of Navigation), 34 (Safety of Navigation) 35 (Penal Jurisdiction in Matter of Collision) and 36 (Duty to render assistence)

(31 March 1958, 22nd Meeting, 2nd Committee)

31. Mr. Keilin (Union of Soviet Socialist Republics) said that, in considering that group of articles, the essential qeustion was whether the Committee should, as proposed by the United Kingdom, agree to replace the explicit provisions that constituted the text of articles 34, 35 and 36 by one or more resolutions containing a list of conventions and commending their acceptance to all States which were not yet parties to them.

32. From the juridical point of view, it was obviously preferable that the instrument being prepared by the Conference should include explicit provisions on the safety of navigation, the duty to render assistance and penal jurisdiction in matters of collision.

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9 See A/Conf.13/C.2/L.71

35. The amendment to article 35 proposed by the United States (A/Conf.13/C.2/L.44)[11] was unacceptable, for it was far from being purely a matter of form. Under the terms of the Commission's draft, no arrest or detention of a ship could be ordered, in any place whatever, by any authorities other than those of the flag State. From the insertion of the words "on the high seas" it would necessarily be deduced, on the contrary, that in a foreign port of call a ship might be arrested or detained under pretext of the investigation of a collision that had occurred on the high seas.

34. The U.S.S.R. delegation could not therefore accept the United Kingdom proposals (A/Conf.13/C.2/L.49 and L.50).[10]

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10 Document A/Conf.13/C.2/L.49 United Kingdom of Great Britain and Northern Ireland: Proposal

Article 34

The article to be deleted, and its subject-matter covered by a resolution.

Draft resolution

The United Nations Conference on the Law of the Sea,

Desiring to emphasize the importance of ensuring safety at sea,

Conscious of the need to avoid the conflicts of interpretation and application which are likely to arise if principles which are embodied in, and given effect by, existing international instruments are embodied in a new convention,

Draws attention to the following international instruments:

The International Load Line Convention of 5 July 1930,

The International Convention of 10 June 1948 for the Safety of Life at Sea,

The International Regulations of 1948 for Preventing Collisions at Sea,

Commends the acceptance of these instruments to all States which are not yet parties to them, and

Expresses appreciation of, and support for, the work of the International Labour Organisation concerning conditions for crews.

Document A/Conf.13/C.2/L.50 United Kingdom of Great Britain and Northern Ireland: Proposal

Articles 35 and 36

The articles to be deleted, and their subject-matter covered by a resolution.

36. The United States amendment to article 34 (A/Conf.13/C.2/L.43)[12] was likewise unacceptable. The enumeration of the various matters that should be the subject of regulation was indispensable, and the deletion of sub-paragraphs (a), (b) and (c) would, so to speak, deprive the article of any concrete character.

37. The U.S.S.R. delegation considered that the Danish proposal concerning article 36 (A/Conf.13/C.2/L.36)[13] was worthy of acceptance. The Soviet Union was already co-operating with several States, particularly the Scandinavian countries, for the purpose mentioned in that amendment.

Draft resolution

The United Nations Conference on the Law of the Sea,

Desiring to affirm the principles stated in article 35 and 36 of the draft articles drawn up by the International Law Commission,

Conscious of the need to avoid the conflicts of interpretation and application which are likely to arise if principles which are embodied in, and given effect by, existing international instruments are embodied in a new convention,

Draws attention to the following international conventions:

Convention of 23 September 1910 for the Unification of certain Rules of Law respecting Assistance and Salvage at Sea,

Convention of 23 September 1910 for the Unification of Certain Rules of Law with respect to Collisions between Vessels,

International Convention of 10 May 1952 for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and Other Incidents of Navigation,

International Convention of 10 June 1948 for the Safety of Life at Sea - chapter V of the annexed regulations,

Commends the acceptance of these instruments to all States which are not yet parties to them; and

Expresses the belief that world-wide acceptance of these instruments will be the most effective method of putting into effect and securing universal respect for the principles affirmed in articles 35 and 36 of the draft articles drawn up by the International Law Commission.

11 Document A/Conf.13/C.2/L.44 United States of America: Proposal

Article 35

Paragraph 2

After the words "No arrest or detention of the ship", insert the words "on the high seas".

Comments

Article 35 is intended to apply to incidents occurring only on the high seas. The proposed amendment is to make the limitation explicit in this paragraph.

38. Another proposed amendment that should encounter no objection was that of the French delegation concerning article 35 (A/Conf. 13/C.2/L.6).[14]

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12 Document A/Conf.13/C.2/L.43 United States of America: Proposal

Article 34

Paragraph 1

Delete the words "with regard inter alia to" and sub-paragraphs (a), (b) and (c).

Comments

The specifics of the safety of navigation are covered in the lengthy International Convention for the Safety of Life at Sea which was signed in London on 10 June 1948. To this treaty there were forty-six parties as of 31 October 1956. Discussions are already under way for another international conference to be held in 1959 or 1960 to consider amendments to the 1948 Convention. Safety of navigation is a technical subject best handled by a separate convention.

13 Document A/Conf.13/C.2/L.36 Denmark: Proposal

Article 36

Additional Paragraph

Add the following new paragraph:

"Every coastal State shall promote the establishment and maitenance of an adequate and effective search and rescue service regarding safety on and over the sea and - where circumstances so require - by way of mutual regional arrangements cooperate with neighbouring States for this purpose."

14 Document A/Conf.13/C.2/L.6* France: Proposal

Article 26

Paragraph 1

The paragraph to read as follows:

"The term 'high seas' means all parts of the sea beyond the outer limit of the territorial sea as determined in the relevant articles."

Paragraph 2

Delete this paragraph.

39. In regard to the Turkish amendment (A/Conf.13/C.2/L.73) to the United Kingdom resolution covering article 35, while appreciating the motives by which it appeared to have been inspired,he felt that the establishment of a new international body could not be fully justified.

Article 27

The article to read as follows:

"1. The high seas are open to all nations; the fundamental principle of the freedom of the high seas means that no State may validly purport to subject any part of them to its sovereignty.

"2. Exercise of the freedom of the high seas is regulated by international law in order to ensure their use in the interests of the entire international community."

Article 28

The article to read as follows:

"Every State has the right to sail such ships on the high seas as are entitled to fly its flag."

Article 29

The article to read as follows:

"1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly.

"2. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship. The criteria applied by the State of registration for the grant of its nationality must in any event provide for effective and constant control to ensure that living, working and safety conditions on board conform to the minimum standard recognized as essential in the general interests of navigation.

"3. The right of a ship to fly the flag of a State is evidenced by documents issued by the authorities of the State of flag."

Article 34

Paragraph 1

Paragraph 1 (a) to read as follows:

"(a) The use of signals and means of communication and the prevention of collisions;"

Incorporating document A/Conf.13/C.2/L.6/Corr.1.

40. As to the proposal of the Union of South Africa (A/Conf. 13/C.2/L.74),[15] it merely stated the obvious and was thus superfluous.

41. Lastly, the U.S.S.R. delgation could not accept the United States proposal for article 28 (A/Conf.13/C.2/L.40)[16] which, far from improving the Commission's text, made it less satisfactory. Any mention in the article of the symbolic nature of the flag might introduce an element of uncertainty in the very conception of the flag. The comments which accompanied the proposal merely bore that out. The flag must have a precise meaning that did not lend itself to varying interpretations.

Article 35

Paragraph 1

Substitute the words "the incriminated person" for the words "the accused person" near the end of the paragraph.

additional Paragraph

Insert, between paragraph 1 and the present paragraph 2 (which would then become paragraph 3), a new paragraph reading as follows: "2. In disciplinary matters, the State which has issued a master's certificate or a qualifying certificate shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them."

Article 36

Article 36 to come immediately after article 34.

Note. - Article 35, on the subject of penal jurisdiction in matters of collision, should logically follow the more general provision concerning collisions contained in sub-paragraph (c) of the present draft article 36.

In sub-paragraph (b), delete the words "with all speed".

Note. - These words are, to say the least, unnecessary, in view of the general qualification expressed at the beginning of article 36 in the phrase "in so far as he [the master of a ship] can do so without serious danger to the ship, the crew or the passengers".

Article 48

Paragraph 2

Substitute the words "contamination by radio-active substances" for the words "the dumping of radio-active waste".

4) Article 29 (Nationality of Ships), 30 (Status of Ships) and 31 (Ships Sailing under two Flags)

(2 April 1958, 24th Meeting, 2nd Committee)

25. Mr. Chao (China) said that the right of a ship to fly the flag of a State depended on the grant of the State's nationality to the ship and on the registration of the ship in its territory. There must be a genuine link between the ship and the State before the grant of nationality and the registration could take place. In paragraph 3 of its commentary on article 29, the International Law

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15 Document A/Conf.13/C.2/L.73 Turkey: Amendment to document A/Conf. 13/C.2/L.50

Add the following paragraph at the end of the draft resolution proposed by the United Kingdom (A/Conf.13/C.2/L.50):

"Expresses the hope that an international body be set up to solve the conflicts of competence which may result in the event of a collision or other incident of navigation concerning a ship on the high seas."

16 Document A/Conf.13/C.2/L.40 United States of America: Proposal

Article 28

The article to read as follows:

"Every State has the right to navigate on the high seas ships having its nationality and flying its flag as a symbol thereof."

Comments

There are two principles underlying the rule stated in article 28:

(a) Every State, whether or not it has a seacoast, has the legal power to grant its nationality to ships operating upon the high seas. States not having a seacoast were first regarded as having this power by the peace treaties (1919) following World War I, and again in the Declaration of Barcelona (1921).

(b) Ships fly the flag of the State of their nationality as a symbol, and prima facie evidence, of their nationality. Thus when it is stated that a ship is "flying" or "sailing under" a particular flag, what is meant is that the ship has the nationality of the flag State. However, there are other situations where a ship may properly display the flag of a State of which it is not a national without any intention of claiming the latter's nationality.

For example, it is not unusual for a ship to fly at the mast-head or yard-arm the flag of a State other than the State of its nationality. Thus at the yard-arm at sailing time a ship sometimes flies the flag of the country to which she is bound, and in a foreig: port the flag of that State is frequently flown as a courtesy.

Commission said that in view the divergence of existing practice it had confined itself to stating the general principle of the necessity of a genuine link. His delegation thought that use of the bare term "a genuine link" might lead to a great variety of relationships between State and ship. The link should be such as to enable the State to exercise control and jurisdiction over the ship. For that reason his delegation supported the Italian amendment (A/Conf.13/C.2/L.28).[17]

(2 April 1958, 24th Meeting, 2nd Committee)

31. Mr. Keilin (Union of Soviet Socialist Republics) said that his delegation would vote in favour of the Romanian amendment to article 31 (A/Conf.13/C.2/L.27),[18] which it considered an essential addition in that it made the text more precise.

32. His delegation could not, however, accept the United Kingdom amendment to article 29 (A/Conf./13/C.2/L.86); were it adopted, the result would be that a ship's documents would lose their authentic value and,in violation of the essential rules of international law, documents issued by the competent authorities of the flag State, certifying a ship's right to fly its flag, could be subjected to verification in foreign ports. That was in fact the meaning of the Latin term prima facie, which the United Kingdom

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17 Document A/Conf.13/C.2/L.28 Italy: Proposal

Article 29

Paragraph 1

The paragraph to read as follows:
"1. Each State shall fix the Conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control over ships flying its flag."

18 Document A/Conf.13/C.2/L.27 Romania: Proposal

Article 31

Between the words "according to convenience" and "may not", insert the words "during the same voyage".

* Incorporating documents A/Conf.13/C.2/L.28/Corr.1 and Corr.2.

proposed inserting in the text. There was perhaps two categories of evidence in England, prima facie evidence and conclusive evidence, the difference being that the former could be refuted by any other kind of evidence while the latter was irrefutable. If the validity of the documents certifying a ship's right to fly its flag could be challenged in foreign ports, many difficulties and complications would obviously ensue in international commercial navigation. Unnecessary conflicts might arise between the governmental organs of various countries over the validity or irregularity of the documents issued.

33. The United States amendment to article 30 (A/CONF. 13/C.2/L.41)[19] was unsatisfactory from a juridical point of view, for paragraph 2 implied that a ship changed its nationality and flag whenever it changed its papers. The change of a ship's papers was, however, a consequence of the change of registry. Therefore the International Law Commission's text seemed preferable from the juridical point of view.

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19 Document A/Conf.13/C.2/L.41 United States of Ameria: Proposal

Article 30

The article to read as follows:

"1. Ships shall have the nationality of one State only. A State shall not grant its nationality to a ship already having the nationality of another State.

"2. A ship may not change its nationality, and hence its flag, during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of documentation.

"3. Save in cases expressly provided for in international treaties or in these articles, ships shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas."

Comments

Article 30 deals with three separate, although related, topics, viz: (a) single nationality, (b) change of nationality, and (c) jurisdiction and control. The proposed re-draft of article 30 is intended to separate and clarify these topics.

(a) Single nationality. The opening phrase of article 30, that "Ships shall sail under the flag of one State only. . ." is intended to mean that "ships shall have the nationality of one State only," and it is believed the article should so state, as in paragraph 1 of the proposed re-draft.

(b) Change of nationality. The last sentence of article 30 regarding a change of flag is intended to refer to a change of nationality, and it is believed the article should so state, as in paragraph 2 of the re-draft.

34. The new article on the classification of ships proposed by the Portuguese delegation (A/Conf.13/C.2/L.38/Rev.1)[20] was contrary to the laws of logic, which required any classification to be based on fixed criteria.
In the proposed classification, the criterion of ownership was applied in the first category of ships and that of purpose (whether or not the ship was engaged in commercial transport) in the second. It was not difficult to surmise the reasons for that amendment. As it was impossible, without infringing the principles of international law, to deny immunity to state-owned merchant ships, the authors of the amendment had had the idea of considering state-owned merchant ships as not being State ships. Any such attempt to deny immunity to state-owned merchant ships was a distortion of the very rules of logic. The U.S.S.R. delgation would therefore vote against the Portuguese proposal.

(c) Jurisdiction and control. Article 30, in stating that, subject to the two mentioned exceptions, ships "shall be subject to its [the flag State's] exclusive jurisdiction on the high seas" is intended to mean that ships "shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas". It is believed that the article should so state, as in paragraph 3 of the re-draft.

20 Document A/Conf.13/C.2/L.38/Rev.1 Portugal: Proposal

Additional article 29 A *

Insert between articles 29 and 30 a new article worded as follows:

"Classification of Ships

"1. For the purposes of these articles, all ships fall into two categories: (a) State ships (b) Merchant ships

"State ships are ships owned or operated by a State with the purpose of carrying out military and/or scientific noncommercial functions and/or others dependent or related thereto, including notably hospital ships and survey ships. They must always be under the command or control of an officer duly commissioned by his government and bear and/or carry an external mark or marks of their category.
"Merchant ship is any ship other than a state ship.
"2. For the purposes of these articles state ships are divided in two categories:

(a) Military or warships

(b) Non-military or government ships

"A warship is a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

"Government ships are state ships other than warships."

5) Additional Article 31 A (A/Conf.13/C.2/L.51)

(9 April 1958, 27th Meeting, 2nd Committee)

1. Mr. Keilin (Union of Soviet Socialist Republics) said that the proposal for an additional article 31 A submitted by Mexico, Norway, the United Arab Republic and Yugoslavia (A/Conf.13/C.2/L.51)[2] was not at all clear. It was stated in that text that the provisions of the preceding articles did not prejudice the question of ships in the service of intergovernmental organizations. But that question had not previously been mentioned, and in the view of the Soviet Union delegation the proposed article was devoid of substance. It was immaterial whether it was adopted or not, and for that reason its adoption would be meaningless.

2. He added that it would be possible to raise many matters which were not germane to the work of the Committee, but to do so would merely complicate the work and hinder agreement.

The additional article 31 A proposed by Mexico, Norway, the United Arab Republic and Yugoslavia was adopted by 24 votes to 12, with abstentions.

6) Article 32 (Immunity of Warships) and 33 (Immunity of Other Government Ships)

(3 April 1958, 25th Meeting, 2nd Committee)

16. Mr. Keilin (Union of Soviet Socialist Republics) said that, in considering the fourth group of articles, his delegation felt it particularly necessary to stress the fact that the immunity of government ships, including those operated for commercial purposes, was one of the oldest-established principles of international law. It was based on the generally accepted respect for the sovereignty of foreign States, in virtue of which no State was entitled to exercise jurisdiction over another State; the time-honoured principle was expressed in the maxim: par in parem non habet imperium.

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* It was indicated in document A/Conf.13/C.2/L.38/Rev.1/Corr.1 of 3 April 1958 that the additional article proposed by Portugal was to be inserted in a place to be determined by the drafting committee, and not between articles 29 and 30.

21 Document A/Conf.13/C.2/L.51 Mexico, Norway, United Arab Republic and Yugoslavia: Proposal

Additional article 31 A

"The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization."

17. The immunity of government ships, including those operated for commercial purposes, was admitted in the legal practice of many States, among them States whose representatives in the Committee were opposed to that principle. There was an obvious contradiction between the statements of their representatives and the position adopted by certain States which, when their own interests were directly affected, pleaded the immunity in question.

18. Almost 150 years previously, the immunity of government ships had been recognized by the United States Supreme Court in the famous judgement delivered in 1812 in the case of the schooner Exchange. The same principle of conceding immunity to government ships engaged in the commercial carriage of passengers and cargo had formed the basis of a judgement of the English Court of Appeal in 1880 in the case of a collision off Dover between the Belgian government ship Parlement belge and a British tugboat. That decision had established a precedent, followed in a number of subsequent decisions of English courts in such cases as those of the vessels Jassy, Esposende, Quilmark, Gagara and Porto-Alexandre, among others.

19. In 1938, the principle of the immunity of government ships operating for commercial purposes had been discussed and reaffirmed by the House of Lords in the case of the vessel Cristina. That decision had stated two universally accepted principles as a basis for subsequent decisions in cases affecting foreign government ships. Firstly, the courts should not countenance legal proceedings involving a sovereign foreign State against its will, irrespective of whether the proceedings were instituted directly against that State or with the purpose of depriving it of property or obtaining any monetary compensation from it. Secondly, whether or not the sovereign foreign State was a party to the proceedings, the courts should not arrest or detain property belonging to or under the control of a sovereign foreign State.

20. The Judicial Committee of the Privy Council, deciding a case in 1954 in which the Indonesian Government had claimed immunity, had failed to recognize immunity, but only on the grounds that the Indonesian Government's ownership of the vessel had not been proven.

21. In the United States of America, the immunity of government ships, including those operated for commercial purposes, had also been conceded in a series of judgements. In the case of the Chilean Government ship Maipo, a United States court had ruled that, if the government of any State regarded transport of cargo as one of its functions, that was for the State concerned to decide, and the courts could not require that a foreign State was subject to their jurisdiction on the same basis as a private ship-owner.

22. In the well-known judgement of the United States Supreme Court in the case of the Italian government commercial vessel Pesaro, it had been conceded that the principles of immunity applied equally to all ships owned and employed by any government for public purposes and that ships acquired, equipped and operated by a government for commercial transport in order to develop trade or increase the national income must be regarded as government ships in the same sense as warships. The Supreme Court had also stated in its judgement that it was unaware of any international rule under which the maintenance and development of a nation's prosperity in time of peace could be considered a less important social cause than the maintenance of naval forces.

23. In the Navemar case, the Supreme Court had ruled that ships belonging to a friendly foreign State, owned and used by it, should be considered to be government ships even if engaged in the carriage of merchandise.

24. Similarly, in 1943 in the case of a Peruvian government ship carrying sugar from Peru to New York, which had claimed immunity, a United States court had ruled that the judicial seizure of a ship belonging to a friendly foreign State would constitute a grave derogation of that State's dignity, and was likely to jeopardize friendly relations.

25. In France, a judgement of the Cour de cassation in 1849 had established the principle that a foreign State was beyond the jurisdiction of the French courts.

26. The Brussels Convention of 1926 had suffered an unenviable fate: it had been ratified by only a small number of States, despite the fact that over thirty years had elapsed since it had been concluded. Neither the United States of America nor Great Britain had ratified it. The fact that it had been concluded by a very limited number of States proved only that it represented an exception to the general rule. But it was evident that such an exception could affect only the ships of those States which were parties to the convention, and that its provisions could not be applicable to other ships.

27. In recent years, the United States of America had been trying to introduce a restrictive interpretation of immunity by differentiating between the functions exercised by a State in public and in private international law. But the protagonist of such an interpretation could not show any grounds for it. Indeed, it would be an inadmissible interference in the domestic affairs of a foreign State for any judicial organ to lay down which functions of the foreign State were exercised in public law and which in private law. It would surely be a violation of international law if national

courts were to try to distinguish between the sovereign and non-sovereign acts of a foreign State, particularly since in some countries commercial vessels were state-owned and the operation of commercial navigation constituted a function of the State.

28. The immunity of government ships operated for commercial purposes was generally recognized as a principle of international law, and no deviation from that principle was possible without the agreement of the State concerned. That was borne out by the inclusion in a number of trade agreements between the United States and other countries of provisions waiving immunity. The Swiss jurist Lalive, in a lecture at the Academy of International Law in 1953, had referred to agreements of that nature concluded between the United States of America and Italy, Colombia, Denmark, Greece, Ireland, Israel and Uruguay.[22]

29. The reasons for that attempt to restrict the immunity of government ships operated for commercial purposes were not difficult to surmise. On the one hand, there was a completely unfounded fear that to concede such immunity might place privately owned ships at a disadvantage in international trade by comparison with government ships. On the other hand, the question was being confused, possibly deliberately. The conception of immunity was being replaced by one of irresponsibility, although the immunity of government commercial ships in no wise implied any irresponsibility. There had never been a case in which any valid claims in respect of Soviet Union ships had not been settled. Certain questions concerning suits brought against U.S.S.R. goverent commercial ships, and suits brought by such ships against foreign ships, had been and were being considered, to the satisfaction of the parties in dispute, by the Maritime Arbitration Commission of the Soviet Union, established some thirty years previously.

30. Established institutions of international law, such as the immunity of government ships, including those operated for commercial purposes, should be respected. The observance of that immunity did not encroach upon the interests of privately owned ships. For those reasons, the Soviet Union delegation objected to any restriction of the immunity of government ships, a restriction which ran counter to international law, and would vote for the adoption of article 33 of the International Law Commission's draft.

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[22] Academie de droit international, Recueil des cours, 1953 III, pp. 209 et seq.

(8 April 1958, 26th Meeting, 2nd Committee)

23. Mr. Keilin (Union of Soviet Socialist Republics), referring to the statements of certain representatives, wished to make some brief observations.

24. A careful study of the judicial practice of Great Britain and the United States of America fully suported the assertions of the Soviet Union delegation that the judicial decisions of those countries continued to uphold the immunity of government ships operated for commercial purposes. Those assertions were also confirmed in the literature of jurisprudence, particularly in the yearbook Annuaire de I'Institut de droit international devoted to the session of the Institute held at Siena in 1952.

25. In that connexion, a judgement of the House of Lords pronounced in November 1957 was not without interest, although it was not directly concerned with merchant vessels, being of wider purport; in it, one of the peers had stated that the principle of sovereign immunity was not founded on any technical rules of law, but on broad considerations of public policy, international law and comity.[23]

26. It was obvious that the problem of the immunity of foreign States was far from simple. It was under consideration by the Institute of International Law, which had discussed it at the two sessions at Siena and later at the session at Aix-en-Provence. It had also been considered at the session of the International Law Association at Lucerne.

27. As to the distinction between acts jure gestionis and acts jure imperii to which he had referred at the previous meeting, the literature of jurisprudence showed that distinction to be unfounded. He would mention only the conclusion reached by Lauterpacht, published in the Year Book of International Law,[24] that the solution of the problem could not be found in the distinction between acts jure gestionis and acts jure imperii.

28. In view of all that had been said, the question arose as to whether it was advisable for the Committee to discuss or take any decisions at all on the subject of immunity; the differences of opinion which had been revealed showed that such a course might only complicate the Committee's work and lead to difficulties in drawing up the document of international law which was the common goal. The question of the immunity of government ships was not indissolubly

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[23] The All-England Law Reports, 1957, Vol. 3, part 8, p. 452.

[24] The British Year Book of International Law, 1951, p. 222.

linked to the régime of the high seas, which was the immediate subject of the Committee's deliberations; it would therefore be quite appropriate to put aside the question of immunity without taking any decisions on it.

7) Additional Article 33 (Immunity of Other Government Ships)

(9 April 1958, 27th Meeting, 2nd Committee)

11. Mr. Keilin (Union of Soviet Socialist Republics) felt that the Romanian proposal was both rational and consistent with the General Committee's recommendations. If article 33 was referred to the First Committee, the question of the immunity of government ships would be dealt with as a single whole, in its logical context, and would thus stand a better chance of solution.

The Romanian proposal to refer article 33 to the First Committee was rejected by 41 votes to 11, with 2 abstentions.

8) Additional Article 33A (A/Conf.13/C.2/L.113)

(14 April 1958, 33rd Meeting, 2nd Committee)

9. Mr. Keilin (Union of Soviet Socialist Republics) drew attention to the circumstances surrounding the submission of the United Kingdom's proposal for article 33A (A/Conf.13/C.2/L.113)[25] and the

[25] Document A/Conf.13/C.2/L.113 United Kingdom of Great Britain and Northern Ireland: Draft resolution

Additional article 33 A

The United Kingdom delegation withdraws that part of its proposal (A/Conf.13/C.2/L.83) which concerns article 33, in favour of the United States proposal (A/Conf.13/C.2/L.76), and proposes the following additional article 33A:

"For the purposes of the present convention ships owned or operated by a State and used only on government non-commercials service are ships which, being owned or operated by a government, fall into one or other of the following categories:

(i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships;

(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigation, fishery protection vessels;

additional article proposed by Portugal (A/Conf.13/C.2/L.38/Rev.2).[26] The original Portuguese proposal (A/Conf.13/C.2/L.38) had been submitted on 21 March. On 25 March, it had been submitted in a revised form (A/Conf.13/C.2/L.38/Rev.1); and on the same day the United Kingdom had submitted a similar proposal to the First Committee (A/Conf.13/C.1/L.37).[27] The same proposal (A/Conf.13/C.2/L.113) had then been submitted by the United Kingdom to the

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(iii) Vessels employed in services of a similar character to (i) and (ii)."

Note. - A definition in identical terms has already been submitted by the United Kingdom delegation to the First Committee as additional article 20 A (A/Conf.13/C.1/L.37). If that proposal is adopted by the First Committee, and if articles 20 and 33 are to be included in a single instrument, it may not be necessary to repeat the definition as article 33A. It is also possible, as the delegation of the Federal Republic of Germany has pointed out in its proposal (A/Conf.13/C.2/L.85), that several definitions may be placed in a general clause preceding the rules concerning the territorial sea. If such a proposal is adopted, the United Kingdom delegation proposes that the definition set out above should be included in that general clause

[26] Document A/Conf.13/C.2/L.38/Rev.2 Portugal: Revised proposal

Additional article

"Classification of ships

"1. For the purposes of these articles all ships fall into one or other of the following categories:

(a) Warships
(b) Government Ships
(c) Merchant ships

"Warships are ships belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

"2. Government ships are ships which being owned or operated by a government fall into one or other of the following categories:

(i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships;
(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigations, fishery protection vessels;
(iii) Vessels employed in services of a similar character to those referred to in (i) and (ii).

Second Committee at its 27th meeting on 9 April; and on the same day the Portuguese representative had once again submitted a revision (A/Conf.13/C.2/L.38/Rev.2) of his proposal. At the 39th meeting of the First Committee on that day, the United Kingdom representative had spoken on his proposal and stressed its importance. The representative of Turkey in the First Committee had opposed the United Kingdom proposal, pointing out that government non-commercial ships as defined therein included such vessels as fleet auxiliaries, military supply ships and troopships, which the Montreux Convention had classified as warships. Some surprise had been caused when the Second Committee had adopted the United Kingdom proposal (A/Conf.13/C.2/L.113) at its 27th meeting on 9 April. At the 39th meeting of the First Committee on that day, the United Kingdom proposal to that committee (A/Conf.13/C.1/L.37) had been withdrawn. It had now been decided that the whole question should be reconsidered in the Second Committee.

13. Mr. Keilin (Union of Soviet Socialist Republics) pointed out that the additional article 33 A proposed by the United Kingdom (A/Conf.13/C.2/L.113)[28] could not be put to the vote as it had been submitted at the last minute and had not been discussed in the Committee. It was surprising that those delegations which had just stressed the importance of expediting the work in accordance with the

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"They must always bear and/or carry an external mark or marks of their category and should always be under control of an [officer duly commissioned by his government].

"3. Merchant ships are all ships are all ships other than warships or government ships."

Remarks. -- The drafting committee is the competent organ to determine where to insert the article if accepted.

In the expression "officer duly commissioned by his government" the terms "officer" and "commissioned" are taken in a broad sense and intend to mean "a responsible person duly placed in charge by his government as its representative on board". Such person may or may not discharge concurrently the office of captain, skipper or master of the ship. The above-mentioned expression is placed between brackets so that its drafting may be left to the drafting committee.

[27] Document A/Conf.13/C.2/L.37 Portugal: Proposal

Article 32 and 33

Articles 32 and 33 and their headings to be replaced by a single article, reading as follows:

Immunity of State Ships

Article 32

"State ships on the high seas have complete immunity from the jurisdiction of any State other than the flag State."

recommendations of the General Committee should now submit a new article which required most careful consideration.

The additional article 33 A proposed by the United Kingdom was adopted by 24 votes to 14, with 21 abstentions.

9) Article 46 (Right of visit) and 47 (Right of not pursuit)

(9 April 1958, 28th Meeting, 2nd Committee)

29. Mr. Pushkin (Ukrainian Soviet Socialist Republic) supported the Bulgarian proposal (A/Conf.13/C.2/L.117)[29] because it provided a practical method of avoiding the visiting of government commercial ships on the high seas.

30. His delegation had already pointed out that article 37 on the slave trade was anachronistic. The same applied to paragraph 1 (b) of article 46. There had formerly been a need for special provisions to suppress slave trading, and there had been grounds for admitting the right of warships to visit suspect ships, although the warships of some countries had abused that right to control certain seaways in their own interests, contrary to international law. It had since been acknowledged, however, in the Slavery Convention of 1926 and the Supplementary Convention on Slavery of 1956, that the grant of such rights to warships was no longer essential. Accordingly, the Ukranian delegation would vote for the proposal of the United Arab Republic.

40. Mr. Keilin (Union of Soviet Socialist Republics) said he unreservedly supported the proposal of the United Arab Republic that paragraph 1 (b) of article 6 be deleted, and would vote for it. That deletion was necessary for various reasons. In the first place, would it not be discriminatory automatically to regard certain maritime zones as suspect in the matter of the slave trade? It was well known which countries had warships cruising in those neighbourhoods and had interests which would be served by the right of visit thus established. Secondly, it was inadmissible and unjustified to presume that ships in the "suspect" zones were engaged in the slave

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28 See supra

29 Document A/Conf.13/C.2/L.117 Bulgaria: Proposal

Article 46

Additional Paragraph

Add a new paragraph as follows:
"4. The provisions of paragraphs 1 to 3 of this article shall not apply to government ships operated for commercial purposes."

trade; such a suspicion would probably only be a pretext for controlling maritime trade in violation of the principle of the freedom of the high seas. Thirdly, the sub-paragraph was in no way necessary for effectively combating the slave trade, and it seemed that the International Law Commission had allowed itself to be influenced by happenings in a former age in an entirely different set of circumstances, of which the memory lay sleeping in the dust of archives. Finally, the provision ran counter to the Supplementary Convention on Slavery of 1956, article 3 of which laid down that the transport or attempted transport of slaves from one country to another was a penal offence and that persons found guilty of such offences were liable to severe penalties. The suppression of such offences could and should be undertaken by the States of which the flag was flown by the ships attempting to engage in the transport of slaves.

41. He also supported the Bulgarian proposal to add a new paragraph to article 46. The arguments put forward by the Bulgarian representative required no comment.

42. The many amendments to article 47 might be devided into groups, according to the issues raised in them.

43. One of those groups concerned the question whether the right of hot pursuit arose when ships were outside the limits of territorial sea. The joint proposal of Poland and Yugoslavia and the Indian proposal aimed at extending the right of hot pursuit to the contiguous zone defined in article 66. It should be recalled that that solution was already provided for in the International Law Commission's draft, but only partially, namely, in cases in which there had been an infringement of the rights which the establishment of the contiguous zone was intended to protect. Basing itself on its general concept of the question, his delegation would not raise any objection to those delegations, amendments. That was, however, not the case with regard to the amendments of delegations which wished to go still further and recognize a right of hot pursuit arising even when the foreign ship was in the zone to which article 55 referred. Quite apart from what his delegation thought about those zones in general, it could not consent to such an extension of the right of hot pursuit, which would allow that right to arise within those zones and would permit pursuit beyond them.

44. A further group of amendments would have the effect of weakening the notion of the right of hot pursuit. That group included the proposals of the United States (A/Conf.13/C.2/L.105)30 and other delegations which all, far from rendering the International Law Commission's text more precise, introduced a regrettable uncertainty. The United States proposed to amend paragraph 3 of the more

or less precise text of the International Law Commission by substituting for it a formula of which the meaning was completely vague -- namely, "an accepted method of piloting or navigation". The same could be said of the Danish proposal to introduce a two-year period and a six-hour time-limit (A/Conf.13/C.2/L.99).[31] The adoption of those amendments might in practice cause useless complications.

45. The Soviet Union considered it preferable to keep the wording of article 47 as it appeared in the International Law Commission's draft, merely making the additions resulting from the joint amendment of Poland and Yugoslavia, and from the Indian amendment.

10) Article 48 (Pollution of the high seas)

(10 April 1958, 29th Meeting, 2nd Committee)

25. Mr. Keilin (Union of Soviet Socialist Republics) considered that the Czechoslovak proposal (A/Conf.13/C.2/L.118)[32] relating to

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[30] Document A/Conf.13/C.2/L.105 United States of America: Proposal

Article 47

Paragraph 3

Delete the words "bearings; sextant angles or other like means" and substitute therefor the words "an accepted method of piloting or navigation."

Comments

The article, as drafted, refers only to methods of "piloting" to determine position. The terms used to describe such methods do not necessarily include methods of "navigation", including modern electronic methods. The amendment would clearly permit the use of all effective modern methods of both piloting and offshore navigation.

[31] Document A/Conf.13/C.2/L.99 Denmark: Proposal

Article 47

Paragraph 1

Add at the end of the text:

"The pursuit may also be undertaken against a ship on account of offences committed previously within a maximum period of two years. An arrest can only be made if the ship has the same master and belongs to the same owner as was the case when the previous offence was committed.

article 48 was of great value. The amendment to paragraph 2 would make the text more concise and categorical. It was essential to impose on the State the obligation to prohibit the dumping of radio-active elements and waste in the sea. Further, the change introduced in paragraph 3 would delete from the International Law Commission's text the reference to experiments or activities with radio-active materials. That deletion was necessary if it were really desired that the sea and the air space above it should cease to be a source of destruction of living resources and of the spreading of terrible diseases.

26. Other amendments to article 48 could be made to concord with that of Czechoslovakia: for instance, the amendment of Uruguay (A/Conf.13/C.2/L.79),[33] which related to paragraph 1, and that of France (A/Conf.13/C.2/L.6),[34] which was merely one of form.

27. Some attention should be given to the consideration of the United States and United Kingdom proposals (A/Conf.13/C.2/L.96/Rev.1,[35]

Paragraph 2

Add at the end of the text:

"If, however, the ship pursued remains within sight of the pursuer without anchoring or mooring and leaves the said territorial sea not later than 6 hours after entering, the pursuit may be resumed.

Substitute for the words "other like means" the words: "by other reliable technical means such as Decca, loran and radar."

32 Document A/Conf.13/C.2/L.118 Czechoslovakia: Proposal

Article 48

Paragraph 2

The paragraph to read as follows:

"Every State shall, in order to prevent pollution of the seas, draw up regulations prohibiting the dumping of radioactive elements and waste in the sea."

Paragraph 3

The paragraph to read as follows:

"All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above by radioactive materials or other harmful agents."

33 Document A/Conf.13/C.2/L.79 Uruguay: Proposal

Article 48

L.106.[36] L.107[37]). The delegations of those two countries proposed to replace the explicit clauses of the International Law Commission's

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Paragraph 1

Insert the words "and exploration" between "exploitation" and "of the seabed".

34 See supra

35 - Document A/Conf.13/C.2/L.96/Rev.1 United Kingdom of Great Britain and Northern Ireland: Proposal

Article 47

Paragraph 1

Delete the last sentence.

Add a paragraph as follows:

"Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained".

Article 48

Paragraph 1

Delete this paragraph and adopt a resolution in the following terms:

"The United Nations Conference on the Law of the Sea.

Desiring to emphasize the importance of preventing the pollution of the high seas by the discharge of oil;

Draws attention to the International Convention of 12 May, 1954 for the Prevention of Pollution of the Sea by Oil;

Expresses the belief that the objectives of paragraph 1 of draft article 48 drawn up by the International Law Commission will be achieved by States participating in the International Convention of 12 May, 1954."

36 Document A/Conf.13/C.2/L.106 United States of America: Proposal

Article 48

Paragraph 1

Delete this paragraph and recommend that the Conference adopt the resolution the text of which is given below.

Comments

The vast and technical subject of oil pollution has been dealt with experimentally in the 1954 International Convention for the Prevention of Pollution of the Sea by Oil. Furthermore, the subject

draft by resolutions couched in vague terms. In the case of paragraphs 2 and 3, they were submitting a joint draft, whereas in the case of paragraph 1, they were proposing different texts. Those

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of oil pollution has been under study by the Transport and Communications Commission of the United Nations and by the Economic Commission for Europe, which, in turn, has called for continued United Nations study of the problem by the World Health Organization and the Food and Agriculture Organization.

Recognizing that the 1954 Convention was experimental in nature and that the pollution problem continues under extensive study, it is considered that the most appropriate action by this conference would be the adoption of the following resolution:

Draft resolution

The United Nations Conference on the Law of the Sea.

Recognizing the need for international co-operation with respect to the problem of pollution of the high seas by oil and other petroleum products,

Taking into account the complexities of this extremely technical problem which involves not only ships, but pipe-lines and other facilities related to the exploration and exploitation of the continental shelf;

Noting that various international organizations are presently studying this problem;

Recommends that States render all possible assistance to the interested international organizations and that, pending the outcome of the studies of the respective organizations, States promote national programmes designed to minimize the possibility of the pollution of the sea by oil.

37 Document A/Conf.13/C.2/L.107* United Kingdom of Great and Northern Ireland and United States of America: Proposal

Article 48

Paragraph 2 and 3

Article 48, paras. 2 and 3: Delete these paragraphs and recommend that the Conference adopt the resolution the text of which is give below.

Comments

The United States and the United Kingdom, as two of the leaders in the peaceful use of atomic power, believe that it is necessary to encourage international action in the field of disposal of radioactive

* Incorporating document A/Conf.13/C.2/L.107/Corr.1.

draft resolutions served an entirely different purpose from that of the International Law Commission's text, and, to an even greater extent, from that of the Czechoslovak amendment. They were not aimed at preventing the dumping of radio-active materials, nor at avoiding pollution of the sea; on the contrary, they would recognize the right to dump radio-active materials in the sea and to pollute it. That appeared to be the only possible interpertation of the joint resolution of the United Kingdom and the United States (A/Conf.13/C.2/L.107), which openly envisaged the adoption or regulations, standards and measures governing the dumping of radio-active materials in the sea. The United States resolution (A/Conf.13/C.2/L.106), which merely vaguely advocated the establishment of "national

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wastes. All of the available scientific and technical competence in the field of radiological protection should be marshaled and utilized to assist States in establishing standards and drawing up internationally acceptable regulations controlling the disposal of radioactive wastes in such a way as to avoid pollution of the seas and to avoid irreparable harm to the marine resources of man.

Several international agencies are interested in this problem. In view, however, of its primacy in the field of atomic energy, the International Atomic Energy Agency should be called upon by this Conference to take the lead.

It is the opinion of the sponsors of this proposal that the resolution which follows is more appropriate and will be more effective in achieving the goal of early international action in this most important field than the draft article prepared by the International Law Commission

Draft resolution

The United Nations Conference on the Law of the Sea,

Recognizing the need for international action in the field of disposal of radioactive wastes in the sea,

Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject;

Noting that the International Commission for Radiological Protection had made recommendations regarding the maximum permissible concentration of radio isotopes in the human body and maximum permissible concentration in air and water.

Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radioactive materials to the sea, promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radioactive material in amounts which would adversely affect man and his marine resources.

programmes" designed to minimize the possibility of pollution of the sea, must be placed in the same category.

28. Those draft resolution could in no way promote the interests of international shipping; his delegation would therefore vote against their adoption.

32. Mr. Pushkin (Ukrainian Soviet Socialist Republic) said that the problem to which paragraph 3 of article 48 related -- namely, the problem caused by the testing of nuclear weapon on the high seas -- would be completely solved only if all such tests were prohibited. Those tests constituted a dreadful menace to mankind. The International Law Commission, which had recognized, in principle, the need to put an end to such tests, had by recommending that all States should co-operate in drawing up regulations to prevent pollution of the seas or the air space above as a result of experiments or activities with radio-active materials, gone a little way towards meeting the demand of the public throughout the world that such tests should cease; but it had not gone as far as it should have done. The Committee should include in article 48 a clause prohibiting such tests. If it failed to do so, the freedom which should exist on the high seas would be incomplete. The inclusion of such a clause was a prerequisite for ensuring that IAEA and other technical organizations would do the work required of them where that problem was concerned. He would vote against the United Kingdom and United States joint proposal, since its adoption would nullify what was useful in paragraph 3. He would vote for the part of the Czechoslovak proposal relating to paragraph 3.

33. He agreed with what the French representative had said about paragraph 3 of the commentary on article 48, which expressed the Commission's view that the problem caused by the dumping of radio-active waste in the sea should be put on the same footing as pollution of the sea by oil. The former problem was much more serious, since the dumping of radio-active waste seriously affected the living resources of the sea and any human beings who consumed the resources of the sea so affected. There should be no dumping of radio-active waste in the sea. Paragraph 2 of article 48 was not sufficiently explicit. It might be held to mean that such dumping would be permissible provided safety measures were taken; but such measures could not in themselves prevent pollution of the sea by waste. He would therefore vote for the part of the Czechoslovak proposal relating to that paragraph.

(11 April 1958, 31st Meeting, 2nd Committee)

37. Mr. Keilin (Union of Soviet Socialist Republics) explained that he had voted against the joint draft resolution because he believed that even if the International Atomic Energy Agency drew up regulations to prevent the pollution of the seas with radio-active substances and wastes, that would in no way relieve States of their obligation to refrain from taking any action capable of causing such pollution. States were obliged to issue appropriate rules forbidding the pollution of the waters of the sea through the dumping of radio-active materials or wastes, and were under the further obligation to co-operate with one another in drafting such rules. Those important principles had been recognized by the International Law Commission, and the attempt to depart from them was undoubtedly a backward step much to be regretted.

11) Articles 61 to 65 (Submarine cables and pipelines)

(11 April 1958, 30th Meeting, 2nd Committee)

21. Mr. Keilin (Union of Soviet Socialist Republics) considered that articles 61 to 65 should be adopted as they stood in the International Law Commission's draft. His delegation could not agree with the proposal to delete articles 62 to 65, for which there seemed to be no justification. The purpose of those articles was to ensure that each State would take the necessary legislative measures to protect submarine cables and pipelines against damage and to provide for the payment of compensation for loss and for the cost of repairs. In the opinion of his delegation, satisfactory provision was made in articles 62 to 65 for the protection of submarine cables, and the articles were similar to the principal measures contained in the 1884 Convention.

12)-1 Additional Article Proposed by Denmark (A/Conf.13/C.2/L.100)

(12 April 1958, 32nd Meeting, 2nd Committee)

11. Mr. Keilin (Union of Soviet Socialist Republics) remarked that the proposal spoke of responsibilities assumed by international agreement or custom; the special rights deriving from those responsibilities could likewise be regulated, as far as necessary, by custom and agreement. He did not think that the amendment indicated by the representative of Denmark altered the substance of the proposal; the remaining text implied the provision which had been deleted. If the regulations for the issuance of which the proposal sough to obtain authority were necessary, agreement could doubtless be reached with regard to them. A general provision in international law was not required.

10. Mr. Riemann (Denmark) amended his proposal (A/Conf.13/C.2/L.100)[38] by deleting the words "and to enforce them against anybody, irrespective of nationality, who navigates in these waters".

10. The illogical nature of the definition of ships on government non-commercial service proposed by the United Kingdom delegation and of that proposed by the Portuguese delegation was quite apparent. Since when, he asked, had warships ceased to be government ships? That lack of logic was not without a purpose, however. The United Kingdom's classification was intended to combine both warships and other government ships under the same heading, as could be seen from sub-paragraph (i) of the proposal where yachts were placed in the same category as various kinds of warships. The classification used in sub-paragraphs (i), (ii) and (iii) was quite arbitrary. Why should patrolvessels be included in sub-paragraph (i) and fishery protection vessels in sub-paragraph (ii), when it was well known that both types of ship belonged to the military fleets of States?

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38 Document A/Conf.13/C.2/L.100 Denmark: Proposal

Additional article

Insert after article 48, or at another appropriate place in part II, section I, sub-section A, a new article, worded as follows:

"A State which by international agreement or custom has assumed responsibility for buoyage and other similar measures to ensure the safety of navigation in fairways outside the territorial sea shall be entitled to issue such regulations as are necessary to meet this responsibility and to enforce them against anybody, irrespective of nationality, who navigates in these waters."

Comment

In certain areas of the high seas adjacent to its coasts, where the waters are shallow, a State may have undertaken to ensure the safety of navigation by means of light-vessels, buoys and other similar navigational aids, and to mark and remove obstacles to navigation, such as wrecks. Experience has proved that it may be difficult for a State to meet this responsibility without being able to exercise some limited jurisdiction over foreign vessels in these areas of the high seas. In particular, there may be a need for exercising some authority over salvage contractors engaged in removing wrecks, to make sure that the removal is completed in such a manner that guaranteed depths and other conditions of navigability are maintained and no other danger to navigation arises. As jurisdiction for this purpose would be exercised in the general interests of international shipping, and not solely in those of the coastal State, an exception to the general principles governing the regime of the high seas seems justified.

11. The classification was also incomplete. No mention was made of icebreakers, floating docks or, most important, floating wireless stations which some governments were sending to the shores of other States to make broadcasts of a far from harmless nature directed towards those States.

12. Finally, the definition of commercial vessels was also open to question. To put merchant ships in a special category apart from government ships was to ignore the fact that government merchant ships had long existed, and were continually increasing in numbers.

13. The only conclusion that could be drawn was that the United Kingdom classification was intended to give States freedom of passage and navigation for the largest possible number of warships in the territorial and internal waters of other States. The classification was, in fact, an attempt to camouflage certain warships. Its effect would be to confer immunity on certain classes of government ship, while at the same time depriving government merchant ships of such immunity, although that was violation of accepted international law. It was for that purpose that government ships and merchant ships had been placed in separate categories.

14. For those reasons, the classification of ships used in the proposal was unacceptable to his delegation. It would be harmful to the interests of most States represented, and contained a serious danger of conflict. It was to be hoped that the authors of the two proposals would withdraw them, but if they did not do so, he would urge that the classification of ships should be referred to the First Committee, or that a joint meeting should be held between the First and Second Committees to solve the whole problem.

12)-2 Additional Article Proposed by Argentina, Ceylon, India and Mexico

(14 April 1958, 33rd Meeting, 2nd Committee)

42. Mr. Keilin (Union of Soviet Socialist Republics) said that the voting on article 48 at the 31st meeting gave the impression of being more or less fortuitous; that could be the only explanation of the fact that paragraphs 2 and 3 of the article had been deleted by a majority of one vote.

43. In that connexion, attention must be drawn to the positive importance of the joint proposal of Argentina, Ceylon, India and Mexico. The vital interests of the peoples required that effective measures should be taken to eliminate pollution of the seas by radio-active substances and waste matter. It was a question of saving human lives, protecting health and conserving the very important

food resources of the sea. The Soviet Union delegation considered that it was the duty of all governments to issue appropriate regulations forbidding the pollution of the sea by the dumping of radioactive substances and waste matter and to collaborate in the drawing up of such regulations. The dispositions of the additional article proposed by the four powers were directed towards the achievement of those important aims, and the Soviet Union delegation would therefore support the proposal.

44. Moreover, in view of the considerations advanced by one of the delegations, the Soviet Union delegation wished to point out that it was clearly a case of a new proposal and consequently there could be no question of its adoption requiring a reconsideration of the decision taken earlier.

12)-3 Additional Article Proposed by Portugal (A/Conf. 13/C.2/L.38/Rev.2)

(15 April 1958, 34th Meeting, 2nd Committee)

2. Mr. Keilin (Union of Soviet Socialist Republics) emphasized that the Portuguese proposal, not being a matter of drafting, could not be referred to the Drafting Committee without danger of serious controversy. The course proposed by the Portuguese representative was contrary to the rules of procedure. A drafting committee must confine itself strictly to matters of form, and was not empowered to take decisions of substance. The withdrawal of the Portuguese proposal meant that there was no substantive provision now before the Committee.

13) Consideration of the Kind of instrument required to embody the results of the 2nd Committee's Work

(16 April 1958, 35th Meeting, 2nd Committee)

38. Mr. Keilin (Union of Soviet Socialist Republics) said that the results of the work of the Conference should be embodied in clear legal provisions. The most common form of instrument was a convention, which had the advantage of being more specific than a declaration and of carrying a legal obligation. The contents of a declaration were likely to be vague, and to have less legal force and effect than a convention.

39. Since a decision on the form of instrument to be adopted had to be taken by a plenary meeting of the Conference, and since it was important that such a decision should be accepted as widely as

possible, he supported the Turkish suggestion.[39]

c. Text of the articles and draft resolutions adopted by the Second Committee [22 April 1958] (Document A/Conf.13/L.17/Add.1[40])

I

Article 26

The term "high seas" means all parts of the sea that are not included in the territorial sea, as contemplated by part I, or in the internal waters of a State.

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 28

Every State has the right to said ships under its flag on the high seas.

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39 Mr. Lutem (Turkey) said that it would be unwise for the Committee to take a decision on the form of instrument to be adopted before a vote on that question had taken place at a plenary meeting of the Conference. He suggested, therefore, that the Committee should decide not to make a recommendation regarding the kind of instrument in which it wished its work to be embodied, and should also decide

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 31

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

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to submit a report to the Conference containing a summary of the discussions which had taken place in the Committee on that question.

40 Incorporating document A/Conf.13/L.17/Add.1/Corr.1.

Article 33

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 34

1. Every State shall take such measures for ships under it flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even it the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 36

Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and -- where circumstances so require -- by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

Article 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Artcle 39

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 40

The acts of piracy, as defined in article 39, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 42

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which the nationality was originally derived.

Article 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the siezure.

Article 45

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 46

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in thattrade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a continuous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of the present article shall apply mutatis mutandis;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 48

Every State shall draw up regulation to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

New article relating to the pollution of the sea by radio-active waste (to be inserted immediately after article 48)

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any acitvities with ratioactive materials or other harmful agents.

Article 61

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 62

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their ships, after having taken all necessary precautions to avoid such break or injury.

Article 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 64

[Deleted.]

Article 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

II

Draft resolution relating to article 48

The United Nations Conference on the Law of the Sea,

Recognizing the need for international action in the field of disposal of radioactive wastes in the sea,

Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject,

Noting that the International Commission for Radiological Protection has made recommendations regarding the maximum permissible concentration of radio isotopes in the human body and maximum permissible concentration in air and water,

Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radioactive materials to the sea, promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radioactive material in amounts which would adversely affect man and his marine resources.

III

Draft resolution relating to nuclear tests

(in connexion with article 27)

The United Nations Conference on the Law of the Sea,

Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957,

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas, and

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the government concerned,

Decides to refer this matter to the General Assembly for appropriate action.

3. Consideration of the report of the Second Committee

(23 April 1958, 10th Plenary Meeting)

a. 1) Article 31

5. Mr. Tunkin (Union of Soviet Socialist Republics) asked the sponsors of the article to explain its exact purport. Explanation is as follows: Mr. Bartos (Yugoslavia) explained that the wording of the article had been proposed by the Office of Legal Affairs in consequence of certain difficulties experienced by the United Nations during the Korean war and with the United Nations Emergency Force in the Near East. The purpose of the provision was to emphasize that certain intergovernmental organizations had the right to sail ships under their own flags in the same manner as States. But the provision was admittedly not very well drafted and might be improved by some indication of how the words "intergovernmental organization" were to be understood.

11. Mr. Tunkin (Union of Soviet Socialist Republics) said that his delegation agreed with the speakers who had stressed that the question of ships operated by certain international organizations shoul not be prejudged in any way. But the wording of article 31 was open to various interpretations and it might be preferable to indicate that the question was in no way covered, by omitting any reference to it whatever.
(Article 31 was adopted by 50 votes to 9 with 11 abstentions.),

2) Article 33

14. Mr. Tunkin (Union of Soviet Socialist Republics) said that article 33, which implied that government ships on commercial service would be subject to the jurisdiction of States other than the flag State, appeared to be in flagrant contradiction with article 30. If article 33 were adopted, government-owned commercial ships would enjoy less favourable treatment than any other craft.

17. Mr. Tunkin (Union of Soviet Socialist Republics) replied[41] that the saving clause in article 30 applied only where an international treaty made an exception in explicit terms. It was thus obviously inapplicable when the purport of the provision concerned was predominantly implicit.

(Article 33 was adopted by 55 votes to 11 with 10 abstentions.)

3) Article 39

20. Mr. Tunkin (Union of Soviet Socialist Republics) said that his delegation found articles 39 to 45 unacceptable, because the concept of piracy adopted in them was wholly obsolete. The International Law Commission and the Second Committee had both ignored the fact that, in modern times, piracy could be committed otherwise than by individual private ships. Even the principles approved in the Nyon arrangement of 14 September 1937 had been omitted. The Conference should reject those articles and not oblige delegations to formulate unwelcome reservations.

(Article 39 was adopted by 54 votes to 9 with 4 abstentions.)

b. 1) Consideration of the report of the Second Committee
23 April 1958, 11th Plenary Meeting

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41 Mr. Münch (Federal Republic of Germany) said that article 33, far from contradicting article 30, followed naturally from it. The USSR representative had not questioned the propriety of article 32, paragraph 1, which recognized the immunity of warships just as article 33 extended that privilege to other noncommercial government ships. Moreover, in suggesting that article 30 reserved the jurisdiction of

12. Mr. Tunkin (Union of Soviet Socialist Republics) expressed support for the Italian proposal[42] for a convention covering all the articles adopted by the Second Committee. A declaration would not be subject to reservations; it would merely be a resolution without binding force, and as such a conventient guide for national law, but it would not have much authority in international law. Public opinion and governments would not welcome such an insubstantial result to the work of the Conference.

13. A convention, on the other hand, would be a definite reflection of the development of international law. A multilateral convention was generally regarded as superior to bilateral agreements, of which there were vast numbers. Moreover, a convention, being an expression of the opinion of the Conference, would also fulful the function of a declaration, whilst at the same time it would make clear the position of each State, by means of the procedure of signature, accession and ratification. A convention would produce effects even outside the group of States parties, for it would come to be regarded as a source of international law. In addition, the fact that the Conference had adopted a separate convention for the articles adopted by the Fourth Committee established a precedent for such a convention. For those reasons, his delegation was in favour of a separate convention for the articles adopted by the Second Committee.

2) Fourth report of the Drafting Committee of the Conference; Proposals regarding the judicial settlement of disputes

(25 April 1958, 13th Plenary Meeting)

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the flag State in all cases, the USSR representative had apparently overlooked the words "save in exceptional cases expressly provided for in international treaties or in these articles".

42 Mr. Gaetano De Rossi (Italy) said that a convention would be the most satisfactory instrument to embody the articles adopted by the Second Committee. It might be necessary to prepare a series of interconnected separate conventions incorporating the articles on the law of the sea. Every such convention would have to be submitted for signature, accession, acceptance and ratification. It should be binding and provide for the arbitration or judicial settlement of disputes. However, the plenary Conference could not take a final decision on the work of any committee until it had examined the results of the work of all the committees.

7. Mr. Tunkin (Union of Soviet Socialist Republics) said that the question under consideration should be viewed in the light of the common desire to adopt standards of international law acceptable to all States and to ensure that those standards formed a sound basis for the regime of the seas.

8. The Conference should not, therefore, approach the problem of compulsory jurisdiction or arbitration from a purely academic point of view. For example, it had been argued that the insertion of compulsory jurisdiction provisions in any instrument adopted would increase its value; but such provisions would raise practical problems of paramount importance, for it was common knowledge that a large number of States would be unable to sign and ratify an instrument containing them. Those States were simply not prepared to accept compulsory jurisdiction or arbitration clauses, as had been amply demonstrated in the case of several other international instruments. Where they had subscribed to such clauses, their acceptance had invariably been hedged about by numerous reservations. If, therefore, the Conference really wished to give effect to the rules of international law it had adopted and to ensure that as many States as possible were in a position to adhere to the instrument embodying them, no attempt should be made to insert compulsory jurisdiction or arbitration clauses in the body of the text.

9. He understood the purely legal reasons which led some representatives to press for the insertion of such clauses, but felt that the realities of international relations and the position of States in the matter were being disregarded. It might be theoretically desirable to insert compulsory jurisdiction or arbitration provisions in the text, but the mere fact of doing so would greatly reduce its applicability and value; for unless compulsory jurisdiction were accepted, adherence to the instrument would be impossible. States should not be placed in that dilemma, and he suggested that the Conference should choose between three ways of solving the problem.

10. The first was to omit all reference to the settlement of disputes. Many other international agreements and conventions contained provisions on the matter and any disputes that arose in connexion with the articles on the law of the sea could be settled in accordance with the procedure set forth in existing instruments. The second solution was to include a general provision to the effect that any dispute relating to the interpretation or application of the instrument might, if the parties were unable to reach agreement within a reasonable time, be referred to the International Court of Justice or to arbitration in accordance with the Statute of the International Court of Justice and existing agreements. An explicit reference could in fact be made to article 36 of

the Statute. The last solution was to annex a separate protocol to each instrument providing for compulsory jurisdiction of the International Court of Justice or compulsory arbitration. Governments would not, however, be required to sign such protocols.

11. Any one of those three solutions would be acceptable to the overwhelming majority of States and would ensure that the work of the Conference was not placed in jeopardy. The insertion of compulsory jurisdiction or arbitration provisions in the body of the instrument, however, would nullify that work.

18. Mr. Tunkin (Union of Soviet Socialist Republics) said that the could not accept the French representative's interpretation of Soviet Union doctrine[43] in the matter of arbitration. The Soviet Union view was not that national sovereignty prevailed over the law of nations, but that the basis of any principle of international law was agreement and that States were bound only by rules to which they had subscribed.

28. Mr. Tunkin (Union of Soviet Socialist Republics) thanked the French representative for his interests in the view of USSR authorities.[44] The material fact, however, was that many States did not generally believe in the inclusion of procedural rules in substantive treaties. The instances mentioned by the representative of Monaco, in which the USSR had agreed to compulsory arbitration clauses, were very exceptional.

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43 Mr. Gros (France) said he acknowledged that, for the reasons already advanced by the USSR representative, a number of countries would be unable to sign and ratify an instrument containing a provision for compulsory jurisdiction. He pointed out, however, that the present problem with respect to the settlement of disputes was not academic or theoretical, but related to the regulation and jurisdictional supervision of international relations and the application of international rules and regulations. That practical aspect of the matter, which had been raised in connexion with the new conventions on the law of the sea, should not be overlooked.

He noted that the hesitation of some States to commit themselves in advance to compulsory jurisdiction or arbitration was in large measure due to their uncertainty that disputes would always be of a legal nature, which could be settled in accordance with legal principles. However, the convention to be adopted by the Conference would certainly give rise to numerous disputes of a kind already well known, since those of its provisions which reproduced customary

29. The French representative's argument that there could be no recognition of international law without advance submission to jurisdiction was wholly unfounded, for the law of nations had never sanctioned the principle of compulsion. Moreover, the States which opposed the inclusion of a compulsory jurisdiction clause in the instrument drawn up by the Conference were prompted primarily by a desire to see the rules as generally accepted and as firmly established as possible.

3) Adoption of the Convention on the High Seas

(26 April 1958, 18th Plenary Meeting)

79. Mr. Tunkin (Union of Soviet Socialist Republics), referring to the same passage in the preamble, thought it would be better to use the words "which are" instead of "as". the text as drafted suggested that the Conference had adopted the articles because they were declaratory, whereas the real intention was merely to describle the articles.

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law would be more numerous than those containing new law; hence an opportunity of promoting the settlement of legal disputes by arbitration would be lost if the Conference failed to include compulsory jurisdiction or arbitration provisions in the body if its text.

The fears expressed by certain countries were, he thought, unfounded; France had referred numerous disputes to arbitration without in any way feeling that it was sacrificing its national sovereignty. His delegation believed that international jurisdictional control was in fact one of the best guarantees of good international relations and would accordingly vote for the principle of compulsory jurisdiction or arbitration.

44 Mr. Gros (France) hoped that the USSR representative would accept his earlier statement on USSR doctrine as proof of the interest which the legal theories of Soviet Union authors aroused in France. It had been made abundantly clear, however, by authorities as respected as Professor Krylov that USSR doctrine regarded any advance submission to jurisdiction as incompatible with state sovereignty. USSR authorities admittedly affirmed that they accepted the binding force of rules of international law, but apparently that affirmation only referred to the rules of treaty law accepted by the Soviet Union, and perhaps to some aspects of customary law as well; the USSR did not on the other hand accept the interpretation of the rules of international law as binding, unless it had approved that interpretation itself in a specific case. Many passages by Soviet writers made clear that the explanation for a refusal to accept compulsory arbitration was to be found in state sovereignty.

III. HIGH SEAS; FISHING: CONSERVATION OF LIVING RESOURCES

1. Articles 49 to 60 of the Draft of the International Law Commission (A/3159)

Sub-Section B. Fishing

Right to Fish

Article 49

All States have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

Conservation of the Living Resources of the High Seas

Article 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products.

Article 51

A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged shall adopt measures for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.

2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other marine resources in the same area, the conservation measures adopted shall be applicable to them.

2. If these other States do not acept the measures so adopted and if no agreement can be reached within a reasonable period of time, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there.

3. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That scientific evidence shows that there is an urgent need for measures of conservation;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate against foreign fishermen.

3. If these measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

Article 56

1. Any State which, even if its national are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.

2. If no agreement is reached within a reasonable period, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to an arbitral commission of seven members, unless the parties agree to seek a solution by another method of peaceful settlement.

2. Except as provided in paragraph 3, two members of the arbitral commission shall be named by the State or States on the one side of the dispute, and two members shall be named by the State or States contending to the contrary, but only one of the members nominated by each side may be a national of a State on that side. The remaining three members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute. Failing agreement they shall, upon the request of any State party, be nominated by the Secretary-General of the United Nations after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food Agriculture Organization, from nationals of countries not parties to the dispute. If, within a period of three months from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named, after such consultation, by the Secretary-General

of the United Nations. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

3. If the parties to the dispute fall into more than two oppo sing groups, the arbitral commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the United Nations Foo and Agriculture Organization, from amongst well qualified persons specializing in legal, administrative or scientific questions relat ing to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

4. Except as herein provided, the arbitral commission shall determine its own procedure. It shall also determine how the costs and expenses shall be divided between the parties.

5. The arbitral commission shall in all cases be constituted within three months from the date of the original request and shall render its decision within - further period of five months unless it decides, in case of necessity, to extend that time limit.

Article 58

1. The arbitral commission shall, in the case of measures unilaterally adopted by coastal States, apply the criteria listed in paragraph 2 of article 55. In other cases it shall apply these criteria according to the circumstances of each case.

2. The arbitral commission may decide the pending its award the measures in dispute shall not be applied.

Article 59

The decisions of the arbitral commission shall be binding on the States concerned. If the decision is accompanied by any recommendations, they shall receive the greatest possible consideration.

Fisheries Conducted by Means of Equipment Embedded in the Floor or the Sea

Article 60

The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State, may be undertaken by that State

where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. Consideration of the Draft Articles Adopted by the International Law Commission at its Eighth Ression (Articles 49 to 60) (A/3159)

a. General Debate

(12 March 1958, 6th Meeting, 3rd Committee)

9. Mr. Krylov (Union of Soviet Socialist Republics) said that his delegation was wholeheartedly in favour of the principle of the conservation of the living resources of the high seas and considered that the solution of the problem of the international regulation of fishing on the basis of the composition and size of fish stocks in any area of the high seas should be sought through international co-operation. He noted that it was universally recognized that the coastal State had an exclusive right to regulate fishing in its territorial waters. The natural resources of the high seas, however, could be freely exploited by all States. Unfortunately, the experience of the past ten years had revealed the need for regulating fishing because, owing to modern largescale fishing techniques and irrational fishing methods, fish stocks in certain areas such as the North Sea had been considerably depleted. Accordingly, a number of international fishing agreements between the States directly concerned had been concluded in respect of several areas of the high seas. In certain cases, however, the existing system of agreements failed to protect certain species from extinction and in others the coastal State was helpless to prevent foreign nationals from exploiting stocks of fish.

10. The articles before the Committee were based on contemporary doctrine - article 49 was a particularly good example - and on the current practice of States. Certain articles had been drafted in the light of modern fishing techniques and trends and the draft as a whole would provide a sound basis for the Committee's work since it was designed to protect the living resources of the high seas and at the same time ensure freedom of fishing on the high seas. The USSR had been one of the first countries to lay a scientific basis for the conservation of the living resources of the sea. It maintained dozens of institutes engaged in marine biology research, fishing techniques, fish-processing and oceanography.

11. He drew attention to the articles which were intended to proclaim the equal right of all States to exploit the living resources of the high seas and recalled that the first of three articles on fishing drafted by the Commission at its third session in 1951 had stated that in no circumstances might any area of the high seas be closed to the nationals of other States wishing to engage in fishing activities;[1] that, in the USSR's opinion, had been a sound statement of principle. The report before the Committee, however, contained references to the principle of "abstention" according to which a group of States could announce that a certain species was being exhausted and in that way deprive other States of the right to fish that species and to participate in exploiting the resources of the high seas on a footing of equality with other States. Clearly then, the principle of abstention was at variance with the principle of equality of rights and the concept of freedom of fishing on the high seas. In the USSR's opinion no discrimination should be allowed against relative "newcomers" in fishing grounds already being exploited by other States. The world was in a dynamic stage of development, increasing numbers of new independent States were being formed and the principle of abstention should not be used to prevent them from co-operating in the exploitation of the living resources of the high seas.

12. He noted that the problem raised in article 54, paragraph 1, had been given special attention at the Rome Conference of 1955[2] at which no definite conclusions had been reached. One group of States had felt that the coastal State should be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its shores and should take steps to control and maintain stocks in that area. Another group, however, had considered that the coastal State should provide for the conservation of the living resources of the seas adjacent to its shores only with the agreement of other countries. The very existence of that difference of opinion indicated the difficulties involved. The USSR delegation felt that a solution of the problem would have to take account of geographical factors as well as of the behaviour of various species of fish.

1 Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), p. 19.

2 Report of the International Teahnical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2), paras. 44 to 48.

13. In conclusion, he said that the articles relating to the settlement of disputes between States were out of place in the draft, and for that reason he would support the Mexican proposal (A/Conf.13/C.3/L.1). The deletion of such articles would improve the chances of reaching agreement on the articles embodying the substance of contemporary international law of the sea. In any event, ample provision for arbitral procedure had been made in other international agreements, and the elimination of arbitration provisions from the draft would be consistent with the recommendations of the Rome Conference of 1955.

b. 1) Articles 53 and 56 (Competence of Non-Coastal States)

(1 April 1958, 20th Meeting, 3rd Committee)

12. Mr. Krylov (Union of Soviet Socialist Republics) said that the main difference between the text of the joint amendment[3] and the Commission's text of paragraph 1 was that the latter provided in effect for States to have the power to limit in areas of the high seas the fishing rights of other States which had not started to fish there, whereas the joint proposal gave newcomers the right to fish in such areas "on an equal footing". He thought that the Commission's text would be unfair to States which, being less advanced than others, started exploiting the resources of the sea later.
For the same reasons, the two delegations had jointly submitted a proposal regarding article 56 (A/Conf.13/C.3/L.30), which was a very important provision.

17. Mr. Krylov (Union of Soviet Socialist Republics) said that the purpose of the proposal was to ensure that newcomers enjoyed equality of treatment; and he thought that a specific reference to that effect was necessary. He confirmed that if the joint amendment[4] were adopted, the measures would apply only to nationals of States which did not suggest varying or clarifying them.

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3 Document A/Conf.13/C.3/L.29* Poland and Union of Soviet Socialist Republics: proposal

Article 53

Draft this article as follows:
"1. Subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other Sates may engage on an equal footing in fishing the same stock or stocks of fish or other marine resources in the same area.

* Incorporating A/Conf.13/C.3/L.29/Add.1.

Article 53

(18 April 1958, 38th Meeting, 3rd Committee)

30. Mr. Krylov (Union of Soviet Socialist Republics) proposed that, in paragraph 1, the words "on an equal footing" be inserted in the second line between the words "engage" and "in fishing", and that the words "in form or in fact" to be inserted in the fifth line after the words "shall not be discriminating".

Article 56 (Competence of Non-Coastal States)

(2 April 1958, 21st Meeting, 3rd Committee)

19. Mr. Krylov (Union of Soviet Socialist Republics), introducing the joint proposal submitted by Poland and the USSR (A/Conf.13/C.3/L.30)[5], said that its main purpose was to stress the principle of equality, as set forth in article 54, paragraph 2. He agreed with the United States representative that the provision related to coastal and non-coastal States alike. The important point was not so much the area fished, as the uniform application of conservation measures in the interest of world fishing as a whole.

"2. The measures adopted shall be applied without discrimination also to the said States, unless these raise the question of varying or clarifying such measures by proposing to enter into negotiations."

4 A/Conf.13/C.3/L.29 See Supra.

5 Document A/Conf.13/C.3/L.30 Poland and Union of Soviet Socialist Republics: proposal

Article 56

Paragraph 1

Draft this paragraph as follows:

"Aany State which, even if its nationals are not engaged in fishing in any area of the high seas, has an interest in the conservation of the living resources of that area, is entitled to take part on an equal footing in any research organization or system of regulation in that area, and may also request the State whose nationals are engaged in fishing there to take the necessary measures of conservation."

Paragraph 2

Delete this paragraph.

23. Mr. Krylov (Union of Soviet Socialist Republics) accepted the Cuban amendments[6] to his proposal.

2) Article 54 and 55 (Competence of Coastal States)

(8 April 1958, 23rd Meeting, 3rd Committee)

17. Mr. Krylov (Union of Soviet Socialist Republics) said that two trends had become apparent in the Committee with regard to articles 54 and 55. One group of States had advanced arguments in favour of the rights of coastal States, based purely on their geographical proximity to the living resources of the sea. Another group had denied that coastal States had a "special interest" in the resources. He felt that neither attitude was likely to promote a solution to the twofold problem of the rational use of the resources and international regulation.

18. Migration of fish as a result of exploitation occurred both in the high seas and in territorial seas. For that reason a coastal State should be entitled to take part in conservation operations even when not fishing the area of sea concerned. It should also have the right to take unilateral measures, even though subject to certain conditions. For example, if a coastal State was fishing a certain stock, and had made both efforts and sacrifices to increase the size of the stock, while other States were simply fishing it without making any attempt at conservation, then the former undoubtedly had the right to adopt unilateral measures.

19. The only feasible solution was to find a compromise which would guarantee the right of the coastal State to take unilateral measures for the conservation of stocks of fish when it was the sole State intending to apply such measures.

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6 Mr. Garcia Amador (Cuba) suggested that the words "not adjacent to its coast" should be included in the joint proposal after the words "high seas", in order that it might be similar in scope to the International Law Commission's text. He agreed with the representative of El Salvador that a new right had been extended to non-coastal and non-fishing States and did not consider that such States could participate directly in any system of regulation. He therefore suggested that the reference to such systems should be deleted.

20. His delegation was therefore prepared to reconsider its proposal (A/Conf.13/C.3/L.42)[7] concerning articles 54 and 55. Paragraphs 1 and 2 of article 54 of the International Law Commission's draft would then stand. He was also prepared to accept the Commission's draft for article 55, subject to the additon to paragraph 2 of sub-paragraph (d) as drafted by the Soviet Union delegation in document A/Conf.13/C.3/L.42/Rev.1.[8]

(9 April 1958, 24th Meeting, 3rd Committee)

59. Mr. Krylov (Union of Soviet Socialist Republics) said his delegation could not agree with the proposal that the conditions concerning prior negotiation should be omitted from article 55.

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7 Document A/Conf.13/C.3/L.42 Union of Soviet Socialist Republics: proposal

Articles 54 and 55

Articles 54 and 55 to be merged to form one article, reading as follows:

"1. Any coastal State having a special interest in the maintenance of the productivity of the living resources of any area of the high seas adjacent to its territorial sea may, to this end, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not let to an agreement within a reasonable period of time.

"2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That scientific evidence shows that there is an urgent need for measures of conservation;

(b) That the measures adopted are based on appripriate scientific findings;

(c) That they do not discriminate against foreign fishermen;

(d) That they are essential, in order to ensure that the general steps taken by that State to safeguard the reproduction of the living marine resources are effective."

8 Document A/Conf.13/C.3/L.42/Rev.1 Union of Soviet Socialist Republics: proposal

Article 55

Add the following new sub-paragraph (d) to paragraph 2:

"(d) That they are essential in order to ensure that the large-scale measures taken by that State to safeguard the reproduction of the living resources of the sea are effective."

3) Articles 57 to 59 (Peaceful Settlement of Disputes)

(11 April 1958, 28th Meeting, 3rd Committee)

22. Mr. Sheldov (Byelorussian Soviet Socialist Republic) pointed out that the question of the conservation of the living resources of the high seas involved considerable economic interests. If then, like the International Law Commission, the Committee considered it indispensable to set up a procedure for the settlement of disputes, that procedure must be equitable. Yet, in point of fact, the procedure advocated by the International Law Commission failed to take sufficient account of the interest of States and infringed their sovereignty.

23. Like the representative of Mexico, he too would recall that at the Tenth and Eleventh Sessions of the General Assembly several delegations --- including that of the Byelorussian Socialist Republic --- had pointed out that in the field of arbitration the International Law Commission had deviated to a considerable extent from the general principles of international law. The advisability of inserting in the law of the sea provisions deriving from principles to which most delegations had not subscribed was therefore open to serious doubt.

24. It must not be forgotten that the basis of arbitration was the free consent of the parties. Thus, while it was true that The Hague Conventions of 1899 and 1907 on the pacific settlement of international disputes did contain clauses on arbitration, the latter was still contingent upon the agreement of the parties. Yet, in several respects article 57 as formulated by the International Law Commission departed from the traditional concept. Thus, under paragraph 1, it was enough for any one of the parties to a dispute to request the application of the arbitral procedure and the other parties were obliged to submit to it. Moreover, paragraph 3 provided that if the parties to a dispute fell into more than two opposing groups they should not be consulted on the choice of the members of the arbitral commission; it even seemed that they would have no right to representation on that commission, which would be in effect only a variant of the International Court of Justice with special competence in the matter of fisheries.

25. That was why the Byelorussian delegation could not accept the draft of article 57 as adopted by the International Law Commission. For the same reasons, it could only support those amendments which advocated a procedure in harmony with the present rules of international law. The amendments submitted by Mexico (A/Conf.13/

C.3/L.1)[9] and the Soviet Union (A/Conf.13/C.3/L.61) [10] between which there was little difference, prescribed a procedure in conformity with the United Nations Charter, the Statute of the International Court of Justice and the international agreements in force, and one which safeguarded the interests of all States. Those amendments therefore merited general support.

(11 April 1958, 28th Meeting, 3rd Committee)

42. Mr. Krylov (Union of Soviet Socialist Republics) agreed in essentials with the remarks made by the representatives of the Byelorussian Soviet Socialist Republic and Mexico. He had listened with great interest to the representative of Ghana, who had complained of the complicated nature of the procedure envisaged in article 57 of the International Law Commission's draft. In his opinion also, that procedure was too rigid; and it was regrettable that the International Law Commission should have emphasized the compulsory nature of arbritration.

43. In the matter of arbitration, three points arose: the constitution of the organ entrusted with making an arbitral award; the competence of the members of the organ; and -- the most delicate point -- the law to be applied by the arbitrators. That law could be based upon treaties, upon practice, or upon the principles observed

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9 Document A/Conf.13/C.3/L.1 Mexico: proposal

Articles 57 to 59

Replace the text of the draft articles 57, 58 and 59 prepared by the International Law Commission by the following text:

"Disputes concerning the matters to which the present provisions relate shall be settled by the States concerned by the modes of pacific settlement provided for in Article 33 of the Charter of the United Nations."

If the above proposal is approved, it will be necessary to make the corresponding changes in articles 52 to 56 inclusive.

10. Document A/Conf.13/C.3/L.61.
Union of Soviet Socialist Republics: Proposals

Articles 57 to 59

Replace articles 57, 58 and 59 by the following:

"Any dispute on questions relating to fishing on the high seas may, unless the parties can reach agreement within a reasonable period of time, be submitted to the International Court of Justice for consideration or referred to arbitration in accordance with the Statute of the Court and the agreements in force."

by civilized nations. He could not see what law the arbitral commission mentioned in article 57 could apply. The law which the Conference was endeavouring to establish was so new that a system of arbitration as complicated as the one proposed could hardly function satisfactorily By contrast, the procedure suggested by Mexico in its amendment (A/Conf.13/C.3/L.1) [11], was extremely simple, and the Soviet delegation would support it.

44. He would point out that the Charter of the United Nations contained no clause making recourse to arbitration or to the International Court of Justice compulsory. He failed to see why, in the matter of fishing, it was necessary to confer on such recourse a compulsory character which the authors of the Charter had not seen fit to accord. His delegation could not support the text of article 57 in the International Law Commission's draft, nor that proposed by Greece and the United States of America (A/Conf.13/C.3/L.67). [12] At the present moment, when maritime law was in the process of formation, it was essential to exercise extreme caution and to avoid any over-complicated systems. There was danger in not leaving the parties to a dispute complete freedom of choice with regard to the arbitrators asked to give a ruling.

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11 See Supra.

12 Document A/Conf.13/C.3/L.67 Greece and United States of America; proposal

Article 57

Amend article 57 to read as follows:

"1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement.

"2. The members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization, from amongst well-qualified persons being nationals of countries not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

(14 April 1958, 30th Meeting, 3rd Committee)

29. Mr. Krylov (Union of Soviet Socialist Republics) said he had voted against the text because it was unrealistic. He was in favour of providing for arbitration in article 57, but he was opposed to the compulsory form of arbitration proposed by the two delegations.

"3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.
"4. The commission shall determine its own procedure, assuring each party to the proceeding a full opportunity to be head and to present its case, and it shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on these questions.
"5. The special commission shall render its decision within a period of five months from the time it is constituted unless it decides, in case of necessity, to extend that time limit.
"6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute. The commission shall not render decisions ex aequo et bono without the express authorization of all the parties to the dispute.
"7. Decisions of the commission shall be by majority vote."

Comments

In paragraph 1, the name of the commission has been changed to "special" commission to avoid confusion between the specialized functions of this commission and those of arbitration in the classical sense.

Revised paragraphs 1 and 2 would provide a simpler procedure for constituting a special commission which would be suitable for handling disputes of both a two-sided and a multi-sided nature. A five-menber body should adequately provide a suitable balance of the required expert skills.

The proposal in paragraph 3 for inclusion of a non-voting representative from each State party to the dispute would assure each such party of adequate presentation and consideration of the party's case in the proceedings. This would be particularly desirably in situations where there are more than two parties to the dispute.

Paragraph 6 of the revised text would enable the parties to a dispute, by mutual consent, to restrict or expand the commission's terms of reference for the particular case, if they so desire, and in the absence of express authorization by the parties to the contrary, would limit the commission's decisions to the technical merits of the case according to specific criteria.

(14 April 1958, 31st Meeting, 3rd Committee)

1. Mr. Krylov (Union of Soviet Socialist Republics) withdrew his delegation's proposal (A/Conf.13/C.3/L.61)[13] in so far as it related to article 58, but reserved his delegation's right to submit the whole proposal in plenary session.

(15 April 1958, 33rd Meeting, 3rd Committee)

4. Mr. Krylov (Union of Soviet Socialist Republics) withdrew his amendment (A/Conf.13/C.3/L61) and said that his delegation would reintroduce it in the plenary conference.

55. Mr. Krylov (Union of Soviet Socialist Republic) said that the had agreed with the representative of Poland to withdraw their joint proposal (A/Conf.13/C.3/L.30),[14] in view of the decision just taken regarding the Japanese, Spanish and Swedish proposals.

Paragraph 2 of article 56, as amended, was approved of first reading by 46 votes to 7, with 4 abstentions.

4) Proposals concerning claims to exclusive or preferential Rights on the basis of special Conditions.

(16 April 1958, 36th Meeting, 3rd Committee)

2. Mr. Krylov (Union of Soviet Socialist Republics) said his delegation was sympathetic to the Icelandic proposal (A/Conf.13/C.3/L.79),[15] as it was to all proposals motivated by special conditions

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13 See Supra.

14 See Supra.

15 Document A/Conf.13/C.3/L79/Rev.1* Iceland: revised proposal

Article 49

Add the following two paragraphs:

"Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes

* This proposal replaces proposal A/Conf.13/C.3/L.79, which read as follows:

" Add a new paragraph as follows:

"In exceptional circumstances, where a people its primarily dependent on its coastal fisheries for its livelihood and/or economic development, the State concerned has the right to exercise exclusive jurisdiction over the fisheries up to the necessary distance from the coast in view of relavant local considerations."

and the needs of the populations of coastal States. The wording of the proposal, however, lacked clarity in several respects. The phrase "necessary distance from the coast", in particular, was extremely difficult to interpret as long as decisions of related matters had not been reached in the First Committee, Similarly, the expressions "exceptional circumstances" and "relevant local considerations" were excessively broad, and would be out of place in an international legal document. If the Icelandic proposal were put to the vote at present, he would, regretfully, be obliged to vote against it. He considered that the vote on the proposals before the Committee should be postponed, as had been suggested by the representative of Ireland.

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necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

"In the case of disagreement any interested State may initiate the procedure provided for in Article 57."

Comments

——During the general debates in the First, Third and Fourth Committees the Icelandic Delegation has drawn attention to the special case where a nation is dependent upon the coastal fisheries for its subsistence. It was there shown that as far as Iceland is concerned the country is very barren. No minerals or forests exist there and most of the necessities of life have to be imported. These imports have to be financed through the exports, 97 per cent of which consist of fisheries products. In the First Committee, the Icelandic delegation stated that a zone of twelve miles from the baselines would go a long way in taking care of the Icelandic requirements. It would, however, be necessary to keep open the possibility for further action in Icelandic waters if experience should demonstrate the necessity thereof. In that respect the policy would be to satisfy the Icelandic requirements on a priority basis as far as fishing in the coastal areas is concerned.

If such an exceptional rule is limited to demonstrated need there should be no danger of abuse, and indeed, any differences of opinion would have to be settled through the usual channels. In the draft of the International Law Commission, expressions such as "where circumstances necessitate...", "to any appreciable extent", "sufficiently closely linked", "reasonable measures", "unjustifiable interference" and others were used. As Professor Francois, with justice, pointed out in his statement before the First Committee (A/Conf.13/C.1/L.10), such expressions all occur in national legislation and "...a condification of international law can no more do without these expressions than can national law".

9. Mr. Izhevsky (Union of Soviet Socialist Republics) said that the joint proposal submitted by Canada and the United States conflicted with the fundamental principle of several articles adopted by the Committee - in particular, article 53. Under the proposal, one of the most extreme methods of regulating the size of fish stocks - that of limiting the yield - would be applied in the interests of certain States and to the detriment of others - a discriminatory practice.

10. Referring to the document entitled "The Economic and Scientific Basis of the Principle of Abstention" by Professors Richard van Cleve (A/Conf.13/3), he remarked that the author had made no attempt to establish an economic foundation for the principle of abstention. Furthermore, the biological foundations for determining fish stocks were by no means universally accepted by scientists; and the paper failed to provide any justification for its conclusion that the participation of new States in fishing the stocks subject to regulation would endanger the measures for conserving the stock and, consequently, the stock itself.

11. Regulation of the yield was undoubtedly an effective method of maintaining an intensely fished stock. However, precisely because it might injure the economic interests of a State, that method should not be applied except on the basis of strong scientific evidence. In view of the statements made at the Rome Conference of 1955 concerning the principle of abstention, an attempt to introduce it as a principle of international law could not be considered justified. The scientific foundations of the principle required further thorough consideration by a special international conference.

12. Current knowledge of the biology of a number of principal oceanic fish species did not, as yet, reveal with certainty the causes of the fluctuation of stocks or of the rational limit of their utilization. Stocks of a number of fish species were diminishing, so that the question of the influence of utilization on the size of fish stocks had naturally assumed great importance. There were no real grounds, however, for holding utilization principally responsible for the reduction in the size of stocks of the species in question. Natural factors, which had frequently accounted for variations in the size of fish stocks, were entirely ignored by the supporters of the principle of abstention. Professor van Cleve's assumption that the influence of natural factors was relatively stable could not be accepted universally.

13. Only scientifically sound measures should be contemplated in fishing practice, and a fortiori in international collaboration in the conservation of fish stocks. He mentioned several such measures, but pointed out that the need for a limitation yield,

amounting in certain instances to complete temporary prohibition of fishing, arose in very rare cases only - e.g., with regard to easily fished stocks such as plaice, turbot, salmon, etc., in certain limited areas.

14. Any measures for the limitation of the fishing of stocks fished by more than one particular State should be developed and applied jointly by all the States concerned. The principle of abstention meant abstention from overfishing in cases where overfishing could be objectively proved. It was difficult to understand why that principle should apply only to newcomers or to those who were not fishing the stock regularly. Such an interpretation of abstention bore no relation to the scientific foundations of fishing or to the methods of regulating fish stocks undergoing development on an international scale.

15. The Soviet delegation was fully aware on grounds of experience of the effectiveness of measures of conservation of stocks and regulation of their utilization. It even appreciated the need, in certain cases, for unilateral measures designed to limit the utilization of a stock dependent on regulation and reconstitution measures. It could not be convinced, however, that fishing within the established limit should be exclusively by a State or States which had been fishing that stock for a long period of time.

16. As an example of good international collaboration on a scientific basis in the utilization of living resources, he mentioned the International Convention for the Regulation of Whaling, the parties to which established an annual whaling quota in which they were all entitled to participate within the prescribed period of time.

17. For the above reasons, the Soviet delegation would be unable to support the joint proposal submitted by Canada and the United States.

(22 April 1958, 42nd Meeting, 3rd Committee)

22. Mr. Krylov (Union of Soviet Socialist Republics) agreed with the view put forward by the United Kingdom representative that the Ecuadorial proposal contained the same concept as the Icelandic proposal 79/Rev.[16], which he had voted against. He would vote in

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16 cf. Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2), paras, 60 to 66.

favour of the Ecuadorian proposal because the drafting was more satisfactory. However, there was a contradiction in referring at one and the same time to "duly justified unilateral measures" and "means of international co-operation", he therefore supported the amendment proposed by the Cuban representative.[17]

5) Consideration of the Kind of instrument required to embody the results of the Committee's work

(22 April 1958, 42nd Meeting, 3rd Committee)

6. Mr. Krylov (Union of Soviet Socialist Republics) said that his delegation, which was prepared to support the revised Indian proposal, did not share the views expressed by the Uruguayan and Netherlands representatives. The admissibility of reservations was a reality that had been accepted in international law; in any event, the question of final clauses would be examined in the Drafting Committee and the plenary Conference.

c. Text of articles by the 3rd Committee (A/Conf.13/L.21, annex)

I

Article 49

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this convention and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

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17 He made a formal proposal that the last paragraph of the Ecuadorian proposal should be amended by substituting for the phrase "duly justified unilateral measures" the phrase "unilateral measures in keeping with the provisions contained in the convention concerning fishing and the conservation of the living resources of the sea". By "convention" he meant the instrument to be recommended to the plenary Conference.

Article 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 51

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt for its own nationals measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the State concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resource in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measures.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for conservation purposes in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement, with respect to conservation measures, within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other State only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the pertinent provisions of this convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in articles 12 and 14 shall be adopted when coasts of different States are involved.

Article 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 51 and 52 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within

three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization, from amongst well-qualified persons being nationals of countries not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the intial selection.

3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceeding a full opportunity to be heard and to present its case, and it shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on these questions.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend that time-limit not to exceed three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

Article 58

1. The special commission shall, in disputes arising under article 55, apply the criteria listed in paragraph 2 of that article. In disputes under the remaining fishery articles the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under articles 52, 53 and 54 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;

(ii) That the specific measures are based on scientific findings and are practicable; and

(iii) That the measures do not discriminate against fishermen of other States.

(b) Applicable to the determination of disputes arising under article 56 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 55, the measures shall only be suspended when it is apparent to the commission on the basis of prima facie evidence that the need for the urgent application of such measures does not exist.

Article 59 A

1. If the factual basis of the arbitral award is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the State concerned may again resort to the arbitration procedure contemplated by article 57 provided that at least two years have elapsed from the original arbitral award.

Article 60

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. Fisheries conducted by means of equipment embedded in the floor of the sea in this article means those using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently, or if removed, restored each season on the same site.

Article 60 A

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State any initiate the procedure provided for in article 57.

II

Text of draft resolutions adopted by the Third Committee (A/Conf.13/L.21, annex)

Draft Resolution on International Fishery Conservation Conventions

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report, as to the efficacy of international conservation organizations, in furthering the conservation of the living resources of the sea;

Believing that such organizations are valuable instruments for the co-ordination of scientific effort upon the problem of the fisheries and for the making of agreements upon conservation measures,

Recommends:

(1) That States concerned should co-operate in establishing the necessary conservation regime through the medium of such organizations covering particular areas of the high seas or species of living marine resources and conforming in other respects with the recommendations contained in the report of the Rome Conference;

(2) That these organizations should be used so far as practicable for the conduct of the negotiations between States envisaged under articles 52, 53, 54 and 55, for the resolution of any disagreements and for the implementation of agreed measures of conservation.

Draft Resolution on the Procedure of Abstention

The United Nations Conference on the Law of the Sea,

Mindful of the conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, that: "Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favourable for such action",[18]

Recognizing that in special situations, where an exceptional effort and substantial restrains on fishermen are required to bring about the development of the productivity of resources or the restoration of resources reduced by natural factors or by past depletion, a special incentive will be a determining factor in encouraging States to undertake such action,

Believing that the procedure known as abstention, as described by the delegations of Canada and the United States of America during the deliberations of this conference, would in special situations serve the general interest of conservation by encouraging States to inaugurate and continue constructive conservation programmes through ensuring to such States the product of their efforts,

Recognizing, however, that because the abstention procedure is a relatively new concept and because the special situations in which it would be beneficial are at present relatively limited in number, there is some question that incorporation of the concept in the articles adopted by this conference is required, but

Believing that, as the science of fishery conservation advances and the harvesting of the living resources of the sea becomes more efficient, opportunities for application of abstention may become more numerous,

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18 Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2), para. 61.

Decides to commend the abstention procedure to States for utilization where appropriate as an incentive to the development and restoration of the productivity of living resources of the sea.

Draft Resolution on Conservation Measures in the Adjacent High Seas

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as reported in paragraphs 43 (a), 54 and others of the Report,[19] that any effective conservation management system must have the participation of all States engaged in substantial exploitation of the stock or stocks of living marine organisms which are the object of the conservation management system or having a special interest in the conservation of that stock or stocks,

Recommends to the coastal States that, in the cases where a stock or stocks of fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, they should co-operate with international conservation agencies as may be responsible for the development and application of conservation measures in the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures on fishing areas under their jurisdiction.

Draft Resolution Concerning Humane Killing of Marine Life

The United Nations Conference on the Law of the Sea,

Requests States to prescribe, by all means available to them, those methods for the capture and killing of marine life, especially of whales and seals, which will spare them suffering to the greatest extent possible.

3. Consideration of the report of the Third Committee

(25 April 1958, 15th Plenary Meeting)

a.

14. Mr. Tunkin (Union of Soviet Socialist Republics) said that the logical consequence of the views put forward by the United States

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19 Ibid.

representative[20] was to vote on all the articles adopted by the Third Committee as a whole. But those views were based on a wrong premise. Any convention might be nullified by the rejection of one article; nevertheless, it was the invariable practice of international conferences to vote on articles separately. It had been said that all the articles were interrelated, but that was also true of the articles on the continental shelf, which the Conference had voted on separately. The purpose of the Conference was to work out rules of international law which would be acceptable to all States, and the articles adopted by the Third Committee should therefore be put to the vote separately, so that each delegation could make its position clear. An exception could only be made in the case of the procedural articles.

37. Mr. Tunkin (Union of Soviet Socialist Republics) withdrew his delegation's amendment (A/Conf.13/L.22)[21] to article 55, because the new situation which had arisen would compel his delegation to vote against articles 49 to 60 as a group.

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20 Mr. Herrington (United States of America) drew attention to the close interrelationship between the articles on conservation. It had been evident in the Third Committee that some delegations would not be able to accept articles 54 and 55 unless the procedure provided for in articles 57 to 59 concerning the settlement of disputes was approved, while others would not accept articles 57 to 59 unless articles 54 and 55 were adopted. It was therefore obvious that if a separate vote was taken on each article, a two-thirds majority could not be obtained in every case. The rejection of certain articles would, however, so alter the balance of the group that all the work done by the Third Committee would be lost.

The Third Committee in its report (A/Conf.13/L.21, para. 64) had recommended that the convention should consist of two parts, the first dealing with articles 49 to 59 A and the second with article 49, paragraph 1, article 60, article 60A and any other new articles that might be adopted. The United States delegation considered, however, that article 59 as a whole did not relate to conservation, but primarily to fishing rights, and he moved that articles 50 to 59A should be voted upon together, and the remainder separately.

21 Document A/Conf.13/L.22 Union of Soviet Socialist Republics: amendment to article 55 as adopted by the Third Committee (A/Conf.13/L.21)

Add the following sub-paragraph (d) to paragraph 2:

"(d) That they are essential in order to ensure the large-scale measures taken by the said State to safeguard the reproduction of the living resources of the sea."

47. Mr. Tunkin (Union of Soviet Socialist Republics) said that if no reservations were allowed, governments would either have to accept a convention which they did not fully support, or reject it entirely. Past experience showed that if a convention was freely accepted at an international conference, reservations were not dangerous. If, however, a convention did not answer the needs of some States, a limitation concerning reservations would not save it from failure. For those reasons, he opposed the proposal of the Federal Republic of Germany[22].

b. Adoption of the Convention on Fishing and Conservation of the Living Resources of the High Seas.

(Reservation Clause 26 April 1958, 18th Plenary Meeting, Union of Soviet Republics)

51. Mr. Tunkin (Union of Soviet Socialist Republics) said that any limitation placed on the right to formulate reservations was wrong in principle, because it put governments in the position either of not accepting the convention or of abandoning their principles. It would not be in the interests of the international community if some States with large fishing fleets were prevented from accepting the convention because they were not able to make reservations to it, and were thus not bound by it.

55. Mr. Tunkin (Union of Soviet Socialist Republics) said that the convention contained a series of provisions which his delegation could not support, and it had therefore abstained.

(26 April 1958, 18th Plenary Meeting)

73. Mr. Tunkin (Union of Soviet Socialist Republics) said he had abstained from voting on the convention as a whole because he was unable to support several of its provisions and had been obliged to withdraw an amendment which his delegation had proposed to article 55 (A/Conf.13/L.22).[23] Furthermore, he could not agree to the Conference's decision concerning the reservations clause.

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22 Mr. Münch (Federal Republic of Germany) proposed that no reservations should be allowed to articles 49 to 60.

23 See Supra.

IV. CONTINENTAL SHELF

1. Articles 67 to 73 of the Draft of the International Law Commission (A/3159)

Section III. Continental Shelf

Article 67

For the purposes of these articles, the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms), or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

Article 68

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources.

Article 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

Article 70

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables on the continental shelf.

Article 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.

5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

Article 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement betweem them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, very point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured.

Article 73

Any disputes that may arise between States concerning the interpretation or application of articles 67-72 shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

2. Consideration on the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159)

(4 March 1958, 4th Meeting, Fourth Committee)

a. General Debate

15. Mr. Kwei (China) said that the International Law Commission's draft articles dealing with the continental shelf endeavoured to reconcile recognized principles of international law. While paying tribute to the Commission's draft, he thought that certain amendnents might be proposed to make the wording of the articles more precise. For example, the term "sovereign rights" in article 68 should be replaced by "rights of control and jurisdiction", since the control over the continental shelf should not be of the same degree as control over the territorial sea.

16. Article 67 was not precise enough. The legal status of the continental shelf was, in the terms of that article, sjubect to two different limitations: a depth of 200 metres (approximately 100 fathoms), or beyond that limit, to where the depth of the superjacent waters admitted of the exploitation of the natural resources of the said areas. Although it might be said that the former imposed a limitation of area and the latter a limitation of purpose, it was nevertheless true that from the legal point of view, the latter contradicted the former in that it removed the limit which was fixed in the former for the purpose of avoiding disputes or uncertainty. China had no preference for one limitation over the other, but he felt that one of the two was redundant.

17. There were dangers in imposing a limit of depth of 200 metres and giving the coastal State sovereign rights over the area between the 200-metre line and its coast. The impression might be created that the continental shelf was an extension of the territorial sea and the contiguous zone. Furthermore, if a coastal State failed to exploit its continental shelf and also debarred other States from exploiting it, the natural resources of the sea would remain unexploited. He felt that the right of the coastal State over the continental shelf should be recognized on the condition that the exploitation of the natural resources was possible and that the coastal State had taken steps with a view to their development. In other words, the coastal State's right over the continental shelf should be regarded as a right of priority, or a preferential right, but not as a right incident to its sovereignty.

(14 March 1958, 10th Meeting, Fourth Committee)

17. Mr. Molodtsov (Union of Soviet Socialist Republics) said that the Fourth Committee's work would be successful if it was conducted in a desire to achieve mutual understanding and if due consideration was given both to the legitimate interests of individual States and to the more general interests of the strengthening of peace and international collaboration. The International Law Commission's articles on the continental shelf were largely satisfactory and provided a solid basis for the Fourth Committee's deliberations.

18. In recent years, a number of States had issued proclamations claiming certain rights over the continental shelf. For coastal States the utilization of the resources of the continental shelf represented a source of wealth likely to increase in importance as science and technology advanced from year to year. The resources of the seabed and subsoil of the continental shelf consituted in the main, a continuation, or a part, of the land resources. The coastal States were therefore justified in claiming the right to explore, exploit and protect the natural resources of the continental shelf.

19. The proposals of certain delegations which disregarded the interests of the coastal State with regard to the continental shelf and proposed to establish for all States the right to exploit the resources of the continental shelf, considering that any other regime would conflict with the freedom of the high seas, were not acceptable. While the problem of the continental shelf was certainly connected with the principle of the freedom of the high seas, it was also an independent problem with characteristic features of its own. For example, the continental shelf - unlike the seas and oceans - was not a means of communication between nations. Moreover, the exploitation of the natural resources of the continental shelf was generally connected with the erection of permanent installations which necessarily entailed the exercise of a State's authority, whereas the same could not be said of the freedom of navigation and fishing.

20. There were also other features of the problem. Adoption of the prposals for establishing the free exploitation of the resources of the continental shelf and failure to take into account all those features in formulating the rules for the juridical regime of the shelf would lead to an intensified struggle for possession of the submarine areas of the high seas, as a result of which the wealth of the continental shelf might pass into the hands of undertakings of the large States to the detriment of the small and medium-sized countries.

21. The necessary recognition of the coastal State's rights to explore and exploit the natural resources of the continental shelf should not, however, result in the abolition of the principle of the freedom of the high seas, which was one of the main foundations of peaceful relations between countries and was in the interests of all nations.

22. The International Law Commission, in regarding the sovereign rights of the coastal State in the exploration and exploitation of the resources of the continental shelf and in formulating provisions embodying the principle of the freedom of the high seas, had found a completely equitable solution.

23. The inclusion of the concept of sovereign rights in article 68 was entirely correct from the standpoint of international practice and international law, unlike the term "jurisdiction and control", which was both narrower and more ambiguous. Similarly, the definition of the continental shelf provided in article 67 was, in general, satisfactory.

24. With regard to article 73, he remarked that the settlement of disputes between States formed part of procedural law rather than of substantive law. It therefore fell outside the tasks properly assigned to the Fourth Committee, particularly as the question of the settlement of disputes related not only to the articles on the continental shelf but also to other articles on the law of the sea. The subject should be considered apart but for the time being, there was no need for the Committee to discuss it, since it was covered by the United Nations Charter, by the Statute of the International Court of Justice and by special international conventions. His delegation supported the proposals of certain other delegations that article 73 should be replaced by a provision to the effect that disputes between States over the continental shelf should be settled by peaceful means in accordance with the Charter of the United Nations.

b. Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159)

1) Article 68

(26 March 1958, 20th Meeting, 4th Committee)

19. Mr. Kwei (China), supporting the United States proposal, said that sovereign rights were rights pertaining to a sovereign and had no legal basis unless full sovereignty was recognized. The concept of sovereignty was more or less clearly defined. More would be lost than gained by using the term "sovereign rights" for lack of another convenient term. The fact that the rights set forth in

article 68 were limited by the provisions of subsequent articles was precisely the reason why the term "sovereign" should, from the purely juristic point of view, be avoided and replaced by the term "exclusive", which could, indeed, be interpreted as possessing even greater force.

(27 March 1958, 22nd Meeting, 4th Committee)

57. Mr. Kwei (China) asked whether he was right in assuming that the text proposed for article 68 by the International Law Commission covered known resources which had not been properly explored or exploited before the emergence of the concept of the continental shelf as a new subject of international law.

58. He would draw attention to that point in order to ensure that the Committee adopted a proper criterion for the interpretation of the term "natural resources" as used in the article.

(28 March 1958, 23rd Meeting, 4th Committee)

32. Mr. Molodtsov (Union of Soviet Socialist Republics) reiterated the view he had advanced during the general debate that the problem of the utilization of the continental shelf could be solved only by recognizing the rights of the coastal State to explore and exploit the continental shelf; the recognition of those rights, however, must not lead to the abolition of the freedom of the high seas, which was an important factor in the development of peaceful relations between nations. A correct solution would reconcile the individual and general interests of all countries. The International Law Commission's text guaranteed the exclusive right of the coastal State to utilize the wealth of the continental shelf while limiting that right to a definite purpose, thus making nay claim of the coastal to the superjacent waters or air space juridically untenable.

33. The United States proposal to replace the world "sovereign" by the word "exclusive" (A/Conf.13/C.4/L.31)[1] was not an improvement; the discussion had shown that the term "exclusive" lent itself to widely differing interpretations; it would therefore be unwise to employ it in an important international convention. The term "control and jurisdiction" was also not acceptable for reasons stated in the general debate.

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1 A/Conf.13/C.4/L.31 United States of America: proposal

Article 68

Replace the word "sovereign" by the word "exclusive".

34. So far as the definition of natural resources was concerned, it was difficult to see any justification for extending the rights of the coastal State to fish and other swimming species; he would agree, however, with the arguments advanced in favour of including in the concept of natural resources organisms associated with the sea bottom in the harvestable stage of their life. The definition contained in the six-power proposal represented a useful compromise between the view that natural resources should include mineral resources only and the opposing view that all the living organisms of the continental shelf should also be included. The Soviet Union delegation would support that proposal, on condition, however, that the phrase excluding crustacea from the definition was deleted.

2) Article 69

(31 March 1958, 26th Meeting, 4th Committee)

52. Mr. Molodtsov (Union of Soviet Soclaist Republics) reiterated his delegation's support of the principle of the freedom of the high seas. At the same time, he would point out that the object of the articles referred to the Committee was to guarantee the well-being of the peoples of the coastal States; that was why the Soviet delegation had supported the recognition of the rights of the coastal State to explore and exploit the natural resources of the continental shelf. Sinice, however, the Committee was breaking new ground in international law, it should take particular care to ensure that the rules it drafted would never be cited in defence of activities prejudicial to international peace and security. A State bent on performing an unlawful act would often try to invoke rules of international law in self-justification. The Bulgarian proposal would make it impossible for the rights conferred upon the coastal State to be exercised to the detriment of other nations. The purely formal arguments advanced against the Bulgarian proposal were not convincing; the Committee should support the Bulgarian proposal as an important contribution to peace.

3) Article 71

(3 April 1958, 30th Meeting, 4th Committee)

24. Mr. Molodtsov (Union of Soviet Socialist Republics) supported the views expressed by the representatives of India[2] and

2 Mr. Jhirad (India), answering some of the criticism expressed concerning the Indian proposal, said that it had not been introduced in order to create controversy. It had nothing to do with

Ceylon,[3] and considered the arguments of those who opposed the Indian proposal unconvincing and contradictory. The Conference was concerned with drafting regulations in the interests of the welfare of humanity, and should therefore adopt an article forbidding the use of the continental shelf for military purposes.

25. His delegation would vote for the Indian proposal.

4) Article 73

(10 April 1958, 34th Meeting, 4th Committee)

6. Mr. Molodtsov (Union of Soviet Socialist Republics) said that article 73 of the International Law Commissions's draft had no organic connexion with the other articles referred to the Fourth Committee. Nevertheless, those articles would be ineffective without article 73 in one form or another.

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disarmament as such, and made no reference to warships. It merely sought to reaffirm a principle of international law. Article 68 laid down the uses which the coastal State might make of the continental shelf, and article 69 reaffirmed the freedom of the high seas. The Indian proposal was thus merely a further specification of the principle embodied in article 69.

At the 29th meeting (para. 21), the Netherlands representative had said that the Conference was concerned with drawing up articles governing the sea in time of peace, and that therefore the Indian proposal did not fall within the scope of the Conference's work. But the Indian proposal did not necessarily relate to wartime. If it were suggested that there could not be military installations in time of peace, then one might as well omit the references to warships which occurred earlier in the International Law Commission's draft.

The purpose of the Indian proposal was to ensure that the seas should be kept free for all nations.

3 Mr. Kanakaratne (Ceylon) said that his delegation supported the Indian proposal.

He was struck by the change in attitude which had occurred among the habitual defenders of the freedom of the high seas when they had come to consider the Indian proposal. They had argued that the question of military installations was irrelevant to the articles concerning the continental shelf. Yet, surely, the Indian proposal did no more than impose a certain restriction on the coastal State in interests of the freedom of the high seas, just as articles 69 to 71 imposed other restrictions on the coastal States. If such restrictions could be imposed in the interests of scientific research, he failed to see why representative could not accept the restriction embodied in the Indian proposal.

7. The provisions in the articles relating to the continental shelf were new in international law, and had not so far been put to the test of experience. It was therefore not only unnecessary, but might be dangerous, to bind governments to accept compulsory arbitration by the International Court of Justice.

8. The Argentine amendment had the same aim as that proposed by his own delegation (A/Conf.13/C.4/L.59),[4] and therefore, taking into account the wishes of the General Committee, his delegation would withdraw its amendment and would support that of Argentian.

25. Mr. Sheldov (Byelorussian Soviet Socialist Republic) also thought that the matters regulated by article 73 belonged to the sphere of procedural law and were governed by existing international law and practice in accordance with the principle of the sovereign equality of States. There was no reason why disputes relating to the continental shelf should be subject to a separate rule; still less why they should be submitted to the International Court of Justice at the request of only one of the parties.

26. Acceptance of the jurisdiction of the International Court was a sovereign prerogative of every State; no State could be asked to give its consent thereto regardless of the substance of any possible future dispute, particularly as matters of a purely technical nature were likely to be involved. The only appropriate solution would be one which took due account of the interests of those States which reserved the right to decide whether or not a particular dispute should be referred to the International Court. The text proposed by Argentina was the only one which satisfied that requirement, and his delegation would vote for it if the Committee insisted on adopting a special provision regarding the settlement of disputes relating to the continental shelf.

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4 Document A/Conf.13/C.4/L.59 Union of Soviet Socialist Republics: proposal

Article 73

Replace the words: "at the request of any of the parties" by the words "in accordance with the Statute of the Court".

5) Consideration of the kind of instrument required to embody the results of the work of the Committee

(16 April 1958, 38th Meeting, 4th Committee)

20. Mr. Molodtsov (Union of Soviet Socalist Republics) said that the Committee should spare no effort to ensure that the results of its work were incorporated in a proper legal instrument. A declaration would not be binding upon States, and, since it would not require ratification, it could be used against the legitimate interests of some countries. Accordingly, a convention appeared to be the only possible instrument capable of satisfying the Committee.

21. The Brazilian representative's amendment to the Canadian proposal[5] was in the nature of a compromise, but tended to make the decision of the Conference depend on the adoption of a single instrument. In his view, the Canadian proposal could be made more flexible and acceptable by the deletion of the words "separate" and "only".

6) Consideration of the draft final clauses

(17 April 1958, 39th Meeting, 4th Committee)

11. Mr. Molodtsov (Union of Soviet Socialist Republics) said he believed that, in the light of the amended Canadian proposal adopted at the previous meeting,[6] the question of final clause should be dealt with in plenary meeting, which would decide whether or not the convention on the continental shelf would be a separate instrument. Different committees might adopt different and inconsistent final clauses, which would put the Conference in a very difficult position. The final clauses should be decided upon by the Conference as a whole.

12. He therefore proposed that the Fourth Committee should make no recommendations on the subject.

(The proposal by the Soviet Union was rejected by 21 votes to 19, with 10 abstentions)

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5 Mr. Calero Rodrigues (Brazil) suggested that the objections to the Canadian proposal might be overcome by the addition of the words "...unless the Conference decides to embody the results of its work in a single instrument." The use of the term "single convention" would be unwise, since it would tend to prejudge the decisions of the Conference.

6 See Supra(n) Brazilian representative's amendment to the Canadian Proposal at the 38th meeting.

Signature, ratification and accession clauses

(17 April 1958, 39th Meeting, 4th Committee)

17. Mr. Molodtsov (Union of Soviet Socialist Republics) said that he would be prepared to vote for the ratification and accession clauses and for a time-limit of six months for signature.

18. He objected to the signature clause because he though that it would be wrong to exclude certain States which were not Members of the United Nations and had not taken part in the conference. By the present conference, the United Nations was contributing to the progressive development of international law, which had a universal application. There was no such thing as United Nations international law. International law could only exist if it was accepted and recognized by all States. To tell any State that it was debarred from accepting whatever international law emerged from the Conference was contrary to the legal concept of the relations between modern States.

19. He therefore proposed that the signature clause should read "The present convention shall, until...be open for signature on behalf of all States", the rest of the clause being deleted.

7) Consideration of the report of the drafting Committee set up at the 36th Meeting

(18 April 1958, 41st Meeting, 4th Committee)

30. Mr. Molodtsov (Union of Soviet Socialist Republics) supported the Canadian representative's proposal,[7] saying he was opposed to the inclusion of any provision distinguishing between governments with offices which issued Notices to Mariners and other governments.

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7 Mr. Wershof (Canada) found the text adopted by the Committee unrealistic in several respects. He was opposed to laying down that the notice concerned should be sent to "all...groups interested in navigation and fishing." No one really considered that the notice should be given to associations of boy scouts interested in fishing. States had for a long time been giving notice of the construction of such installations; the notice they had given so far had been entirely adequate. They knew when they should give notice and to whom they should give it. The International Law Commission, rightly agreeing that the questions of when and to whom notice should be given should be left to the commonsense of those concerned, had recommended that it should be laid down

c. Text of the articles and final clauses adopted by the Fourth Committee (A/Conf.13/L.12, annex)

I

Article 67

1. For the purpose of these articles, the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coasts but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

2. For the purposes of these articles the term "continental shelf" shall be deemed also to refer to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 68

1. The coastal State exercises over the continental shelf exclusive rights for the purpose of exploring it and exploiting its natural resources.

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simply that "due notice must be given..." without specifying when or to whom. That wording was quite sufficient.
If, as the Netherlands representative had suggested, it were laid down that notice should be given to "all governments", there would be a flood of useless paper. If it were laid down that notice should be given only to "governments with offices which issue Notices to Mariners", there would certainly be complaints about discrimination. He had noted the comments of the Netherlands representative regarding the need for notice to be given before construction began. He proposed the adoption of the following single paragraph to replace paragraphs 5 and 6 of the text adopted at the 30th meeting:

"Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed."

2. The rights referred to in paragraph 1 of the present article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or lay claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the contienntal shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil; but crustacea and swimming species are not included in this definition.

Article 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

Article 70

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Article 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of the present article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research into the continental shelf.

Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Artidle 73 (additional article)

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil my means of tunneling irrespective of the depth of water above the subsoil.

Article 74 (jormerly article 73)

Any disputes that may arise between States concerning the interpretation or application or articles 67-73 shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

II

Recommendations of the Fourth Committee Regarding Final Clauses

Signature

The present convention shall, until 6 months from the closing of the Conference, be open for signature on behalf of all States Members of the United Nations or of one of the specialized agencies, of any other State invited to take part in the United Nations Conference on the Law of the Sea, and of any other State invited by the General Assembly to become a party to the convention.

Ratification

This convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Accession

After ....., this convention shall be open for accession by the States mentioned in article ..... The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Entry into force

1. This convention shall come into force on the ..... day following the date of deposit of the ..... instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the ..... instrument of ratification of accession, the convention shall enter into force on the ..... day after deposit by such State of its instrument of ratification or accession.

Revision

A request for the revision of the present convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Notifications

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article ..... :

(a) Of signatures to this convention and of the deposit of instruments of ratification or accession, in accordance with articles .....

(b) Of the date on which this convention will come into force, in accordance with article .....

(c) Of requests for revision.

Deposit of the convention, and languages

The original of this convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article .....

3. Consideration of the report of the Fourth Committee (A/Conf.13/L.12 to L.16)

a. General Debate

(22 April 1958, 8th Plenary Meeting.)

6. Mr. Tunkin (Union of Soviet Socialist Republics) also supported the Indian proposal,[8] and agreed that States might have difficulty in accepting a single convention of very wide scope.

b-1) Article 68

(22 April 1958, 8th Plenary Meeting.)

50. Mr. Tunkin (Union of Soviet Socialist Republics) said that his delegation would also support the Indian proposal[9] because the exact significance of the word exclusive rights" was obscure.

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8 Mr. Jhirad (India) said that it might be difficult to secure agreement on a single convention embodying all the articles approved at the Conference, and the numerous reservations to which such a convention could give rise might cause confusion. He therefore proposed that the Conference should first decide to incorporate the articles on the continental shelf, which was an entirely new concept, in a separate convention, allowing reservations to all of them except articles 67, 68 and 69 which were of fundamental importance.

4. He also proposed that the International Law Commission's expression "sovereign rights" be restored in article 68, paragraph 1, in place of the expression "exclusive rights", which had been adopted by the Fourth Committee at its 24th meeting by a majority of only one vote, and was clearly causing concern to some delegations. He also proposed that the words "but crustacea and "be deleted from paragraph 4, a similar amendment having been rejected at the same meeting of the Fourth Committee by a tied vote.

9 Mr. Jhirad (India) proposed that the words "exclusive rights" in paragraph 1 should be replaced by the words "sovereign rights", Since the approval of the text by the Fourth Committee, many delegations had had further opportunity to study it and had come to the conclusion that the word "sovereign" - the term originally proposed by the International Law Commission - was preferable. The reasons for introducing the somewhat imprecise term "exclusive" no longer applied, since the fact that the coastal State's rights over the continental shelf would not affect the legal status of the superjacent waters or of the air space above those waters was now expressly recognized in article 69.

(22 April 1958, 9th Plenary Meeting.)

2) Article 71

4. Mr. Tunkin (Union of Soviet Socialist Republics) supported the request made by the representative of Norway.[10] He opposed paragraph 8 because, it no kind of scientific research into the continental shelf could be undertaken without the consent of the coastal state, much valuable purely scientific work would be stopped. The preceding clauses sufficiently safeguarded the interests of the coastal State. The inclusion of the paragraph in the Convention might dissuade some States from becoming parties.

The words "nor [result] in any interference... intention of open publication" were adopted by 44 votes to 10, with 8 abstentions.

Paragraph 8, with the changes recommended by the Drafting Committee (A/Conf.13/L.13), was adopted by 43 votes to 15, with 5 abstentions.

The whole of article 71, with the changes recommended by the Drafting Committee (A/Conf.13/L.13), was adopted by 50 votes to none, with 14 abstentions.

(22 April 1958, 9th Plenary Meeting.)

3) Final clauses

12. Mr. Tunkin (Union of Soviet Socialist Republics) suggested that much time would be saved if the final clauses proposed by the Fouth Committee (A/Conf. 13/L.12, annex) were not discussed at the current meeting but the whole question of final clauses for all the instruments to be finally adopted at the Conference were discussed later, since all the final clauses in those instruments should be couched as far as practicable in identical terms.

29. Mr. Tunkin (Union of Soviet Socialist Republics) said that in discussing the question of reservations to articles proposed by the Committee, it should be remembered that the Conference had been convened to draw up international standards which would be progressively accepted until they became common to all States.

30. The convention should therefore be worded so that all States could become parties to it. The question of reservations was of fundamental importance. Of course, it was desirable that there should be no need for reservations to international conventions, and that everything concerning international law should be completely

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10 Mr. Stabel (Norway) asked the Chairman to put paragraph 8 to the vote separately.

clear; but international law was very complicated and could not be made by any single body. If everything not absolutely clear in international law were scrapped, the harm would be enormous.

31. He did not agree that the basis of the convention would be destroyed if reservations to articles 67-69 were permitted; but the convention would be valueless if ratified only by a very few States. Frequently, governments wanted to make to a convention reservations which did not affect common standards, and were unwilling to become parties to it unless they could do so. He was convinced that the adoption of a clause barring reservations to articles 67-73 would be harmful in practice, since many States would almost certainly decide not to ratify the convention. The number of parties to the convention should be as large as possible, even at the price of allowing States to make reservations.

32. If reservations to any of the articles 67-73 were permitted, some reservations would probably be cancelled later. Moreover, every party would always be free to declare that it was not bound by the terms of the convention in respect of another party which had made a reservation, because of the reservation. For those reasons, he was in favour of permitting reservations to any of those articles; but, if the majority were in favour of prohibiting reservations to articles 67-69, he would not vote against such a provision but merely abstain.

60. Mr. Tunkin (Union of Soviet Socialist Republics) proposed formally that all the final clauses adopted by the committees should be referred together to the Drafting Committee.

The President recommended the Conference to adopt the USSR proposal to refer to the Drafting Committee all the final clauses adopted by the committees. Those adopted by the First Committee might be deferred until that committee had completed its work.

It was so decided.

4) Adoption of the Convention on the Continental Shelf

Clause relating to entry into force

(26 April 1958, 18th Plenary Meeting.)

5. Mr. Tunkin (Union of Soviet Socialist Republics) said that to the best of his knowledge no convention had ever required a minimum of fifty ratifications. For that reason, his delegation opposed

the German proposal,[11] and supported the Canadian proposal. [12]

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11 Mr. Munch (Federal Republic of Germany) said that, in adopting the convention on the continental shelf, the international community was disposing of common property in favour of the coastal States, and hence a larger number of ratifications should be stipulated. For that reason he proposed that the word "fiftieth" should be inserted in the appropriate space in the clause in question.

12 Mr. Wershof (Canada) said that more than twenty-two ratifications might be necessary in the case of some of the conventions adopted by the Conference, but not in the case of the convention on the continental shelf. He therefore proposed that the word "twenty-second" should be entered in the appropriate space in the clause relating to entry into force (A/Conf.13/L.32).

Document A/Conf.13/L.32 Sixth report of the Drafting Committee of the Conference

1. The Drafting Committee of the Conference met on 23 and 24 April to consider the examples of final clauses given in the note by the Secretariat (A/Conf.13/L.7). The Committee also had before it its own recommendations with regard to the final clauses adopted by the Fourth Committee.

2. The Drafting Committee recommends to the Conference the following final clauses for inclusion, where appropriate, in the conventions or other similar instruments to be adopted by the Conference.

Signature

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by other State invited by the General Assembly to become a party to the Convention.

Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Accession

This Convention shall be open for accession by the States mentioned in article ..... The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Note. - The representatives of France and Czechoslovakia were opposed to the inclusion of this clause on the basis that accession to a treaty can only take place when the treaty has entered into force. Similarly, in connexion with the Entry

into Force clause below, both these representatives objected to the inclusion of the words "or accession" in the first and second paragraphs of that clause.

Entry into Force

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instruments of ratification or accession.

Reservations

I

No reservations may be made to this Convention.

II

At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles ..... inclusive.

Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Note. - The Drafting Committee considers that the decision on whether or not reservations should be allowed to a convention or other instrument, and if so to which articles, is essentially a question of principle which should be decided by the Conference. The Drafting Committee therefore recommends the two above alternatives to provide for both the case in which no reservations should, in the view of the Conference, be permitted and the case where reservations to certain articles should be permitted.

Revision

After the expiration of a period of five years from the date on which this Convention shall enter into force a request for the revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General.

The General Assembly of the United Nartions shall decide upon the steps, if any, to be taken in respect of such request.

Note. - The Committee considered that the inclusion of this revision clause made unnecessary any clause on denunciation.

Notifications

The Secretary-General of the United Nations hsall inform all States Members of the United Nations and the other States referred to in article .....:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles .....

(b) Of the date on which this Convention will come into force, in accordance with article .....

(c) Of requests for revision in accordance with article .....

(d) Of reservations to this Convention, in accordance with article .....

Deposit of the Convention, and languages

The original of this Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States referred to in article .....

Reservations clause

8. Mr. Tunkin (Union of Soviet Socialist Republics) proposed that, in conformity with the decisions taken by the Conference at its 9th plenary meeting, alternative II of the reservations clause (A/Conf.13/L.32),* with the insertion of "67 to 69" in the appropriate space, should be adopted.

* see supra.

V. Question of free access to the Sea of Land-locked Countries

o Study of the question of free access to the sea of land-locked countries.

(24 March 1958, 9th Meeting, 5th Committee.)

1. Mr. Saveliev (Union of Soviet Socialist Republics), recalling his government's attachment to the policy of co-existence and collaboration among all States, irrespective of their economic and social systems, said that the Soviet Union was anxious to make a positive contribution to the solution of the main problems of the international law of the sea. In that spirit, the Government of the Soviet Union, a maritime Power whose coasts were washed by several seas, was ready to support the aspirations of the land-locked countries for free access to the sea. In 1815, when the Congress of Vienna was being prepared, the Russian delegation had put forward proposals to the effect that the principle of free access to the sea should be coupled with that of the freedom of the high seas and that in seaports free zones should be established for the benefit of land-locked countries. In modern times, the Soviet Union, in keeping with the same policy, had in June 1955 concluded an agreement with Afghanistan settling the question of transit in the best interests of both Governments. Under that agreement, goods exported or imported by Afghanistan whatever their origin or destination could use the ports and the extensive means of communication in the Soviet Union free of all duties and charges; goods in transit, moreover, enjoyed the lowest freight rates, and the formalities were reduced to a minimum. Similar agreements had been concluded with the Governments of Czechoslovakia and Hungary.

2. He noted that all land-locked countries had concluded with the adjacent coastal States agreements in order to ensure free access to the sea. Previous speakers had all recognized the principle of free access to the sea; that principle should now be confirmed and codified. After the General Assembly had been so sympathetic to the requests for a study by the Conference of the problem of access to the sea of land-locked countries, the Committee could surely not fail to bring those studies to fruition and to draft provisions regulating the right of access to the sea. It should not be difficult to prepare international rules governing free access to the sea, for the Committee had the necessary time and documents at its disposal.

3. The International Law Commission's draft (A/3159) laid down certain principles, including the principle of the freedom of the high seas. Since the right of access to the sea derived from that principle, a convention on the law of the sea would not be

complete and sound unless it also confirmed the principle of freedom of access to the sea for land-locked States. In his opinion, there was no likelihood that an instrument stipulating access to the sea for such States would complicate the situation or impair existing international agreements. Some representatives had said that the question of the transit of goods to the sea should be linked with that of international transit. That view was not shared by the U.S.S.R. delegation, which considered rather that the study of the right of access to the sea should not be complicated by any attempt to link the right of access to the sea with a much more complex and much more controversial question. The Committee had before it a draft, comprising seven articles (A/Conf.13/C.5/L.1, annex 6),[1] prepared by the Czechoslovak delegation at the Preliminary Conference of Land-locked States. Once in final form, that draft would, in his delegation's opinion, enable the Conference to bring its work to a successful conclusion.

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1 A/Conf.13/C.5/L.1 annex 6

Access to the sea of Land-Locked Countries:
Draft Articles Submitted by the Czechoslovak Delegation

Part 1. Main Principles

Article 1

Right to the Free Access to the Sea

The principle of the freedom of the high seas which guarantees to all States equal use of the high seas, universally recognized by international law, embraces also the right of States without a seacoast [land-locked states] to free access to the sea.

Commentary

The noble principle of the freedom of the high seas signifies, as provided under article 27 of the Draft of the United Nations International Law Commission, that the high seas are open to all States. All states are therefore entitled to enjoy the advantages accruing from the freedom of the high seas. The principle of the freedom of the high seas, universally recognized at the present time, indubitably also includes the right of states without a seacoast [land-locked States] to free access to the sea and that by highway, by rail, by waterway and by air. The said principle also includes the right to fly a flag and the right to the use of maritime ports. Without these fundamental rights land-locked states could not exercise any of the powers incorporated in the principle of the freedom of the high seas.

This article does not apply to enclaves on the territory of a foreign State nor to the access of coastal States to seas other than those along their coast.

Article 2

Right to Fly a Flag

1. Land-locked States have the right to sail ships, registered in a specific place within their territory; this place is the port of registry for these ships.

2. Ships sailing under the flag of a land-locked State shall receive guarantees of equal treatment with ships of coastal states on the high seas, during passage through territorial waters and in entering internal waters.

Commentary

The right of land-locked States to fly a flag on the sea was first codified in the Peace Treaties [article 273 of the Versailles Treaty, article 153 of the Neuilly Treaty - in which this right is accorded to all land-locked States belonging to the Allied and Associated Powers, further in article 209 of the Trianon Treaty and article 225 of the Treaty of Saint-Germain, which accorded this right to all land-locked States which are contracting parties to the said Treaties].

"The Declaration recognizing the right of States without a seacost to fly a flag on the sea" unanimously adopted at the Barcelona Conference on the freedom of navigation and transit in 1921 "has for all times embodied the right of all States not having a seacoast to fly a flag on the sea", to cite the President of the Barcelona Conference, Mr. G. Hanotaux.

The right of land-locked states to fly a flag at sea has this become a lasting principle of international law, recognized and applied by all States.

Article 3

The Right to Use Maritime Ports

1. Land-locked States have the right that ships sailing under their flags may use maritime ports.

2. The coastal State is obliged to ensure to the ships of a land-locked State most favoured treatment, and in no event shall such treatment be worse than that enjoyed by its own vessels in maritime ports under its sovereignty or authority, in particular as regards the freedom of access to the port, its use and full enjoyment of the facilities it provides with respect to navigation and commercial operation to ships and vessels, their cargoes and passengers and with respect to payments and charges of all kinds.

Commentary

In respect of land-locked countries, unlike coastal States, the exercise of the right to use the high seas is subject to their

right to use maritime ports. The term "maritime port" should for the purposes of the present article be understood to signify ports receiving naval vessels and serving international economic relations or the transit of a land-locked State.

The right to use maritime ports applies to all vessels sailing under the flag of a land-locked State, irrespective of its owner, or operator, whether a State, a private person or a public agency. It applies equally to vessels exercising the power of control over the vessels of a land-locked State. The same right appertains to land-locked States also in respect of fishing vessels.

The granting of the best possible conditions to the landlocked State and in all cases at least treatment equal to that enjoyed by, and according to, the vessels of the coastal State is fully justified, if it is at least partially to compensate for the very considerable disadvantages arising from the unfavourable situation of the land-locked State. It has, moreover, already been accorded under certain treaties. Comp, article 11 of the Convention between Italy and Czechoslovakia on the granting of concessions and facilities in favour of Czechoslovak transport in the port of Trieste of 23 March 1921. (L.o.N., Recueil des traites, vol. XXXII, p. 256.) Article 2 of the Statute of the International Regime of Ports of 9 December 1923 likewise rests on the same principle. (L.o.N., Recueil des traites. vol. I.VIII, p. 300.)

Paragraph 2 of article 3 regulates the legal status of vessels in maritime ports alone, and in no way affects the rights of the coastal State, as for instance the exclusive right of the coastal State to operate cabotage.

Article 4

Free Zones in Ports

1. For the purpose of free and duty-free movement of goods between a land-locked state and the seacoast, the coastal state may establish by agreement with a land-locked state and for the use there a free zone in certain of its ports.

2. A free zone is a zone exempted from the customs territory of the state where it has been established, which however remains subject to the jurisdiction of that state especially with regard to safety of operation, working conditions and public health.

Commentary

As the experiences of the past years have shown, the needs of the land-locked countries may require the establishment of a free zone in one of the maritime ports. The Versailles Peace Treaty in its articles 363 and 364 regulated the right of Czechoslovakia to establish free zones in the ports of the North Sea as "les besoins tout particuliers de la République tchecoslovaque, consequence de sa situation géographique" (Report of the Transport Commission to the Conference of 7 April 1919). Land-locked states

have concluded international agreements with a view to the establishment of free zones in ports. As an example it is possible to cite the Treaty between Czechoslovakia and Italy of 23 March 1921 on concessions and facilities en favour of Czechoslovak transports in the Port of Trieste (Convention entre I'Italie et la Tchecoslovaquie accordant des concessions et des facilites en faveur des transports tchecoslovaques dans le port de Trieste: L.o.N. Recueil des traites, vol. XXXII, p. 250 et seq.); the Convention of 2 August 1929 between Italy and Ethiopia, envisaging the establishment of a free zone in the port of Assab (Martens, Nouveau recueil general de traites, 3e serie, vol. XXX, p. 335).

The free zones were also established to provide transit facilities to land-locked states in foreign ports. Compare the Greek-Serbian convention of 10 May 1914 on transit traffic through Salonika whose text served as a model for the wording of article 363 of the Peace Treaty of Versailles; the convention between Greece and Yugoslavia of 10 May 1923 concerning the regulation of transit through Salonika, supplemented by the Protocols of 17 March 1929; convention between Great Britain and Belgium with a view to facilitating Belgian Traffic through the territories of East Africa, signed at London, 15 March 1921.

This article only lays down the obligation to give the land-locked State the possibility of establishing a free zone. As a rule, the land-locked State will not feel the need to establish a free zone in maritime ports where a free port exists. However, it need not necessarily be so in all cases. Thus, for instance, the Yugoslav free zone in the port of Salonika established by the Convention of 10 May 1923 does not form a part of the Salonika free port.

From the practices of States it is possible to deduce some general principles of the regime of free zones. A free zone within the terms of article 4 and within the meaning of this principle remains under the sovereignty of the State in the territory of which it has been established. The purpose of a free zone is first and foremost to facilitate transit. Therefore this zone is only excluded from the customs territory of the State and with regard to customs is considered, even in relation to the state in the territory of which it has been established, as foreign territory. The turnover of goods between the free zone and other countries with the exception of the territorial State, is subjected neither to the customs duties nor to any other import or export charges.

The law of the State in the territory of which the free zone is established extends in principle to the free zone as well. This law governs in particular the safety of operations, working conditions and questions of public health. The State in transit has, however, the right to perform the customs formalities in the free zone through its own organs.

Apart from facilitating transit, the free zone at the same

time serves certain commercial needs. In the free zone it is permitted to store goods in customs and other depots, to inspect them, to select, pack and re-wrap them, to treat them with a view to perfecting them and to perform other operations in connexion with the transhipment of goods, without the presence or assistance of the customs authorities of the country in the territory of which the free zone is established.

The interests of the coastal States are sufficiently protected by the provision of article 7, under which the establishment of the free zone shall be carried into effect by agreement between the land-locked State and the coastal State.

Article 5

Obligations of the Countries of Transit

Countries situated between the land-locked State and the sea-coast (countries of transit) shall allow transit of persons and goods proceeding from land-locked States to the sea and vice versa by highway, rail, waterway and air.

Commentary

The obligation of the countries of transit to permit the transit of persons and goods proceeding from land-locked States to the sea and vice versa ensues from the right of the land-locked states to free access to the sea. This right would be ineffective if the corresponding obligation would not be imposed upon the countries of transit. The obligation of the countries of transit shall apply to all means of transport, since it is the only way how to give the land-locked States compensation for their unfavourable geographical situation. Each of the said means of transportation, be it transport on highways, railways, waterways and airways, have their specific features with regard to expense, expediency and adaptability. Should any of these ways of transit be denied to the land-locked State, that State would be discriminated in comparison with the coastal States.

In this connexion the necessity arises to define the country of transit. For the purposes of the present articles the term "country of transit" is understood to denote any country situated between the land-locked State and a maritime port, which according to natural conditions enters into consideration for transit between the land-locked State and the seacoast.

The right of land-[illegible]ed countries to the use of transit routes is reflected in General Assembly resolution 1028 (XI) of 20 February 1957, concerning land-locked countries and the expansion of international trade. The resolution reads as follows:

"The General Assembly,

"Recognizing the need of land-locked countries for adequate transit facilities in promoting international trade,

"Invites the Governments of Member States to give full recognition to the needs of land-locked Member States in the matter of

transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries."

In considering the provisions of article 5 it is necessary to stress the mutual advantage of transit trade. Transit from a land-locked country to the sea is economically beneficial to the countries of transit, particularly to the coastal countries. By imposing certain obligations to the country of transit, article 5 ensures to it at the same time indirectly also the enjoyment of the advantages ensuing from its position as a country of transit.

Article 6

Prohibition to Levy Customs Duties in Transit

The country of transit is not authorized to levy customs duties or other charges on goods shipped in transit from the sea to the land-locked State or from that State to the sea.

Commentary

The principle that the goods shipped in transit are exempt in the country of transit from customs duties and other charges is universally recognized and accepted. Article 6 merely applies this principle to the goods shipped in transit from the sea to the land-locked State and vice versa.

Article 7

Modalities of the Exercise of the Right of Access to the Sea

The modalities under which the land-locked State shall exercise the rights mentioned under articles 4 and 5 shall, if they are not determined by existing international treaties or other rules of international law, be laid down by agreement between the land-locked State and the countries of transit.

Commentary

The purpose of article 7 is to safeguard the sovereign rights of the State of transit, which imply its contractual freedom to determine the conditions under which the land-locked State shall be granted certain powers for the exercise of its rights to free access to the sea. This freedom is of course subject to the limitations of existing international treaties or other universally recognized rules of international law to the effect that the conditions agreed upon shall not be less favourable than those which are laid down by those treaties and rules.

Article 8

Exclusion of the Application of the Most-Favoured-Nation Clause

These articles, as well as agreements on the conditions of transit between land-locked States and countries of transit are excluded from the application of the most-favoured-nation clause.

Commentary

The purpose of article 8 is not to place any obligation upon the State of transit which respects the present Convention and with a view to free access to the sea accords the land-locked State special facilities in the Agreement governing the conditions of transit, also to grant these same facilities to a third State in virtue of the most-favoured-nation clause.

The fundamental right of a land-locked State to free access to the sea, derived from the principle of the freedom of the high seas, constitutes a special right of such a State, based on its natural geographical position. It is natural that this fundamental right belonging only to a land-locked State cannot be claimed, in view of its nature, by any third State by virtue of the most-favoured-nation clause. The exclusion from the effects of the most-favoured-nation clause of agreements concluded between land-locked States and countries of transit on the conditions of transit is fully warranted by the fact that such agreements are derived precisely from the said fundamental right.

Article 9

Rights of the Country of Transit to Protection

1. The country of transit may take measures which are indispensable in order to prevent the exercise of the right of free access to the sea from infringing upon its security, customs, fiscal and health interests.

2. In exceptional cases, in particular at a time of international crisis, the State of transit may, temporarily and for a period as short as possible, limit and it may even, if it deems it indispensable for reasons of public safety or for military reasons, temporarily suspend, in a part of its territory, the exercise of the right of transit. However, such measures must apply with equal force to the transit of all States and must be notified in time to the land-locked State.

Commentary

The purpose of paragraph 1 of this article is to determine the

exact limit of the exercise of the right of the land-locked State to access to the sea and to achieve a certain balance between the rights and obligations of both land-locked States and States of transit. In principle the exercise of the right of the land-locked State may in no way entail a threat to the sovereignty or to any other important interest of the State of transit. On the other hand it is only natural that the measures taken to protect the sovereignty of the State of transit may not depass the limit of what is essential and may not entail discrimination in the transit of persons or goods transported from the land-locked State to the sea and vice versa. sea and vice versa.

Paragraph 2 provides for special instances of the restriction of the exercise of the right of transit. The reason for additional restrictions, of course for a period as short as possible, can be an exceptional situation under which the State of transit cannot, if it is not to act to the detriment of its own vital interests, permit the full exercise of the right of transit through its territory. The State of transit may resort to such measures as would affect the transit of the land-locked State the most seriously, and which might even lead to its suspension, only for urgent reasons of public security or for military reasons, while at the same time such suspension may only be a temporary one and may be localized only to a certain part of the state territory of the country of transit. In no even may these measures be used as a means of discrimination or pressure against a land-locked State. The previous notification of such measures to the land-locked State is an essential condition.

Similar provisions have, for instance, been incorporated in article 7 of the Statute of the Freedom of Transit drawn up at Barcelona on 20 April 1921.

Article 10

Relation of the New Regulation to Previous Agreements

1. Articles 1 to 9 neither abrogate agreements which exist between the contracting parties on questions regulated under the said articles, nor preclude the conclusion of similar agreements in the future, provided that those will not be in confliet with the present regulation.

2. However, the contracting parties undertake that, in case such existing agreements deviate from the provisions set out under articles 1-9, they shall at the earliest occasion bring them in accord with the present regulation, unless such deviations would be justified by specific geographical, economic or technical conditions.

Commentary

The regulation represents the codification of the essential

principles governing the right of land-locked countries to access to the sea. In evaluating its place among the other norms of international law it is necessary to proceed from its general nature. The regulation does not exclude, but to the contrary, ensues from the assumption of a detailed contractual regulation of the modalities and individual aspects. The conditions for the application of the principles of this regulation will differ from region to region of the world and from country to country. Existing treaties, in so far as they are not directly in contradiction with the present regulation, will constitute an important part of the regulation of relations between the land-locked countries and countries of transit. In those cases where the existing regulation deviates in principle from the present regulation and where such deviation is not justified by particular geographical, economic or technical conditions, it is desirable that the existing treaties be brought in to accord as early as possible and in an appropriate manner [revision, etc.] with the present regulation. This procedure was chosen for instance in the case of article 10 of the Statute of the Freedom of Transit concluded in Barcelona on 20 April 1921. It is natural that any future treaties should take into account the principles of the present regulation.

Article 11

Settlement of International Disputes

1. Disputes that may arise in connexion with the interpretation or application of the above articles 1 to 10 and that could not be settled by negotiation or by any other means of peaceful settlement between the parties, shall be brought before a mixed commission.

2. The mixed commission shall be composed of six members. Each party to the dispute shall nominate three members, out of whom only two may be nationals of the State on that side, while the third must be a national of a State not party to the dispute, and must not have his permanent residence within the territories of either of the States parties to the dispute: nor must he be in any way engaged in their services. The mixed commission shall decide by simple majority and its decisions shall be final and binding on the parties concerned.

3. Failing the constitution of the mixed commission within three months from the date of the original request by one of the parties or if, within a period of six months from the constitution of the Commission, or within a prolonged period agreed upon by the parties, there shall be a failure to bring the proceedings before the Commission to a settlement of the dispute, each of the parties concerned has the right to submit the case for decision to the Permanent Court of Arbitration at The Hague, in accordance with the provisions of the Convention on the Pacific Settlement of International Disputes of October 18, 1907..

Commentary

In principle it is left to the agreement of the parties concerned to determine what means of peaceful settlement they wish to resort to in the event of any dispute arising from the interpretation or application of the regulation. In so far as the dispute is not capable of a solution by any of these means (i.e., the means cited in Article 33, paragraph 1 of the Charter of the United Nations), the dispute shall be brought before a Mixed Commission, the composition, competence and manner of decision of which are governed by the provisions of paragraph 2, article 11, of the present regulation. The Mixed Commission in this instance represents an appropriately adapted modification of an Arbitral Tribunal, and in view of the nature of the disputes that may eventually arise from the interpretation or application of the present regulation appears to offer the most appropriate means for their peaceful settlement. It permits of a speedy, operative and competent consideration of the situations in dispute, where, in the majority of cases, technical moments will be predominant.

Failing the constitution of the mixed commission or in the event of its failure to bring about a settlement of the dispute within the period of time established therefor, each of the parties concerned shall have the right to submit the case for decision to the Permanent Court of Arbitration at The Hague in accordance with the provisions of the Convention on the Pacific Settlement of International Disputes of 18 October 1907. The procedure envisaged by The Hague Convention of 1907 offers the respective guarantees for the parties to assert their will and to ensure their influence with respect to the appointment of the Arbitral Tribunal. Besides this, the use of this procedure preserves the aspect of the expert competence of the Arbitral Tribunal, since the list of arbitrators of the Permanent Court of Arbitration and the manner of their selection offer wide possibilities for the appointment of an Arbitral Tribunal, the composition of which can, in each case, be adapted to the nature of the dispute in question.

Article 12

Effects of an Armed Conflict

The provisions of this part (articles 1 to 11) do not affect the rights and duties of beligerents and neutrals in time of armed conflict; they shall, however, continue in force even in time of armed conflict in so far as such rights and duties permit.

Commentary

This provision seems necessary in view of the purposes of the new regulation. For these reasons the regulation should in no event belong to that category of treaties which are suspended from the moment an armed conflict breaks out. The extent to which the provisions of the regulation will apply at the time of an armed

(15 April 1958, 20th Meeting, 5th Committee.)

30. Mr. Saveliev (Union of Soviet Socialist Republics) considered that the Swiss proposal constituted an excellent working basis. Together with the nineteen-power proposal and the three-power proposal, it would enable the Working Party to arrive at a final solution.

31. His delegation could not accept the amendment proposed by the Federal Republic of Germany (A/Conf.13/C.5/L.17).[2]

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conflict will naturally be governed by the status of the contracting parties in such a conflict. A similar provision was embodied in article 8 of the Statute on the Freedom of Transit which is a part of the Barcelona Convention on the Freedom of Transit of 20 April 1921.

Part. II. Form of the New Regulation

The articles contained in part I could either constitute a separate declaration which would be open, as the other contractual instruments agreed upon at the conference, to signature and ratification, or for accession by states, or could be included in some broader agreement, preferably in the Convention on the Regime of the High Seas, if it is negotiated at the conference. There are serious considerations speaking in favour of the second alternative. For this is the only way of ensuring that the said articles receive the broadest possible recognition by States. Final decision as to the form in which the provisions concerning the free access to the sea of land-locked states should be presented can be made at the conference according to the situation.

The principles concerning the modalities of transit should be incorporated in a special resolution so as to provide a basis for discussion between land-locked States and States of transit and furnish directives for eventual later elaboration of model treaties in the Transport and Communication Commission of the Economic and Social Council.

2 Document A/Conf.13/C.5/L.17 Federal Republic of Germany: amendment to document A/Conf.13/C.5/L.15

Replace the text of part II, paragraph 1, by the following:
"To enable land-locked States to enjoy the freedoms of the sea on equal terms with coastal States, the latter shall
(a) Accord the land-locked State free transit through their territory on the basis of reciprocity and of the other principles enunciated in the Statute of Barcelona, and
(b) Accord to ships flying the flag of that State treatment equal to that accorded to the ships of any other State as regards access to sea ports and the use of such ports."

It could see no point in complicating the wording of the text by a reference to conventions and statutes that had not been universally ratified and which many countries found themselves unable to ratify. The Committee had to find a text which would satisfy all participating States and establish an instrument which could remain in force for several decades.

42. Mr. Geronin (Byclorussian S.S.R.) praised the work done by the Swiss delegation and the proposal to which it had led. However, that proposal was silent on one important issue: that every land-locked State had the right of free access to the sea as the consequence of a more general principle, that of freedom of the high seas which could be understood to mean that the sea was by its nature open to all.

43. The right of free access to the sea, already recognized as belonging to land-locked States in many bilateral and multilateral agreements, must be affirmed and developed. The Swiss proposal was therefore not the only one to be considered. Echoing the remarks made by the Soviet Union representative, he expressed the view that the Working Party should draft a document acceptable to all participants, also taking into account the report of the Working Party (A/Conf.13/C.5/L.16)[3] and the proposals previously submitted to the Committee.

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3 Document A/Conf.13/C.5/L.16 Report of the Working Party to the Fifth Committee

1. At its 17th and 18th meetings held on 10 and 11 April 1958 the Fifth Committee decided to appoint a working party consisting of the representatives of Bolivia, Czechoslovakia, Nepal and Switzerland (land-locked States), Chile, the Federal Republic of Germany, Italy and Thailand (States of transit), and Ceylon, Mexico, Tunisia and the United Kingdom of Great Britain and Northern Ireland (States not included in the two preceding categories), with the following terms of reference:

"To report to the Fifth Committee not later than 12 April its recommendations concerning the form or forms in which the results of the Committee's work should be expressed."

2. The Working Party held two meetings, on 11 and 12 April 1958, with Mr. Perera (Ceylon) in the chair.

3. The Working Party had before it draft recommendations submitted by the United Kingdom representative, the first two paragraphs of which are worded as follows:

"The Working Party makes the following recommendation to the Committee:

"1. That articles, suitable for inclusion in convention, be prepared on the subject matter covered by:

"(a) Section II and III of the nineteen-power proposal (A/CONF. 13/C.5/L.6);
"(b) Part I of the three-power proposal (A/Conf.13/C.5/L.7) and paragraph 4 of the three-power draft resolution (A/Conf.13/C.5/L.7, part II);
"(c) The Bolivian proposal transmitted by the Chairman of the First Committee (A/Conf.13/C.5/L.9);
"2. that a resolution be prepared on the subject matter covered by
"(a) Sections I,IV, V, VI, VII, VIII and IX of the nineteen-power proposal,
"(b) the whole (other than operative paragraph 4) of the three-power draft resolution (A/Conf.13/C.5/L.7, part II),
"(c) the Chilean amendment to the nineteen-power proposal (A/Conf.13/C.5/L.8), and
"(d) the amendment of the United States of America to the three-power proposal (A/Conf.13/C.5/L.10)."

4. The Working Party decided to base its work on this draft (hereinafter referred to as the basic document).

5. The Working Party first discussed which of the proposals and amendments before the Fifth Committee should be included in paragraph 1 of the basic document as matter which should be embodied in a convention. After an exchange of views, the Working Party decided by a majority that paragraph 1 of the basic document should include section 1 of the nineteen-power proposal (A/Conf.13/C.5/L.6), the Swiss proposal (A/Conf.13/C.5/L.15), and the Chilean amendment (A/Conf.13/C.5/L.8) to the nineteew-power proposal.

6. It was unanimously decided to retain in paragraph 1 of the basic document sections II and III of the nineteen-power proposal (A/Conf.13/C.5/L.6), the first part of the three-power draft resolution (A/Conf.13/C.5/L.7, part II), and the Bolivian proposal transmitted by the First Committee to the Fifth Committee (A/Conf. 13/C.5/L.9).

7. The Working Party then discussed whether the matters dealt with in the other documents before the Fifth Committee should be embodied in a resolution or a declaration. It was unanimously decided that the matters dealt with in the three-power draft resolution (A/Conf.13/C.5/L.7, part II) (except for operative paragraph 4), and the United States amendment (A/Conf.13/C.5/L.10) to the three-power proposal, should be embodied in a resolution. It was decided by a majority that the matters dealt with in sections IV to VIII of the nineteen-power proposal (A/Conf.13/C.5/L.6) should be embodied in a declaration. A proposal that the matter dealt with in section IX of the nineteen-power proposal should be embodied in a declaration was rejected by a majority.

8. All the decisions taken by the Working Party concern merely the form or forms in which the results of the Committee's work

should be expressed, and therefore do not signify that the Working Party either approves or disapproves of the substance of the proposals or amendments to which it refers in its decisions.

9. The Swiss delegate maintained that there were five possible types of instruments. These in the ultimate analysis conformed to the views of the Group that the entire subject matter could be dealt with under (i) a convention, or (ii) a declaration or resolution, with a judicious combination of both these categories where applicable.

10. The Working Group was a representative group, and there is no doubt that on the lines indicated finality could be reached by the Committee. It will be seen that, within the term of reference, the Working Group was able to resolve many of the conflicts which raged in the Committee. At least one major achievement was that the Group could now focus the attention of the Committee on the nature of the instruments in which the subject matter would be finally embodied.

11. In consequence of the decisions taken by the Working Party, certain reservations were made as shown below.

12. The delegates of the Federal Republic of Germany, Italy, Thailand and the United Kingdom explained

(1) That they could not accept as suitable for inclusion in a convention the following matters, which in their view should be dealt with in a resolution:

(a) Section I of the nineteen-power proposal, and

(b) The Chilean amendment to the nineteen-power proposal;

(2) That they could not accept as suitable for inclusion in a declaration the matters covered by sections IV, V, VI, VII and VIII of the nineteen-power proposal, which in their view should be dealt with in a resolution;

(3) That their agreement that the subject matter covered by the Swiss proposal should be treated as suitable for inclusion in a convention was solely with regard to that particular proposal, on which they reserved the right to express their views in the full Committee and to which they reserved the right to propose amendments.

13. The delegations of Nepal and Czechoslovakia considered that section IX of the nineteen-power proposal had a close bearing on the sections that preceded it, that is on sections IV, V, VI, VII and VIII and should, therefore, in their opinion, be incorporated in a declaration. The principle contained in section IX of the nineteen-power proposal is both in the interests of the land-locked countries and States of transit, inasmuch as the latter will not be obliged by virtue of a most-favoured-nation clause to grant the same kind of facilities to other States which are not in the same geographical position as the land-locked countries. Furthermore, examples of the exclusion of the application of the most-favoured-nation clause are found in international law and practice.

VI. Final Procedure

a. Sixth report of the Drafting Committee of the Conference: final clauses (A/Conf.13/L.32)

(26 April 1958, 17th Plenary Meeting.)

1. Mr. Tunkin (Union of Soviet Socialist Republics) said that the rules of the law of the sea were universal, not regional, in character. His delegation therefore objected to the signature clause, which excluded certain States from participation. That clause was contrary to the principle of the equality of States, which was a basic principle of international law.

48.. Mr. Tunkin (Union of Soviet Socialist Republics) proposed a separate vote on the phrase "members of the United Nations or of any of the specialized agencies" in the signature clause.

[The President put the USSR representative's proposal to the vote. The USSR proposal was rejected by 40 votes to 16, with 8 abstentions.]

53. Mr. Tunkin (Union of Soviet Socialist Republics) thought that it would be better to leave the question of the reservations clause until later.

b. Proposals for the convening of a new United Nations conference on the law of the Sea.

(27 April 1958, 21st Plenary Meeting.)

39. Mr. Tunkin (Union Soviet Socialist Republics) said that although he had no objection to considering the possibility of arranging periodic conferences on the law of the sea, he was not in a position to accept the Peruvian representative's proposal that the next conference be convened in five years' time. Nor could he accept the four-power draft resolution; after two months' work, the Conference had failed to reach agreement on the breadth of the territorial sea and on the coastal State's fishing rights in the contiguous zone, and it could not now make recommendations on those matters as proposed in operative paragraph (a). With regard to operative parative paragraph (b) it was, in his view, only the General Assembly which could decide whether another conference should be convened to seek agreement on the points which the present conference had left unsettled. He therefore approved the Cuban draft resolution with

the amendments suggested orally by the Cuban representative [1]; but he could not accept the Italian representative's suggestion.[2]

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1 Mr. Garcia Amador (Cuba) regretted that after the recess the proposals had not been taken in order of submission. His delegation could not accept operative paragraph (a) of the four-power draft resolution, but agreed to an earlier date for the next conference. He thought it should be held within about one year, but it was the General Assembly that should decide.
With regard to the agenda of the Conference, he wished to amend the second paragraph of the Cuban draft resolution to read as follows:

> "Considering that it has not been possible to reach agreement on the breadth of the territorial sea and on various other questions discussed in connexion with that problem."

In the last paragraph of his proposal he would now substitute the words "thirteenth session, in 1958" for the words "fourteenth session, in 1959".
His delegation could not agree to the four-power proposal.

2 Mr. Ago (Italy) said that consultations during the recess had shown that a compromise must be reached between two points of view if any practical result were to be achieved. On the one hand, many delegations could not accept operative paragraph (a) of the fourpower draft resolution; on the other hand, many delegations could not accept any resolution which did not give some assurance that nothing would be done during the interval before another conference was held, to make the situation more difficult than it was at present. Having consulted other delegations, including that of Mexico, he therefore proposed that the fourpower draft resolution, as amended, should be taken as a basis, operative paragraph (a) being replaced by the following recommendation:

> "(a) To recommend to all States to facilitate, during the interval, the realization of the desired general agreement through bilateral or multilateral negotiations, and to express the hope that during that period they will act in such a manner as to create an atmosphere favourable to the success of the next conference."

That was merely the expression of a wish and he thought it should meet with no opposition.

APPENDIX I

CONTENTIONS, RESOLUTIONS, OPTIONAL PROTOCOL OF SIGNATURE ADOPTED BY THE CONFERENCE AND FINAL ACT

CONVENTIONS, RESOLUTIONS, OPTIONAL PROTOCOL OF SIGNATURE ADOPTED BY THE CONFERENCE, AND FINAL ACT

DOCUMENT A/CONF.13/L.52

Convention on the Territorial Sea and the Contiguous Zone
(adopted by the Conference at its 20th plenary meeting)

The States Parties of this Convention Have agreed as follows:

PART I

TERRITORIAL SEA

SECTION I. GENERAL

Article 1

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II. LIMITS OF THE TERRITORIAL SEA

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 4

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea

areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

1. The article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a wellmarked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the

mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

SECTION III. RIGHT OF INNOCENT PASSAGE

Sub-section A. Rules applicable to all ships

Article 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent

passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only

after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Sub-section B. Rules applicable to merchant ships

Article 18

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this ar article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Sub-section C. Rules applicable to government ships other than warships

Article 21

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in sub-section A and in article 18 shall apply to government ships operated for noncommercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Sub-section D. Rules applicable to warships

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II

CONTIGUOUS ZONE

Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

a) Prevent infringement of its customs, fiscal, immigration of sanitary regulations within its territory or territorial sea;

b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

PART III

FINAL ARTICLES

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Narions or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention.

Article 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any

Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 31

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28;

(b) Of the date on which this Convention will come into force, in accordance with article 29;

(c) Of requests for revision in accordance with article 30.

Article 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention.

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

DOCUMENT A/CONF.13/L.53

Convention on the High Seas
(adopted by the Conference at its 18th plenary meeting)

The States Parties to this Convention,

Desiring to codify the rules of international law relating

to the high seas,

Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law.

Have agreed as follows:

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia , both for coastal and non-coastal States:

(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

(a) To the State having no sea-coast, on a basis of reciprocity free transit through their territory; and

(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 5

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 6

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 7

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

Article 8

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 9

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 10

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 11

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be

competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 12

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and - where circumstances so require - by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 13

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, ipso facto, be free.

Article 14

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally faciliatating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 18

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a

ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 21

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That, the ship is engaged in the slave trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article 23

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of this article shall apply mutatis mutandis ;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the rights of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 24

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

Article 25

1. Every State shall take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submaring cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphie or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or iujury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owner of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States parties to them.

Article 31

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Articel 32

This Convention is subject to ratification. The insturments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 33

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 31. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 34

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 35

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 36

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 31:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 31, 32 and 33;

(b) Of the date on which this Convention will come into force, in accordance with article 34;

(c) Of requests for revision in accordance with article 35.

Article 37

The original of this Convention, of which the Chinese, English,

French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 31.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention.

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

DOCUMENT A/CONF.13/L.54

Convention on Fishing and Conservation of the Living Resources of the High Seas

(adopted by the Conference at its 18th plenary meeting)

The States Parties to this Convention,

Considering that the development of modern techniques for the exploitation of the living resources of the sea, increasing man's ability to meet the need of the world's expanding population for food, has exposed some of these resources to the danger of being over-exploited,

Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned,

Have agreed as follows:

Article 1

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this Convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals

as may be necessary for the conservation of the living resources of the high seas.

Article 2

As employed in this Convention, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 3

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 4

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the States-concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 5

1. If, subsequent to the adoption of the measures referred to in articles 3 and 4, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 6

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State, but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation measures within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 7

1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved.

Article 8

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources of the high seas in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 3 and 4 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

Article 9

1. Any dispute which may arise between States under articles 4,5,6,7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in

dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations ; Within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission, but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

Article 10

1. The special commission shall, in disputes arising under article 7, apply the criteria listed in paragraph 2 of that article. In disputes under articles 4,5,6 and 8, the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under atricles 4, 5 and 6 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;
(ii) That the specific measures are based on scientific findings and are practicable; and
(iii) That the measures do not discriminate, in form or in fact, against fishermen of other States;

(b) Applicable to the determination of disputes arising under article 8 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 7, the measures shall only be suspended when it is apparent to the commission on the basis of prima facie evidence that the need for the urgent application of such measures does not exist.

Article 11

The decisions of the special commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions. If the decisions are accompanied by any recommendations, they shall receive the greatest possible consideration.

Article 12

1. If the factual basis of the award of the special commission is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the procedure contemplated by article 9 provided that at least two years have elapsed from the original award.

Article 13

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate

in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the genera status of the areas as high seas.

2. In this article, the expression "fisheries conducted by means of equipment embedded in the floor of the sea" means those fisheries using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently or, if removed, restored each season on the same site.

Article 14

In articles 1, 3, 4, 5, 6 and 8, the term "nationals" means fishing boats or craft of any size having the nationality of the State concerned, according to the law of that State, irrespective of the nationality of the members of their crews.

Article 15

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 17

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 15. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day

after deposit by such State of its instrument of ratification or accession.

Article 19

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.

2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdrawn the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 20

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 21

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 15:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 15, 16 and 17;

(b) Of the date on which this Convention will come into force, in accordance with article 18;

(c) Of requests for revision in accordance with article 20;

(d) Of reservations to this Convention, in accordance with article 19.

Article 22

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall

send certified copies thereof to all States referred to in article 15.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention.

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

DOCUMENT A/CONF.13/L.55

Convention on the Continental Shelf
(adopted by the Conference at its 18th plenary meeting)

The States Parties to this Convention Have agreed as follows:

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are

immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Article 8

This Convention shall, until 30 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention.

Article 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the

revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;

(b) Of the date on which this Convention will come into force, in accordance with article 11;

(c) Of requests for revision in accordance with article 13;

(d) Of reservations to this Convention, in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention.

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

DOCUMENT A/CONF.13/L.56

Resolutions adopted by the Conference

I

NUCLEAR TESTS ON THE HIGH SEAS

Resolution adopted on the report of the Second Committee, in connexion with article 2 of the Convention on the High Seas

The United Nations Conference on the Law of the Sea,
Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105(XI) of 21 February 1957,

Recognizing that there is a serious and genuine apprehension on the prat of many States that nuclear explosions constitute an infringement of the freedom of the seas,

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides to refer this matter to the General Assembly of the United Nations for appropriate action.

10th plenary meeting
23 April 1958

II

POLLUTION OF THE HIGH SEAS BY RADIO-ACTIVE MATERIALS

Resolution adopted on the report of the Second Committee, relating to article 25 of the Convention on the High Seas

The United Nations Conference on the Law of the Sea,
Recognizing the need for international action in the field of disposal of radio-active wastes in the sea,

Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject.

Nothing that the International Commission of Radiological Protection has made recommendations regarding the maximum permissible concentration of radio-isotopes in the human body and the maximum permissible concertration in air and water,

Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection, should whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radio-active materials to the sea, in promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radio-active materials in amounts which would adversely affect man and his marine resources.

10th plenary meeting
23 April 1958

III

International Fishery Conservation Conventions

Resolution adopted on the report of the Third Committee

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report,[1] as to the efficacy of international conservation organizations in furthering the conservation of the living resources of the sea,

Believing that such organizations are valuable instruments for the co-ordination of scientific effort upon the problem of fisheries and for the making of agreements upon conservation measures,

Recommends:

1. That States concerned should co-operate in establishing the necessary conservation regime through the medium of such organizations covering particular areas of the high seas or species of living marine resources and conforming in other respects with the recommendations contained in the report of the International Technical Conference on the Conservation of the Living Resources of the Sea;

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[1] United Nations publication, sales No: 1955.II.B.2.

2. That these organizations should be used so far as practicable for the conduct of the negotiations between States envisaged under articles 4, 5, 6 and 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, for the resolution of any disagreements and for the implementation of agreed measures of conservation.

15th plenary meeting
25 April 1958

IV

Co-operation in conservation measures

Resolution adopted on the report of the Third Committee

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as reported in paragraphs 43 (a), 54 and others of its report,[2] that any effective conservation management system must have the participation of all States engaged in substantial exploitation of the stock or stocks of living marine organisms which are the object of the conservation management system or having a special interest in the conservation of that stock or stocks,

Recommends to the coastal States that, in the cases where a stock or fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, they should co-operate with such international conservation organizations as may be responsible for the development and application of conservation measures in the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures on fishing areas under their jurisdiction.

15th plenary meeting
25 April 1958

V

Humane Killing of Marine Life

Resolution adopted on the report of the Third Committee

The United Nations Conference on the Law of the Sea

Requests States to prescribe, by all means available to them, those methods for the capture and killing of marine life, especially of whales and seals, which will spare them suffering to the greatest extent possible.

15th plenary meeting
25 April 1958

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2. Ibid.

VI

Special Situations Relating to Coastal Fisheries

Resolution adopted on the report of the Third Committee

The United Nations Conference on the Law of the Sea,

Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development.

Having considered also the situation of countries whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats.

Recognizing that such situations call for exceptional measures befitting particular needs,

Considering that, because of the limited scope and exceptional nature of those situations, any measures adopted to meet them would be complementary to provisions incorporated in a universal system of international law.

Believing that States should collaborate to secure just treatment of such situations by regional agreements or by other means of international co-operation,

Recommends:

1. That where, for the purpose of conservation, it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such situation, by establishing agreed measures which shall recognize any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of the other States;

2. That appropriate conciliation and arbitral procedures shall be established for the settlement of any disagreement.

16th plenary meeting
26 April 1958

VII

Regime of Historic Waters

Resolution adopted on the report of the First Committee

The United Nations Conference of the Law of the Sea,

Considering that the International Law Commission has not provided for the regime of historic waters, including historic bays,

Recognizing the importance of the juridical status of such areas,

Decides to request the General Assembly of the United Nations to arrange for the study of the juridical regime of historic waters, including historic bays, and for the communication of the results of such study to all States Members of the United Nations.

20th plenary meeting
27 April 1958

VIII

Convening of a second United Nations conference on the law of the sea

The United Nations Conference on the Law of the Sea,

Considering that, on the basis of the report prepared by the International Law Commission,[1] it has approved agreements and other instruments on the regime applicable to fishing and the conservation of the living resources of the high seas, the exploration of the continental shelf and the exploitation of its natural resources and other matters pertaining to the general regime of the high seas and to the free access of land-locked States to the sea,

Considering that it has not been possible to reach agreement on the breadth of the territorial sea and some other matters which were discussed in connexion with this problem,

Recognizing that, although agreements have been reached on the regime applicable to fishing and the conservation of the living resources of the high seas, it has not been possible, in those agreements, to settle certain aspects of a number of inherently complex questions,

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[1] Official Records of the General Assembly, Eleventh Session, Supplement No. 9.

Recognizing the desirability of making further efforts at an appropriate time to reach agreement on questions of the international law of the sea, which have been left unsettled,

Resolves to request the General Assembly of the United Nations to study, at its thirteenth session, the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled by the present Conference.

21st plenary meeting
27 April 1958

IX

Tribute to the International Law Commission

The United Nationsl Conference on the Law of the Sea, on the conclusion of its proceedings,

Resolves to pay a tribute of gratitude, respect and admiration to the International Law Commission for its excellent work in the matter of the codification and development of international law, in the form of various drafts and commentaries of great juridical value.

21st plenary meeting
27 April 1958

DOCUMENT A/CONF.13/L.57

Optional Protocol of Signature concerning the Compulsory Settlement of Disputes

The States parties to this Protocol and to any one or more of the Conventions of the Law of the Sea adopted by the United Nations Conference on the Law of the Sea held at Geneva from 24 February to 27 April 1958,

Expressing their wish to report, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of any Convention on the Law of the Sea of 29 April 1958, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement is provided in the Convention or has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of any Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being a party to this Protocol.

Article II

This undertaking relates to all the provisions of any Convention on the Law of the Sea except, in the Convention of Fishing and Conservation of the Living Resources of the High Seas, articles 4, 5, 6, 7 and 8, to which articles 9, 10, 11 and 12 of that Convention remain applicable.

Article III

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party to this. Protocol may bring the dispute before the Court by an application.

Article IV

1. Within the same period of two months, the parties to this Protocol may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The concliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Articie V

This Protocol shall remain open for signature by all States who become parties to any Convention on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea and is subject to ratification, where necessary, according to the consitutional requirements of the signatory States.

Article VI

The Secretary-General of the United Nations shall inform all States who become parties to any convention on the law of the sea of signatures to this Protocol and of the deposit of instruments of ratification in accordance with article V.

Article VII

The original of this Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Protocol.

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

DOCUMENT A/CONF.13/L.58

Final Act of the Conference

1. The General Assembly of the United Nations, by resolution 1105 (XI) of 21 February 1957, decided to convene an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it might deem appropriate. The General Assembly also recommended that the conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties.

2. The United Nations Conference on the Law of the Sea met at the European Office of the United Nations at Geneva from 24 February to 27 April 1958.

3. The governments of the following eighty-six States were represented at the Conference: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Lebanon, Liberi Libya, Luxembourg, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet

Socialist Republic , Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yemen, Yugoslavia.

4. At the invitation of the General Assembly, the following specialized agencies had observers at the Conference:

International Labour Organisation;
United Nations Food and Agriculture Organization;
United Nations Educational, Scientific and Cultural Organization;
International Civil Aviation Organization;
World Health Organization;
International Telecommunication Union;
World Meteorological Organization.

5. At the invitation of the General Assembly, the following intergovernmental organizations also had observers at the Conference:

Conseil Général des Pêches pour la Méditerranée;
Indo-Pacific Fisheries Council;
Inter-American Tropical Tuna Commission;
Inter-Governmental Committee for European Migration;
International Council for the Exploration of the Sea;
International Institute for the Unification of Private Law;
League of Arab States;
Organization of American States;
Permanent Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific.

6. The Conference elected His Royal Highness Prince Wan Waithayakon Krommun Naradhip Bongsprabandh (Thailand) as President.

7. The Conference elected as Vice-Presidents Argentina, China, France, Guatemala, India, Italy, Mexico, Netherlands, Poland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

8. The following committees were set up:

General Committee

Chairman: The President of the Conference.

Fist Committee (Territorial Sea and Contiguous Zone)

Chairman: Mr. K.H. Bailey (Australia).
Vice-Chairman: Mr. S. Gutierrez Olivos (Chile).
Rapporteur: Mr. Vladimir M. Koretsky (Ukrainian Soviet Socialist Republic).

Second Committee (High Seas: General Regime)

Chairman: Mr. O.C. Gundersen (Norway).
Vice-Chairman: Mr. Edwin Glaser (Romania).
Repporteur: Mr. Jose Madeira Rodrigues (Portugal).

Third Committee (High Seas: Fishing; Conservation of Living Resources)

Chairman: Mr. Carlos Sucre (Panama).
Vice-Chairman: Mr. E. Krispis (Greece).
Rapporteur: Mr. N.K. Pannikar (India).

Fourth Committee (Continental Shelf)

Chairman: Mr. A.B. Perera (Ceylon).
Vice-Chairman: Mr. R.A. Quarshie (Ghana).
Rapporteur: Mr. L. Diaz Gonzales (Venezuela).

Fifth Committee (Question of free access to the sea of land-locked countries)

Chairman: Mr. J. Zourek (Czechoslovakia).
Vice-Chairman: Mr. W. Guevara Arze (Bolivia).
Rapporteur: Mr. A.H. Tabibi (Afghanistan).

Drafting Committee

Chairman: Mr. J.A. Correa (Ecuador).

Credentials Committee

Chairman: Mr. M. Wershof (Canada).

9. The Secretary-General of the United Nations was represented by Mr. C.A. Stavropoulos, the Legal Counsel. Mr. Yuen-li Liang, Director of the Codification Division of the Office of Legal Affairs of the United Nations, was appointed Executive Secretary.

10. The General Assembly, by its resolution convening the Conference, referred to the Conference the report of the International Law Commission covering the work of its eighth session as a basis for consideration of the various problems involved in the development and codification of the law of the sea; the General Assembly also referred to the Conference the verbatim records of the relevant debates in the General Assembly, for consideration by the Conference in conjunction with the Commission's report.

11. The conference also had before it the comments by governments on the articles concerning the law of the sea prepared by the International Law Commission, the memorandum submitted by the Preliminary Conference of Land-locked States held in Geneva from 10 to 14

February 1958, and preparatory documentation prepared by the Secretariat of the United Nations, by certain specialized agencies and by independent experts invited by the Secretariat to assist in the preparation of this documentation.

12. On the basis of the deliberations, as recorded in the summary records and reports of the committees and in the records of the plenary meetings, the Conference prepared and opened for signature the following conventions (annexes I to IV):

Convention on the Territorial Sea and the Congiguous Zone

(adopted on 27 April 1958, on the report of the First Committee) (A/Conf.13/L.52);

Convention on the High Seas

(Adopted on 27 April 1958, on the report of the Second Committee) (A/Conf.13/L.53 and Corr.1);

Convention on Fishing and Conservation of the Living Resources of the High Seas

(adopted on 26 April 1958, on the report of the Third Committee) (A/Conf.13/L.54 and Add.1);

Convention on the Continental Shelf

(adopted on 26 April 1958, on the report of the Fourth Committee) (A/Conf.13/L.55).

The Conference also adopted the following Protocol (annex V);

Optional Protocol of Signature concerning the compulsory settlement of disputes

(adopted by the Conference on 26 April 1958) (A/Conf.13/L.57).

In addition, the Conference adopted the following resolutions (annex VI)

(A/Conf.13/L.56);

Nuclear tests on the high seas

(Resolution adopted on 27 April 1958, on the report of the Second Committee, in connexion with article 2 of the Convention on the High Seas);

Pollution of the high seas by radio-active materials

(Resolution adopted on 27 April 1958, on the report of the Second Committee, relating to article 25 of the Convention of the High Seas);

International fishery conservation conventions

(Resolution adopted on 25 April 1958, on the report of the Third Committee);

Co-operation in conservation measures

(Resolution adopted on 25 April 1958, on the report of the Third Committee);

Humane killing of marine life

(Resolution adopted on 25 April 1958, on the report of the Third Committee);

Special situations relating to coastal fisheries

(Resolution adopted on 26 April 1958, on the report of the Third Committee);

Regime of historic waters

(Resolution adopted on 27 April 1958, on the report of the First Committee);

Convening of a second United Nations Conference on the Law of the Sea

(Resolution adopted by the Conference on 27 April 1958);

Tribute to the International Law Commission

(Resolution adopted by the Conference on 27 April 1958).

In witness whereof the representatives have signed this Final Act.

DONE AT GENEVA this twenty-ninth day of April, one thousand nine hundred and fifty-eight, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations Secretariat.

PART II: THE SECOND UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

1. Consideration of the questions of the breath of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958.

o General Debate

(22 March 1960, 2nd Meeting of the Committee of the Whole.)

1. Mr. Tunkin (Union of Soviet Socialist Republics) expressed the hope that the marked improvement in the climate of international relations, which had already had a beneficial influence on the fourteenth session of the General Assembly and the Conference on Antarctica would do the same for the work of the present Conference. Although the first United Nations Conference on the Law of the Sea had not been able to complete its work in 1958, it had made a considerable contribution to the codification of the law of the sea. The USSR delegation hoped that the present Conference would make a new contribution by solving the closely linked problems of the breadth of the territorial sea and of fishery limits, which were both of vital concern to coastal States.

2. Hitherto, coastal States had themselves fixed the breadth of their territorial sea, with due regard for their own interests and circumstances. With a few exceptions, that breadth nowhere exceeded twelve nautical miles. It was the Conference's task not to establish a uniform breadth of the territorial sea applicable to all countries, but to agree upon a maximum limit. The International Law Commission, after a careful study of the legal status of the territorial sea, had concluded that international law did not permit its extension beyond twelve miles, from which it followed that any breadth of territorial sea up to twelve nautical miles was permissible under international law.

3. At the first Conference, many States, mindful of their independence and national security, of the need to protect their national fishing, and of the current trend in international practice, had been in favour of a twelve-mile limit. Other States, moved mainly by military and strategic considerations, had urged the adoption of a narrower limit - three or six nautical miles. The 1958 Conference had dealt the deathblow to the contention that the three-mile limit was a general rule of international law, and had shown that even a six-mile limit was not generally acceptable. For its part, the Soviet Union delegation had proposed that each State should fix the breadth of its territorial sea, in accordance with established

practice, within the limits, as a rule, of three and twelve miles.[1] Certain objections having been raised to the wording of that proposal, his delegation was submitting to the second Conference a new proposal (A/Conf.19/C.1/L.1).[2]

4. That proposal, which his delegation believed to reflect the best of current practice in the matter, was based on the premise that although a State had the right to extend its sovereignty over a belt of sea twelve nautical miles wide, it was not obliged to do so; it was free to extend its sovereignty over a narrower belt, but would then retain fishing rights up to the twelve-mile limit. The proposal also had an important bearing on the security of coastal States, some of which were at present vulnerable to intimidation by demonstrations of force in their coastal waters, even in time of peace. There had been instances of large-scale naval manoeuvres, reconnaissance by sea and by air and attempts to interfere with shipping by foreign forces in the coastal waters of certain States.

5. The debates on the breadth of the territorial sea at the first Conference proved that military and strategic considerations which had nothing to do with the preservation of peace and the development of international co-operation underlay the objections to fix a twelve-mile limit for the territorial sea. Indeed, although a proposal was adopted by the first Conference recognizing the right of a State to a twelve-mile zone for customs, sanitary, fiscal and immigration purposes, yet, when the Polish delegation proposed that in that zone the State should also have the right to prevent violations of its security, its proposal was rejected by those States which

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1 Official Records of the United Nations Conference on the Law of the Sea, vol. III, annexes, document A/Conf.13/C.1/L.80.

2 Document A/Conf.19/C.1/L.1 Union of Soviet Socialist Republics: proposal

Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles. If the breadth of its territorial sea is less than this limit, a State may establish a fishing zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and the fishing zone does not exceed twelve nautical miles. In this zone a State shall have the same rights of fishing and of exploitation of the living resources of the sea at it has in its territorial sea.

were against a twelve-mile limit for the territorial sea.

6. It was noteworthy that when at an early stage of the 1958 Conference it became clear that a three-mile limit for the territorial sea was doomed to failure, the United Kingdom, which had been resolutely opposing a twelve-mile territorial sea, agreed to extend the territorial sea up to six miles, provided ships, including warships, and aircraft of all nations would continue to enjoy the right of navigation beyond the three-mile limit.

7. The opponents of the twelve-mile limit for the territorial sea seemed therefore to be willing to admit that a State might exercise a wide range of rights in the twelve-mile zone, but under the express condition that the exercise of those rights should not interfere with the freedom of warships and aircraft of certain States navigating near foreign coasts. As such activities had not infrequently contributed to an increase in international tension, the acceptance of a twelve-mile limit could not fail to further the interests of world peace.

8. Adoption of the Soviet Union proposal would also promote the protection of coastal fisheries, which was a matter of grave concern to many States. Complete sovereignty over its coastal waters alone enabled a State to exercise fully its exclusive right to protect and exploit the living resources thereof. Moreover, as fish habitually migrated, conservation measures taken by a coastal State would redound to the benefit of other States exploiting the same resources outside coastal waters.

9. Lastly, the argument that the adoption of a twelve-mile limit for the territorial sea would restrict the freedom of navigation and result in longer trade routes and hence push up shipping costs and commodity prices was quite unfounded, given the generally recognized right of innocent passage for merchant shipping through territorial waters. Furthermore, the free passage of ships and commercial aircraft along established international routes which crossed the waters of foreign States was adequately safeguarded in specific multilateral and bilateral agreements which would not be affected by an agreement on the breadth of the territorial sea.

10. He emphasized the dangers of adopting texts which were condemned in advance to remain a deal letter as many international conferences had done. Although the rules of international law were the outcome of agreements between States, such agreements, like the development of interantional law generally, rested upon certain laws of social development, and any text which did not conform to those laws and to the facts of reality must be fruitless. The success of the present Conference would depend on the elaboration of

rules that would meet such needs. The past decade had displayed a definite trend towards an extension of the breadth of the territorial sea. That trend sprang naturally from radical changes in the international situation, from recent technical advances, and from the drive of many States to safeguard their security and independence and to defend their economic interests. At the previous meeting the Saudi-Arabian representative had righly pointed out that the twelve-mile limit was commended by States in different continents and with different political and social systems; the freshly emergent States in many parts of the world were particularly anxious to establish a twelve-mile territorial sea.

11. The Soviet Union proposal thus reflected a progressive trend, and was in harmony with such new principles of international law as the right to self-determination and the right to fetterless exploitation of national resources - principles which lay at its very root. In the opinion of the Soviet delegation, the Conference should seek not temporary and improved solutions which might have only a negative effect on the development of international co-operation, but the establishment of rules of international law in conformity with the present situation and trends.

(6 April 1960, 17th Meeting of the Committee of the Whole.)

27. Mr. Povetiev (Byelorussian Soviet Socialist Republic) said that, faithful to its policy of peaceful coexistence and co-operation with all States regardless of their social system, his Government was convinced that all controversial problems, no matter how complex, could be settled by negotiation and conciliation, given goodwill and the determination to take the mutual interests of States concerned into account as fully as possible. But such a task sometimes needed time, and together with others, his delegation had argued at the thirteenth session of the General Assembly that the Second United Nations Conference on the Law of the Sea should not be convened too hastily, on the grounds that little real change had occurred in the attitude of Governments on the question of the breadth of the territorial sea since the first Conference, and that it might even be inimical to a solution of the question of the breadth of the territorial sea to hold another too soon. Some delegations had thought otherwise. Nevertheless, his delegation hoped that a generally acceptable solution would emerge.

28. The proposals before the Committee could be placed in one of two groups: those providing for a territorial sea up to twelve miles broad, and those limiting the breadth to six miles.

The proposals of the Soviet Union (A/Conf.19/C.1/L.1)[3] and Mexico (A/Conf.19/C.1/L.2)[4] were identical so far as the delimitation of the

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3 see supra

4 Document A/Conf.19/C.1/L.2 Mexico: proposal

Article 1

1. Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve miles measured from the baseline which may be applicable in conformity with articles 3 and 4 of the Convention on the Territorial Sea and the Contiguous Zone adopted by the first United Nations Conference on the Law of the Sea.

2. When the breadth of its territorial sea is less than twelve miles measured as above, a State has fishing zone contiguous to its territorial sea in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea. This fishing zone shall be measured from the baseline from which the breadth of the territorial sea is measured and will extend to the following limits:

(a) When the breadth of the territorial sea is from three to six miles, up to a limit of eighteen miles;

(b) When the breadth of the territorial sea is from seven to nine miles, up to a limit of fifteen miles;

(c) When the breadth of the territorial sea is from ten to eleven miles, up to a limit of twelve miles.

3. For the purpose of the present Convention (or Protocol) the term "mile" means a nautical mile, equivalent to 1,852 metres.

Article 2

1. The coastal State shall inform the Secretary-General of the United Nations, within six months of its depositing its instrument of ratification of the present Convention (or Protocol), of the breadth it has fixed for its territorial sea in pursuance of paragraph 1 of article 1 above, which breadth shall automatically determine the breadth of the fishing zone referred to in paragraph 2 of the said article 1, in accordance with sub-paragraphs (a), (b) and (c) of the said paragraph 2.

2. The coastal State undertakes not to change the breadth fixed for its territorial sea before the expiration of a period of five years from the date on which the present Convention (or Protocol) shall enter into force.

Article 3

1. Every State shall enact the necessary laws and regulations

to prevent its nationals from fishing within the territorial seas and fishing zones of other States unless authorized to do so by the competent authorities of the coastal States concerned, and shall also adopt the necessary control measures to ensure observance by its nationals of such laws and regulations.

2. States shall communicate to the Secretary-General of the United Nations the texts of the laws and regulations referred to in the preceding paragraph, and shall also inform him as to the control measures adopted in accordance with that paragraph.

Article 4

1. After the expiration of a period of five years from the date on which the present Convention (or Protocol) shall enter into force, a request for the revision of the present Convention (or Protocol) may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 5

The Secretary-General of the United Nations shall apprise all States Members of the United Nations and all other States Parties to the present Convention (or Protocol) or:

(a) Signatures to the present Convention (or Protocol) and of the deposit of instruments of ratification or accession, in accordance with articles ...;

(b) The breadth fixed by each of these States for its territorial sea;

(c) The information which he is to receive from States under article 3;

(d) Requests for revision in accordance with article 4

Commentary

1. A State which fixes the breadth of its territorial sea within the limit of twelve nautical miles is merely exercising a right it can legitimately claim under modern international law, since:

(a) This breadth is based on what may be called the "customary rule of international law", which is the only existing rule on the subject, since, as is known, the breadth of the territorial sea has never been fixed in a contractual international instrument of a general character, whether a treaty or a convention.

(b) The International Law Commission implicitly recognized that any breadth of the territorial sea which does not exceed twelve miles is valid in international law, since no other positive interpretation can be given to the negative proposition in article 3, paragraph 2, of the draft articles approved

by the Commission and transmitted to the first United Nations Conference on the Law of the Sea. According to that paragraph "The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles". *

2. The flexible formula with a twelve-mile limit, besides faithfully reflecting the practice of the vast majority of coastal States, is a very reasonable formula, which not only satisfies the legitimate aspirations and claims of the coastal States, but also does so without detriment to the freedom of maritime or aerial navigation. The former, indeed, has already been fully guaranteed in the provisions on innocent passage incorporated in the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958, while the latter is suitably regulated by the Convention on International Civil Aviation, signed at Chicago in 1944.

3. It must be admitted, however, that despite the safeguards embodied in those Conventions, several maritime Powers still seem to believe that, if all coastal States fixed the breadth of their territorial sea at twelve miles, this would prejudice the two freedoms of navigation referred to, and they adduce this opinion as an argument against such a breadth. The Powers in question also maintain that to adopt the flexible formula of three to twelve miles would in fact mean fixing a breadth of twelve miles for the territorial sea, since, if this formula were adopted, all States which have a narrower territorial sea would hasten to extend it to the permitted twelve-mile limit.

4. Even though any objective examination of the true situation from both the legal and the practical point of view would seem to show that these fears are groundless, it has been thought advisable to see whether it may be possible to put into practice a procedure which may help dispel them. This procedure would be bound to take as its starting point the fact that a coastal State, as has been stated in paragraph 1, is already entitled under international law to fix the breadth of its territorial sea at up to twelve miles. Therefore, if some States consider that it suits their interests that as many coastal States as possible should refrain from exercising this right, the latter States must needs be given some compensation, such as that laid down in article 1, paragraph 2, of this proposal. It must be borne in mind that in relations between States, as in relations between persons, no one can be expected, much less compelled, to abstain from exercising legitimate rights without receiving adequate compensation.

5. The purpose of article 2 of the proposal is also to meet the wishes expressed by various martime Powers that there should be the greatest possible degree of stability in matters relating to the breadth of the territorial sea.

* Official Records of the General Assembly, Eleventh Session, Supplement No. 9, p. 4.

territorial sea was concerned, and offered an acceptable basis for agreement, since they were inspired by a realistic assessment of the trend in international practice whereby each coastal State determined the breadth of its own territorial sea within the maximum of twelve miles, as the maintenance of its security, sovereignty and independence and the protection of its economic interests demanded. Such a solution would be consistent with the conclusions of the International Law Commission, reached after exhaustive study.

29. The merit of those two proposals was that they took more fully into account than others the interests of all coastal States in accordance with the principles of sovereign equality and self-determination enshrined in the Charter of the United Nations and various decisions of the Organization. They recognized the right of all countries, great or small, to exploit natural resources freely, and would help the less developed countries to expand their economy and raise their standards of living.

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6. The contents of article 3 of the proposal are based on the necessity, if it is desired - in accordance with resolution 1307 (XIII) of the United Nations General Assembly, by which it was decided to convene a second conference on the law of the sea - to contribute to "the lessening of international tensions and to the preservation of world order and peace", for all Governments and especially the Governments of those countries with large fishing fleets to prohibit their nationals from fishing in the territorial sea and the exclusive fishing zone of other States unless they are duly authorized to do so in each case, and, in addition, to take the necessary supervisory and control measures to ensure strict compliance with this prohibition. It must be borne in mind in this connexion that one of the main causes of international friction with regard to fishing has been, and still is, the invasion of the territorial waters of many coastal States by fleets of foreign vessels engaged in fishing in such waters in breach of the laws and regulations enacted and published by those States.

7. The text of article 4 is identical with that of article 30 of the Convention on the Territorial Sea and the Contiguous Zone adopted at the first Conference, and has been included for the same reasons.

8. Lastly, article 5 is designed to ensure that States are duly informed of the breadth which each State has fixed for its territorial sea, of the action taken in compliance with article 3 of this proposal, and of any requests for revision which may be made in accordance with article 4.

30. His delegation found the proposals of the United States (A/Conf.19/C.1/L.3)[6] and Canada (A/Conf.19/C.1/L.4)",[7] which sought to establish a six-mile limit, unacceptable. They ignored international practice and clearly discernable trends in the legislation of coastal States concerning their territorial sea.
of coastal States concerning their territorial sea. It was common knowledge that fourteen States had fixed a twelve-mile limit since 1945 and that at present sixteen States upheld it.

31. The advocates of a six-mile limit had declared themselves willing to make "concessions", but if they genuinely regarded a three-mile limit as advantageous there was nothing to prevent them from adhering to it. In fact, the opponents of a twelve-mile limit were seeking to extort a real sacrifice out of a number of States already possessing a territorial sea wider than six miles to the detriment of vital interests consecrated by long usage.

32. The main objective of the champions of the six-mile limit was to obtain for their naval forces unconditional, so-called legitimate, access to foreign waters close to coasts in which they were interested for strategic or political reasons. Events during recent years had convincingly shown how certain Powers had made use of such methods to bring effective pressure to bear on other States whose policies they disliked. The real motives for opposing the twelve-mile limit were being kept out of sight and hearing.

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7 Document A/Conf.19/C.1/L.4 Canada: proposal

1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline.

2. A State is entitled to establish a fishing zone contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

6 Document A/Conf.19/C.1/L.3 United States of America: proposal

Article 1

The maximum breadth of the territorial sea of any state shall be six miles. For the purpose of the present Convention the term mile means a sea mile (1,852 metres) reckoned at sixty to one of latitude.

Article 2

The coastal state shall have exclusive fishing rights in a zone (hereinafter referred to as "the outer zone") extending from the outer limit of its territorial sea to maximum distance of twelve miles measured from the baseline from which the breadth of its territorial sea is measured, subject however to the provisions of the present Convention.

Article 3

Any state whose vessels have made a practice of fishing in the outer zone of another state during the period of five years immediately preceding 1 January 1958 (hereinafter referred to as "the base period") may continue to fish within the outer six miles of that zone for the same groups of species as were taken therein during the base period to an extent not exceeding in any year the annual average level of fishing carried on it the outer zone during the said period.

Article 4

Any state whose vessels are entitled, under the provisions of the present Convention, to fish in the outer zone of another state shall take such measures as are necessary to ensure that its vessels comply with the said provisions. Such measures shall be notified to the coastal state.

Article 5

The provisions of the annex to the present Convention shall apply to negotiations between the coastal state and the fishing state in regard to the application of the present Convention, and to the settlement of any dispute between such states arising out of the interpretation or application of the present Convention.

Annex

I. If the coastal State disputes that the vessels of the fishing State have made a practice of fishing in the outer six-mile zone during the base period, the former State may initiate the procedure provided for in section IV of this annex. Pending a decision under that procedure, vessels of the fishing State may continue to fish within the outer zone to the same extent as heretofore.

II. (1) Negotiations shall be entered into between the coastal State and the fishing State, if at any time either State so requests, for the purpose of agreeing upon the groups of species taken and upon the annual average level of fishing carried on by the vessels of the fishing State during the base period.

(2) If the negotiations referred to in paragraph (1) above do not result in agreement within twelve months from the time of any

such request, either State may initiate the procedure provided for in section IV of this annex.

(3) The coastal State and the fishing State may enter into such arrangements as may be appropriate in particular cases for applying the provisions of article 3 of the Convention of ...., 1960.

III. (1) If the coastal State at any time so requests, negotiations shall be entered into between the coastal State and the fishing State for the purpose of reaching agreement upon any measures additional to those provided in article 4 of the Convention of .. .., 1960, which may be necessary to ensure compliance with the provisions of that Convention.

(2) If the negotiations provided for in paragraph (1) above do not result in agreement within twelve months from the time of any such request, the coastal State may initiate the procedure provided for in section IV of this annex.

IV. (1) In the circumstances envisaged in sections I, II and III of this annex, the dispute shall be submitted for settlement to a commission of five members, unless the two states agree to seek a solution by another method of peaceful settlement.

(2) The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the State in dispute within three months of the request for settlement. Failing agreement they shall, upon the request of either State, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and, if the Secretary-General of the United Nations deems it appropriate, the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for in the initial selection.

(3) Either state shall have the right to name one of its nationals to the commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

(4) The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the States in the dispute, failing agreement by those States on this matter.

33. At the Committee's 4th meeting, the United States representative had expressed his Government's preference for a three-mile limit, which in the United States' view would serve the interests of all countries. In explaining the United States Government's opposition to a twelve-mile limit, Mr. Dean had indicated that such a limit would allegedly be contrary to the interests of the majority, would hinder navigation, would cause serious incidents in international straits, would affect established sea routes passing through zones contiguous to territorial seas, and would cause anchorage difficulties. The Byelorussian delegation associated itself with the pertinent criticisms levelled against those factitious arguments, especially by the representatives of Poland and Yugoslavia.

34. Mr. Dean's statement on 20 January 1960 before the Senate Foreign Relations Committee shed some light on the real motives underlying the United States proposal. Referring to the preparations for the present Conference, Mr. Dean had said:

> "Our navy would like to see as narrow a territorial sea as possible in order to preserve the maximum possibility of deployment, transit and manoeuvrability on and over the high seas, free from the jurisdictional control of individual States."

Mr. Dean himself had supplied the answer why the United States Navy stood in such need when he had gone on th say:

> "The primary danger to the continuance of the ability of our warships and supporting aircraft to move, unhampered, to wherever they may be needed to support American foreign policy presents itself in the great international straits of the world - the narrows which lie athwart the sea routes which connect us with our widely scattered friends and allies and admit us to the strategic materials we do not outselves possess."

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(5) The commission shall render its decision within a period of five months from the time it is appointed, unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

(6) The commission shall, in, reaching its decision, adhere to any special agreements between the States in dispute regarding settlement of the dispute.

(7) Decisions of the commission shall be by majority vote, and shall be binding on the States in dispute.

Thus Mr. Dean had discussed the position of international straits in definitely strategic terms. He had worked out that a twelve-mile limit would result in 116 of the major international straits coming under the sovereignty of coastal States, whereas with a six-mile limit only 52 would be so affected. Mr. Dean had gone even further in stating that with a six-mile limit probably only 11 States would claim the right to terminate or interfere with the transit of United States warships or military aircraft, and had concluded that although this would "present a defence capability impairment, that impairment is believed to be within tolerable operating limits".

35. Such were the fundamental motives of the so-called United States compromise proposal, and the considerations he had quoted - which had possibly not been intended for discussion at the present Conference - explained the determined refusal of the United States Government to accept a twelve-mile limit. Although in the Committee Mr. Dean had given entirely different reasons for his proposal, there was no reason to doubt the authenticity of the case he had put to the Senate Committee.

36. It should be added that United States naval forces were at present stationed far from their home waters. For example, the Sixth Fleet was in the Mediterranean, the Seventh Fleet off the coasts of the Chinese People's Republic, and the Fifth Fleet was assembling in the Indian Ocean - all of which proved that the United States Navy had been transformed into the instrument of a definite foreign policy.

37. It was hardly necessary to adduce further evidence to show that the United States' position with regard to the territorial sea had nothing to do with the progressive development of international law and with the purposes and principles of the United Nations Charter.

38. He reiterated his conviction that the problems before the Conference could be solved on the basis of the Soviet Union proposal, which constituted the only viable and realistic compromise. It was consistent with state practice, was, of general applicability and met the varied interests of all States. It would require neither substantial sacrifices on the part of any country nor a fundamental departure from national legislation in force. Adoption of the USSR proposal would be a positive contribution to the codification of the law of the sea, and would thus promote peaceful international co-operation.

39. The Conference could succeed only by reaching unanimous agreement on the breadth of the territorial sea, since without unanimity any agreement would remain a dead letter. The special feature of rules of international law regulating the relations between sovereign States was that they were created by agreement between States, and possessed legal force only by virtue of assent. Unfortunately, it was becoming apparent that participants in the Conference held opposing views about the breadth of the territorial sea, and that - as certain delegations had maintained at the thirteenth session of the General Assembly - the time was not yet ripe for devising a generally acceptable formula. If that was so, it might be wiser to wait until the question of the breadth of the territorial sea was really ready for codification.

(6 April 1960, 18th Meeting of the Committee of the Whole.)

24. Mr. Liu (China) said that, in listening to the debate, his delegation had been impressed by the general awareness of the urgency of the problem. That common will to succeed was important, for unless success was achieved at the present Conference, it would be many years before another opportunity would arise to find a solution for two of the most crucial issues of the law of the sea. If the Conference were to disperse without reaching agreement, the instruments adopted in 1958 would be left incomplete and in some ways ineffective, and the efforts of the 1958 Conference would be largely nullified. Moreover, the confusion and controversy which had prevailed with regard to the questions of the territorial sea and fishing rights would be aggravated.

25. The Chinese delegation did not maintain a rigid position with regard to the question of the breadth of the territorial sea, but was prepared to co-operate in finding a reasonable and generally acceptable and applicable formula. His Government had for many decades applied the three-mile rule because it regarded that as the rule most widely accepted by the principal users of the sea and as satisfactory from the point of view of shipping and commercial interests. It had defended that position at The Hague Conference of 1930, and still considered that, unless there was a formal agreement to the contrary, the three-mile rule could not be regarded as obsolete or be entirely discarded. In the light of the deliberations of the 1958 Conference, however, his Government was prepared to support the proposal for a six-mile territorial sea as the best compromise. The formula would ensure adequate freedom for sea and air navigation, while accommodating the wish of many States to extend control over their coastal waters; its general application would also provide stable conditions for all users of the sea. His delegation could see no advantage in a more flexible formula, and could not subscribe to

the view that considerations of national security called for an extension of the territorial sea beyond the six-mile limit.

26. The idea of a contiguous fishing zone was comparatively new. If a uniform rule concerning such a zone were to be established equity for all the interested parties must be duly taken into consideration. While he had been impressed by the force of the Canadian representative's arguments at the 5th meeting in favour of the coastal State, it was impossible to disregard the interests of State whose economy was largely dependent on fishing in distant waters.

27. Of the proposals before the Committee, only the United States proposal (A/Conf.19/C.1/L.3)[8] provided for the recognition of historic fishing rights, and even under that plan, States fishing in distant waters were required to give up their former fishing rights in the three-to-six-mile area. In the days when the territorial sea had been limited to three miles, that area, where more fishing was carried on than in the outer six-mile zone up to the twelve-mile line, had formed part of the high seas. The creation of a six-mile territorial sea would cause all foreign States to yield their former fishing rights in the three-to-six-miles area to the coastal State. Furthermore, only States with historic rights would be allowed to fish in the outer zone.

28. It should also be borne in mind that the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas provided for co-operation in conservation measures in areas of the high seas adjacent to the coastal State. Those principles might be strengthened and incorporated in the instrument on the fishing zone, so as to provide coastal States with some added protection and to allay their fears that the productivity of the contiguous zon might be impaired by foreign fishermen. In that way, it would be possible to safeguard the interests of the coastal State without causing undue hardship to those whose livelihood depended on distant-water fishing.

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8 see supra.

29. In the search for an acceptable compromise, several new ideas had emerged. For example, the 1958 version of the United States proposal[9] had been modified by the inclusion of limits relating to the species of fish caught and the level of the catch, and the Pakistani representative had suggested at the 12th meeting a period of five to ten years during which States fishing in distant waters would be allowed gradually to change over to other types of fishing. It was to be hoped that all those ideas would be elaborated and rendered acceptable to the largest possible majority. The Chinese delegation, for its part, believed that the best solution lay in a compromise between the United States and the Canadian proposals, the differences between which could undoubtedly be bridged, in the spirit of understanding and compromise which was the key to the successful conclusion of the Conference.

(7 April 1960, 20th Meeting of the Committee of the Whole.)

1. Mr. Koretsky (Ukrainian Soviet Socialist Republic) said that there would have been no difficulty in reaching agreement on the breadth of the territorial sea if all the participants in the Conference had based their positions on the need to embody in conventions the progressively developing practice of States. No one was now proposing a return to the three-mile limit, which had been described as obsolete by a number of speakers. Already in 1930, Professor Giannini had said that the three-mile limit could no longer be justified and, while stating that the six-mile limit seemed to fill the needs of the time, had added that the future development of the breadth of the territorial sea could not be foreseen. The International Law Commission had taken a similar view, which had been confirmed by the overwhelming majority of delegations to the 1958 Conference.

2. The controversy at the present Conference seemed to relate mainly to two sets of proposals. On the one hand there was the clear and easily applicable proposal of the USSR (A/Conf.19/C.1/L.1),[10]

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9 Official Records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/Conf.13/L.29.

10 See supra.

providing for a limit of twelve nautical miles, which coincided with the basic intention of the proposal submitted by Mexico (A/Conf.19/C.1/L.2) [11] and the sixteen-Power proposal (A/Conf.19/C.1/L.6).[12] The USSR proposal took into account developments in state practice and the national interests of all States, by ensuring their political and economic security and their free and exclusive utilization of the resources of their own seas. On the other, there were the proposals which fixed the breadth of the territorial sea at six miles. The latter, submitted by the United States (A/Conf.19/C.1/L.3)[13] and Canada (A/Conf.19/C.1/L.4),[14] could not be regarded as anything other than half-measures, since they failed to take actual developments into account. Only eleven States had fixed the breadth of their territorial sea at six miles, whereas seventeen States had enacted legislation establishing the limit at twelve miles, and more would undoubtedly enact like legislation in the near future. From the realistic and practical point of view, it was obviously impossible by a mere vote to impose upon Governments a breadth of territorial sea other than that which they had established for themselves: such a course would be contrary to the principle of territorial inviolability. The only realistic approach towards establishing a legal rule, embodied in a convention, was to strive towards unanimity. The fixing

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11 see supra.

12 Document A/Conf.19/C.1/L.6 Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Philippines, Saudi Arabia, Sudan, Tunisia, United Arab Republic and Yemen: proposal

Article 1

A State has the right to fix the breadth of its territorial sea up to a maximum of twelve miles measured from the applicable baseline.

Article 2

A State, if the breadth of its territorial sea is less than twelve miles, has the right to establish a fishing zone contiguous to its territorial sea extending to a maximum of twelve miles measured from the applicable baseline.

Article 3

A State has in this fishing zone the same rights of fishing and of exploitation of the living resources of the sea as it has in its territorial sea.

13 see supra.

14 see supra.

of the territorial limits of the State and, consequently, its territorial sovereignty, could not be the subject of bargaining. The Conference's true and only task was to fix the maximum breadth of the territorial sea, as it had evolved historically, and the maximum breadth could not, of course, be less than the limit already fixed by a number of States. The establishment of such a limit in a binding convention had the further advantage of not foreing any State to reduce the boundaries of its territorial waters. Moreover, such a rule would in no way oblige all States to fix the same limits, and any country wishing to retain a three-mile or six-mile limit would be free to do so. It would be for the legislative bodies of each country to take the relevant decision, within the limit established by international law in accordance with historical developments. The Cambodian representative had rightly said at the 12th meeting that States which had already declared a breadth of twelve nautical miles or more were unlikely to ratify a convention which would oblige them to revert to a narrower breadth; legal rules must be based on realities and not on abstract principles that were not unanimously accepted.

3. Turning to the objections to the USSR proposal raised during the debate, he said he could not agree with the United States and Australian representatives, who argued that the rule concerning the breadth of the territorial sea was determined by the principle of the freedom of the high seas. In the first place, that argument was illogical; it was, on the contrary, the extent of the high seas and the limits of the freedom of the sea which were determined by the limit of the territorial sea. Article 1 of the 1958 Convention on the High Seas defined the high seas as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". Furthermore, the argument was historically incorrect, for the concept of the territorial sea had been evolved by the coastal States in reaction to incursions of the States which had gained mastery of the seas. In the era of the scramble for colonies, it had been the practice of the great maritime Powers to seize the coasts of countries which they wished to invade and to penetrate into the hinterland. Anxious to keep foreign ships at a "respectful distance", which had then been the distance of a cannon-shot, from their shores, the coastal States had sought to fix their territorial seas at a breadth which would ensure their security and enable them freely to exploit the resources of their own seas. In times of revolutionary and liberation movements, one of the first moves of fighters for freedom had been to establish adequate limits for the territorial sea; the "British Seas" in Cromwell's time had been defined "to the largest extent of these seas", and the problem of the territorial sea had arisen in the early days of the United States and during the French revolution. The young Soviet State, embattled after the October revolution of 1917, had reaffirmed the pre-existing twelve-mile limit. It was perfectly natural for newly independent States to

tend to increase their territorial sea to twelve nautical miles, in order to fend off depredations by foreign warships and fishing fleets and the diversionist activities of reactionary forces.

4. The countries which were trying to retain their hold over former colonial territories were inventing arguments against the twelve-mile limit. They asserted that that limit would hamper freedom of navigation; but so long as that freedom was not turned into an instrument of penetration into foreign waters and territories, the right of innocent passage through territorial waters fully secured the interests of international shipping which, incidentally, owing to modern technical advances, no longer needed to keep close in-shore. Another argument cited against the twelve-mile limit was that of the risk of interference by the coastal State with international navigation; those who used that argument, however, ignored the fact that certain States had not hesitated to impede the passage of foreign merchant vessels in areas far beyond the limits of territorial waters. It had also been said that the broader the territorial sea, the greater would be the expenses incurred by shipping, for ships would have to anchor farther out at sea at greater depth; actually, however, the depth of the sea did not always depend on the distance from the shore, and anchors would be used by a ship in transit in exceptional circumstances only, for the right of innocent passage did not imply the right to stop in territorial waters. The United States representative had gone into details concerning the height at which a navigator must stand to see the shore from a distance of twelve miles; but in the early days of navigation, when there had been no technical means of determining distance from the shore, the distance of visibility had been determimed at 14 to 28 miles. It had also been claimed that a twelve-mile territorial sea would involve the coastal State in considerable expense in the discharge of its duties under the 1958 Convention on the Territorial Sea and the Contiguous Zone. It should be noted, however, that article 16 of that Convention merely obliged that State not to hamper innocent passage of foreign merchant vessels through the territorial sea and to give appropriate publicity to any dangers to navigation in that sea of which it had knowledge.

5. It was obvious to all unprejudiced persons that a wider territorial sea was essential for the safety of the coastal State. At various times, the United States itself had attempted to establish a security zone of 300 miles for the American continent; but the United States representative was now asserting that a wide territorial sea was unnecessary for the security of peace-loving States. The Canadian representative had argued that a narrower territorial sea would best ensure the security of coastal States, because control could be exercised more effectively. Those arguments could not convince States which were anxious to preserve their independence and had no aggressive intentions against other countries. They knew

that a narrowing of their territorial waters would facilitate access to their shores by hostile warships and military aircraft and would open the door to military and economic penetration by other countries. The head of the United States delegation had spoken more frankly at a recent meeting of the United States Senate Foreign Relations Committee, where he had stated that his country wished the territorial seas to be narrowed as far as possible, in order to ensure the maximum possibility of deployment, transit and navigation in the open seas, free from the jurisdiction and control of individual States. The unfounded allegations concerning so-called activities of Soviet submarines could convince no one, and merely served as a proof of the weakness of the position of those who advanced them. The Conference should be thinking not in terms of war, but in terms of peaceful coexistence. The march of time could not be stopped and the significance of the territorial sea as a safety barrier was being increasingly widely recognized, particularly by nations which had thrown off the yoke of political and economic dependence and were determined to strengthen their sovereignty and security.

6. If the legitimate need of States for a twelve-mile territorial sea were accepted, other connected problems, including that of the contiguous fishing zone, could be easily solved. While the development of technical fishing methods had created new possibilities for the rational exploitation of the resources of the sea, large monopolies were using their well-equipped fishing fleets to cause depredations of the fish resources near the shores of foreign countries, where fish usually abounded. The coastal States could best be protected against such forays by the extension of their territorial sea to twelve miles. A strange situation had, however, arisen: a number of States were prepared to agree to a twelve-mile fishing zone, but refused to accept a twelve-mile limit for the territorial sea.

7. At the 1958 Conference, his delegation had drawn attention to the fact that, juridically, the contiguous zone was merely a prolongation of the territorial sea. The close connexion between the territorial sea and the contiguous zone was not a new concept; it had been argued at the 1930 Conference at The Hague that there was no essential juridical difference between the two areas. It might be said that the same legal characteristics were attached explicitly to territorial waters, and implicitly to the contiguous zone; that was clear from the accumulation of the powers which the coastal States traditionally exercised in the contiguous zone. Originally, that zone had been established in answer to the policy of the great maritime Powers of trying to confine the coastal States to a narrow limit of territorial waters; it was, in fact, an indirect way of extending the breadth of the territorial sea. Exclusive

fishing zones should similarly be regarded as an integral part of the territorial sea.

8. In the past, the great maritime Powers had recognized contiguous zones to the extent only to which it was expedient for them to recognize them, and had resisted the recognition of fishing zones outside territorial waters. At the 1930 Conference, the representatives of Portugal and Iceland had argued in favour of a broader territorial sea with a view to protecting coastal fishing industries and securing the recognition of fishing zones. That attempt had been thwarted, and subsequent codifications excluded fishing zones from the lists of recognized contiguous zones.

9. Nevertheless, the connexion between fishing zones and territorial waters would become clearer if one looked at other types of contiguous zone. Whereas, for example, customs, sanitary and fiscal zones might be regarded as manifestations of the administrative and police functions of the State, fishing zones were connected with territorial sovereignty, for in them the nationals of the coastal State had the right to exploit the resources of the sea. Just as the usufruct of the earth was connected with the right to territory, so exclusive fishing rights were connected with a State's rights in its territorial sea. In that connexion, he pointed out that even under the Canadian proposal (A/Conf.19/C.1/L.4),[15] a State entitled to establish a contiguous fishing zone would have in it "the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea".

10. Accordingly, the best way on affirming exclusive fishing rights would be to extend the breadth of the territorial sea, since the fishing industries of the coastal State would then be fully protected by all the consequential sovereign rights. Such a solution would not, however, suit the policies of certain States, which were trying to reduce the breadth of the territorial sea as far as possible, in order to achieve the greatest possible manoeuvring space for their warships and military aircraft. Thus, they were prepared to "compromise" by retaining their so-called historic fishing rights in foreign waters. Clearly, their willingness to agree to provisions extending fishing zones was motivated, not by economic interest, but mainly by military considerations. That was why they were trying to separate the fishing zone from the territorial sea, with its characteristic sovereignty. It was significant that the fishing zone was called "the outer zone" in the United States proposal

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15 see supra.

(A/Conf.19/C.1/L.3),[16] and although that semantic conceit could clearly not change the real nature of exclusive fishing rights, it was a pity that States like Canada and Iceland, which were deeply concerned with the protection of their fishing, had followed the idea of a separation between the two belts of sea. Instead of using the best legal means of protecting their national interests by insisting on an extension of their territorial sea to twelve miles, those delegations were, without any doctrinal foundation, differentiating between the fishing zone and the territorial sea, and were thus weakening their chances of securing exclusive fishing rights.

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16 see supra.

APPENDIX II

1. RESOLUTION 1307 (XIII) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS CONVENING THE CONFERENCE

2. DOCUMENT A/Conf.19/4
   SYNOTICAL TABLE CONCERNING THE BREATH AND JUDICIAL STUTUS OF THE TERRITORIAL SEA AND ADJACENT ZONES.

3. FINAL ACT OF THE SECOND UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA.

1. RESOLUTION 1307 (XIII) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS CONVENING THE CONFERENCE

Convering of a second United Nations conference on the law of the sea

The General Assembly,

Having received the resolution adopted on 27 April 1958 by the United Nations Conference on the Law of the Sea,[1] requesting the General Assembly to study at its thirteenth session the advisability of convening a second international conference of plenipotentiaries for further consideration of questions left unsettled by the Conference.

Recalling that the Conference made an historic contribution to the codification and progressive development of international law by preparing and opening for signature conventions on nearly all of the subjects covered by the draft articles on the law of the sea drawn up by the International Law Commission,[2]

Noting that no proposal concerning the breadth of the territorial sea or fishery limits received the two-thirds majority required for adoption by the Conference.

Believing that the desire for agreement on these two vital issues continues, and that agreement thereon would contribute substantially to the lessening of international tensions and to the preservation of world order and peace.

Convinced that to reach such agreement it is necessary to undertake considerable preparatory work so as to ensure reasonable probabilities of success,

1. Decides that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits;

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[1] Official Records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/Conf.13/L.56, resolution VIII.

[2] Official Records of the General Assembly, Eleventh Session, Supplement No. 9, pp. 4 ff.

2. Requests the Secretary-General to convoke the conference at the earliest convenient date in March or April 1960 at the European Office of the United Nations in Geneva;

3. Invites all States Members of the United Nations and States members of the specialized agencies to participate in the conference and to include among their representatives experts competent in the matters to be considered;

4. Requests the Secretary-General to invite the specialized agencies and inter-governmental bodies concerned with the matters to considered to send observers to the conference;

5. Requests the Secretary-General to arrange for the necessary staff and facilities which would be required for the conference, and to present to the conference recommendations concerning its methods of work and procedures, and other questions of an administrative nature;

6. Refers to the conference for its information the relevant records of the United Nations Conference on the Law of the Sea held in 1958.

783rd Plenary Meeting, 10 December 1958.

2. Document A/Conf.19/4

Synoptical table concerning the breadth and juridical status of the territorial sea and adjacent zones

1. During the first United Nations Conference on the Law of the Sea, the Secretariat prepared, at the request of the First Committee and in consultation with the delegations, a synoptical table concerning the breadth and juridical status of the territorial sea and adjacent zones of the States represented at the Conference.[1]

2. During the thirteenth session of the General Assembly, in connexion with the descussion in the Sixth Committee on item 59 of the agenda, namely, "Question of convening a second United Nations conference on the law of the sea", the Secretariat, at the request of several delegations, made the synoptical table available to the Sixth Committee. Various delegations, in the course of that session, made known to the Secretariat their wish that the synoptical table should be brought up-to-date and then republished as a document for the second United Nations Conference on the Law of the Sea. Accordingly, by a note dated 13 March 1959, the Secretary-General informed all States invited to particpate in the second Conference under paragraph 3 of General Assembly resolution 1307 (XIII) that the Secretariat was preparing a revised edition of the synoptical table for this purpose. He further requested that the States should transmit to him, by 1 November 1959, any data which it was desired should be included in order to amend or supplement the synoptical table, together with the relevant texts of the laws or regulations. The synoptical table was annexed to the note.

3. The present revised table, although based upon the original synoptical table prepared at the request of the First Committee during the first United Nations Conference on the Law of the Sea, incorporates all the changes that have been requested by the States concerned.

4. Some observations in connexion with the table appear necessary. Where a figure in miles or metres is given, followed by a year in parentheses and then a page reference, the year is that of the relevant law, regulation or decree, and the page reference is to the volume in the United Nations Legislative Series entitled Laws and

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[1] See Official Records of the United Nations Conference on the Law of the Sea, vol. III, 14th meeting, paras. 1-29, and document A/Conf.13/C.1/L.11/Rev.1 and Corr. 1 and 2.

Regulations of the Regime of the Territorial Sea.[2] Where the page reference is preceded by the abbreviation Suppl., this refers to the Supplement[3] to the volumes in the United Nations Legislative Series entitled Laws and Regulations on the Regime of the High Seas, volume I,[4] Laws and Regulations on the Regime of the High Seas, volume II,[5] and Laws Concerning the Nationality of Ships.[6] Where no page reference is given, this means that the figures are derived from information which was submitted by the States concerned either at the first United Nations Conference on the Law of the Sea, or in the Sixth Committee of the General Assembly at its thireenth session, or in response to the Secretary-General's note of 13 March 1959.

5. The texts of laws and regulations which were received in reply to the said note are reproduced in a separate document (A/Conf. 19/5 and Add.1-3). When necessary, reference is made to these texts in the footnotes appended to the synoptical table.

6. A blank entry opposite the name of a State in the revised synoptical table signifies that the relevant information was not available to the Secretariat.

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[2] United Nations publication, Sales No.: 1957. V.2

[3] United Nations publication, Sales No.: 59. V.2

[4] United Nations publication, Sales No.: 1951. V.2

[5] United Nations publication, Sales No.: 1952. V.1.

[6] United Nations publication, Sales No.: 1956. V.1.

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Albania	10 miles (1952)								
Argentina	3 miles (1869)	(1946) Including sovereignty over superjacent waters	12 miles (1869)	12 miles (1869)	5 miles (1889)	3 miles (1869)	10 miles (1907)	3 miles (1869)	12 miles (1869)
Australia	3 miles (1878)	(1953) Not affecting superjacent waters Suppl. p. 3 Pearl Fisheries Act (1952-53) Suppl. p. 4	3 miles (1901-1954) p. 63		3 miles (1878) pp. 319 355	3 miles (1912-1953) p. 63			
Belgium	3 miles (1929) p. 74		10 km. (1852)				3 miles (1891) p. 441	3 miles (1939) p. 615	
Brazil	3 miles (1950) p. 2	(1950) Not affecting navigation of fishing rights					12 miles (1938) p. 444	3 miles (1914) p. 2	
Bulgaria	12 miles (1951) p. 80								
Burma									
Combodia	5 miles[a]	(1957) 50 metres. Including sovereignty over superjacent waters	12 miles (1957)	12 miles (1957)			12 miles (1957)		
Canada	3 miles		12 miles[b] (1952) p. 95		3 miles (1954) p. 322	3 miles (1934) p. 92	12 miles (1952) Suppl. p. 22		

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Ceylon	6 miles[c] (1957)	d	2 leagues from coast[e]	Territorial waters	f	g	h	Territorial waters	Territorial waters
Chile	50 km. (1941) Suppl. p. 23	(1947) 200 miles. Including sovereignty over superjacent waters, pp. 4-5	100 km. (1948)	100 km. (1941) Suppl. p. 23					
China	3 miles (1930) (Condification Conference)		12 miles (1934) p. 113						
Colombia	6 miles (1930)		20 km. (1931) p. 115				12 miles (1923) p. 5		12 miles (1923) Pollution of sea
Costa Rica	In accordance with international law (1949)	(1949)[i] 200 miles incl. sovereignty over the superjacent waters					200 miles (1939) p. 462		
Cuba	3 miles (1942) p. 7		12 miles (1942) p. 7	3 miles (1936)	3 miles (1936) p. 334		3 miles (1936)		5 miles (1936) Pollution of sea
Denmark Greenland Faroe Islands	3 miles		4 miles (1928) p. 121				3 miles (1951) p. 474 3 miles (1953) p. 476		

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Faroe Islands							Special limit (1959)[j]		
Dominican Republic	3 miles (1952) p. 11		15 miles (1952)[k] p. 11				15 miles (1952)[k] p. 11		15 miles (1952)[k] p. 11
Ecuador	12 miles	To a depth of 200 metres (1950)					1		
El Salvador	200 miles (1950) p. 14	200 miles (1950) including sovereignty over superjacent waters, p. 14					200 miles (1955) p. 400		
Ethiopia	12 miles (1953) p. 129						12 miles (1953) p. 130		
Federation of Malaya	3 miles								
Finland	4 miles[m] (1956) p. 805		6 miles (1939) p. 14						
France	3 miles (1888) p. 497		20 km. (1948) p. 135	3-6 miles			3 miles (1888) p. 497	6 miles (1912)	
Germany, Federal Republic of	In accordance with international law (1956), p. 17		3 miles (1939) p. 139						

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Greece	6 miles (1936)			10 miles (1913)				6 miles (1914)	
Guatemala	12 miles (1934)	(1956) Not affecting free maritime and air navigation	12 miles (1934/39) p. 141					12 miles (1940) p. 379	
Honduras	(1957) Suppl. p. 10[n]	(1957) 200 metres or to where depth admits of exploitation. Sea-bed and subsoil only. Suppl. p. 10	6 miles (1925) p. 146				n		
Iceland		(1948) Relates to fisheries only. p. 513	4 miles (1935) p. 146				12 miles[o] (1958) Suppl. p. 11		
India	6 miles (1956) p. 23	(1955). Sea-bed and subsoil only. Suppl. pp. 13-14	12 miles (1956)[p]				100 miles (1956)[q]		12 miles (1956)[p]
Indonesia	12 miles (1957)[r]								
Iran	12 miles (1959)[s]	(1955). Sea-bed and subsoil only. p. 25							
Iraq	In accordance with international law (1956), p. 26								

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Ireland	3 miles (1959)[t]						[t]		
Israel	6 miles (1956) p. 26	(1952). Not affecting superjacent waters. Suppl. p. 14.			6 miles (1955) pp. 26, 340-2		6 miles (1937) pp. 26, 518		
Italy	6 miles (1942) p. 162		12 miles (1940) p. 172	10 miles (1912; in time of peace)			6 miles (1942) pp. 162, 165		
Japan	3 miles (1870)							3 miles (1870) p. 29	
Jordan	3 miles (1943) p. 522						3 miles (1943) p. 522		
Korea, Republic of		(1952). Including sovereignty over superjacent waters.[u] p. 30					20-200 miles (1952-1954) pp. 30, 523		
Lebanon			20 km. (1954) p. 177		20 km. (1943) p. 344		6 miles (1921) p. 524		
Liberia	3 miles (for all purposes)								

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Libya	12 miles (1954)								
Mexico	9 milwa[V] (1935-1941)	(1945). Not affecting right of free navigation.[W]					See under continental shelf		
Monaco	According to international Law (1955), p. 32		20 km. (1948)						
Morocco							6 miles (1924) p. 528		
Netherlands	3 miles (1889) p. 531						3 miles (1952) p. 533	3 miles (1939) p. 647	
New Zealand	In accordance with international law		In accordance with international law(1913)		In accordance with international law(1953) p. 346		3 miles (1908) p. 540 (1935) (1934) p. 597		3 miles (1956)
Nicaragua		(1950). Including sovereignty over the superjacent waters, p. 35							

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Norway	4 miles[x] (1812)		10 miles (1932) p. 35				4 miles (1906) p. 549	4 miles[y]	
Pakistan	3 miles (1878) p. 38[z]	Sea-bed along the coast extending to 100 fathom contour into the open sea (1950), p. 38			3 miles (1878) p. 38[z]		Sea within a distance of 1 marine league of sea-coast (1897) p. 38		
Panama	12 miles (1958)[aa]	(1946). Including sovereignty over the superjacent waters[bb]					(1946) Extends over area of sea above continental shelf[cc]		
Peru		(1947). 200 miles including sovereignty over the superjacent waters, p. 38					(1947) 200 miles p. 38		
Philippines[dd]									
Poland	3 miles (1932) p. 40		6 miles (1933) p. 40	6 miles (1932)					

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Portugal		(1956) 200 metres. Seabed and subsoil only, not affecting superjacent waters. Suppl. p. 16	6 miles (1885) p. 811				Reciprocity (1917) p. 810		6 miles (1928) Pollution by oil
Romania	12 miles (1951)[ee] p. 238								
Saudi Arabia	12 miles (1958) Suppl. p. 29		18 miles (1958) Suppl. p. 29	18 miles (1958) Suppl. p. 29					18 miles (1958) Suppl. p. 29
Spain	6 miles (1957) Suppl. p. 30		6 miles (1948) Suppl. p. 30				6 miles (1909/ 1933) Suppl. p. 30		
Sweden	4 miles (since 1779) p. 655, footnote 2		4 miles (1927) p. 246					4 miles (1938) p. 655	
Thailand	6 miles (1958)						12 miles (1958)		
Tunisia	3 miles (1951)						50 metres of depth of water (1951)		

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Turkey									
Union of South Africa	3 miles (1935) p. 42		3 miles (1955) P. 254				3 miles (1955) p. 571		3 miles (1919) p. 253
Union of Soviet Socialist Republics	12 miles (1909)[ff]								
United Arab Republic	12 miles (1958)								
United Kingdom	3 miles[gg] (1878) p. 355		3 miles (1952) p. 288		3 miles (1878) p. 355		3 miles (1933) p. 596		
Arab States under protection		(1949) Seabed and subsoil only. Not affecting superjacent waters[hh]							
Bahamas		(1948) Ditto,"[ii]							
B. Guiana		(1954) Ditto, p. 48							
B. Honduras		(1950) Ditto, p. 48							
Brunei		(1954) Ditto, p. 48							
Falkland Isles[jj]		(1950) Ditto, p. 49							
Jamaica		(1948) Ditto, p. 48							
North Borneo		(1954) Ditto, p. 48							
Sarawak		(1954) Ditto, p. 48							

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
United States of America	3 miles (1953) p. 54	(1945). Seabed and subsoil only. Not affecting superjacent waters[kk]	12 miles (1930) p. 308						3 miles (1924) Pollution by oil. p. 307
Uruguary	6 miles (1930) (Codification Conference)							5 miles (1914)[ll]	
Venezuela	12 miles (1956)[mm nn]	(1956). Seabed and subsoil only. 200 metres or beyond that when depth of superjacent waters admits of exploitation of resources[mm]	15 miles (1956)[mm]	15 miles (1956)[mm]			(1956) Right to establish non-exclusive conservation zones[mm]		15 miles (1956)[mm]
Viet-Nam, Republic of							20 km. (1936)		
Yemen									
Yugoslavia	6 miles (1948) p. 314		6 miles (1949) p. 317				10 miles (1950)[oo] p. 613		

[a] Measured from straight baselines.

[b] Nine marine miles beyond Canadian waters.

[c] Measured from the appropriate baseline. See Proclamation of the Governor-General, 20 December 1957 (A/Conf.19/5, under Ceylon).

[d] Exclusive sovereign rights over the sea-bed and subsoil of the continental or insular shelf adjoining the territory and beyond the territorial waters of Ceylon. The right to establish conservation zones in that part of the Indian Ocean known as the Wadge Bank and in such areas of the high seas adjacent to the territorial waters of Ceylon as are within a distance of 100 nautical miles from the outer limits of those waters. See Proclamation of the Governor-General, 20 December 1957 (A/Conf.19/5, under Ceylon).

[e] Section 65 of the Customs Ordinance of 1870, as amended (Laws and Regulations on the Regime of the Territorial Sea, p. 104). These provisions had been made prior to the Proclamation of 20 December 1957)extending the limits of the territorial waters (A/Conf.19/5, under Ceylon).

[f] Generally within territorial limits -- i.e., up to the limits of the territorial waters. Extraterritorial jurisdiction exists in the following cases: (a) In regard to offences under the Pearl Fisheries Ordinance where the Ceylonese courts have jurisdiction in regard to offences committed over the pearl banks delineated in the plan set out in the first schedule to the said Ordinance (Laws and Regulations on the Regime of the Territorial Sea, p. 459): (b) In regard to offences under the Chanks Ordinance where the Ceylonese courts have jurisdiction in regard to offences committed in and over the limits set out in schedule B to the said ordinance (Ibid., p. 456); (c) The Ceylonese courts have jurisdiction in respect of certain offences like treason, robbery, murder, conspiracy committed on the high seas falling within Admiralty jurisdiction (section 136 of the Criminal Procedure Code) (Ibid., p. 328); (d) Customs.

[g] Territorial limits. But the Supreme Court has jurisdiction as extensive as the Admiralty jurisdiction of the High Court of England under the Ceylon Courts of Admiralty Ordinance (Ibid).

[h] (a) Territorial Waters. Section 27 of the Fisheries Ordinance No. 24 of 1940, as amended (Ibid., p. 454); (b) In regard to pearl fisheries, the Ceylon pearl banks as delineated in the plan set out in the first schedule to the Pearl Fisheries Ordinance (Ibid., p. 459); (c) In regard to the collection of Chanks beche-de-mer, coral and shells, the limits set out in schedule B to the Chanks Ordinance, amended by Act No. 12 of 1948 and Chank Fisheries Act No. 8 of 1953 (Ibid., p. 456); (d) Whaling Ordinance No. 2 of 1936 (Ibid., p. 458); (e) Proclamation by the Governor-General of 20 December 1957 declaring rights to establish conservation zones to

regulate fishing in the Wadge Bank and in the seas within 100 miles (A/Conf.19/5, under Ceylon).

[i] Laws and Regulations on the Regime of the High Seas, vol. I, p. 9.

[j] See Order No. 130 of 27 April 1950 (A/Conf.19/5, under Denmark).

[k] Twelve nautical miles measured from the outer limit of the territorial sea.

[l] "The Government of Ecuador has proclaimed its paramount right to priority over all others in the exploitation of the resources of the sea near its coasts, as well as its special right, inherent in its geographical position, to conserve and protect the living resources of the sea."

[m] Measured from straight baselines drawn between points not more than 8 miles apart.

[n] The Decree of 19 December 1957, article 6, does not specify any limit, but reserves the right to determine such limits in the future.

[o] Measured from straight beselines drawn between defined points.

[p] See Presidential Proclamation of 3 December 1956 (A/Conf.19/5, under India (b)).

[q] The Proclamation of 29 November 1956 gives the Government power to establish conservation zones within a distance of 100 nautical miles from the outer limits of territorial waters (A/Conf. 19/5, under India (a)).

[r] Measured from straight baselines drawn between the outermost points of the outermost islands or parts of islands comprising the Indonesian Archipelago.

[s] See Act of 12 April 1959 (A/Conf.19/5, under Iran).

[t] See Maritime Jurisdiction Act, 1959, and Maritime Jurisdiction Act, 1959 (Straight Baselines) Order, 1959 (A/Conf.19/5, under Ireland).

[u] The Presidential Proclamation of 18 January 1952 provides that the "declaration of sovereignty over the adjacent seas does not interfere with the rights of free navigation on the high seas".

[v] See Laws and Regulations on the Regime of the Territorial Sea, addendum (ST/LEG/SER.B/6/Add.1).

[w] Laws and Regulations on the Regime of the High Seas, vol.I, p. 13.

[x] See Royal Decree of 22 February 1812 (A/Conf.19/5, under Norway). For the system of measurement see Anglo-Norwegian Fisheries Case, I.C.J. Reports (1951), p. 116.

[y] During the two world wars, for practical reasons, 3 miles.

[z] Under the Territorial Waters Jurisdiction Act. 1878, s. 7. This is an Act of Parliament of the United Kingdom in force in Pakistan. For text see Laws and Regulations on the Regime of the Territorial Sea, p. 355.

[aa] See Act No. 58 of 18 December 1958 (A/Conf.19/5, under Panama).

[bb] Laws and Regulations on the Regime of the High Seas, vol. I, p. 15.

[cc] Ibid., p. 16.

[dd] The position of the Philippines is given in Yearbook of the International Law Commission, 1956, vol. II (United Nations publication, Sales No.: 1956, V. 3, vol. II), pp. 69-70.

[ee] The Romanian People's Republic established the breadth of its territorial sea at 12 miles by Decree No. 176 of September 29 1951. This breadth was maintained in Decree No. 39 of 28 January 1956, published in Laws and Regulations on the Regime of the Territorial Sea, p. 238.

[ff] Law on the Extension of the Maritime Customs Zone, 10 December 1909 (see A/Conf.19/5, under USSR).

[gg] The legislation of the United Kingdom Assumes, rather than specifically states, that the breadth is, in accordance with that State's view of international law, fixed at 3 miles.

[hh] Laws and Regulations on the Regime of the High Seas, vol.I, pp. 23-29.

[ii] Ibid. p. 31.

[jj] By letter dated 22 December 1959, the Permanent Mission of Argentina to the United Nations expressed the formal reservations of the Argentine Government with regard to the reference herein to the Falkland Isles as belonging to the United Kingdom. Referring to the Islands in question as the "Malvinas Islands", the Argentine Government reaffirmed its claim to sovereignty over them.

[kk] By accompanying press release stated to be limited to the 100 fathom line (Department of State Buletin, vol. 12 (1945), p. 484).

[ll] Laws and Regulations on the Regime of the High Seas, vol. I, p. 130.

[mm] See Act of 27 July 1956 concerning the territorial sea, continental shelf, fishery protection and air-space (A/Conf.19/5, under Venezuela).

[nn] The territorial sea is measured from straight baselines to be specified by decree, with due respect for existing treaties.

[oo] Four nautical miles measured from the outer edge of the territorial waters.

3. Final Act of the Second United Nations Conference on the Law of the Sea

Document A/Conf.19/L.15*

1. The United Nations Conference on the Law of the Sea, which met at the European Office of the United Nations at Geneva from 24 February to 27 April 1958, adopted a resolution on 27 April 1958 in which it requested the General Assembly of the United Nations to study at its thirteenth session the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled at that Conference.[18] The General Assembly of the United Nations, by resolution 1307 (XIII), adopted on 10 December 1958, decided that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits

2. The Second United Nations Conference on the Law of the Sea accordingly met at the European Office of the United Nations at Geneva from 17 March to 26 April 1960.

3. The Governments of the following eighty-eight States were represented at the Conference: Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Lebanon, Liberia, Libya, Luxembourg, Federation of Malaya, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yemen, Yugoslavia.

4. At the invitation of the General Assembly, the following specialized agencies were represented at the Conference by observers:

International Labour Organisation;
Food and Agriculture Organization of the United Nations;
International Civil Aviation Organization;
World Health Organization;

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* Incorporating document A/Conf.19/L.15.Corr.1.

18 Ibid., document A/Conf.13/L.56, resdution VIII.

International Telecommunication Union;
World Meteorological Organization;
Inter-governmental Maritime Consultative Organization.

5. At the invitation of the General Assembly, the International Atomic Energy Agency and the following intergovernmental organizations were also represented by observers at the Conference:

Conseil General des Peches pour la Mediterranee:
Inter-American Tropical Tuna Commission;
International Institute for the Unification of Private Law;
League of Arab States;
Organization for European Economic Co-operation;

Permanent Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific;

6. The Conference elected His Royal Highness Prince Wan Waithayakon Krommun Naradhip Bongsprabandh (Thailand) as President.

7. The Conference elected as Vice-Presidents Albania, Argentina, Canada, China, France, Ghana, Guatemala, Iran, Italy, Mexico, Norway, Poland, Switzerland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

8. The following committees were set up:

General Committee

Chairman: The President of the Conference.

Committee of the Whole:

Chairman: Mr. Jose Antonio Correa (Ecuador)
Vice-Chairman: Mr. Max Sorensen (Denmark)
Rapporteur: Mr. Edwin Glaser (Romania)

Credentials Committee

Chairman: Mr. Nathan Barnes (Liberia)

9. The Secretary-General of the United Nations was represented by Mr. C.A. Stavropoulos, the Legal Counsel. Mr. Yuen-li Liang, Director of the Codification Division of the Office of the Legal Affairs of the United Nations, was appointed Executive Secretary.

10. The General Assembly, by its resolution convening the Conference, referred to the Conference for its information the records of the United Nations Conference on the Law of the Sea held in 1958.*

11. The Conference also had before it certain documents submitte by the Secreatriat of the United Nations. These included a provisiona agenda (A/Conf.19/1), provisional rules of procedure (A/Conf.19/2) and a memorandum on the method of work and procedures of the Conference (A/Conf.19/3). The Conference took note of the memorandum on the method of work and procedures of the Conference and adopted the provisional agenda; the rules of procedure, as amended by the Conference (A/Conf.19/7), were also adopted.

12. The Conference referred to the Committee of the Whole the two substantive items on its agenda entitled: "Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958" and "Adoption of conventions of other instruments regarding the matters considered and of the Final Act oftthe Conference." The Committee of the Whole held 28 meetings from 21 March to 13 April 1960, and on of April 1960 submitted its report (A/Conf.19/L.4) to the Conference.

13. The Conference adopted only the two resolutions set out in the annex.

In witness whereof the representatives have signed this Final Act.

Done at Geneva this twenty-seventh day of April, one thousand nine hundred and sixty, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations Secretariat.

Annex

I

The Second United Nations Conference on the Law of the Sea.

Considering that, whatever the result of the Conference, its records will be of the utmost value for the correct interpretation of its work;

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* Official Records of the United Nations Conference on the Law of the Sea, vol. I to VII.

Recalling the statement made by the representative of the Secretary-General at the 2nd plenary meeting of the Conference concerning the possibility and cost of publishing the complete text of the statements made at the Conference in the original in a trilingual record, produced from the sound recordings and the texts of speeches as supplied, in most cases, by delegations;

Recommends to the General Assembly of the United Nations that at its fifteenth session it approve the necessary budget appropriations for the publication, in the form described above, of a complete verbatim record of the discussions at the Second United Nations Conference on the Law of the Sea.

8th plenary meeting,
21 April 1960.

II

The Second United Nations Conference on the Law of the Sea,
Having considered the question of fishery limits,

Recognizing that the development of international law affecting fishing may lead to changes in the practices and requirements of many States,

Recognizing further that economic development and the standard of living in many coastal States require increased international assistance to improve and expand their fisheries and fishing industries, which in many cases are handicapped by a lack of modern equipment, technical knowledge, and capital,

1. Expresses the view that technical and other assistance should be available to help States in making adjustments to their coastal and distant-waters fishing in the light of new developments in international law and practices;

2. Draws the attention of Governments participating in the Conference to the facilities for assistance already available through the United Nations and specialized agencies;

3. Urges the appropriate organs of the United Nations and the specialized agencies, and in particular the Food and Agriculture Organization of the United Nations, the Technical Assistance Board, and the United Nations Special Fund to give sympathetic and urgent consideration to any requests for assistance made by member Governments based on the new developments, and also urges them to consider, jointy or separately, further comprehensive studies and programmes of technical and material assistance;

4. Invites the Economic and Social Council to inform the General Assembly through its annual reports, of the action taken in response to this resolution:

5. Requests the Secretary-General of the United Nations to bring this resolution to the attention of the appropriate organs of the United Nations and the specialized agencies for suitable action at the earliest practicable time.

13th plenary meeting,
26 April 1960.

PART III: THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

I. PLENARY MEETING

1. General Statement

(28 June 1974, 22nd Plenary Meeting, 2nd Session.)

Mr. Kolosovsky (Union of Soviet Socialist Republics)

32. The main aim of the Conference was to draw up agreed principles and norms for the rational exploitation of marine resources, which would promote peaceful co-operation among nations, taking account of the interests of coastal and landlocked countries, large and small countries, developed countries and those countries which were just beginning to establish their own independent national economy. His delegation, in accordance with its policy of supporting anti-imperialist and anti-colonialist struggles, felt that account should also be taken of the special interests of countries which had just been liberated from colonial dependence and of the interests of all developing countries.

33. The tasks facing the Conference were extremely difficult and complex. Their solution, however, was facilitated by the fact that considerable experience of co-operation among States in the oceans of the world had already led to the development of a number of important, commonly recognized principles and rules relating to the law of the sea, the existence of which would stimulate further work on the updating of existing, and the preparation of new, provisions to meet modern needs.

34. There were a number of problems of cardinal importance, which, if resolved, would make it easier to reach agreement on other questions. At a time when economic activity was becoming more and more international, when goods were being produced specially for export and international trade, the role of such trade had greatly increased. It was however only possible when the necessary conditions existed for international navigation, in which all countries were interested, and without which such trade was unthinkable. The most important issues were the breadth of the territorial sea, the freedom of passage for all vessels through straits used for international navigation, and the freedom of the high seas.

35. The 12-mile limit for the territorial sea was recognized by approximately 100 States and was in keeping with the interests of the overwhelming majority of coastal States. Embodying it in an international convention would mean that a widely accepted international practice would become international law. The 12-mile limit was adequate for the security of coastal States and for the exercise of their

economic rights and interests, and it was also acceptable for international shipping. That balance would be disturbed if the breadth of the territorial sea was excessively expanded. In that case, even the rights of coastal States as recognized in international law would acquire new characteristics; there could be serious interference with international navigation and shipping would be made dependent on the unilateral action of coastal States. Extending the breadth of the territorial sea would thus have a negative effect on international trade and on the world economy as a whole.

36. The right of transit for all ships through straits used for international navigation was closely linked to the questions of the breadth of the territorial sea and the freedom of international navigation. Such straits were the focal points of international shipping routes because they were the routes of the most intensive navigation. There could be no real freedom of international navigation or international communication without free transit for ships through straits used for international navigation and linking the high seas. The conclusion to be drawn from the established practice of navigation in international straits was that a rule of common law had already been established recognizing the right of transit through such straits for all ships. Such a rule was in keeping with the interests of all countries even of those which did not yet have their own merchant marine. His delegation supported the retention of the principle of free transit for all ships through straits used for international navigation linking the high seas. However, in view of the contemporary conditions of navigation and particularly of the increase in traffic and in the speed and size of ships, special provisions for strict compliance with the appropriate international regulations in those straits should be enforced to protect the security and other interests of coastal States. In the case of straits linking the high seas to the territorial waters of a coastal State and leading only to such waters, his delegation supported the régime of innocent passage, taking into account the individual characteristics of the straits concerned.

37. One of the most important issues to be considered by the Conference was that of fishing. All States should be entitled to exploit the food resources of the seas and should also have a duty to conserve them. The coastal States undoubtedly had special interests with regard to the living resources of the sea adjacent to their coasts. However, all peoples should have the right to exploit the living resources of the seas and thus increase food production. His delegation was sympathetic to the wish of the developing countries to use the natural resources of the sea to raise the standards of living of their peoples, and thus to strengthen their national economy and political independence; account should be taken of their special interests in fishing and also in the utilization of other

marine resources. As indicated in General Assembly resolution 3067 (XXVIII), the question of fishing was closely related to other aspects of the law of the sea and those problems should be resolved as a whole or in a package deal.

38. He suggested that, provided that there was agreement among the participants to the Conference on a mutually acceptable solution concerning the breadth of the territorial sea, the right of transit through and overflight over international straits, international shipping, scientific research and other important problems the future convention should also include a provision recognizing the rights of coastal States to establish 200-mile economic zones and to exploit all living and mineral resources in their zones. Provision would, of course, also have to be made for the coastal State to grant to fisheries of other States, on a non-discriminatory basis, the right to fish in its economic zone in accordance with provisions established in the convention, such as payment of a modest fee where that State did not catch 100 per cent of its allowable catch in the zone, That would permit other countries to utilize the food resources of the sea and would prevent under-utilization of those resources. Although the establishment of a 200-mile economic zone would cause considerable loss to Soviet fisheries, his delegation would accept it with a view to reaching mutually acceptable decisions on all important questions relating to the law of the sea in the interests of all peoples.

39. The matter of a régime for the international sea-bed and ocean floor was also important, the question being to what extent that régime would fulfil the needs of mankind and correspond to the rational utilization of sea-bed resources. His delegation advocated the establishment of such a régime which would meet the interests of all countries in the development of their national economies. It favoured the establishment of an international organization in which States would co-operate in industrial exploration and exploitation of the mineral resources of the sea-bed. There should be no cumbersome, expensive machinery for such an organization, whose executive organ, in which all the major groups of States would be represented, would play the most important role. He fully agreed with the proposal made by the developing countries that exploitation of those mineral resources should be for the benefit of all mankind, irrespective of the geographical location of States and whether or not they had a coastline, with particular regard to the interests of the developing countries. In accordance with its peace-loving policy, his delegation favoured a provision that the sea-bed would be used exclusively for peaceful purposes. Naturally, the régime governing the sea-bed should in no way affect the status of superjacent waters which were part of the high seas, where the principles of free use by all States were in effect.

40. The Conference included a large number of land-locked and shelf-locked States, many of which were developing countries whose economic situation was further complicated by their lack of access to the sea. He therefore proposed that the right of free access of land-locked States to the sea should be recognized as a general principle of international law.

41. The increase in scientific research on the oceans was a direct result of the scientific and technological revolution. In that respect, two factors played an important role; the increase of international co-operation and the strengthening of the international legal régime governing the seas.

42. States should co-operate by combining their material, technical and other resources under the auspices of appropriate international organizations and by exchanging scientific data and the results of experiments. The Soviet Union provided extensive scientific and technological assistance to other, particularly developing countries, tens of thousands of whose citizens studied in the USSR, and would be willing to expand that assistance to include marine technology. Freedom of scientific research in the high seas was an important stimulus without which further development of fundamental marine science, which constituted the basis for the economically efficient exploitation of ocean space and marine resources, would not progress.

43. His delegation supported the adoption of measures for the conservation of the marine environment and the prevention of pollution from any source. That was an important question which should be given serious consideration.

44. The complexity of the problems faced by the Conference stemmed from the deep relationship and interdependence of various forms of the activity of States in the world oceans. That was emphasized in General Assembly resolution 3067 (XXVIII), which said that the problems of ocean space were closely interrelated and should be considered as a whole. The provisions adopted by the Conference should become universally recognized norms of the international law of the sea and must therefore be acceptable to all groups of States. That could be achieved if a balance was maintained between national interests and the requirements of international co-operation, the consolidation of peace and the security of peoples. His delegation intended to co-operate actively with other delegations with a view to seeking just and acceptable solutions to the problems. He expressed his conviction that the spirit of good will and the willingness to seek reasonable solutions, essential to the success of the Conference, would prevail.

(2 July 1974, 25th Plenary Meeting, 2nd Session.)

11. Mr. Chai Shu-fan (China) said that the international situation had changed considerably since the two previous Conferences on the Law of the Sea had been held, and the third world countries had now become the main force combating colonialism, imperialism and hegemony, as had been demonstrated at the recent sixth special session of the General Assembly. The expansionist policies of the two super-Powers were being firmly resisted by third world countries and were also arousing opposition among many "second world" countries. The historical trend was irresistible-countries wanted independence, nations wanted liberation and the people wanted revolution.

12. The seas had long been the arena for the rivalries between colonial Powers, and the two super-Powers were now struggling for control of the seas by building up naval forces, establishing military bases, and plundering other countries' off-shore fishery and sea-bed resources. The super-Power that flaunted the banner of socialism was using particularly vicious tactics to obtain from other countries the right to use their ports and naval bases and carry out espionage activities with a view to dominating the seas. It was to safeguard their national security and coastal resources against such policies of aggression and expansion that a number of Latin American countries had declared their sovereignty and national jurisdiction over a zone extending for 200 nautical miles; some had proclaimed a 200-mile patrimonial sea, while others had extended their territorial seas or established exclusive fishery zones. The Organization of African Unity and the Summit Conference of Non-Aligned Countries had proclaimed that coastal States had the right to establish such zones. That position was now supported by some "second world" countries. Malaysia and Indonesia had declared their right of jurisdiction over the Strait of Malacca, Mediterranean countries had called for "a Mediterranean of the Mediterranean countries", and Sri Lanka and other countries had urged that the Indian Ocean should be a zone of peace. A struggle against super-Power maritime hegemony was being waged across the world. That struggle was an important aspect of the efforts of developing countries to safeguard their sovereignty and to develop their national economy.

13. The central issue of the Conference was whether or not super-Power control and monopoly of the seas should be ended and the sovereignty and interests of small and mediumsized countries defended. The super-Powers had long advocated the freedom of the high seas which in effect meant their monopoly over the high seas. The super-Power which claimed to be the natural ally of the developing countries had openly asserted its right to send warships to all parts of the world's oceans, had attacked the proposal for the 200-mile zone as unilateral and extremist, and had derided developing countries which advocated an economic zone as technologically backward and unable to exploit

the resources even of their territorial waters. That super-Power had suddenly changed its tune and now claimed it was prepared to accept a 200-mile economic zone, but with certain restrictions; for example, it considered that coastal States should be allowed only preferential fishing rights in the zone; it was simply continuing to pursue its policy of maritime hegemony by employing new tactics. However, the argument in favour of a 200-mile zone, advanced by third world countries and supported by many small and medium-sized countries, and now created favourable conditions for changing the outdated régime of the sea to a new fair and reasonable régime.

14. Several just and reasonable proposals relating to the law of the sea had been made by developing countries at recent sessions of the United Nations sea-bed Committee. His delegation supported those proposals and suggested that they should be the basis for consideration by the Conference. The legal régime of the sea affected the interests of all countries and should therefore be worked out jointly by all countries on an equal footing.

15. He firmly opposed any attempt by the super-Powers to impose on others the outdated legal régime of the sea based on hegemony. His delegation supported the resolution adopted at Algiers in 1973 by the Conference of Heads of State or Government of Non-Aligned Countries stating that the new rules of the law of the sea should eliminate threats to the security of States and ensure respect for their sovereignty and territorial integrity.

16. It was the sovereign right of every country to define its territorial sea and the scope of its national jurisdiction. Coastal States were entitled to define a territorial sea of an appropriate breadth and, beyond it, their exclusive economic or fishery zones with appropriate limits in the light of their specific conditions and the needs of their national economic development and national security. In so doing, they should naturally take account of the legitimate interests of neighbouring countries and the convenience of international navigation. The question of fixing a maximum limit for territorial seas should be decided by all countries jointly on an equal footing. He reaffirmed his delegation's support for the position taken by many Latin American, African and Asian countries for maritime rights in an area extending for 200 nautical miles, including the territorial sea and the economic zone. That position represented their legitimate and reasonable rights and interests, which were in no way conferred upon them by the super-Powers. Land-locked States should also enjoy reasonable rights and interests in the economic zones of neighbouring coastal States and the right of transit through the territories and territorial seas of neighbouring coastal States.

17. The Conference should seek a reasonable solution to the question of navigation through straits within the territorial seas of coastal States used for international navigation. Owing to the strategic importance of those straits, the super-Powers had always tried to use them for their own hegemonist ends. In insisting on the application of the so-called principle of the freedom of the high seas to those straits, they were denying the inviolable sovereignty of the States bordering on those straits. The coastal States concerned should have the right to apply regulations in respect of those straits in accordance with their security and other interests, while also taking account of the needs of international navigation and some reasonable international standards. Foreign non-military vessels could have the right of innocent passage, but should observe the laws and relevant regulations of the coastal States. Coastal States could require foreign military vessels in transit to give prior notification or to obtain prior authorization for passage.

18. The international sea-bed should be used for peaceful purpose Its resources were owned jointly by the peoples of all countries, and an effective international régime should be worked out and appropriate international machinery established to manage and exploit those resources. He firmly opposed any form of super-Power manipulation or monopoly and the exclusive control or arbitrary exploitation of international deep-sea resources by one or two super-Powes on the strength of their advanced technology.

19. The new legal regime of the sea should accord with the interests of the developing countries and the basic interests of the peoples of the world. The super-Powers were trying to exploit certain differences among the developing countries in order to control, dominat and plunder them. All developing countries, although they might differ on specific issues, must unite against hegemonist policies. The fundamental and vital interests of developing countries were closely linked, and unity would bring victory in the protracted and unremitting struggle. China was a developing socialist country belonging to the third world. Its Government would, as always, adhere to its just position of principle, resolutely stand together with the other develop ing countries and all countries that cherished independence and sovereignty and opposed hegemonist policies, and work together with them to establish a fair and reasonable law of the sea that would meet the requirements of the present era and safeguard the sovereignty and national economic interests of all countries.

20. Commenting on the question of representation at the Conference, he said that the representation of the Lon Nol clique, which in no way represented the Cambodian people, was entirely illegal; the Royal Government of National Union of Cambodia under the leadership of Prince Norodom Sihanouk was the sole legal Government representing the Cambodian people.

21. In the same connexion, he noted that there were two administrations in South Viet-Nam, the Provisional Revolutionary Government of the Republic of South Viet-Nam and the Saigon authorities, the former being the authentic representative of the South Viet-Namese people. It was therefore inappropriate and unreasonable that only the Saigon authorities should be represented at the Conference. He could not accept what the representative of the Saigon authorities had said in his statement concerning the Hsisha and Nansha islands which, as the Government of the People's Republic of China had on more than one occasion solemnly declared, had always been an inalienable part of Chinese territory. The Chinese Government would not tolerate any infringement on China's territorial integrity and sovereignty by the Saigon authorities.

22. He expressed support for the position taken by some African and Arab delegations that representatives of national liberation movements and organizations, struggling against imperialism, colonialism and zionism, should be invited to participate in the Conference.

(3 July 1974, 28th Plenary Meeting, 2nd Session)

72. Mr. Ling Ching (China), speaking in excrcise of the right of reply, said that at the previous two meetings one delegation[1] had made unjustified allegations against his country which he could not leave unanswered.

73. It had said that hegemony of the seas did not exist, while in reality it was a fact: it had existed in the past and existed now, threatening the legitimate rights and interests and the security of medium-sized and small States. To deny the existence of such hegemony, it must state the facts.

74. That delegation had also asserted that it was playing a constructive role in the Conference, and slandered those who opposed its hegemonism as spreading "political pollution". If there were people spreading political pollution, those people were none other than that delegaion itself. The delegation which was disrupting the Conference was the same one which had long opposed its convening.

75. The essence of the law of the sea was the struggle to defend the sovereignty, security and national resources of many medium-sized and small countries, and hence a serious political struggle.

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1 See supra General Statement of U.S.S.R delegation

The attempt of the said delegation to forbid the discussion of political questions at the Conference was aimed at preventing such countries from denouncing the crimes originating in the hegemony he had mentioned: crimes of aggression, plundering, threats, and intimidation.

76. If the Conference was to give birth to a just and rational law of the sea, all countries must be treated equally, and no country must be denied the right to speak freely.

77. The delegation he had mentioned had said on the previous day that China was seeking to make itself the leader of the third world. But that label could never be put on China, since China, which was one of the countries of the third world and would support their just demands, had never lorded it over others. His country had never been a super-Power and never would be one. The said delegation had tried to sow the seeds of discord but it would never achieve its design.

2. Settlement of Disputes

(5 April 1976, 58th Plenary Meeting, 4th Session.)

26. Mr. Kozyrev (Union of Soviet Socialist Republics) said that the strengthening of peace and security and the development of international co-operation should serve as the basic guideline in the application of the legal provisions of the new convention as well as in the settlement of related issues. That goal could not be achieved through procedures alone. The new convention had to minimize, even if it could not eliminate, the possibility of friction and disputes between States. Its provisions, especially those on questions of substance, had to be mutually acceptable in order to create the most favourable conditions for the implementation of appropriate procedures for settling disputes.

27. The most effective means of dispute settlement was direct negotiations between the parties concerned. Most important in that connexion were the provisions stipulating that if a dispute arose between States the parties should proceed expeditiously to exchange their views regarding settlement and the provisions regarding consultations and the exchange of information with respect to the adoption by States of certain measures provided for in the convention and affecting other States. In the absence of successful negotiations, provision would have to be made for an appropriate range of dispute settlement procedures and for the right of every State Party to the convention to choose the procedures it found most suitable. The nature of the procedure, however, should be determined by the nature

of the dispute and the convention should clearly stipulate that, unless otherwise agreed by the Parties, a dispute between them could be settled only by a procedure accepted by the Party against which the proceedings had been instituted.

28. It was obvious that the convention should exempt certain categories of disputes from dispute settlement procedures. Such exceptions, however, should not include "disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement under the present Convention." Convention. The value of the procedures of dispute settlement would be considerably diminished if they did not protect the legitimate rights and interests of other States Parties to the convention.

29. His delegation also felt it necessary to point out that disputes relating to the interpretation and application of the convention could by their very nature only be disputes between States and therefore only States could be parties to the dispute. To allow private companies and various intergovernmental organizations to resort to the dispute settlement procedures would be unwarranted both from the standpoint of substance and from the juridical point of view. An abnormal situation would arise if a private company could start a dispute with States by trying to impose upon them an interpretation of the provisions of the convention which was most favourable to the company. The right of private companies to take a sovereign State to court would violate the principle of sovereignty. Private companies should not be given direct access to the dispute settlement procedures. If the State whose nationality the private company possesses were not involved in the dispute, no international dispute should arise under the terms of the convention. With respect to international organizations, the Charter of the United Nations did not authorize the United Nations to participate in disputes with States in matters relating to the interpretation and application of any convention, and it was therefore unreasonable to include in the convention a general rule of law granting such a right to other international organizations.

(6 April 1976, 60th Plenary Meeting, 4th Session.)

26. Mr. Lai Ya-li (China) said that the discussion on the settlement of disputes was particularly important because it involved the sovereignty of all States. Currently the small and medium-sized States were struggling to defend State sovereignty and marine resources against maritime hegemonism. Those States firmly demanded the abolition of the old law of the sea, which served the interests of colonialism, imperialism and maritime hegemonism, and the establishment of a new law of the sea in keeping with current trends and giving expression to their legitimate interests and particularly to the interests of the developing countries. The super-Powers for their

part, were trying by every possible means to weaken and restrict the legitimate rights of other countries and were clinging obstinately to their position of maritime hegemonism. To protect their vested interests they were capable of resorting to dispute settlement procedures designed to weaken the provisions in the new law of the sea which reflected the interests of the third world countries and to restrict the sovereignty and jurisdiction of those countries over the sea areas within their own jurisdiction and their rights and interests in the areas beyond the limits of national jurisdiction.

27. The Chinese Government had consistently held that States should settle their disputes through negotiation and consultation on an equal footing and on the basis of mutual respect for sovereignty and territorial integrity. Of course, States were free to choose other peaceful means to settle their disputes. However, if a sovereign State were asked to accept unconditionally the compulsory jurisdiction of an international judicial organ, that would amount to placing that organ above the sovereign State, which was contrary to the principle of State sovereignty. Moreover, problems within the scope of the State sovereignty and exclusive jurisdiction of a sovereign State should be handled in accordance with its laws and regulations. That was why his delegation considered that the provisions in document A/CONF. 62/WP.9[2] concerning the compulsory jurisdiction of the law of the sea tribunal were inappropriate.

28. Since the question of the settlement of disputes involved the sovereignty of all States, the procedures to be followed must be chosen by States themselves. If most States agreed to draft specific provisions on dispute settlement procedures, those provisions, should not be included in the convention itself but should form a separate protocol so that countries could decide for themselves whether to accept it or not.

(12 April 1976, 65th Plenary Meeting, 4th Session)

42. Mr. Romanov (Union of Soviet Socialist Republics) considered that the proposed procedure in respect of negotiations on the text relating to the settlement of disputes was quite logical; such procedure would provide the opportunity for detailed consideration of the various procedures for settling disputes which might derive from the interpretation and implementation of the convention. His delegation was prepared to study the new version of the single negotiating text to be submitted by the President as soon as it was distributed.

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2 See annex V.

The only question which arose was whether sufficient time would be available at the present session for reconsideration of that issue. For its part, his delegation was prepared to begin such a study forthwith.

43. He emphasized the fact that the ultimate aim of the Conference was to produce a generally acceptable text, which, if necessary, would be a compromise, representing the global solution which had been decided at Caracas, on the basis of the principle that ocean space should be considered as a whole and not as fragments belonging to one or another group of countries. The new single negotiating text on the settlement of disputes would constitute one element of that global solution.

3. Peaceful uses of ocean space: Zones of peace and security.

(23 April 1976, 67th Plenary Meeting, 4th Session.)

30. Mr. Kozyrev (Union of Soviet Socialist Republics) said that the USSR, which was consistently implementing the Soviet programme for peace and international cooperation put forward at the Twenty-Fourth Congress of the Communist Party of the Soviet Union and reaffirmed and further developed at the Twenty-Fifth Congress, could not divorce peace on earth from peace on the seas. The convention which was being elaborated should, as a whole, be a document that would strengthen peace and international security and promote the progress of peoples and international co-operation.

31. In his delegation's view, the solution of the entire range of problems of the law of the sea as a "package" and on the basis of consensus, taking into account the interests of all countries, would create the necessary conditions for peaceful and friendly co-operation among peoples in the use of the resources and spaces of the world ocean. If a law of the sea convention were worked out on such a basis and its provisions were implemented, the problems of the use of the world ocean by mankind would not be a source of friction and conflicts between States.

32. His delegation was convinced that the absolute majority, if not all, of the delegations at the Conference, including the USSR delegation, were guided in their efforts to prepare a new convention by the fundamental principle of the peaceful uses of ocean space.

33. A realistic assessment of the present international situation, characterized by a shift from tension to detente, in other words the lessening of international tension, showed that the Conference could also arrive at a mutually acceptable solution of questions relating to the world ocean régime on the basis of consensus.

34. An inspiring example of how to solve pressing international problems constructively on the basis of consensus was the successful completion of the Conference on Co-operation and Security in Europe, held on the initiative of socialist States and with the support of all the peace-loving forces of the European continent which had long been an arena of conflicts and international tension.

35. The Soviet Union, guided in its foreign policy by the principles of peaceful coexistence, always actively advocated measures aimed at maintaining and strengthening international peace and security He referred, by way of example, to the formulation and signing of the Treaty on the Prohibition of Emplacement on the Sea-bed and Ocean Floor and in the Subsoil Thereof of Nuclear Weapons and other Weapons of Mass Destruction in 1972.

36. The leaders of the Soviet Union had repeatedly expressed their approval of the initiatives also taken by other countries to create zones of peace and security in the world ocean. In November 1973 the Soviet-Indian Declaration had emphasized that "both Parties confirm their readiness to participate with all States concerned on an equal basis in finding a favourable solution to the question of making the Indian Ocean a zone of peace". Only recently, at the Twenty-Fifth Congress of the Communist Party of the Soviet Union, L.I. Brezhnev had said that the Soviet Union had never had, and had no intention now, of building military bases in the Indian Ocean.

37. The General Assembly had in recent years, on the initiative of the USSR, adopted a number of important resolutions on limitations of the arms race, the banning of the development and manufacture of new weapons of mass destruction and the prohibition of interference with the environment for military purposes. The Soviet Union had been guided in all those initiatives by the Peace Programme put forward at the Twenty-Fourth Congress of the Communist Party of the Soviet Union and by the new targets set at the Twenty-Fifth Congress for the further struggle for peace and international co-operation and for the freedom and independence of peoples. It would be of particular importance in that connexion to give effect to the proposal supported by the overwhelming majority of States Members of the United Nations to convene the World Disarmament Conference.

38. It was obvious that the problem of the peaceful uses of ocean space and of establishing zones of peace and security in it could not be dealt with in isolation from the other problems relating to the maintenance of international peace and security, the ending of the arms race and general and complete disarmament. That was why the solution of such complex and important issues relating to the world ocean in the context of strengthening peace on the seas, creating zones of peace and security in them, eliminating naval bases etc,

was beyond the scope of the work facing the Conference on the Law of the Sea. A complete and constructive solution of those issues would be possible only within the framework of the appropriate United Nations bodies or at other international conferences and forums dealing with the problems of disarmament, international security and world peace.

39. The Conference's contribution to the attainment of that noble goal should be the preparation of a mutually acceptable legal régime for the use of the world ocean.

40. The role of the Conference had been convincingly described by the Secretary-General when he had said, at the opening meeting of the Conference, that "a just, viable and lasting agreement on law of the sea issues is of the greatest importance for the maintenance of peace for future generations".

41. His delegation firmly believed that the solution of the law of the sea issues on the basis of consensus and in a "package" would promote the uses of the world ocean for peaceful purposes, the further relaxation of international tension, the prevention of situations of conflict between States and the creation of the necessary conditions for peaceful and friendly co-operation between peoples on the seas. Such a solution of the law of the sea issues would be the Conference's contribution to the common struggle of the peoples to strengthen international peace and security.

(23 April 1976, 67th Plenary Meeting, 4th Session.)

46. Mr. Lai Ya-li (China) said that many small and medium-sized countries were resolutely demanding the replacement of the old maritime order based on colonialism, imperialism and hegemonism by a fair and reasonable new maritime order which would safeguard the sovereignty and security of all countries and protect their national resources from plunder. The high seas, which had become an area of wanton aggression and plunder with the emergence of imperialism, were still an arena for fierce rivalry between the two super-Powers. They were competing with each other in building up huge naval forces and installing naval bases everywhere, each trying to overwhelm the other. They had made a show of force to intimidate and threaten other countries in all parts of the world. The obstacles to the peaceful uses of ocean space came mainly from the two super-Powers.

47. Ambitious Soviet social-imperialism, in particular, had always made its pursuit of maritime hegemonism an important part of its global strategy in its contention with the other super-Power for world hegemony. It had frantically stepped up the expansion of its naval forces, developing nuclear submarines, building offensive ocean-going fleets whose strength had surpassed that of its rival,

and also building huge fishing fleets, merchant fleets and fleets for scientific research and study. It had sought overt or covert military bases and access to port facilities everywhere. It had conducted many major naval manoeuvres aimed at gaining mastery by striking first. It had forcibly occupied other countries' territories, which it refused to return, and turned them into strategic naval strongholds. Its ultimate objective was to gain complete command of the seas with a view to dominating the world.

48. The Soviet Union had done its utmost to advertise its naval might, arguing that the Soviet fleets would navigate wherever the interests of national security so required. The questions which arose were what kind of interests the Soviet fleets were defending thousands of miles away from the Soviet coast, and who was threatening whose security and interests.

49. Reference by Soviet representatives to the need to extend detente to the oceans of the world was sheer deception. Many people still recalled the extensive global naval manoeuvres organized by the Soviet Union early in 1975. His delegation wondered what the Soviet Union understood by "detente", and whether those manoeuvres were for the purpose of extending detente to the oceans of the world. It was in order to conceal its expansionist ambitions and the truth concering its arms expansion and war preparations that the Soviet Union spoke so volubly about "detente" and "disarmament", in a vain attempt to deceive the people of the world.

50. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, said that the representative of China should address himself to the item on the agenda.

51. The PRESIDENT requested the representative of China to confine his remarks to the question of the peaceful uses of ocean space.

52. Mr. LAI Ya-li (China) asserted that all his remarks had been related to the question of the peaceful uses of ocean space. He was fully entitled to express the views of his Government without interruption. The establishment of a new law of the sea was an important part of the establishment of a new international economic order. It was therefore not surprising that the super-Powers should attempt to sabotage efforts to establish a new law of the sea.

53. The Soviet Union was practising power politics with respect to maritime rights. It considered those countries which had declared that their territorial seas extended beyond 12 nautical miles to be "violating international law". It had condemned as extremist the just demands of the third-world countries for maritime rights extending up

to 200 nautical miles, singing the same old tune about "freedom of the high seas". Actually it wanted to dominate the seas all by itself. It had tried hard to dilute the essence of the exclusive economic zone so as to maintain its "rights" to military activities and economic plunder. The "freedom of navigation", "freedom of fishing" and "freedom of scientific research" so loudly advocated by the Soviet Union were its freedom to send fleets speeding across every ocean, to plunder the fishery resources of other countries and conduct espionage activities. Its intention was to deny the many small and medium-sized countries their freedom to defend their sovereignty and security and safeguard their maritime rights and marine resources.

54. The Government and people of China had always firmly supported the struggles of all peoples against super-Power aggression, intimidation, interference and bullying. They firmly supported proposals for the establishment of zones of peace and the demands by many countries for the withdrawal of troops and military bases

55. The Conference had to choose between a fair and reasonable new law of the sea and an old law of the sea which continued to serve the interests of maritime hegemonism. Many small and medium-sized countries had become increasingly aware that in order to ensure that the ocean space was reserved exclusively for peaceful purposes, it was essential to combat resolutely arms expansion, war preparations and maritime hegemonism on the part of the super-Powers. At its current session, and at its previous sessions, the Conference had heard many just and reasonable proposals aimed at combating and resisting such hegemonism and safeguarding the sovereignty and security of the small and medium-sized countries. Those proposals should be explicitly provided for in the Convention.

56. The super-Powers were endeavouring to obstruct and sabotage the struggle for the establishment of a new maritime order. His delegation was confident, however, that the third world and all peoples, steadily strengthening their unity and persisting in the struggle, would eventually frustrate the ambitions of the super-Powers and establish a new maritime order corresponding to the fundamental interests of the people of the world.

57. Mr. Kozyrev (Union of Soviet Socialist Republics) said that his delegation wished to exercise its right of reply in order briefly to refute the allegations made by the representative of China.

58. The President asked the representative of the Soviet Union to note that under rule 27 of the rules of procedure, rights of reply were exercised after the last speaker on the list had spoken.

Reply

(23 April 1976, 67th Plenary Meeting, 4th Session.)

89. Mr. Lai Ya-li (China) said that the represenative of the Soviet Union had not dared to respond to the many facts showing how the Soviet Union had pursued maritime hegemonism, as exposed by the Chinese delegation. Instead, he had made unfounded countercharges, slandering and attacking the Chinese delegation, thus revealing the extreme weakness of those countercharges.

90. The Soviet delegation had spoken of "peace", "detente" and "disarmament" to give the impression that it was concerned about peace on the oceans. If the words of the Soviet delegation were not hypocritical and deceptive, then it would have the courage to undertake the following explicit obligations with respect to maritime rights: not to stage military manoeuvres in the economic zones of other countries or interfere in and disrupt the normal economic life of other countries; to pledge that its warships would not arbitrarily pass through the straits in other countries' territorial seas without authorization from the coastal States; to discontinue its military espionage and spying activities carried out under the name of scientific research in the off-shore seas of other countries; not to carry out military activities and set up military installations in the international sea-bed area and, in particular, agree to the prohibition of nuclear submarine activities therein.

91. The President informed the representative of China that the debate on the item had not been intended to call on certain countries to undertake specific obligations. The debate was on the peaceful uses of ocean space.

92. Mr. Lai Ya-li (China) replied that everything that his delegation had stated related to the item under discussion.

93. The Soviet delegation did not dare to undertake the above-mentioned obligations and that fully revealed the true features of Soviet social-imperialistic, maritime hegemonism. It also revealed that the "peace", "detente" and "disarmament" preached by the Soviet delegation were meant to deceive.

(23 April 1976, 67th Plenary Meeting, 4th Session.)

82. Mr. Kozyrev (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that his delegation rejected the attempts of the Chinese representative to use the Conference in order to pervert the USSR position on the issue under discussion.

83. The intent of the Chinese delegation was to mask its reluctance to co-operate with the world's peace-loving forces in strengthening peace and international security and in disarmament. China rejected all proposals on those problems, because the main direction of its foreign policy contradicted the yearning of the peoples of the world for a relaxation of international tension and for disarmament. The Peking leaders also disliked those proposals because they came from the USSR.

84. The peace-loving peoples of the world, including the people of China, whatever the wall by which they were intended to be isolated, knew well that the peaceful initiatives of the Soviet Union and socialist countries, supported by the world's progressive forces, had served decisively to further the normalization of the international situation with regard to the maintenance and strengthening of peace.

85. The Soviet Union had proposed to convene a world disarmament conference. China was opposed to the convening of such a conference. Yet that proposal was also based on the recommendations of five conferences of non-aligned States, held in Cairo, Belgrade, Georgetown, Lusaka and Algiers, which had unanimously supported the convening of a world disarmament conference and had called for a speedy resolution of the problem.

86. Proclaiming itself as a self-appointed defender of the interests of developing countries and even trying to include itself in that group, the Chinese leadership in fact ignored the vital aspirations of the peoples of the third world and sabotaged proposals aimed at strengthening peace and international security and at solving the problem of disarmament. As had been stressed at the Twenty-Fifth Congress of the Communist Party of the Soviet Union, the policy of the current leaders of China merged directly with the position of the extreme reactionaries all over the world. Of great danger to all peace-loving peoples were the feverish attempts of Peking to frustrate detente, i.e. the relaxation of international tension, to prevent disarmament, to create distrust and hostility among States and to provoke military conflicts, from all of which they hoped to benefit. Such policies of Peking were obviously completely opposed to the interests of all peoples.

4. Organizations of Negotiation

(17 September 1976, 76th Plenary Meeting, 6th Session.)

51. Mr. Kozyrev (Union of Soviet Socialist Republics) thanked the Chairman for his accurate report on the recommendations of the General Committee. Despite the difficulties which had arisen during

the fifth session, positive results had been achieved in the Second and Third Committees and at plenary meetings on part IV of the revised single negotiating text. Although complete agreement had not been reached, delegations had made known their positions and some progress had been achieved on certain issues. It was to be hoped that future negotiations would be based on co-operation and understanding and that unilateral actions, which had caused considerable difficulties at the fifth session, would no longer be considered.

52. It had been suggested that, with respect to First Committee matters, political and ideological considerations should be abandoned and a pragmatic approach should be adopted. However, such an approach would not help to solve the problems. The question of using the resources of the international sea-bed area in the interests of all countries, particularly developing ones, was being considered at an international forum for the first time, and it was clear that a mutually acceptable solution must be based on recognition of the existence of different social, economic and political systems. Accordingly, the convention must guarantee that every country, whether socialist, socialist-oriented or capitalist, would have equal rights with respect to the use of sea-bed resources. His country believed, therefore, that both States and the International Authority should have the right to exploit sea-bed resources, whether independently or in association. However, the access of States to sea-bed resources should be limited and a provision to that effect, aimed at preventing any possible monopolization of those resources, was one of the most important principles in the system of exploitation of sea-bed resources. A system which made it possible to select a contractor from among different legal entities, including States, thereby facilitating discrimination against States, would not be acceptable. The common heritage of mankind could not be sold to the highest bidder, it belonged to the people of each and every country.

53. Most of the proposed solutions relating to First Committee matters had been one-sided, since they were inconsistent with the principle of using sea-bed resources in the interests of all States and would enable imperialist transnational corporations to dominate the sea-bed. The only possible approach to such matters was a multilateral one which recognized that the International Sea-bed Authority and every State had the right to exploit sea-bed resources; that the sea-bed could not be monopolized by one or more States and that the convention should include some system of limiting access to those resources; that the Authority should be provided with the facilities it would need for the exploitation of sea-bed resources and that the Authority should have the right to take whatever measures were needed to protect exporting countries, especially developing countries, against the adverse effects of sea-bed mining. His delegation was convinced that despite the difficulties, it would still be possible

to agree on a "package deal" by consensus. His country and the other socialist countries of Eastern Europe had made many concessions, and hoped that other groups would do the same.

54. With respect to the organization of the next session, he agreed that the initial period should be devoted primarily to First Committee matters, that informal intersessional consultations open to all participants should be held and that the President of the Conference and the Chairmen of the Committees should participate in those consultations. A composite text should be prepared on a collective basis. His delegation would do everything possible to help establish a convention and hoped that other delegations would do likewise.

5. Organization of the work at the next session of the Conference

(17 September 1976, 76th Plenary Meeting, 5th Session.)

59. Mr. Lin Ching (China) said that it was undoubtedly necessary and beneficial to assess appropriately the work of the current session and to analyse where the main problems lay, with a view to future consultations.

60. There existed different appraisals regarding the work of the current session. For instance, one super-Power had stated that the work of the First Committee represented a retrogression from the previous session. The other super-Power had stated that the activities of the Group of 77 had brought the work of the First Committee to a "standstill". His delegation believed that those assertions were all groundless. The revised text of the First Committee had moved backward substantially on certain major issues, as compared with the original Geneva text. The group of 77 had, through repeated negotiations and great efforts, produced important working papers concerning the system of exploiting the international sea-bed area, maintaining the principle of equity that the international sea-bed and the resources therein were the common heritage of mankind. It was precisely that that had made positive contributions to the correct advancement of the Conference, and his delegation firmly supported the Group of 77 showing the spirit of actively taking the initiative and adhering to principles.

61. The developing countries had upheld their unity, adhered to principles and actively conducted negotiations. That was in striking contrast to the practice of the super-Powers, which were obstinately clinging to their unreasonable positions and were saying on thing while doing another. The representative of one super-Power that styled itself "the natural ally of the developing countries" had made a lengthy statement in an attempt to show how sincerely it was ready

for consultations and had appealed for "mutual concessions". Yet, while ostensibly it recognized the international sea-bed as the common heritage of mankind, in reality, like the other super-Power, it advocated a "parallel system of exploitation" in an attempt to partition and plunder the resources of the international seabed. It gave recognition to the 200-mile economic zone in words, yet insisted that the economic zone was a part of the high seas. It opposed the exclusive jurisdiction of coastal States over scientific research activities in the economic zone. It insisted that foreign military vessels need not give prior notification to or obtain authorization from coastal States for passage through the territorial sea and the straits lying within the territorial sea. It ignored the just proposals of the developing countries and refused to make compromises in substance, blaming the developing countries for lack of progress.

62. The basic contradiction of the present work on the law of the sea was that, while the third world countries wanted to safeguard their maritime rights and interests, the one or two super-Powers were not reconciled to the loss of their privileged position of monopolizing the seas. Quite clearly, it was the hegemonist position of the super-Powers that constituted the basic reason why the Conference failed to made due progress. The experience of the current session showed once again that the fundamental interests of the numerous developing countries brooked no violation. Any attempt by the one or two super-Powers to impose their will on others would lead nowhere.

63. With regard to the land-locked and geographically disadvantaged States, especially those that were developing countries, his delegation's consistent position was that their reasonable maritime rights and interests should be duly guaranteed. The Fifth Conference of Heads of State or Government of Non-Aligned Countries held at Colombo in August 1976 had also reaffirmed the need to give particular consideration to the special problems of the least developed, land-locked and island developing countries and other geographically disadvantaged countries. The differences on that problem could be solved through negotiations.

64. His delegation was confident that, so long as the developing countries continued to strengthen their unity, they would be able to advance the development of the Conference in the correct direction, so as to establish a new convention on the law of the sea that was fair and reasonable and genuinely in accord with the fundamental interests of the peoples of all countries. His delegation was ready to continue working towards that goal together with the numerous developing countries and the countries that respected the principle of equity.

6. Organization of Work

(23 May 1977, 77th Plenary Meeting, 6th Session.)

24. Mr. Kozyrev (Union of Soviet Socialist Republics) welcomed the participation in the Conference of the representatives of the heroic people of Viet Nam, a people successfully unified in one independent State. The coming of peace to that country had greatly strengthened its international position. The USSR was convinced that Viet Nam would play a significant part in solving the complex problems facing the Conference.

25. His delegation supported the President's recommendations in document A/CONF.62/BUR/5. In the matter of preparing a composite text, however, the Conference should abide by the decision taken at the 76th plenary meeting; it was absolutely essential to retain the collegiate method, which would provide the surest guarantee of balanced wording on questions on which differences prevailed. Mere consultations with the Chairmen of the Committees were not enough if the composite text was to provide a satisfactory basis for the draft convention and so bring the Conference nearer to consensus.

26. A speedy decision on the organization of work would help to ensure real progress towards solving questions of substance. Meetings of the First Committee and related informal intergroup meetings on the issues causing the greatest difficulties should begin without delay. The multilateral consultations held before the opening of the session had indicated that prospects existed for generally acceptable compromise solutions.

27. The status of the world's oceans needed to be regularized so that the necessary conditions for effective and orderly utilization of the oceans and their resources might be created with a view to the progress and well-being of all mankind. Only the Conference could achieve that objective; there was no rational alternative to an internationally agreed solution. To that end, his delegation would do its utmost to advance the work of the Conference.

(28 June 1977, 78th Plenary Meeting, 6th Session)

12. Mr. Kozyrev (Union of Soviet Socialist Republics) said that the socialist countries were of the unanimous opinion that the period until the end of the sixth session should be utilized as effectively as possible to achieve progress in the preparation of a generally acceptable convention. They supported the President's proposals to the effect that an informal composite text should be prepared during the sixth week and considered at informal plenary meetings during the seventh and eighth weeks, that the text should be informal in character and provide a basis for negotiations, and

that, on the last day of the session, the plenary could decide on the organization of the future work, of the Conference. The socialist countries also agreed that negotiations on the outstanding issues should continue while the composite text was being prepared and that the results of such negotiations should be taken into account in the composite text. They believed that the decision adopted at the President's suggestion at the previous session concerning the procedure for the preparation of the composite text was still valid. His delegation agreed that the composite text should be prepared jointly by the President and the Chairmen of the three Committees under the leadership of the President, and felt that the Chairman of the Drafting Committee and the Rapporteur-General should co-operate in that task. It was important for the success of the current session and of the Conference as a whole that the composite text should include not only the mutually agreed formulas on key issues but also all the formulations resulting from negotiations on outstanding issues which might form the basis for compromise decisions. The composite text would then be a prototype for a draft convention which could subsequently be adopted by the Conference on the basis of consensus.

(28 June 1977, 78th Plenary Meeting, 6th Session.)

13. Mr. Shen Chih-cheng (China) said that his delegation attached great importance to the formulation of an informal composite negotiating text on the basis of the discussions held so far. It also attached importance to the basis on which the composite text would be prepared and to the substantive contents of the text.

14. It was clear that there were two diametrically opposite positions on the kind of convention that was needed. On the one hand, the developing countries upheld the view that the international sea-bed resources were the common heritage of mankind and should be exploited under the full control of the International Sea-bed Authority and that the coastal States should have sovereign rights and jurisdiction over the exclusive economic zone and the resources on the continental shelf. The super-Powers, on the other hand, were still trying to impose the parallel system on the Conference, in an attempt to pillage the international sea-bed resources under a cloak of legality and to enable the old law of the sea which protected their maritime hegemonism to continue in a new form.

15. The formulation of a new convention on the law of the sea was an important element in the struggle to establish the new international economic order to which the developing countries attached great significance. Accordingly, the composite text must be based on the reasonable proposals of the developing countries and reflect the fundamental interests of the people of all countries and it must firmly reject the proposals of the super-Powers. The text should be drafted democratically and serious consideration should be

given to the views of the developing countries. It should not be elaborated in either a casual or impetuous manner. The task would not be easy, for the super-Powers would make every attempt to sabotage the work.

[16. The President reminded the representative of China that only the procedural aspects of the issue were currently under discussion and asked him to confine his remarks to those aspects.]

17. Mr. Shen Chih-cheng (China) said that, while one super-Power was threatening to adopt legislation for the unilateral exploitation of the international sea-bed should the Conference fail to reach agreement at the current session, the other super-Power, although professing a willingness to make concessions to the developing countries, was advertising a new system which was not substantially different from the paralled system advocated by the former. The two super-Powers had made consistent attempts to undermine the unity of the developing countries, thus emphasizing the importance of such unity if a fair and reasonable convention on the law of the sea was to be secured. Although the developing countries included both coastal and land-locked States and although their geographical conditions varied, there was no fundamental conflict of interest among such States. His delegation was convinced that they would seek common ground on major issues while reserving differences on minor ones, and would promote a spirit of mutual understanding and accommodation in order to strengthen their solidarity.

[18. The President again called on the representative of China to refrain from commenting on the substance of the issue.]

19. Mr. Shen Chih-cheng (China) said that, while some progress had been achieved, many obstacles still remained and they would not be overcome without much effort, for the super-Powers would not abandon their position of maritime hegemonism of their own accord. He expressed confidence, however, that the developing countries would achieve their goals since there was no force that could stem the march of history.

II. FIRST COMMITTEE

1. Statements on the international régime and machinery

(17 July 1974, 8th Meeting, 1st Committee, 2nd Session.

6. Mr. Ko Tsai-shuo (China) said that the relevant General Assembly resolutions on the international sea-bed régime must be adhered to. The resources of that area, which were the common property of the people of the whole world, must not be appropriated by any State or person. Equitable sharing by all States in the benefits derived from the exploitation of such sources must be ensured, taking particular account of the needs of the developing countries. The super-Powers must not take advantage of their advanced industrial technology to plunder those resources directly or indirectly. Since the relevant General Assembly resolutions stated that the international sea-bed area should be used for peaceful purposes, military operations, the emplacement of nuclear and other weapons and the activities of nuclear submarines in that area should be forbidden. Scientific research and related activities should be subject to appropriate regulation and should not be used as a cover for military espionage.

7. The international machinery should be endowed with real powers, including that of engaging directly in the exploration and exploitation of the resources of the area. Should the power of exploitation fall into the hands of the super-Powers or of monopolies, the heritage of mankind would remain common in name only. The assembly, in which all contracting parties would be represented, should be entrusted with all major powers, and the council, in which only a minority of States would be represented, should be an executive organ responsible to the assembly. If the powers of the council were inordinately enlarged, the super-Powers would find it easy to manipulate the Authority. His delegation supported the principles of the equality of all nations and of rational geographical representation in the composition of the international machinery and opposed any counter-proposal by the super-Powers.

8. It also supported the developing countries' contention that decisions on matters of substance should be taken by a two-thirds majority of the council members and decisions on matters of procedure by a simple majority and opposed the institution of a disguised veto system on the pretext of consensus.

9. The principle clearly stated in General Assembly resolution 2574 D (XXIV) that, pending the establishment of the international régime, States and persons should refrain from the commercial exploitation of the international area, must be respected.

(17 July 1974, 8th Meeting, 1st Committee, 2nd Session.)

46. Mr. Kachurenko (Ukrainian Soviet Socialist Republic) said that recent years had brought ever wider recognition of the need to utilize the natural resources of the sea-bed in the deepest parts of the oceans for the benefit of all countries. Certain factors would play a vital role in meeting that need, among them mankind's growing demand for mineral raw materials on the one hand, and, on the other, contemporary knowledge concerning the presence of such materials in formerly inaccessible areas and the development of the means of exploiting them. The Committee must constantly bear such factors in mind when working out specific provisions and articles concerning the régime for the international area of the sea-bed.

47. His delegation endorsed the view of those delegations which had declared themselves in favour of the freedom of scientific research on the sea-bed; without the knowledge already obtained from such research, it would be impossible for the Committee to consider the items allocated to it or to examine the question of the establishment of a sea-bed organization. Future scientific research was also of great importance, especially for the rational utilization of the common heritage of mankind. No one would argue that contemporary knowledge concerning the deepest areas of the ocean was comprehensive or sufficient, whether it was knowledge about deposits of natural resources or knowledge about the consequences of the exploitation of such resources and its effects on the marine environment.

48. Clearly, the study of the sea-bed and its resources must be continued and appropriate conditions must be established for its expansion and the elimination of obstacles, including quite unjustified attempts to limit the freedom of scientific research. Such an approach would help to reconcile the various positions reflected in the alternative draft articles prepared in the sea-bed Committee.

49. In a broader sense the study of the sea-bed had a bearing on a number of branches of science which could not be developed without knowledge of the sea-bed, its structure and geomorphology and the geological processes taking place on it. The verification of the theory of continental drift, for example, would be impossible without investigation of the sea-bed, In many cases the sea-bed was the only area where it was possible to solve problems of world significance such as the study of the earth's crust.

2. Economic implications of sea-bed mineral development.

(7 August 1974, 12th Meeting, 1st Committee, 2nd Session.)

34. Mr. Romanov (Union of Soviet Socialist Republics) said : the statement which had been read out by the representative of the International Ocean Institute and distributed to members of the Committee [1] was full of references to matters which had nothing to do with the item under discussion. Moreover, it included a proposal which was completely out of order and contrary to the provisions in the rules of procedure concerning statements by non-governmental organizations. He therefore requested that the references by that representative to matters not relevant to the subject under discussion should be omitted from the record, that her proposal should be rejected and that henceforth all statements by representatives of non-governmental organizations should be submitted in advance to the Chairman, who would decide whether it was in them to be read out.

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1 Mrs. Mann Borgese (International Ocean Institute), speaking at the invitation of the Chairman, said that as a result of current trends in delimiting national jurisdiction it might be anticipated that a substantial part of the manganese nodules of the abyss would either pass under national jurisdiction or could be claimed by coastal States. Consequently, prospective exploiters of manganese nodules could, in many cases, have the choice of exploitation either in the international sea-bed area or in areas under national jurisdiction. Thus, if a licensing or service contract system of exploitation was adopted, the proposed International Sea-Bed Authority would not be able freely to determine royalty provisions nor would it be able to adopt effective arrangements to ensure that mineral output from the sea-bed would not result in prices that were inequitable to land-based producers.

In the view of the International Ocean Institute, the only realistic instrument for putting into practice the concept of the common heritage of mankind was the enterprise system. In existing conditions, however, it seemed unlikely that the enterprise could raise the necessary capital and obtain the necessary technological capacity to compete successfully with industrial consoritia exploiting manganese nodules within the areas under national jurisdiction.

In those circumstances, her organization considered that in the light of technological advances, the most appropriate solution would be the establishment of an international ocean space Authority-a system which would fulfil functions beneficial to all States.

3. International régime for the sea-bed and the ocean floor beyond the limits of national juristition.

(26 March 1975, 19th Meeting, 1st Committee, 3rd Session.)

8. Mr. Igrevsky (Union of Soviet Socialist Republics) introduced the working document on the basic provisions of the rules and conditions governing the evaluation and exploitation of the mineral resources of the sea-bed beyond the limits of the continental shelf-provisions which should form an integral part of the law of the sea convention (A/CONF. 62/C.1/L.12); the document was a preliminary list, and not an exhaustive one, of basic rules for the exploitation and exploration of the sea-bed.

9. His delegation had repeatedly stated that it was essential to include such rules in the text of the convention itself or in an annex to it. Consideration of the rules for the exploration and exploitation of the sea-bed and of the establishment of an international sea-bed organization should form an integral part of the Conference's work. The rules should take account of the rights and interests of all States, in accordance with the concept of the common heritage of mankind. The text submitted therefore provided that all States parties would have the right to conclude contracts for evaluation and exploitation with the organization to be set up and to secure the same number of contracts. The number of contracts to be awarded to a State party should be restricted in order to prevent the development of monopolies. Such a system would mean that sectors of the sea-bed could be reserved for States which did not yet possess the necessary technical equipment to conduct evaluation and exploitation operations. The procedure for awarding contracts allowed for a balance to be maintained within the number of contracts awarded to a State between sectors where the prospects of finding certain useful minerals were very favourable and those where they were less so. If more than one application for contracts related to the same category of resources within a single sector, the council would give preference among competing applications to those from developing countries. As a result of rapid technological progress, some of those countries were already drawing a substantial proportion of their national resources from exploitation of the mineral resources of the continental shelf; and they should soon be in a position to exercise their rights beyond the limits of the shelf. It was therefore essential that they should be enabled to acquire the necessary experience and technical staff: he drew the Committee's attention to article 21 of the document submitted by his delegation, which dealt with participation by experts from developing countries in evaluation and exploitation activities undertaken by a State party or a group of States parties.

10. Every type of prospecting activity involved the expenditure of speculative capital which was amortized only when a deposit was discovered and then exploited. Since prospecting at great depth was very expensive, those who carried it out should be guaranteed participation in exploitation also, for which reason his delegation's document provided for a single evaluation and exploitation contract. Prospecting, whether carried out by States or natural or juridical persons, should not of itself confer any right to secure evaluation and exploitation contracts; otherwise the developing countries would be placed at a disadvantage in relation to countries that had already prospected beyond the continental shelf. Under the proposed system of contracts the interests of all States were protected, because a State engaged in exploitation operations had to pay fees to the international organization, which would redistribute them with particular reference to the developing countries' needs. The Soviet proposal also provided for evaluation and exploitation activities to be carried out by the international organization itself, thus ensuring the participation of all States parties in exploiting marine resources. Article 5 of the proposal provided that, prior to the allocation of sectors to States, the international organization might reserve certain sectors for evaluation and exploitation by itself, delegating the operations, if required, to natural or juridical persons under contracts or joint ventures. The organization would supervise the operations throughout under arrangements that it would be at liberty to establish. Article 5 did not stipulate what the ratio between the area of the sectors reserved for the international organization and the sectors open for evaluation and exploitation by States parties should be. That would have to be the subject of negotiations.

11. Lastly, he stressed the preliminary nature of the draft articles, and said that his delegation reserved the right to amplify, clarify or amend them.

(28 April 1975, 12th Meeting, 1st Committe, 3rd Session.)

25. Mr. Tien Chin (China) said that he agreed with representatives of developing countries that the international sea-bed machinery should be an organization jointly administered by all sovereign States, big and small, on a basis of equality. It should not fall under the control of and be monopolized by the super-Powers or be used by them to plunder the common heritage of mankind, but should work for the benefit of all peoples. The organization should have broad powers, including the right to direct exploration and exploitation of sea-bed resources, and should regulate all activities in the international area, such as scientific research, production, processing and marketing. The super-Powers must not be allowed to reduce the machinery to a hollow administrative framework devoid of real power.

26. The machinery should have an assembly a council and an enterprise. The assembly, the supreme organ, should be composed of all States and should formulate policy on all important matters and give instructions to the council and other subsidiary organs. The council, as an executive organ, should be responsible to the assembly and operate according to the guidelines laid down by it. The enterprise would be subordinate to the assembly and the council, and would be responsible for all operations related to exploration, exploitation and scientific research.

27. The composition of the assembly and the council should be consistent with the principles of equality among States and of rational geographical representation. Developing countries, as the majority, should have greater weight in the council. The council and other subsidiary organs should not be subjected to any form of control or manipulation by the super-Powers. In the assembly and the council, procedural matters should be decided by a simple majority and matters of substance by a two-thirds majority. His delegation was opposed, as were many developing countries, to the super-Powers introducing a disguised veto system with the aim of appropriating the international sea-bed.

28. The machinery and the régime for the exploration of the international sea-bed were closely interrelated. The international machinery should be governed by the international régime, and the régime should be enforced by the machinery. The régime would have to embody the common heritage concept and be in consonance with the demands of all countries. The developing countries were demanding machinery which would ensure that such a régime was implemented, but the super-Powers were working for a régime that would enable them to appropriate the international sea-bed and were therefore trying to weaken the machinery. Two conflicting views had existed about the machinery and régime for some years, and recent discussions in the First Committee and in its Working Group on the subject had shown that the super-Powers were maintaining their unreasonable demands on both questions. Until those demands were abandoned no real progress was possible.

29. In conclusion, he said that the proposed single text on the machinery for the exploitation of the international sea-bed should reflect the demands of the majority of States and should serve the interests of all peoples.

4-1) Organization of Work

(4 August 1926, 25th Meeting, 1st Committee, 5th Session)

41. Mr. Romanov (Union of Soviet Socialist Republics) agreed that the Committee had reached a new and critical stage in its work. His delegation wished to express its gratitude to the Chairman for performing the very important and difficult task of preparing the revised text, in which he had sought to reconcile opposing views. While his delegation did not agree with all the draft provisions of that text, it could form a sound basis for further progress, given the requisite goodwill.

42. His delegation wished to submit the following tentative list of topics: first, the statute of the Enterprise; secondly, the statute of the sea-bed dispute settlement system; thirdly, the specia appendix on financial arrangements, in regard to which two sets of proposals, deseribed as "Approach A" and "Approach B", had been presented by the Chairman; fourthly, outstanding issues concerning the powers and functions of the Authority in regard to regulation of activities in the area; fifthly, outstanding issues concerning the basic conditions of prospection, exploration and exploitation; sixthly, the organs of the Authority and their respective powers and functions; and, seventhly, finance. Topics could be added to or deleted from that list, and could be grouped under main headings. Furthemore, it was not intended that the list should prejudge the order of priority of the issues.

43. In contrast, the Committee would be taking a step backward if it confined itself to general formulations, as had been suggested by some delegations. The original list of items assigned to the First Committee, which had contained only two main issues, was no longer appropriate. In his delegation's view, the revised single negotiating text would form an appropriate basis for the Committee's work.

44. While his delegation felt that it would be better to set up two or three working groups, as was current practice at international conferences, it would not object if only a single group was set up, in order to enable smaller delegations to participate in its work.

45. He appealed to delegations to try to overcome their long-standing dislike of smaller groups. After all, they should accustom themselves to the idea that the various subsidiary organs of the Authority would be of limited membership.

46. While he did not oppose formal meetings as such, he felt

that they might merely result in rigid positions being placed on record. There was need for a more flexible formula. For example, it might be possible for records to be prepared for records to be prepared for informal meetings. He hoped that delegations would not adopt an attitude of confrontation. He recalled the view expressed by his delegation at the 71st plenary meeting pointing out that concrete results could be achieved if all delegations showed goodwill, realism and readiness to seek mutually agreeable solutions; and emphasizing that negotiations between groups were of special importance, that no group could of its own accord work out mutually acceptable solutions and that nor could such solutions be reached in confrontations of one group with another.

49. Mr. Ouyang Chu-ping (China) said that his delegation was ready to exert a positive effort in the struggle to achieve a convention which would meet the interests of all. It was necessary to proceed from the principle that all countries were equal. There should be continuous, full and democratic consultations on all issues with the participation of all countries. Negotiations should therefore proceed only in the Committee. His delegation supported the views of the Group of 77 with regard to the establishment of a single open-ended working group. It was inadmissible for the super-Powers to impose their unreasonable views on the majority consisting of over 100 States.

50. The question of the organization of work and the determination of key issues for discussion on a priority basis should be thoroughly considered by the full Committee. His delegation was in agreement with those of Algeria and other developing countries that the Committee should first discuss issues of principle, such as the status of the area, the organs of the Authority and the system of exploration and exploitation. It would be inappropriate to take up other matters first, such as financial issues. The final agreed text should be faithful to the negotiations and should reflect the views of the majority, especially the developing countries.

(27 August 1976, 30th Meeting, 1st Committee, 5th Session)

25. Mr. Kazmin (Union of Soviet Socialist Republics) said that he shared the concern of the Chairman regarding the need to accelerate negotiations. At the 24th meeting of the General Committee his delegation, speaking on behalf of the Eastern European countries, had stated that those countries were prepared to promote constructive negotiations with other groups and to start at once. It had also set forth the major provisions which might form a basis for an agreement, namely, the right of the Authority to exploit the resources of the international sea-bed area; the right of States to conduct such activities; the right of the Authority to take necessary measures to

prevent the adverse effects of mining in the sea-bed on the economies of exporting-countries, particularly developing countries. States parties should not be placed on the same footing as private companies. Those were the basic provisions of "package deal" which could form the basis for a compromise.

26. He did not wish to list all the concessions his delegation had made, but would point out that it had conceded at the last session the measures contained in article 9. His delegation welcomed the spirit of co-operation evidenced in the discussion of the system of exploitation and in the workshop, and the willingness of the Group of 77 to make a proposal designed to facilitate a compromise solution; unfortunately that proposal did not constitute a basis for a compromise acceptable to all, since it did not provide for the right of States to participate in exploitation activities. In connexion with statements made on proposals for State participation in activities in the area, he pointed out that his delegation had made its own proposal which would secure to all parties the right to participate in the activities, irrespective of their geographical location, stage of development or social system.

4-2) Weekly report by the Co-chairmen on the activities of the workshop

(30 August 1976, 31st Meeting, 1st Committee, 5th Session.)

4. Mr. KAZMIN (Union of Soviet Socialist Republics), drawing attention to the reference in paragraph 2 of the report[2] to joint sovereignty over the area, said that his delegation had always felt that the Authority should be concerned only with promoting and regulating the exploitation of the common heritage. The fact that the resources of the area were the common heritage of mankind did not mean that the international community should exercise sovereignty over it. Under article 4, paragraph 1, of part I of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1), no State could exercise sovereignty over the area; neither could the international community acting through the Authority exercise such sovereignty.

2 DOCUMENT A/CONE.62/C.I/WR.3*
Weekly report by the Co-Chairmen on the activities of the workshop

At these meetings several delegations stressed the fundamental character of the international area as the common heritage of mankind, and the commitment of all States to seek a practical realization of that concept, which in the first place requires that the international community, through the Authority, exercise joint sovereignty over the area, and not alienate any part of it to States

* Incorporating document A/CONF.62/C.i/WR.31Corr.1 of 30 August 1976

(14 September 1976, 36th Meeting, 1st Committee, 5th Session)

1. Mrs. Ho Li-liang (China) said that, as a result of the tremendous effort exerted by most of the participating delegations, a great deal of progress had been made. The Group of 77 in particular, and the developing countries in general, had adhered to principle and had provided the momentum for the advance of the First Committee's work.

2. There had, however, been obstacles created by one or two super-Powers, whose positions were unjustified and unacceptable. Consequently, in order to obtain positive results on the question of the regime of the international sea-bed area, it was essential to observe the fundamental principle that the interests of the developing countries, including the land-locked and geographically disadvantaged countries, must be taken into account. The principle that the international sea-bed area and its resources were the common heritage of mankind must be adhered to and put into practice. In other words, the area should not be divided, and no country or individual could claim sovereignty over the area and the resources therein. Activities in the area should be conducted under the leadership and control of the International Sea-bed Authority, which would exercise all rights on behalf of the whole of mankind.

3. In that connexion, her delegation deemed it necessary to stipulate that, while all activities within the area might be conducted through modalities deemed appropriate by the Authority, the latter's decision-making power and its right to effective and over-all control over all activities should be maintained. The super-Powers' proposition for a parallel system of exploitation and their unjustified demand for automaticity of entry into contracts with States parties or private companies must be rejected.

4. The experience gained at the current session testified to the fact that the premature consideration of specific of technical questions was not conducive to progress. For that reason, at the

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parties or other entities. Furthermore, the Enterprise, as the operating arm of the Authority, was intended to work on behalf of all States. Priority should therefore be given to consideration of ways and means of enabling the Enterprise to commence productive operations as soon as possible. It was also suggested that an acceptable compromise would seem to be one which established the over-all and effective control of the Authority over all activities

next session important questions of principle should be allotted more time and considered on a priority basis. In addition, all representatives should have equal rights to participate in negotiations and discussions.

(14 September 1976, 36th Meeting, 1st Committee, 5th Session)

12. Mr. Yarmolouk (Union of Soviet Socialist Republics) thanked the Co-Chairmen of the Committee for their final report on the activities of the workshop. He was obliged to note, however, that the addendum to the report contained statements of a subjective nature which his delegation would have difficulty in accepting.

13. He explained that in submitting workshop paper No. 2, his delegation had had in mind the need to find a compromise formula acceptable to all. In that spirit it had supported the concept of the common heritage of mankind and the establishment of the Authority, had recognized the need to protect exporting developing countries from the adverse economic effects of activities in the area and had also accepted other political positions taken by the developing countries. At the same time, in that paper, it had accommodated the interests of the capitalist countries in accepting the possibility that natural or juridical persons might participate as contractors, as well as the idea of the creation of a tribunal and a technical commission and other positions adopted by that group of countries.

14. The Soviet delegation had therefore naturally hoped for an equally understanding attitude on the part of other countries, and groups of countries especially, towards the concern of the socialist countries to ensure that the right of States to explore and exploit the resources of the sea-bed under the supervision of the Authority was guaranteed.

15. He pointed out that such assured access would enable the social and economic structure of the socialist States to be used for the exploitation of the resources which constituted the common heritage of mankind. At the same time, in his opinion, the arrangement would safeguard the interests of the developing countries and the industrialized countries, first through the direct participation of the Authority, and, secondly, through the conclusion of contracts with natural or juridical persons.

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in the area, while adoping decision-making procedure in the organs of the Authority which would ensure that the essential interests of all, including those of the minority, would be adequately safeguarded.

16. On account of its social and economic structure the USSR could not agree that the Authority should be granted the exclusive right to exploit the resources of the sea-bed. Indeed, to give the Authority the power to select the contractor from among different entities was tantamount to giving it the power to choose between different economic and social systems and, worse still, completely disregard any of those systems.

17. He observed that, for the first time in history, the international community was required to take a decision on the exploration and exploitation of the resources of the sea-bed as the common heritage of mankind. That meant that any decision must have a sound political basis. In that connexion he pointed out that, at the present time, socialism was an important factor in the balance of power in the world. Furthermore, the organizational structure of many States not belonging to the socialist group of States included some of the main elements of the socio-economic structure of the socialist States, such as centralized ownership of the means of production and centralized economic planning. For example, in various developing countries there were primary producers' associations which functioned as State co-operatives. That was no mere coincidence but, in his opinion, represented a prevailing international trend.

18. In those circumstances his delegation reaffirmed its basic position that the convention should guarantee equal rights regarding the exploration and exploitation of the common heritage of mankind for all social and economic systems. Apart from the political considerations he had mentioned, assured access was essential from the economic point of view, since it should be borne in mind that capital investment for the exploitation of marine resources entailed a risk and that when that risk was assumed by an enterprise, the enterprise alone was responsible to its shareholders. On the other hand a socialist country, under its constitutional provisions, could not assume a risk in making an investment since it constituted a State asset, nor could it enter into competition with other entities. Besides, it was inconceivable that access to the common heritage of mankind should be granted to the highest bidder.

III. SECOND COMMITTEE

1. Territorial Sea

(16 July 1974, 4th Meeting, 2nd Committee, 2nd Session.)

15. Mr. Movchan (Union of Soviet Socialist Republics)

16. Three general trends seemed to emerging from the deliberations of the Conference on the question of the territorial sea; first, a belt of territorial waters called the territorial sea should exist; secondly, the breadth of that territorial sea should not exceed 12 nautical miles; thirdly, the territorial sea and its resources should be under the sovereignty of the coastal State.

17. He reminded the Committee that only 30 working days remained for consideration of the issues referred to the Committee and that it should try to speed up its work.

18. That would enable the Second Committee to deal with the régime of transit. The proposals made by the sea-bed Committee, functioning as the preparatory committee for the Conference (A/9021 and Corr.1 and 3, vol. VI), were based on a complete examination of the proposals submitted up to then, particularly the one submitted by Fiji (ibid., vol. III, sect.31). All the proposals assumed that the traditional régime of innocent passage was applicable in the territorial sea; his delegation supported that view.

19. With a view to ensuring a rational reconciliation of all the interests involved and to avoid the possibility of different interpretations of the régime of innocent passage, the draft articles should clearly define the rights and obligations of coastal and non-coastal States, particularly in respect of innocent passage; that would certainly be a contribution to the development of international law. He hoped that the Second Committee would begin to deal as soon as possible with important matters such as innocent passage, guarantees for the rights of coastal States and the definition of their corresponding obligations, and the delimitation of the territorial sea, for there was enough documentation available to deal with those questions.

(17 July 1974, 6th Meeting, 2nd Committee, 2nd Session.)

26. Mr. Sapozhnikov (Ukrainian Soviet Socialist Republic) said that the most complicated questions of the law of the sea were perhaps those connected with the definition of the outer limits of the territorial sea, the legal régime for straits used for international navigation, and the economic zone.

27. With regard to territorial waters, a very sound basis for an acceptable solution was to be found in the many existing texts, which were not only part of customary international law but had also

been incorporated in the Geneva Convention on the Territorial Sea and the Contiguous Zone. That Convention constituted the legal order applicable in the matter, although its rules should be brought up to date and the gap due to the failure to find a solution to the problem of the outer limit of territorial waters must be filled.

28. He noted that various formulations concerning the territorial sea had been put forward to his mind, there was no real difference of opinion, at least with regard to a basic principle, namely, that the territorial sea was subject to the sovereignty of the coastal State, a sovereignty which also extended to the sea-bed and its subsoil, including the resources situated therein. However, some delegations had put forward new ideas and were using a new terminology; for example, the theory of the jurisdiction of the coastal State over the maritime space. His delegation thought that the concept of sovereignty recognized in international law should not be replaced by other vague concepts such as jurisdiction or competence and that, with a view to bringing its work to a happy conclusion, the Conference should confine itself to the terminology used in the list of items prepared by the sea-bed Committee (see A/CONF.62/29)[1].

29. With regard to the innocent passage of foreign vessels through territorial waters, his delegation thought that the provisions of the Geneva Convention were fully in force, but that the concept of innocent passage must be defined more precisely; in particular, acts which would be incompatible with it must be specified. It was likewise necessary to clarify the question of conformity with the laws and regulations established by the coastal State with regard to innocent passage.

30. The overwhelming majority of delegations which had spoken in the debate had declared themselves in favour of the 12-mile limit for territorial waters. The economic interests of the coastal States would be covered by the concept of the economic zone, which could extend up to 200 miles; however, the interests of international navigation with regard to passage through straits connecting parts of the high seas must not be forgotton. In conclusion, his delegation stressed that the important thing was to agree on solutions which were generally acceptable.

(2 May 1975, 48th Meeting, 2nd Committee, 3rd Session.)

29. Mr. Ko Tsai-shuo (China)

30. The Chinese Government and people had always firmly

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1 see annex. I.

supported the struggle of the third world countries to safeguard their rights in a 200-mile maritime zone for the purpose of preserving national resources, developing the national economy and defending State sovereignty. That just struggle against maritime hegemony, begun by Latin America, had gained the support of many small and medium-sized countries and had become the essence of the new law of the sea which was being formulated by the Conference. The new draft article included some important principles that should be embodied in the new law of the sea.

31. His delegation had always held that a coastal State was entitled, within reason, to define the breadth and limits of its territorial sea according to its geographical features and its economic development and national security needs, with due regard to the legitimate interests of neighbouring States and to the convenience of international navigation. A reasonable maximum breadth, with general international applicability, should be determined by the countries of the world through consultations on the basis of equality. The spirit of the relevant provisions of the Ecuadorian proposal was identical with that position.

32. The majority of developing and other countries favoured an exclusive economic zone not exceeding 200 miles and measured from the baseline of the territorial sea, to be delimited by each country in accordance with its legitimate needs and for the purpose of defending its national sovereignty, independence and resources. Some other developing countries favoured, for the same purposes, the establishment of a 200-mile territorial sea with different regulations for individual sectors of it. The proposals stemmed, in each case, from the same position, namely, the need to safeguard State sovereignty, oppose aggression, expansion and plunder by the hegemonic Powers, and defend maritime rights within a 200-mile zone. The differences could certainly be resolved through consultations.

33. A serious question arose, however, when the super-Powers tried to impose a strict limitation on the breadth of the territorial sea. To them, the narrower the territorial sea and the wider the so-called high seas, the better, so that they could do as they pleased in the open sea. They had not only continued by all possible means to negate the essence of the exclusive zone, but had also sought to separate from the territorial sea straits lying within it which were used for international navigation, and to turn them into part of the high seas. The developing and other small and medium-sized countries would have to intensify their unity and persist in their just struggle if they wanted a new law of the sea that conformed to the needs of the times.

34. The super-Powers were still claiming that there could be

no agreement so long as the developing and other small and medium-sized countries refused to abandon their maritime rights within a 200-mile maritime zone. Owing to their truculent attitude, the Conference had failed to achieve the expected progress. It was to be hoped that the situation would be rectified in the near future.

2. Straits used for international navigation

(22 July 1974, 12th Meeting, 2nd Committee, 2nd Session.)

1. Mr. Kolosovsky (Union of Soviet Socialist Republics), referring to the draft articles on straits used for international navigation (A/CONF.62/C.2/L.11)[2], of which his delegation was a sponsor, underlined the importance of the principle contained in article 1, which provided that all ships in transit would enjoy equal freedom of navigation for the purpose of transit passage between straits used for international navigation between two parts of the high seas.

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2 Document A/Conf.62/C.2/L.11* Bulgaria, Czechoslovakia, German Democratic Republic, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: draft articles on straits used for international navigation

Article 1

1. In straits used for international navigation between one part of the high seas and another part of the high seas, all ships in transit shall enjoy equally the freedom of navigation for the purpose of transit passage through such straits.

In the case of narrow straits or straits where such provision is necessary to ensure the safety of navigation, coastal States may designate corridors suitable for transit by all ships through such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors shall include such channels. In the case of any change of such corridors, the coastal State shall give notification of this to all other States in advance.

2. The freedom of navigation provided for in this article for the purpose of transit passage through straits shall be exercised in accordance with the following rules:

(a) Ships in transit through the straits shall not cause any threat to the security of the coastal States of the straits, or to their territorial inviolability or political independence.

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* Incorporating document A/Conf.62/C.2/L.11/Corr.3 of 26 August 1974.

Warships in transit through such straits shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, launch or land their aircraft, undertake hydrographical work or engage in other similar acts unrelated to the transit. In the event of any accidents, unforeseen stops in the straits or any acts rendered necessary by force majeure, all ships shall inform the coastal States of the straits;

(b) Ships in transit through the straits shall strictly comply with the international rules concerning the prevention of collisions between ships or other accidents.

In all straits where there is heavy traffic, the coastal State may, on the basis of recommendations by the Inter-Governmental Maritime Consultative Organization, designate a two-way traffic separation governing passage, with a clearly indicated dividing line. All ships shall observe the established order of traffic and the dividing line. They shall also avoid making unnecessary manoeuvres;

(c) Ships in transit through the straits, shall take all precautionary measures to avoid causing pollution of the waters and coasts of the straits, or any other kind of damage to the coastal States of the straits. Supertankers in transit through the straits shall take special precautionary measures to ensure the safety of navigation and to avoid causing pollution;

(d) Liability for any damage which may be caused to the coastal States of the straits, their citizens or juridical persons by the ship in transit, shall rest with the owner of the ship or other person liable for the damage, and in the event that such compensation is not paid by them for such damage, with the flag-State of the ship;

(e) No State shall be entitled to interrupt or suspend the transit of ships through the straits, or engage therein in any acts which interfere with the transit of ships, or require ships in transit to stop or communicate information of any kind.

(f) The coastal State shall not place in the straits any installations which could interfere with or hinder the transit of ships.

3. The provisions of this article:

(a) shall apply to straits lying within the territorial sea of one or more coastal States;

(b) shall not affect the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits;

(c) shall not affect the legal regime of straits through which transit is regulated by international agreements specifically relating to such straits.

Article 2

In the case of straits leading from the high seas to the territorial sea of one or more foreign States and used for international

navigation, the principle of innocent passage for all ships shall apply and this passage shall not be suspended.

Article 3

1. In the case of straits over which the air space is traditionally used for transit flights by foreign aircraft between one part of the high seas and another part of the high seas, all aircraft shall enjoy equally freedom of transit overflight over such straits. Coastal States may designate special air corridors suitable for overflight by aircraft, and special altitudes for aircraft flying in different directions, and may establish particulars for radio communication with them.

2. The freedom of transit overflight by aircraft over the straits, as provided for in this article, shall be exercised in accordance with the following rules:

(a) Overflying aircraft shall take the necessary steps to keep within the boundaries of the corridors and at the altitude designated by the coastal States for flights over the straits, and to avoid overflying the land territory of a coastal State, unless such overflight is provided for by the delimitation of the corridor designated by the coastal State;

(b) Overflying aircraft shall not cause any threat to the security of the coastal States, their territorial inviolability or political independence; in particular military aircraft shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, take acrial photographs, circle or dive down towards ships, take on fuel or engage in other similar acts unrelated to overflight;

(c) Liability for any damage which may be caused to the coastal States of the straits or their citizens or juridical persons by the aircraft overflying the straits shall rest with the owner of the aircraft or other person liable for the damage and, in the event that compensation is not paid by them for such damage, with the State in which the aircraft is registered;

(d) No State shall be entitled to interrupt or suspend the transit overflight of aircraft, in accordance with this article, in the air space over the straits.

3. The provisions of this article;

(a) shall apply to transit flights by aircraft over straits lying within the territorial sea of one or more coastal States;

(b) shall not affect the legal régime of straits over which overflight is regulated by international agreements specifically relating to such straits.

That principle was essential for maintaining the benefits derived from the tremendous development of international trade in recent years. That trade, in which the developing countries had an increasing share, was carried on more and more through straits used for international navigation. The adoption of the principle of innocent passage with regard to those straits would entail the risk of hampering international trade, to the serious detriment of certain countries and the international community as a whole. In particular, it would be prejudicial to the land-locked countries, since the right of access to the high seas would be practically worthless without the freedom to navigate through straits. The Soviet Union attached special importance to that freedom, since its only access to the Atlantic and the Far East was through strait, and its coastal shipping linking the far-flung points of its extensive territory passed through a number of straits.

2. The USSR recognized the need to protect the security of coastal States bordering on straits used for international navigation between one part of the high sea and another, but it also believed that the security and other interests of countries that used those straits, which comprised the majority, should also be taken into account. The security of the USSR depended upon communications by sea and through straits. Consequently, his delegation could not agree that matters relating to navigation through straits used for international navigation admitted unilateral solutions. Attempts to modify the traditional régime or to limit transit through those straits were against the interests of the international community.

3. Draft article 2 referred to straits which connected the high seas with the territorial sea of one or more foreign States and which were used for international navigation. The principle of innocent passage applied to those straits.

4. Article 3 established the equal freedom of overflight for those straits whose air space had been traditionally used by foreign aircraft for flying from one part of the high seas to another.

5. In preparing articles 1 and 3, special attention had been paid to the interests of the coastal State. Ships using the straits were placed under the obligation not to cause any threat to the security of coastal States, various acts were prohibited, strict compliance with international rules was required, and liability for damage caused to the coastal State was imposed upon the owner of the ship or aircraft or the person causing the damage, or the flag State or State of registry.

6. The draft articles demonstrated the willingness of their sponsors to work on the basis of co-operation and the conciliation

of the diverse interests. He expressed his conviction that it would be possible to reach agreement on such a basis.

(23 July 1974, 13th Meeting, 2nd Committee, 2nd Session.)

44. Mr. Ling Ching (China), commenting on the proposals of Oman (A/Conf.62/C.2/L.16)[3] and the Soviet Union (A/Conf.62/C.2/L.11)[4], said that the legal status of the territorial sea differed from that of the high seas. The territorial sea was undeniably an inseparable part of the territory of the coastal State, which exercised full sovereignty over it. A strait lying within the limits of the territorial sea could hardly change its status and become part of the high seas simply because it was normally used for international navigation. It stood to reason that the strait State exercised sovereignty and jurisdiction over such a strait, and had the right to make all the necessary laws and regulations governing it. The very title of the draft articles submitted by Oman, "Navigation through the territorial sea, including straits used for international navigation", showed that such straits remained part of the territorial sea of the coastal State and retained their legal status as such. Moreover, the Oman proposal explicitly provided for a number of specific rights of the coastal State in its regulation of such a strait. The Soviet proposal, however, while placing restrictions on the sovereignty and rights of the coastal State, demanded the right of equal freedom of navigation for all ships, including warships. That, in essence, was a denial of the status of such straits as territorial sea and of the coastal State's sovereignty and jurisdiction over them. Such contempt for the sovereignty of the strait State was unacceptable to his delegation.

45. With respect to the régime of innocent passage, his delegation believed that while the sovereignty of the strait State must be fully respected, the needs of international navigation must be taken into account and all necessary measures adopted to ensure unimpeded international trade. That was a very important point, on which many countries had understandably expressed concern. In principle innocent passage meant passage granted to foreign vessels provided that they did not prejudice the peace, good order and security of the coastal State and that they observed the relevant laws and regulations of that State. The draft articles submitted by Oman not only safeguarded the sovereign security and interests of the coastal State but also took into account the convenience of international navigation. They set forth a number of reasonable objective criteria permitting unimpeded passage for foreign merchant vessels, and

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3 see annex II

4 see supra.

providing ample guarantees to such vessels engaging in normal international transport. His delegation believed that those proposals could be taken as the basis for the Committee's discussion.

46. The passage of foreign military vessels was, however, an entirely different matter, and must be clearly distinguished from that of foreign merchant vessels, as had rightly been pointed out by the representatives of Sri Lanka and the United Republic of Tanzania at the 11th and 12th meetings respectively. The super-Powers had always tried to obliterate that distinction under the smoke-screen of "all ships", and had adopted pretexts of all kinds in an attempt to impose free passage through straits by warships.

47. One super-Power had asserted that its insistence on freedom of navigation through straits was aimed at developing international trade. It was the legitimate desire of the peoples of the world to develop such trade; but that had nothing to do with warships and nuclear submarines. Moreover, the free passage of such vessels through straits in itself posed a threat to the strait State or to others. The Soviet representative at the preceding meeting had referred to the increase in the volume of international trade. That increase could hardly have been brought about by the free passage of warships and nuclear submarines through straits.

48. That super-Power was also pedding its claim for free passage of warships through straits under the label of safeguarding collective security. But it had substantially increased its fleet in the Mediterranean and in the Indian Ocean, thus directly threatening the security of the countries in those regions, infringing their sovereignty and interfering in their internal affairs. That action could in no way be described as a measure of collective security; on the contrary it had greatly aggravated insecurity in the world.

49. That super-Power was also flaunting the ideas of peace and disarmament to cover up the expansion of its naval force. Facts showed that the very Power that had been talking glibly about disarmament had in reality greatly expanded its naval force and strengthened its strategic position in the world. One of its admirals had in fact confessed that his country's navy had become a diplomatic means of intimidation and containment.

50. Thus, the ideas of "all ships" and "free passage" as advocated by the super-Powers were designed to enable their warships and nuclear submarines to cross the oceans of the world in implementation of their expansionist policies and their strategy of world hegemony. If that design were carried out, not only would the sovereignty of the straits States be infringed, but the peace and security of the world as a whole would be threatened. His country

could not accept that approach. The draft articles submitted by Oman provided that the coastal State might require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State. His delegation considered that requirement to be the undeniable right of a sovereign State and firmly supported its inclusion in the convention.

51. The super-Powers had advocated free passage through straits for all ships, including warships, as a precondition for a package settlement of various issues relating to the law of the sea. His delegation believed that, since there were certain interrelationships between the various aspects of that law, due consideration should be given, in the course of dealing with a certain item, to other related items. However, that should never be done at the expense of the sovereignty of the States concerned and the interest of international pea peace and security. Any attempt to exchange recognition of the legitimate demands of the developing countries for free passage through straits by military vessels would not be tolerated.

(23 July 1974, 14th Meeting, 2nd Committee, 2nd Session.)

77. Mr. Sapozhnikov (Ukrainian Soviet Socialist Republic) said that his country had joined in sponsoring the draft articles in document A/Conf.62/C.2/L.11[5] because it attached great importance to the problem of straits used for international navigation. His delegation had already explained its position in that respect during the preparatory work of the sea-bed Committee.

78. Some straits were the shortest and most convenient route between seas and oceans and were the only way for States to communicate, co-operate in different spheres and develop economic, commercial and other relations. It was therefore wrong to say that the maintenance of free transit through straits used for international navigation was of interest only to certain States, even though his delegation was fully aware that all countries did not use the ocean space and straits to the same extent at the present time.

79. When establishing principles for international navigation, it was important to remember that they should be valid for at least a decade; it was therefore necessary to take future prospects into account, since international straits were becoming increasingly important for the development of the international navigation of all countries and for the encouragement of international relations.

80. Although some countries had access to the sea without

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5 see supra

passing through any strait, many other countries, such as the Mediterranean and the Black Sea countries, depended on such passage to gain access to the sea.

81. His country attached particular importance to the articles contained in document A/Conf.62/C.2/L.11, especially article 1, and insisted that freedom of navigation and overflight in the air space traditionally used by foreign aircraft for transit between one part of the high seas and another part of the high seas must be recognized.

82. The Ukrainian SSR was fully aware that it was equally important to ensure the legitimate interests of the coastal States concerned. The draft articles included detailed provisions in that respect and could constitute a good basis for the future convention, taking account of the interests of all States.

83. The concept of innocent passage could not be the basis for a satisfactory arrangement. That concept could not be applied to straits which formed part of the high seas. Ships passed from one part of the high sea to another through those waterways, which were often their only means of access to the ocean; navigation in the straits could therefore not be subject to unilateral rulings by coastal States.

84. Coastal States must, of course, have some control over navigation through the straits, but such control should be compatible with the interests of international navigation. To grant coastal States absolute power of control did not safeguard equality and justice, since such a step could lead to discrimination against States with which the coastal States did not maintain good relations.

85. Those advocating the principle of control by the coastal State based their opinion on the increasing threat represented by the strategic interests of the navies of the super-Powers. It should however, be clearly stated that the coastal State's control over the straits would not prevent an increase in the number of warships, since most countries possessing such fleets did not have to pass through straits to reach the oceans. That problem could only be solved by adopting the proposal of the Union of Soviet Socialist Republics concerning general and complete disarmament. The régime for the territorial sea could not serve as a basis for that for straits.

86. With regard to the statement made by the representative of China at the preceding meeting, that country was continually holding up the work of the Conference by its insistence on making factious statements. For instance, it had referred to the activities of warships of other countries as if it itself possessed none. It might be asked therefore what China's position was on disarmament. The truth

was that when the Soviet Union, supported by the majority of developing countries, had proposed that a conference on general disarmament should be convened, China had raised objections; when the idea of a declaration on the prohibition of nuclear weapons had been discussed in the General Assembly, that idea had been supported by the developing countries, but not by China; China had also opposed the reduction of defence budgets, which would have freed resources to help the developing countries.

Reply

(23 July 1974, 14th Meeting, 2nd Committee, 2nd Session.)

99. Mr. Ling Ching (China), speaking in the exercise of his right of reply, said that the fact that his delegation had supported the proposal that a clear distinction should be drawn between merchant vessels and warships, thus revealing the real purpose of the super-Powers in advocation freedom of navigation, had induced the delegation of the Ukrainian Soviet Socialist Republic to defend its position by sophistry.

100. On the subject of disarmament, China was opposed to indiscriminate "general disarmament" and favoured genuine disarmament, which must be, first of all, the disarming of the super-Powers. China refused to become a party to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water[6] because it wished to eliminate the nuclear monopoly and nuclear blackmail of the super-Powers. China's nuclear tests were for the sole purpose of self-defence and it had declared that it would never be the first to use nuclear weapons. That pledge remained valid, and the super-Powers had not yet dared to undertake such a commitment.

101. China had also settled its boundary questions with most of its neighbouring countries and had not a single soldier stationed abroad, or a single military base. By contrast, there were those who were engaged in frenzied arms expansion and who were constantly dispatching their warships thousands of miles off to interfere in the internal affairs of other countries, resorting to every possible means of securing military bases in other countries, conducting military exercises in the off-shore areas of other countries and plundering their resources. Those were facts that had been denounced by world public opinion and had called forth protests from the Governments of several countries; the truth could not be distorted by sophistry.

102. Mr. Sapozhnikov (Ukrain Soviet Socialist Republic) speaking in the exercise of his right of reply, said the real fact was that

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6 United Nations, Treaty Series, vol. 480, p.430.

the representative of China had not referred to any of the questions raised by his own delegation.

3. Continental Shelf

(30 July 1974, 20th Meeting, 2nd Committee, 2nd Session.)

5. Mr. Molodtsov (Union of Soviet Socialist Republics) welcomed the trend in support of the concept of the continental shelf, one of the basic principles of the existing law of the sea. The Soviet Union, as a party to the 1958 Geneva Convention on the Continental Shelf, had incorporated that principle in its national legislation and had expressed support for it in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

6. Coastal States possessed sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources; that was no coincidence, since the continental shelf was a prolongation under the sea of the territory of the coastal State and was organically joined to that territory. It was also significant that the resources of the shelf, as compared with the living resources of the superjacent waters, were nonrenewable and non-movable; it was logical, therefore, that the sovereign rights of States over the continental shelf should not extend to the superjacent waters.

7. He agreed on the importance of fixing the outer limit of the shelf, for which the 1958 Convention offered no precise criteria. In the light of new technological advances in exploiting the resources of the deep-sea-bed, that task was becoming increasingly urgent.

8. Under the draft basic provisions on the question of the outer limit of the continental shelf submitted to the sea-bed Committee by the USSR (A/9021 and Corr.1 and 3. vol. III, sect.15) the coastal State would have the right to establish that limit within the 500-metre isobath area, while in areas where the deep sea was close to the coast, that limit could be established within 100 miles from the coast.

9. In its statement at the 22nd plenary meeting, his delegation had indicated that, if a mutually acceptable solution was found to the basic questions of the law of the sea, the Soviet Union was ready to recognize the right of the coastal State to establish an economic zone of up to 200 miles and to dispose of all living and mineral resources within it. In that connexion, his country's current position regarding the limit of the continental shelf was that the coastal State had the right to establish the outer limit of the shelf within 200 miles from its coast or within the 500-metre isobath line,

whichever it chose. Those two criteria would protect the interests both of States with a wide shelf and States with a narrow shelf. At the same time, the 500-metre isobath criterion was based on physical and geological factors which, in the view of many delegations, should be considered in any delimitation of the shelf.

10. The growing tendency for coastal States to extend their rights to the mineral resources of the sea-bed over the broadest possible area could be seen, for example, in the position of many States which were trying to establish the outer limit of the shelf along the outer limit of the continental margin - in other words, at a depth of 2,500-4,500 metres. However, that would mean that some States with a long coastline would have a shelf some 500-700 miles wide. In that case, what would be left of the common heritage? Only the areas of abyssal depths. For the purposes of the rational harmonization of the interests of coastal States and of the international community as a whole, the Soviet delegation considered that it was possible to take the 500-metre isobath as the depth criterion, since that would correspond to the actual boundary of the shelf, in the gemorphological sense, in all parts of the oceans of the world.

11. However, since there was now a group of countries which would deny to States the right to exploit the mineral resources of the sea-bed beyond the limit of the continental shelf, his delegation reserved the right to define its position further regarding the limits of the shelf with a view to safeguarding its own interests in exploring and exploiting the mineral resources of the shelf adjacent to the territory of the USSR.

4. Exclusive economic zone beyond the territorial Sea

(1 August 1974, 24th Meeting, 2nd Committee, 2nd Session.)

1. Mr. Ling Ching (China) observed that the Asian, African and Latin American peoples had long suffered from aggression and plunder at the hands of the colonialists and imperialists and, accordingly, their determination to see a territorial sea established together with an exclusive economic zone up to 200 nautical miles was entirely proper and reasonable. Their position, which reflected an irreversible trend of the times, had won widespread support; even the two super-Powers had had to recognize in words the concept of the economic zone.

2. On the question whether the coastal State should exercise full sovereignty over the renewable and non-renewable resources in its economic zone or merely have preferential rights to them, he said that such resources in the off-shore sea areas of a coastal State were an integral part of its natural resources. The super-Powers had for years wantonly plundered the offshore resources of developing

coastal States, thereby seriously damaging their interests. Declaration of permanent sovereignty over such resources was a legitimate right, which should be respected by other countries. The super-Powers however, while giving verbal recognition to the economic zone, were advocating the placing of restrictions on the sovereignty of coastal States over their resources. For example, one of them had proposed that the coastal State should allow foreign fishermen the right to fish within that zone in cases where the State did not harvest 100 per cent of the allowable catch. Such logic made no sense. The suggestion in fact harked back to that super-Power's well-known proposal that coastal States should be allowed only "preferential rights" when fishing their own off-shore areas. Yet, the establishment of exclusive economic zones over the resources of which coastal States would exercise permanent sovereignty simply meant that the developing countries were regaining their long-lost rights and in no way implied a sacrifice on the part of the super-Powers. The coastal State should be permitted to decide whether foreign fishermen were allowed to fish in the areas under its jurisdiction by virtue of bilateral or regional agreements, but it should not be obliged to grant other States any such rights.

3. The land-locked countries should enjoy reasonable rights to and benefits from the resources in the economic zones of their respective neighbouring coastal States. Specific arrangements could be made by means of full consultations between coastal and land-locked countries. Appropriate regional arrangements should also be made by States which had at heart the interests of geographically disadvantaged countries. Any attempt to make use of that question to poison the relations between coastal and other States would be futile.

4. With regard to the question whether a coastal State should exercise exclusive or restricted jurisdiction over the economic zone, he said that exclusive jurisdiction was the natural corollary to the exercise of full sovereignty over resources. If the coastal State did not have the right to protect, use, explore and exploit all the natural resources in the zone, to adopt the necessary measures to prevent those resources from being plundered, encroached on, damaged or polluted, and to exercise over-all control of the marine environment and scientific research and regulate them, there was no point in speaking about full sovereignty over resources. Freedom of navigation for foreign vessels and other legitimate rights and interests of foreign States should be given reasonable guarantees on the understanding that the relevant laws and regulations of the coastal State would be respected.

5. However, neither of the super-Powers recognized the exclusive jurisdiction of the coastal State over the zone; both proposed instead that coastal State jurisdiction should be subject to "international standards" and that it should comply with "internationally

agreed rules". One super-Power had even gone so far as to suggest that the coastal State should not be permitted to regulate scientific research or adopt measures to prevent pollution from ships in the economic zone.

6. To place restrictions on coastal State sovereignty over the resources of the economic zone or on coastal State jurisdiction was to deny the "exclusive" nature of that zone and was absotutely impermissible. His delegation therefore supported the proposals put forward by a number of the developing countries of Asia, Africa and Latin America, including the draft articles submitted by Nigeria (A/Conf.62/C.2/L.21)[7], which not only safeguarded the coastal State's sovereignty over the resources and its jurisdiction over the zone, but also took into account the navigation and other legitimate interests of foreign States.

7. His delegation was firmly opposed to any attempts to bargain over a solution to the question of the exclusive economic zone. For instance, it could not accept the suggestion that free passage of warships through straits lying within the limits of the territorial sea must be recognized before the establishment of economic zones could be accepted; that idea was nothing less than blackmail. In short, no attempt to "make a deal" at the expense of the sovereignty of other States could be tolerated.

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7 Document A/Conf.62/C.2/L.21/Rev.1 Nigeria: revised draft articles on the exclusive economic zone

Article 1

Rights and competences of a coastal State

1. A coastal State has the right to establish, beyond its territorial sea, an exclusive economic zone the outer limit of which shall not exceed 200 nautical miles measured from the applicable baselines for measuring the territorial sea.

2. A coastal State has the following rights and competences in its exclusive economic zone:

(a) Exclusive right to explore and exploit the renewable living resources of the sea and the sea-bed;

(b) Sovereign rights for the purpose of exploring and exploiting the non-renewable resources of the continental shelf, the sea-bed and the subsoil thereof;

(c) Exclusive right for the management, protection and conservation of the living resources of the sea and sea-bed, taking into account the recommendations of the appropriate international or regional fisheries organizations;

(d) Exclusive jurisdiction for the purpose of control,

regulation and preservation of the marine environment including pollution control and abatement;

(e) Exclusive jurisdiction for the purpose of control, authorization and regulation of scientific research;

(f) Exclusive jurisdiction for the purpose of protection, prevention and regulation of other matters ancillary to the rights and competences aforesaid and, in particular, the prevention and punishment of infringements of its customs, fiscal, immigration or sanitary regulations within its territorial sea and economic zone.

3. A coastal State shall have the exclusive right to authorize and regulate in the exclusive economic zone, the continental shelf, ocean bed and subsoil thereof, the construction, emplacement, operation and use of offshore artificial islands and other installations for purposes of the exploration and exploitation of the non-renewable resources thereof.

4. A coastal State may establish a reasonable area of safety zones around its offshore artificial islands and other installations in which it may take appropriate measures to ensure the safety both of its installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and functions of the installations.

Article 2

Rights and Competences of Other States

1. All States shall have the following rights in the exclusive economic zone of a coastal State:

(a) Freedom of navigation and overflight; and

(b) Freedom of laying of submarine cables and pipelines.

2. All States may exercise, subject to an appropriate bilateral or regional arrangement or agreement, the competence to exploit an agreed level of the living resources of the zone.

3. Land-locked and geographically disadvantaged States shall have the right to explore and exploit the living resources of the exclusive economic zones of neighbouring coastal States, subject to appropriate bilateral or regional arrangements or agreements with such coastal States.

Article 3

Duties of a Coastal State

1. A coastal State shall use its exclusive economic zone for peaceful purposes only.

2. A coastal State, in its exclusive economic zone, shall enforce applicable international standards regarding the safety of navigation.

3. A coastal State, in its exclusive economic zone, is under an internalional duty not to interfere without reasonable justification with:

(a) The freedom of navigation and overflight and

(5 August 1974, 25th Meeting, 2nd Committee, 2nd Session.)

79. Mr. Sapozhnikov (Ukrainian Soviet Socialist Reputlic) said that the question of the economic zone was closely linked with the problems of the territorial sea and straits used for international navigation among others; such problems should be solved jointly, the interests of all States being taken into account.

80. The new concept of the economic zone had arisen as a result of the acceptance of the laws of a number of coastal States, and it should not be viewed as a rule of existing international law recognized by all States; it was not a question of de lege lata, but of de lege ferenda. It would be wrong to give the impression that the coastal States possessed economic zones and were making concessions to other States at the Conference. From the viewpoint of existing international law the future economic zone was an area of the high seas used by all States on an equal basis. The States which were now inclined to recognize an economic zone of 200 miles were in fact making a substantial concession to the coastal States concerned.

81. The rights of coastal States and those of all other States

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(b) The freedom of laying of submarine cables and pipelines.

4. A coastal State shall not erect or establish artificial islands and other installations, including safety zones around them, in such a manner as to interfere with the use by all States of recognized sea lanes and traffic separation schemes essential to international navigation.

Article 4

Duties of Other States

1. In the exclusive economic zone of the coastal State, all other States are duty bound not to interfere with the exercise by the coastal State of its rights and competences.

2. In such an exclusive economic zone, all other States shall ensure compliance by vessels of their flag with:

(a) Applicable international standards regarding the safety of navigation outside safety zones established by a coastal State around offshore artificial islands and other installations used for the exploration and exploitation of the non-renewable resources of the zone; and

(b) The regulations of the coastal State regarding the safety of the said offshore artificial islands and other installations as well as ancillary regulations of the coastal State regarding the enforcement of its customs, fiscal, immigration and sanitation laws.

in the zone must be clearly defined. The extension of the rights of coastal States over a 200-mile economic zone had been justified by the need to guarantee their economic interest and improve the welfare of the peoples of developing coastal States. That was the reason why the zone had been called economic. Thus, in defining the regime for the economic zone, the Conference must allow that within the zone the coastal State would have sovereign rights for the purposes of the preservation, exploration and exploitation of living and mineral resources. But the legitimate rights and interests of other States, which had long used the ocean space concerned as the high seas, must also be guaranteed.

82. Demagogic statements had been made about the proposal that, if a coastal State did not take 100 per cent of the permissible annual catch of fish in the economic zone, the fishermen of other States must be allowed to catch the remainder. He wished to stress that any coastal State which could not take 100 per cent of the living resources in the economic zone would itself have an interest in allowing the vessels of other States to catch them, on the basis of authorization by the coastal State and making reasonable payments therefor. Indeed, if the coastal State did not permit such action, both it and the other States concerned would suffer, and the final result would be that the ever-increasing population of the world would not obtain the protein it so much needed, and the unused living resources would simply be lost. It was no coincidence that the representatives of many developing countries had stated that if the Conference recognized the sovereign rights of coastal States to explore and exploit the natural resources of a 200-mile economic zone, they would certainly not want to destroy the fishing industries of other States.

83. The rights of the coastal State in the economic zone must be exercised without prejudice to the rights of all other States with regard to the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research, provided that such research was not connected with the exploration and the exploitation of natural resources. That obligation of coastal States had been widely recognized in draft articles and statements. However, there was a tendency to extend the rights of the coastal State beyond its own economic interests to such areas as the prevention of pollution and the conduct of scientific research. Some delegations had even proposed that the coastal State should establish customs, fiscal, immigration and health controls in the economic zone. His delegation wondered what would be left of the freedom of navigation if that were to happen. Under the pretext of exercising such controls, a coastal State might at any time detain a foreign vessel and reduce to nothing the freedom of navigation in the zone. That was the purpose of the attempts to replace the concept of the economic zone with such terms as "national zone" or "national sea". A clear distinction must be made between the regime of the

regime of the territorial sea and that of the economic zone. The other legitimate interests of coastal States would be fully guaranteed by the rights they enjoyed in the territorial sea and the contiguous zone, which must not exceed 12 miles.

(5 August 1974, 26th Meeting, 2nd Committee, 2nd Session.)

33. Mr. Korchevsky (Byelorussian Soviet Socialist Republic)

34. Byelorussia was a land-locked socialist State and attached special importance to the exploitation of the living and mineral resources of the world oceans. Other aspects of the law of the sea were also important, however, and the Conference could be successful only if it considered all problems of ocean space as a whole.

35. On the question of the economic zone, the position of his delegation was similar to that of many other States which were land-locked, had narrow shelves or short coastlines. Extending the rights of coastal States beyond the territorial sea would seriously interfere with the interests of geographically disadvantaged States. Some representatives of land-locked countries had already said that the concept of an exclusive economic zone was similar to the concept of the annexation or nationalization of the seas. He agreed with those who had claimed that developing coastal States which had unilaterally extended their national jurisdiction to wide zones had themselves undermined the principle of the common heritage of mankind adopted in General Assembly resolution 2749 (XXV), as their action reduced the size of the international area. Such unilateral action also increased the imbalance between the economic stituation of coastal States and land-locked States, which was not in accordance with the objective of the United Nations to close the economic gap between different groups of States.

36. His delegation approached the matter from a position of principle to justify its view that the rights of coastal States over 200-mile economic zones should be subject to certain conditions to ensure that the legitimate interests of third States, including land-locked States, would be protected in the zone,together with the right of all members of the international community to freedom of navigation, freedom of laying cables and pipelines, freedom of overflight, freedom of scientific research, and freedom of access to the high seas and the international sea-bed area through straits used for international navigation. He opposed the view that coastal States should be entitled to unlimited rights in the economic zone, and agreed with other delegations who had interpreted sovereignty, not as absolute sovereignty, but as sovereignty with due respect for the rights of other States. Accordingly, he believed that coastal States should have sovereign rights only over the resources of the economic zone. He

had no objection to proposals that the coastal State should have competence with respect to the mineral resources of the economic zone, the conservation and rational exploitation of the living resources, and the right to reserve for itself in the economic zone as much of the maximum allowable catch as it had the capacity to fish. The coastal State should not, however, disregard the interests of other members of the international community, particularly of the land-locked countries. Where a coastal State could not fully utilize the fish resources in its economic zone, it should grant access to its zone to nationals of other States, such as geographically disadvantaged States, States which had spent considerable amounts on research, exploration and evaluation of the living resources of the zone, and States which had traditionally fished in that zone.

37. His delegation fully supported the more detailed proposals made by the representatives of the Soviet Union, Bulgaria and other countries, which were fully in accordance with the interests of all States, particularly developing coastal and land-locked States.

38. Referring to the draft articles in document A/AC.138/SC.II/L.41 (ibid, sect.30) he noted that the sponsors had tried to provide for distribution of the living resources of the economic zone in accordance with the principle of regional solidarity. That approach did not take account of the interests of all land-locked States and other members of the international community, particularly those which were not able to resolve the fisheries problem on a regional or subregional level. He shared the views of those geographically disadvantaged States which felt that the question of the exploitation of the living resources of the economic zone should not be settled by bilateral, regional or subregional agreement, but should be resolved in a universal international instrument.

(5 August 1974, 26th Meeting, 2nd Committee, 2nd Session.)

97. Mr. Molodtsov (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that at the 24th meeting of the Committee one delegation had again sought to sow the seeds of discord and suspicion among participants in the Conference. It had repeated oft-refuted stories about the so-called plundering of the developing countries by a certain "super-Power".

98. According to the delegation in question, the proposal to permit fishing by foreign vessels in an economic zone in which the coastal State did not take 100 per cent of the permissible catch was a manoeuvre directed against the concept of the economic zone. It was well known, however, that a number of developing countries which strongly supported the concept of the economic zone held similar views, which they based on the need to exploit living resources in

a rational manner. That fact clearly showed that the statement by the delegation in question was demagogic in nature.

99. The same delegation was particularly displeased at the fact that a number of socialist countries, whose delence and security also depended on the type of regime that would apply to straits used in international navigation, were determined to uphold firmly their legitimate interests in those extremely important maritime areas. However, countries whose peoples had suffered incalculable human losses in defending their freedom and independence would not yield their vital interests to those who sought to establish one-sided control and domination over those zones. Demagogues pursuing hegemonistic aims would not succeed in misleading anyone in those matters. Nor could his country forget the aggressive plans of imperialism or its international duty in so far as the victims of imperialism and aggression were concerned.

100. At the current meeting, another delegation had also crudely distorted the policy of the USSR, borrowing its "ideas" from the same source. The representative of that delegation acted in accordance with the principle of "monkey see, monkey do". Therefore, having rebuked the inspirers of those malicious statements, he had no need to reply to their followers.

101. Mr. Plaka (Albania), speaking in exercise of the right of reply, said that the USSR representative had provided clear proof of the chauvinistic policy followed by the Soviet Union since the betrayal of Marxism-Leninism: it was establishing links with its satellites on the basis of principles followed by a large chauvinistic Power. The statement of the representative in question had clearly demonstrated the imperialist and expansionist policy followed by the USSR, based on the domination and exploitation of man.

102. In his own statement earlier in the meeting, he had asked whether the USSR recognized the sovereign rights of coastal States over the resources of the sea adjacent to their coast up to a 200-mile limit. Yet the USSR representative had not replied. Futhermore, representatives of both the Ukrainian SSR and the Byelorussian SSR had spoken in favour of the policy of limited sovereignty of coastal States.

103. He had asked the USSR representative to declare that the Soviet Union was ready to withdraw its warships from the maritime space of other States. The reasons why it would not do so were clear: it kept them there for the purpose of dominating other peoples.

104. He had also asked whether the USSR recognized the sovereign rights of coastal States in respect of scientific research. However,

the Ukrainian representative had demanded freedom of scientific research. It was clear what that freedom entailed-freedom for the USSR to send warships and reconnaissance vessels in order to obtain military information and establish military and economic control over other States.

105. If the USSR really clung to worthy principles, why had the Ukrainian representative stated that the USSR wanted to impose a package deal on other States?

106. The USSR representative had said that the manoeuvres of the imperialists had not been forgotton; that was a statement with which he fully agreed.

107. Finally, he had asked the USSR whether it was prepared to accept the concept of the exclusive economic zone. If it did, it should say so.

Reply

(5 August 1974, 26th Meeting, 2nd Committee, 2nd Session.)

108. Mr. Ling Ching (China), replying to the representative of the Soviet Union, said that the facts spoke for themselves. The Soviet Union had large numbers of fishing fleets engaged in plundering the fishery resources of other countries. Furthermore, a number of countries had for that reason lodged protests with the Soviet Union. The Chinese delegation affirmed that, within the economic zone, the coastal State should exercise full sovereignty; there was no reason why it should be obliged to permit other States to fish in its economic zone.

109. As to the question of the free passage of warships through straits used for international navigation, the Soviet Union showed utter contempt for the sovereignty of coastal States and pursued an imperialist strategy to achieve world hegemony. Why should warships be permitted freedom of navigation through straits without the prior notification and authorization of the coastal State? Moreover, why had some countries declared their own regions to be zones of peace? Was it not precisely because warships of the super-Powers were traversing the oceans of the world, threatening the security of the countries of those regions?

110. Yet in 1958, the Soviet Union itself had advocated that the passage of warships through straits should be permitted only upon prior notification and authorization. Why, then, 10 years later, had it completely reversed its position? The reason was that it had now built up a powerful navy which permitted it to pursue its imperialist policies.

111. His delegation resolutely opposed the use of the principle

of the free passage of warships through straits as a precondition for a package deal.

(6 August 1974, 28th Meeting, 2nd Committee, 2nd Session)

51. Mr. Kolosovsky (Union of Soviet Socialist Republics), commenting on the draft articles submitted by the socialist countries (A/Conf.62/C.2/L.38)[8], noted that the Soviet delegation had repeatedly stated in the sea-bed Committee that the establishment of economic zones would have undesirable consequences for many countries, especially the geographically disadvantaged States and those having no outlet to the sea. Substantial harm would also be sustained by the Soviet Union and a number of other countries whose fishing industries depended on distant-water fishing on the high seas. However, his country was ready to proceed towards the establishment of such zones, having in mind the desire of many coastal developing countries to raise their standard of living and to strengthen their national, economies. The interests of all other States and peoples would have to be taken into account in the establishment of economic zones, since they too had an interest in the rational utilization of marine resources. In formulating its position, his country was guided by the fact that it was important for the strengthening of peace that the Conference should reach mutually acceptable decisions on questions affecting the vital interests of many countries. His delegation wished to stress that its readiness to recognize the right of a coastal State to establish an economic zone of up to 200 miles and its right to control the living and mineral resources of the zone was conditional on the simultaneous adoption of mutually acceptable decisions on the other basic questions of the law of the sea listed in the introduction to the draft articles.

52. The draft articles included a provision granting the coastal State sovereign rights for the purposes of exploration and exploitation of the living and mineral resources of the zone, including the right to determine the maximum allowable catch of fish and other living resources and to establish measures to regulate the exploitation of such resources. The aim was to give the coastal State not only guarantees of a durable raw materials base but also an opportunity to develop its fishing industry in a planned manner. Observance of the recommendations of international fishery organizations would prevent or minimize any differences over questions relating to the living resources of the economic zone between the coastal State and neighbouring or other interested States. It would enable the coastal State to arrange mutually advantageous cooperation with the other countries and to reduce its own expenditures on the scientific research without which the rational operation of the fishing industry was inconceivable.

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8 see annex III.

53. Since mankind was vitally concerned to utilize fish resources to the full, without of course jeopardizing their reproduction, it was unthinkable that those resources should not be utilized to the permissible extent or, what was worse, should simply be lost. Accordingly, the convention must include a provision requiring a coastal State which could not itself take 100 per cent of the allowable catch to authorize foreign fishermen to take the remainder. The developing coastal States should receive reasonable payment, either in cash or in other forms, for granting such authorization. It would be just to include in the convention a provision granting nationals of developing countries having no outlet to the sea, or only a narrow one, the right to fish in the economic zone of a neighbouring coastal State on an equal footing.

54. His delegation wished to point out that the granting of sovereign rights in the economic zone to the coastal State was not equivalent to the granting of territorial sovereignty and must in no way interfere with the other lawful activities of States on the high seas, especially with international maritime communications. The convention must state clearly that the rights of the coastal State in the economic zone must be exercised without prejudice to the rights of any other State recognized in international law, including the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research not connected with the exploration and exploitation of the living and mineral resources of the economic zone.

55. The sponsors of the draft articles had not made excessive demands; they had taken into account the legitimate wishes of other States. They considered that the draft articles were reasonable and balanced and might form the basis of a mutually acceptable settlement of the question of fishing in the economic zone and of all the other important questions of the law of the sea. They hoped that the other participants in the Conference would display a similar spirit of reciprocity and goodwill.

5. Coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea.

(7 August 1974, 30th Meeting, 2nd Committee, 2nd Session.)

22. Mr. Ling Ching (China) said that the item on preferential rights had been imposed on the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by the two super-Powers in order to oppose the proposal by the developing countries for the establishment of exclusive economic zones. His

delegation, which fully supported the proposal for a 200-nautical-mile exclusive economic zone, was opposed to the attempt by the super-Powers to limit the legitimate exclusive rights of the coastal States or to deprive them of those rights by introducing preferential rights in a disguised form. The professed recognition of the economic zone, while attempting to impose "preferential rights", made a mockery of the demand by several countries of the third world for the establishment of an exclusive economic zone. The draft articles on the economic zone submitted by the Soviet Union and other countries (A/Conf.62/C.2/L.38)[9] were an example of such an attempt and his delegation firmly opposed it.

23. The theoretical basis for the denial of coastal States' exclusive jurisdiction over the economic zone, as set forth in the draft articles, was the assertion that the economic zone which fell within the scope of national jurisdiction should be treated as part of the high seas. If the economic zone were truly part of the high seas, there would be no point in discussing the establishment of such a zone and the coastal States would then have to submit to the will of the super-Powers which monopolized the high seas. Furthermore, the document provided that each State might freely carry out fundamental scientific research unrelated to the exploration and exploitation of the living or mineral resources of the economic zone. His delegation wondered whether there could be any fundamental scientific research in today's world that was not related, directly or indirectly, to specific military or economic purposes. It might also be asked what were the criteria for determining what kind of scientific research was related to the exploration and exploitation of resources and what was unrelated. It was common knowledge that the same super-Power which had sponsored the draft articles, on the pretext of "fundamental scientific research" or "freedom of scientific research", constantly sent large numbers of "research vessels" or "fishing fleets" equipped with electronic devices into the coastal waters of other countries or beneath those waters for the sole purpose of carrying on espionage activities.

24. The 11 articles under section II of the Soviet draft were limitations on the sovereignty of the coastal State over fishery resources. It could be said that in that section, which was the main body of the draft, the theory of "preferential rights" was most fully elaborated. For example, assertions that the maximum annual allowable catch of fish should be determined in accordance with the recommendations of international fishery organizations and that fishermen of foreign States should be allowed to fish for the unused part of such allowable catch were aimed at pedding the preferential rights

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9 see annex III.

being advocated. Those assertions had long been refuted by the developing countries and the only reason for that super-Power to make them again was that, regardless of the redical changes in the situation, it was determined that there should be absolutely no chang in its vested hegemonistic interests and its policies of aggression and plunder.

25. Articles 15 and 16 of the draft arbitrarily provided that the coastal State should grant foreign vessels permission to fish in its economic zone while giving priority to none other than the so-called States which had borne considerable material and other costs of research, discovery, identification and exploitation of living resource stocks, or which had been fishing in the region involved. Investigations showed that from the late 1950s to the early 1970s, at the same time as the military expansion of that super-Power on the seas and oceans had been stepped up, its distant-water fishing activities had increased substantially. In the past decade the average annual catch of its distant-water fishing had accounted for three quarters of its total annual catch. Furthermore, it had not hesitated to spend large sums of money to build fishing vessels of high tonnage applying new fishing technology for the purpose of intruding into the sea areas of coastal States in order to carry out exploration and outright plunder. Its indiscriminate fishing was eloquent proof of the real intention of the sponsor of the draft articles. Furthermore, that super-Power, which had professed concern for the interests of the land-locked States, had placed itself ahead of the land-locked States for a share in the ownership of the resources found in the economic zone.

26. Finally, his delegation reiterated that it resolutely supported the proposal by the developing countries for the exclusive economic zone and was firmly opposed to the underhanded attempt of the super-Powers to substitute so-called preferential rights for the essential contents of the exclusive economic zone.

(7 August 1974, 30th Meeting, 2nd Committee, 2nd Session.)

33. Mr. Molodtsov (Union of Soviet Socialist Republics) said that his delegation supported the recognition of preferential rights of coastal States over anadromous species outside the economic zone. That position was reflected in article 20 of document A/Conf.62/C.2/L.38.[10]

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10 see annex III

34. Anadromous fish were unique in that they returned, after lengthy migration in the oceans, to the fresh waters in which they had been spawned. The most numerous of the anadromous fish - salmon - spawned once and then died in the spawning reaches. On many occasions, non-rationalized fishing had led to the complete extermination of the fish stock from a given river. As a result, the costly efforts by the coastal State to renew and manage stocks were completely fruitless. Serious social problems, such as the need to relocate specialized fishermen and their families, then arose.

35. The proper approach was to grant the coastal State in whose rivers anadromous fish spawned sovereign rights over anadromous species and all other living resources within the economic zone, and preferential rights outside the zone in the migration area of anadromous species. Foreign fishing for anadromous fish should be on the basis of agreement between the coastal and other States concerned, bearing in mind, particularly, that it was the coastal States that were really in a position to assess and regulate the numbers of fish going to the spawning ground and to catch them without prejudicing the regeneration of the fish stocks.

36. Clearly, States that participated jointly with the coastal State in measures to regenerate anadromous fish stocks should have preferential fishing righs, as should States that had traditionally fished for those species.

37. One delegation had just spoken in terms that grossly distorted the USSR's position as set out in document A/Conf.62/C.2/L.38. Reserving the right to deal with the fabrications contained in that statement at an appropriate time, he made the following comments.

38. The basis of a solution to the acute and complex problem of fishing in the world oceans must be the principle of reconciling the just interests of all States and peoples in the rational use of valuable marine food resources, their renewal and conservation. He recognized the particular interest of the developing countries in those resources, which would help to raise the level of living and well-being of their peoples and to consolidate their economic and political independence. Those principles were the basis of the draft articles, article 2 of which, giving the coastal State sovereign rights over all living and mineral resources in the economic zone, had not been mentioned by the delegation in question. Article 12 also provided for broad powers of coastal States deriving from the recognition of their sovereign rights in the economic zone - a fact that the representative in question had passed over in silence because it did not suit his delegation's unseemly objective of distorting the position of the sponsors of the document. Other articles in the draft were intended to protect the interests of other States interested in the rational use of the living resources of the world

oceans, in keeping with the Soviet Union's endeavour to find a solution acceptable to all countries. That representative had also falsely said that the Soviet assertion that the economic zone was part of the high seas was somehow aimed at preserving a state of affairs in which Soviet fishing and research vessels could continue to engage in espionage in the world oceans.

39. Where had that representative obtained such false information? Clearly, the only way to determine what foreign fishing and other vessels were doing on the high seas would be for that representative's country to engage in true espionage on a wide scale. That delegation was systematically distorting the USSR's position and slandering the USSR. It was doing its utmost to grab the leadership of the Conference, particularly among the countries of the third world , which it wanted to see quarrelling with many socialist countries. But it was not succeeding in its hegemonistic intentions. What infuriated it was the spirit of constructive work prevailing at the Conference. Those hegemonistic intentions were also being rebuffed outside the Conference. Many States of the third world had long come to understand that behind the flattering words spoken by the representatives of that country lay a thirst for power and leadership. That country's true intentions were clearly shown by the fact that it had made territorial claims, including claims on the sea, against most of its neighbours and did not stop short of using brute force to press those annexationist claims. Anti-Soviet and slanderous statements were a cover-up for those unseemly hegemonistic policies. The delegation he referred to was motivated not by a desire to work constructively but by a determination to plunge the Conference into an abyss of dissension and quarrelling. He expressed confidence that the Conference would not allow itself to be diverted from carrying out its tasks.

6. High Seas

(7 August 1974, 31st Meeting, 2nd Committee, 2nd Session.)

71. Mr. Movchan (Union of Soviet Socialist Republics) said that he understood the high seas to refer to that part of the oceans beyond the limits of the territorial sea, which all States could use freely and in which no State was entitled to exercise sovereignty. The basis of the regime of the high seas was the generally recognized principle of the freedom of the high seas, as codified in the 1958 Geneva Convention on the High Seas. He stressed that the Convention had been adopted unanimously at a Conference in which representatives of all continents of the world had participated. His delegation regarded that Convention as a major contribution to the international law of the sea and believed that the basic principles and norms it

embodied should be retained.

72. The principle of the freedom of the high seas had been a major factor in the development of the world economy and international communications. That freedom had been recognized after a long struggle between the forces of progress and the forces of reaction, and it not only helped to meet the economic needs of mankind and to promote scientific and technological progress, but had become one of the means of implementing the principle of peaceful coexistence between States, including international co-operation and fraternal international assistance to peoples struggling against colonialism and imperialism for peace and democracy.

73. The freedom of the high seas included freedom of navigation, freedom of overflight, freedom of scientific research, freedom of fishing, freedom to lay submarine cables and pipelines and other freedoms embodied in the principles of international law and the Charter of the United Nations. Due account should be taken, in exercising those freedoms, of the interests of other States. He agreed that new measures providing for the conservation of living resources were now needed.

74. With regard to the question of international fisheries commissions, he said that any criticism of those commissions, which deserved respect, should be supported by facts and figures and preceded by a careful and objective assessment of their work. The freedom of scientific research and the freedom of fishing should be exercised in the context of the special provisions to be worked out by the Conference on the regime of the economic zone. He understood the economic zone to refer to that part of the high seas in which the coastal State enjoyed clearly defined special economic rights over the living and mineral resources. Proposals had been made by certain representatives that would divide the oceans into two parts, one part under national jurisdiction and the other under international jurisdiction; that approach was a dangerous distortion of the concept of the economic zone. His delegation had accepted the principle of the economic zone and would be willing to contribute to the establishment of economic zones, taking into account the interests of coastal States. The issue of the economic zone should be resolved as part of a package deal, and provision should be made only for the rights of coastal States over the resources of the zone.

75. His delegation was in favour of a firm regime of the high seas which would prevent any interference with the freedom of the high seas. Some critics of the existing regime had tried to claim that gross violations of the law of the sea by certain States were in fact applications of the current regime of the high seas. He therefore felt it would be advisable to spell out some of the existing international legal norms in order to ensure that the new law of

the sea to be established would be acceptable to all delegations. The norms contained in the Geneva Convention on the High Seas should be reflected in the working documents of the Committee, since they reflected the views of many countries. They could, however, be supplemented by special provisions concerning the international legal obligations and responsibilities of flag States.

7. Land-Locked Conntries

(9 August 1974, 34th Meeting, 2nd Committee, 2nd Session.)

4. Mr. Movchan (Union of Soviet Socialist Republics) said that his delegation had decided to speak on the item on land-locked countries in order to draw attention to the serious problems besetting those countries because of their geographical position.

5. In requesting that they should be allowed to exploit the resources of the oceans together with the coastal States, the land-locked countries were not asking for any special favours; they were simply seeking to enjoy the same rights as coastal States on the basis of equitable principles. Some countries, on the other hand, were claiming special rights; for example, a number of straits States were asking for special rights in respect of international navigation.

6. The 1965 New York Convention on Transit Trade of Land-locked States[11] had been ratified by only a few countries. The Soviet Union, which had for many years co-operated with its land-locked neighbours Mongolia and Afghanistan in the matter of transit of their goods through its territory, had ratified it. In its view, the principle of free access by land-locked countries to the sea should be a universally recognized principle of international law, the exercise of which should not be subject to any conditions whatever, including reciprocity.

7. While the principle of free access of land-locked States to the sea should be embodied in the future convention, technical and other specific arrangements relating to transit could be the subject of bilateral agreements between the land-locked and transit States.

8. The land-locked countries had nothing to gain from the broadening of the limits of the jurisdiction of coastal States over marine resources. Indeed, that would only add to their difficulties. Accordingly, his delegation, together with the delegations of a number of other socialist countries, when submitting draft articles on the

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11 United Nations, Treaty Series, vol. 597, p.41.

economic zone (A/Conf.62/C.2/L.38)[12], had provided that developing land-locked countries and States with narrow access to the sea or narrow continental shelves should be given preferential treatment in respect of fishing in the economic zones of neighbouring coastal States on equal terms with their nationals. The Soviet Union also supported proposals whereby the international community would give special consideration to the land-locked countries in respect of the exploitation of the resources of the international sea-bed area and the sharing of the benefits derived therefrom. The group of land-locked countries must also be adequately represented in the main bodies of the International Sea-Bed Authority.

8. Archipelagos

(12 August 1974, 37th Meeting, 2nd Committee, 2nd Session.)

9. Mr. Barabolya (Union of Soviet Socialist Republics) said that the question of the legal regime of the waters of archipelagic States, States constituted wholly by one or more archipelagos, was an entirely new problem in international law. There were no special norms in contemporary international law to provide the basis for consideration of that question. All the Committee had before it was proposals from archipelagic and some other States. That question was, however, closely related to other more important questions being considered by the Conference, such as the breadth of the territorial sea and the regime of international straits and economic zones.

10. The basic principles of contemporary international law provided for the equality of States and mutual respect for the rights of all peoples in the uses of the sea. Yet the concept of a special regime for archipelagic waters meant that there would be different provisions for large areas of ocean between the islands of archipelagic States wishing to extend their sovereignty over areas of the high seas much larger than their own land area. Indonesia and the Philippines, for example, claimed sovereignty over an area of the seas almost twice as large as that of their land territory. If the 200-mile economic zone, with the sovereign rights over the living and mineral resources that it implied, was to be added to the archipelagic waters, archipelagic States would have rights over vast areas of the high seas.

11. His delegation maintained that the question of the regime of archipelagic waters should be considered together with other related questions as a package deal. International rules should be drafted

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12 see annex III.

to take account of the interests of archipelagic States, which should, however, state clearly and unequivocally that they, in turn, were prepared to take account of the interests of other States. The regime of the waters of archipelagic States should be established in conjunction with a settlement providing for free transit passage along the shortest routes through archipelagic straits and waters traditionally used for international navigation.

12. In connexion with the question of straight basclines, the length of baselines used to delimit the so-called archipelagic waters should be limited and clearly defined in the convention. A 48-mile limit had been proposed, but any other reasonable limit could also be considered. It was quite clear that individual islands belonging to archipelagic States should have their own territorial waters and could not be linked to the archipelago by straight baselines. Archipelagic States would, in any case, be in an advantageous position in comparison with other States in respect of living and mineral resources of the sea as they would have rights in a considerably larger part of the seas.

13. The proposals made by the archipelagic States might become acceptable to his delegation only if they agreed to free transit for all ships through archipelagic straits and waters used for international navigation, and if they recognized the right of unimpeded overflight Such provisions would not interfere with the right of archipelagic States to use their own archipelagic waters or with their rights over the resources of those waters. He agreed with the representative of Bulgaria that articles 4 and 5 of document A/Conf.62/C.2/L.49[13] were unacceptable as they provided only for the principle of innocent passage of ships through archipelagic waters and also because, in article 5, they provided for the possibility of restriction of passage.

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13 Document a/Conf.62/C.2/L.49 Fiji, Indonesia, Mauritius and Philippines: draft articles relating to archipelagic States

These draft articles are largely based on proposals contained in documents A/Ac.138/Sc.11/L.15 and 48 (A/9021 and Corr.1 and 3. vol.III, sects, 2 and 38) submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973.

Article 1

1. These articles apply only to archipelagic States.

2. An archipelagic State is a State constituted wholly by one or more archipelagos and may include other islands.

3. For the purpose of these articles an archipelago is a group

of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 2

1. An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured.

2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

3. Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

4. The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off the territorial sea of another State as determined under article ... of chapter ... of this Convention.

5. If the drawing of such baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct communication, including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, the continued right of such communication shall be recognized and guaranteed by the archipelagic State.

6. An archipelagic State shall clearly indicate its straight baselines on charts to which due publicity shall be given.

Article 3

1. The waters enclosed by the baselines, which waters are referred to in these articles as archipelagic waters, regardless of their depth or distance from the coast, belong to, and are subject to the sovereignty of, the archipelagic State to which they appertain.

2. The sovereignty and rights of an archipelagic State extend to the air space over its archipelagic waters as well as to the water column and the sea-bed and subsoil thereof, and to all of the resources contained therein.

Article 4

Subject to the provisions of article 5, ships of all States whether coastal or not shall enjoy the right of innocent passage through archipelagic waters.

Article 5

1. An archipelagic State may designate sea lanes suitable for the safe and expeditious passage of foreign ships through its archipelagic waters, and may restrict the passage of such ships, or any types or classes of such ships, through those waters to any such sea lanes.

2. An archipelagic State may, from time to time, after giving due publicity thereto, substitute other sea lanes for any sea lanes previously designated by it under the provisions of this article.

3. An archipelagic State which designates sea lanes under the provisions of this article may also prescribe traffic separation schemes for the passage of such ships through those sea lanes.

4. In the designation of sea lanes and the prescription of traffic separation schemes under the provisions of this article an archipelagic State shall, inter alia, take into account:

(a) The recommendations or technical advice of competent international organizations;

(b) Any channels customarily used for international navigation;

(c) The special characteristics of particular channels; and

(d) The special characteristics of particular ships.

5. An archipelagic State shall clearly demarcate all sea lanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

6. An archipelagic State may make laws and regulations, not inconsistent with the provisions of these articles and having regard to other applicable rules of international law, relating to passage through its archipelagic waters, or the sea lanes designated under the provisions of this article, which laws and regulations may be in respect of all or any of the following.

(a) The safety of navigation and the regulation of marine traffic;

(b) The installation, utilization and protection of navigational aids and facilities;

(c) The installation, utilization and protection of facilities or installations for the exploration and exploitation of the marine resources, including the resources of the sea-bed and subsoil, of the archipelagic waters;

(d) The protection of submarine or aerial cables and pipelines;

(e) The conservation of the living resources of the sea;

(f) The preservation of the environment of the archipelagic State, and the prevention of pollution thereto;

(g) Research in the marine environment, and hydrographic surveys;

(h) The prevention of infringement of the fisheries regulations of the archipelagic State, including inter alia those relating to the stowage of gear;

Such proposals, which did not strive towards compromise, were unrealistic. He would be in a position to support the proposals of the archipelagic States if they accepted the 12-mile limit for territorial waters, and free transit, without exception, for ships through archipelagic waters of archipelagic States and through all other international straits.

14. His statement referred only to those very few archipelagic States which were constituted by a group of islands and the ocean space between them and which had geographical, and traditional political, economic and administrative unity. He stressed that the Committee should not deal in that connexion with questions concerning archipelagos off the coast of mainland States which formed part of their territory. He would oppose any proposal for any regime for such archipelagos or islands which would differ from that applied to the mainland State. Any attempts by individual mainland States to draft

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(i) The prevention of infringement of the customs, fiscal, immigration, quarantine, sanitary and phytosanitary regulations of the archipelagic State; and

(j) The preservation of the peace, good order and security of the archipelagic State.

7. The archipelagic State shall give due publicity to all laws and regulations made by it under the provisions of this article.

8. Foreign ships exercising the right of innocent passage through the archipelagic waters or the sea lanes designated under the provisions of this article shall comply with all laws and regulations made by the archipelagic State under the provisions of this article.

9. If any foreign warship does not comply with the laws and regulations of the archipelagic State concerning its passage through the archipelagic waters or the sea lanes desingated under the provisions of this article and disregards any request for compliance which is made to it, the archipelagic State may suspend the passage of such warship and require it to leave the archipelagic waters by such safe and expeditious route as may be designated by the archipelagic State.

10. Subject to the provisions of paragraph 9 of this article, an archipelagic State may not suspend the innocent passage of foreign ships through sea lanes designated by it under the provisions of this article, except when essential for the protection of its security, after giving due publicity thereto and substituting other sea lanes for those through which innocent passage has been suspended.

The foregoing provisions relating to archipelagic States are without prejudice to the regime concerning coastlines deeply indented and cut into and to the waters enclosed by a fringe of islands along the coast.

provisions for a special regime for such archipelagos were completely unjustified. Such attempts could lead to arbitrary action in many parts of the ocean, interference with navigation and extension of rights over large areas of the high seas, which would hardly promote progress and the strengthening of peace and understanding between peoples.

9. Enclosed and semi-enclosed Seas.

(13 August 1974, 38th Meeting, 2nd Committee, 2nd Session.)

49. Mr. Barabolya (Union of Soviet Socialist Republics) said be wished to draw attention to certain peculiarities of the problem under discussion. First, a clear distinction must be made between enclosed and semi-enclosed seas. From a juridical point of view, enclosed seas were comparatively small, had no outlet to the ocean, and did not serve as international shipping routes in the broadest sense. In the case of such seas, the legal regime might include certain peculiarities on the basis of existing international agreements and international custom. Semi-enclosed seas, on the other hand, were large bodies of water with several outlets through which passed international waterways. They had never been subject tc any special regime. Almost any sea could be called semi-enclosed, and to compare such seas with enclosed seas would be quite unjustified. His country could not accept the establishment of a special regime benefiting any given country in waters that had traditionally been used by all countries for international shipping on a basis of equality. The question of enclosed seas had both a geographical and a juridical aspect. Was the Mediterranean, for example, an enclosed or semi-enclosed sea? He would say it was neither. It contained many other seas and could be compared to an ocean. It was an immense body of water used as a high sea by all countries for international shipping.

50. Another peculiarity of the issue was that the Geneva Conferences had not laid down principles for enclosed seas, although the International Law Commission had confirmed the desirability of extending a special regime to some enclosed seas. No specific proposals had been put forward in the sea-bed Committee, and therefore there was only one chapter heading for the issue in the Committee's report, in volume V. Nevertheless, that question had been touched upon, mainly in connexion with the problem of the delimitation of marine areas, as, for example, in the Turkish proposal (A/Conf.62/

.2/L.56)[14] and had recently become of some current interest as a result of the prospect of establishing economic zones of a breadth of up to 200 miles. The question of economic zones would cause no problems where the coastlines faced the open sea, but a number of problems could arise in enclosed or semienclosed seas, as the representative of Turkey had pointed out, particularly in connexion with the delimitation of sea areas between States.

51. The point at issue was not a regime for enclosed seas, but the possibility of taking a regional approach to certain questions in specific marine areas where the application of certain provisions of international marine law by one coastal State might affect the rights and interests of other States. His country's position was that in those specific areas regional decisions on questions of sea law could be taken only within the framework of the international convention to be adopted by the Conference. Specific solutions to problems must be arrived at by agreement between the coastal States concerned, without prejudice to the legitimate interests of other countries of the world.

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14 Document a Conf.62/C.2/L.56 Turkey: draft article on enclosed and semi-enclosed seas

> The general rules set out in chapters... (chapters relating to territorial sea and economic zone) of this Convention shall be applied, in enclosed and semi-enclosed seas, in a manner consistent with equity.
>
> States bordering enclosed and semi-enclosed seas may hold consultations amont themselves with a view to determining the manner and method of application, appropriate for their region, for the purposes of this article.

IV. THIRD COMMITTEE

1. Preservation of the Marine Environment

(16 July 1974, 4th Meeting, 3rd Committee, 2nd Session)

52. Mr. Kovaley (Union of Soviet Socialist Republics) said that his country attached the greatest importance to the elaboration of effective anti-pollution measures, which should and could be achieved without hampering freedom of navigation. Drawing attention to the statement by his delegation during the general debate at the 22nd plenary meeting he considered that it should be possible, provided a mutual under standing was reached on the other complex questions on the agenda of the Third Committee, to secure for coastal States certain rights to protect the resources within a 200-mile wide economic zone from any damages arising from pollution.

53. Serious harm could be caused to both living and non-living marine resources by the dumping of wastes and other harmful materials in the sea. Coastal States should accordingly have the power to regulate dumping of wastes within a zone the width of which would be stipulated in the future convention. Dumping could be regarded as a particular kind of land-based pollution carried out to sea by ships. The issuance of licences for the dumping of wastes in coastal areas, or the refusal to grant such licences, should be the prerogative of coastal States, which should take into account international rules, particularly those laid down in the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The coastal State should also ensure that permissible dumping did not harm shipping or neighbouring States.

54. Another source of danger to fisheries and other resources was that arising from collisions between tankers, or ships carrying other harmful substances, or from sea-bed mining operations. Coastal States should have the right beyond their own territorial waters to take protective measures against grave dangers of that kind. The measures adopted should be commensurate with the actual or potential damage.

55. The 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil represented a balanced and correct approach to pollution hazards arising from accidents at sea. However, those instruments did not cover pollution arising from sea-bed mining operations, particularly oil drilling.

56. A future convention should therefore embrace the fundamental provisions of the 1969 Convention and the 1973 Protocol, but should be extended to cases of accidents arising from sea-bed mining operations.

57. A major problem connected with anti-pollution measures arose in connexion with the need to safeguard freedom of navigation. His delegation felt that the problem could be solved only by the adoption of international anti-pollution measures and measures to ensure their observance, particularly by flag States. The introduction of separate national measures even with regard to territorial waters would undoubtedly give rise to difficulties for navigation.

58. The problem of controlling pollution from ships could be solved on the basis of the provisions of the 1973 International Convention for the Prevention of Pollution from Ships embodying measures to prevent pollution from oil and other harmful substances transported or discharged by ships. That Convention in practice applied to all the oceans of the world. Its five technical annexes contained detailed rules and recommendations concerning the construction and special requirements of vessels with regard to pollution control.

59. The Convention also laid down, in its article 6, that a foreign cargo vessel, while in the port of a foreign State, might be subject to inspection for the purpose of ascertaining whether it had discharged any substances in contravention of the relevant rules.

60. His delegation took the view that the 1973 Convention contained adequate provisions for the prevention of pollution from ships. If they were strictly observed, there would be no need for additional measures to be adopted on a national basis moreover, they should be incorporated in a future convention in such a way as to form the basis for future work by IMCO and by specialized conferences for the formulation of specific technical rules and recommendations for the prevention of pollution from ships. In particular, it was essential to stipulate in a future convention that a coastal State had the right to take within the limits of its internal and its territorial waters -- of 12 miles in width -- the necessary measures to ensure that ships observed the internationally agreed rules prohibiting or restricting the discharge of harmful substances. In the case of infringement of those rules by foreign vessels, the coastal State should have the right to inform the flag State, or to take appropriate legal or administrative action in accordance with its own legislation. The captain or other officers of the ship should be liable to fines on a non-discriminatory basis. Punishment in the form of deprivation of liberty should be imposed only by the flag State, which would be responsible for informing the coastal State of the measures taken.

61. A future convention should, of course, also lay down more general obligations for all States to ensure the cleanliness of the seas and oceans of the world. In particular. States should have the obligation to ensure that ships flying their flags refrained from causing marine pollution, and to co-operate with other States and competent international organizations in elaborating and applying more progressive standards.

62. His delegation, together with that of the German Democratic Republic, was currently seeking to formulate some of the provisions to which he had already referred and which would constitute additional draft articles for combating marine pollution.

(17 July 1974, 6th Meeting, 3rd Committee, 2nd Session)

1. Mr. Lo Yu-ju (China) said that his delegation resolutely supported the many representatives who had set forth their solemn and just stand in defence of State Sovereignty against maritime hegemony.

2. The increasingly-serious pollution found in some sea area was mainly the consequence of the policies of aggression and plunder pursued by imperialism and especially by the superPowers, and the victims of their policies were the numerous developing countries. Proceeding from their rapacious and egoistical position, the supper-Powers and monopoly capitalist groups obdurately sought high profits and, disregarding the safety of the people of their own countries and of the world as a whole, discharged large quantities of industrial wastes and fluids and toxic, harmful and even highly poisonous substances into the seas, thereby poisoning sea waters, damaging living resources, and seriously endangering the health and safety of the peoples of the world.

3. In such circumstances, it was absolutely just that the coastal States should rise in self-defence and take measures to protect their marine environment and natural resources against pollution from outside sources. Prompted by the urge to maintain their maritime hegemony, however, the super-Powers frenziedly opposed the legitimate rights of coastal States and attempted under the pretexts of "international standards" and "global measures" to deny the jurisdiction of those States and their role in the prevention and control of marine pollution. It was only natural that such attempts should have met with firm opposition by the numerous developing countries.

4. It was admittedly necessary to establish, through joint consultations on the basis of equality of all countries, big and small, an international or regional regime for the preservation of the environment and the prevention of pollution. But that could in no way substitute for anti-pollution regulation by coastal States. It was impermissible to use so-called "international standards" and "global measures" to oppose or weaken the jurisdiction of the coastal States and to restrict the economic and industrial development of the developing countries.

5. Each coastal State had the right to formulate its environmental policy and take all necessary measures to protect its marine environment and prevent pollution in the sea area under its national jurisdiction. In doing so, the coastal State should, of course, have regard to the interests of all, including those of its neighbouring countries.

6. All State, especially the industrially-developed countries, had the duty to take all effective measures to solve their problem of the discharge of harmful substances, and to prevent pollution of the sea areas under their jurisdiction from spreading to, and damaging, the marine environment of sea areas under the national jurisdiction of other States, or of internatioanl sea areas.

7. International anti-pollution measures and standards should be adopted, and appropriate international regulation should be enforced for the marine environment of the international sea area. Discharge of radioactive and other harmful substances into that area must be strictly prohibited.

8. Finally, all States and concerned international organizations should strengthen their co-operation in conducting antipollution research, following the principles of respect for sovereignty, equality, and mutual benefit, so as to promote the exchange and the utilization of anti-pollution technology and data.

(26 March 1975, 19th Meeting, 3rd Committee, 3rd Session)

64. Mr. Tikhonov (Union of Soviet Socialist Rebpublics) said that each State's contribution to the prevention of pollution of the marine environment depended on the significance it attached to the protection of the environment within its territory and the responsibility for prevention of pollution it imposed on its nationals, ships and organizations operating outside its territory.

65. The legislation of the Soviet Union contained a body of regulations designed to protect the marine environment from pollution. That legislation provided effective measures to prevent pollution in Soviet internal waters and its territorial sea by Soviet and foreign ships and the pollution of the high seas by Soviet ships. For example, it was a criminal offence, punishable by a fine of up to 20,000 roubles, for Soviet ships to discharge proscribed harmful substances in the high seas.

66. Moreover, his Government was always prepared to co-operate on the bilateral, regional and multilateral levels to protect the marine environment. It was a party to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil and was already voluntarily applying the 1969 amendments to that Convention to its ships without waiting for their entry into force. It was a signatory to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1973 International Convention for the Prevention of Pollution from Ships. Many important provisions of the last-mentioned Convention concerning the construction of purifying equipment and ship design were already being applied in Soviet ports and on Soviet ships. In 1974 the Soviet Union had acceded to the 1969 International Convention relating to Internation on the High Seas in Cases of Oil Pollution Casualties and had signed the 1973 Protocol extending that Convention to other harmful substance. One of the first regional agreements--the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area--had been drafted and adopted with the partipation of the USSR.

67. At the same time his Government was well aware that there was still considerable scope for international co-operation in protecting the marine environment and that the international regulations on the problem could be more universal and effective if they covered a wider range of sources of pollution, many of which were more dangerous than shipping. The Conference could do much to remedy that situation in the interests of all mankind.

68. His delegation supported the draft articles on the prevention, reduction and control of marine pollution submitted by nine delegations, including three representing socialist countries (A/Conf.62/C.3/L.24).1 The sponsors had adopted the right approach towards reconcilling national and international rules and had correctly evaluated various sources of pollution from the international point of view.

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1 See A/Conf.62/C.3/L.25 (infra)

69. Much importance was attached in those draft articles to national rules for the prevention of land-based pollution and pollution arising from exploration and exploitation of the sea-bed. That was essential because of the inadequacy of current international rules and because, as coastal States bore the main responsibility for stopping such pollution, they should be empowered to establish additional and more stringent rules to prevent it, including a total prohibition of such activities.

70. In principle the same kind of approach had been taken in the draft articles to the dumping of waste and other matter in areas adjacent to coasts. A large measure of agreement had been achieved on article 4, which conferred on the coastal State the exclusive right to allow or prohibit dumping in established zones and to promulgate laws and rules which it would enforce.

71. Clearly, a somewhat different approach had to be adopted to preventing pollution from ships. In that respect the draft articles correctly emphasized the importance of international rules (article 3, paras. 1-4). Serious difficulties for shipping might arise if each country were allowed to promulgate its own rules on the subject. Discrepancies would inevitably arise between the rules of different States, and in time ships might have to face not a unified international code but separate provisions applicable in different parts of the world.

72. Enforcement provisions were prominent in the nine-power proposal. His delegation would prefer the Conference to adopt the principle of the jurisdiction of the flag State in the high seas. However, in order to reach agreement, it was prepared to accept the proposal in the draft articles for an amplification of that principle by a limited grant of competence to the coastal State over any foreign ship coming into its ports. An essential condition should be the establishment of safeguards against the abuse of power by the port State and the avoidance of unnecessary international complications. In particular the articles should include the flag State's primary right to take proceedings within a fixed period against any persons in breach of the rules; the imposition of only monetary fines for such breaches; the immediate release of the ship on paying a deposit or giving some other guarantee for payment of the fine; and full compensation for any damage caused by unjustified measures taken against the ship. In that connexion, his delegation had some doubts about article 3, paragraph 11 and 12 of which enabled the port State to take proceedings against a foreign ship even when it had committed a breach of international rules many hundreds of miles from the coast of any State.

73. The nine-Power draft did not touch on the important problem of whether or not coastal States could establish in their territorial sea national rules concerning the construction, equipment, and manning of foreign ships. In practice, technical innovations were often applied only to newly-built ships. The introduction of new rules called for special care, and at the national level rules for the prevention of pollution should not be made applicable to foreign ships. His delegation's views on that point were reflected in article 2 of its additional draft articles on prevention of pollution of the marine environment (A/Conf.62/C.3/L.25).[2]

74. The problem of combating pollution in international straits situated within the territorial sea was a complicated one. The only way to deal with it was to include in the future convention provisions, such as those in article 3 of his delegation's draft articles, prohibiting in straits any discharge from ships of harmful or toxic substances either on board or being transported, as well as mixtures containing such substances. Such a rule would complicate the position of ships passing through straits but was essential in order to reach agreement concerning the regime of straits.

75. An important element in the Soviet draft articles was the rule in article 4 about the right of intervention by the coastal State in the event of a serious threat of pollution affecting its coastline or related interests, but arising outside the territorial sea of that State. The text of that article embodied the principles of the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and of the 1973 Protocol extending that Convention to accidents in ships transporting any harmful or dangerous substances. Those principles were given greater prominence in the additional draft articles, and, in the interests of protecting the marine environment of coastal States, their right to intervene was also recognized in cases of accidents connected with the exploration and exploitation of sea-bed resources.

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[2] Document A/Conf.62/C.3/L.25* Union of Soviet Socialist Republics: additional draft articles on prevention of pollution of the marine environment

* Incorporating document A/Conf.62/C.3/L.25/Corr.1 of 4 April 1975.

2. Scientific Research

(19 July, 1974, 8th Meeting, 3rd Committee, 2nd Session)

40. Mr. Lo Yu-ju (China) said the contention of many countries of the third world that marine scientific research should be appropriately regulated was entirely proper and should be taken as the basis for discussion at the Conference. The superpowers, however, in disregard of the just demands of the majority of States, strongly opposed the regulation by coastal States of scientific research in sea areas under national jurisdiction. Marine research, like any other scientific research, directly or indirectly served definite political, economic or military purposes. If such scientific research was permitted freely, the coastal States would be unable to safeguard their sovereignty and protect their national security. In the hands of the super-powers, marine research was a means of contending for maritime hegemony and for pursuing policies of aggression and plunder. The so-called "freedom of scientific research" advocated by them was only the freedom to violate the sovereignty of other States and to monopolize marine research. To counter that, it was entirely necessary that many countries, particularly those of the third world, should insist on the appropriate regulation of marine research. His delegation fully supported their stand.

Note. The present draft articles do not deal with the points agreed upon during informal meeting of the Third Committee or those set out in document A/Conf.62/C.3/L.24.

Article 1

Obligation to prevent the spread of pollution outside the territorial sea

States shall take all necessary measures to ensure that pollution of the marine environment arising from activities under their jurisdiction or control does not spread to the marine environment outside their territorial sea and does not cause damage to other States and their environment.

Article 2

Prevention of pollution of the marine environment from ship within the territorial sea

1. Coastal States may, within the limits of their territorial sea, establish regulations on prevention of pollution of the marine environment from ships, in addition to the international regulations.

41. Marine research should be governed by the following basic principles. First, anyone wishing to conduct marine research in the sea area within the national jurisdiction of another coastal State must obtain the prior consent of that State and observe its relevant laws and regulations. Secondly, a coastal State had the right to take part in any scientific research carried out by other countries in the sea area under its national jurisdiction and to obtain the data and results thereof. Such data and results could not be published or transferred without the prior consent of the coastal State concerned. Thirdly, marine research in the international sea area beyond national jurisdiction should be subject to regulation by the international regime and international machinery to be established. Fourthly, all States should promote international co-operation in marine research and actively assist the developing countries to enhance their capability to conduct marine research independently, on the basis of mutual respect for sovereignty and equality and mutual benefit.

42. The developing countries had great potential for developing their marine science and technology independently. That could be done by done by unremitting effort in the light of a country's own specific characteristics and conditions and by advancing along the road of independence and self-reliance. Self-reliance did not mean self-seclusion or the rejection of foreign aid. All countries should exchange marine environment preservation and marine research techniques. His country wished to learn from the useful experience of other countries in that respect. There should be an active transfer of technology to developing countries, without any conditions or demands for special privileges. The technology transferred must be practical, efficient, economic and convenient to use. Experts and other personnel dispatched to the recipient countries should conscientiously pass on technical know-how to the peoples of those countries whose laws and national customs should be respected. They must not ask for special facilities or engage in illegal activites.

Such regulations shall be established taking into account the international regulations and may not deal with the design, construction, equipment, operation or manning of a foreign ship nor with the transit of foreign ships through straits referred to in articles. . . of this Convention.

2. Without prejudice to the provisions of article 3, the coastal State shall, within the limits of its territorial sea, ensure compliance by all ships with regulations for the prevention of pollution

43. The question of marine research and the transfer of technology could be reasonably resolved only on the basis of respect for national sovereignty and the equality of all countries. His delegation's basic stand was that the sovereignty of all States should be safeguarded and their national economic interests defended, and super-Power hegemonism should be opposed.

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of the marine environment, applicable in accordance with this Convention, and in particular with regulations provided for in paragraph 1 of this article.

Article 3

Prohibition to discharge harmful substances from ships in straits

The flag state shall ensure that no ship registered in its territory or flying its flag discharges in straits referred to in article. . . of this Convention, any harmful or toxic substances or mixtures containing such substances which such a ship has on board or is transporting, save when it is necessary to do so for the purpose of saving human life at sea.

Article 4

Measures to be taken in cases of serious danger of pollution

1. Coastal States may, beyond the limits of their territorial sea, take such measures as may be necessary to prevent, mitigate or eliminate serious imminent pollution of their coastline or related interests, including fisheries, caused as the result of an accident with a ship or of any other incident, including incidents arising from exploration or exploitation of the sea-bed resources, if such accident or incident may reasonably be expected to have major harmful consequences.

The coastal State, before taking any measures, shall consult other States whose interests have been affected by the accident or incident save in exceptional cases requiring immediate action.

2. Measures taken by the coastal State in accordance with paragraph 1 of this article shall be proportionate to the actual or threatened damage.

The coastal State shall be obliged to pay compensation for the damage caused by measures exceeding those reasonably necessary to achieve the purpose mentioned in paragraph 1.

3. States, acting in particular through competent international organizations, shall establish, as soon as possible and where they do not already exist, international regulations with respect to the enforcement of measures provided for in this article.

(23 August 1974, 16th Meeting, 3rd Committee 2nd Session)

39. Mr. Lo Yu-ju (China) said that his delegation fully supported the draft articles contained in document A/Conf.62/C.3/L.13,[3] and regarded them as a very significant contribution by the Group of 77. He proposed that the draft articles should be used as a basis for consideration of marine scientifice research at the next session of the Conference. He endorsed the suggestion made by the representative of Kenya regarding the support expressed for the draft articles.

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3 Document A/Conf.62/C.3/L.13* Colombia: draft articles on marine scientific research**

Item 2(a) -- Right to undertake marine scientific research

1. Coastal States have the exclusive right to conduct and regulate marine scientific research in their (. . .)*** and to authorize and regulate such research as provided for in article . . .

2. Marine scientific research in the international area**** shall be conducted directly by the International Authority and, if appropriate, by persons, juridical or physical, through service contracts or associations or through any other such means as the International Authority may determine, which shall ensure its direct and effective control at all times over such research.

* Incorporating document A/Conf.62/C.3/L.13/Corr.1 of 24 August 1974.

** The delegate of Colombia, as the Chariman of the Group of 77, while presenting this document, would like to point out that it represents the consensus of the Group of 77 of the Third Committee, without committing the final position of members of the Group.

*** A decision on the precise terms to be used here, such as economic zone, patrimonial sea, national sea or area under national jurisdiction and or sovereignty, and continental shelf, and which do not refer to the international area, shall be adopted in the light of the decisions on the definition and nature of those terms in the Second Committee.

****The international area referred to in this paragraph is the area with which the First Committee is concerned. With regard to the remaining international area, the matter will be discussed at a later stage.

(23 August 1974, 16th Meeting, 3rd Committee, 2nd Session)

40. Mr. Kovalev (Union of Soviet Socialist Republics) noted that the draft articles[4] dealt with some of the most important

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Item 2(b)--Consent, participation and obligations of the coastal State

1. Marine scientific research in the (. . .)*** of a coastal State shall not be conducted without the explicit consent of that State.

2. States and appropriate international and regional organizations, as well as persons, juridical and physical, seeking consent of the coastal State to conduct marine scientific research in the area referred to in paragraph 1 shall, inter alia:

(i) Undertake to conduct the research exclusively for peaceful purposes;

(ii) Disclose the nature and objective of the research, as well as the means to be used, including satellites and Oceanic Data Acquisition Systems (ODAS);

(iii) Indicate the precise geographical area in which the activities concerning such research are to be conducted;

(iv) State the proposed date for commencement of the activities and the period for completing the project;

(v) Give full information and particulars regarding the sponsoring institution, if any, the scientific staff, and the vessels, equipment and other means to be employed, such as ODAS and remote sensing devices operating in the atmosphere or beyond;

(vi) Provide the coastal State with a detailed description of the research project which shall be kept up to date;

(vii) Include active participation or representation of the coastal State, if it so desires, in all stages of the research project;

(viii) Undertake to supply on time all raw and processed data, including the final evaluations and conclusions and samples to the coastal State;

(ix) Assist the coastal State in assessing the implications of the said data and samples and the results thereof in such a manner as that State may request;

(x) Undertake that results of scientific research shall not be published without the explicit consent of the coastal State; and

(xi) Undertake to comply with all applicable environmental standards and regulations of the coastal State, as well as international standards established or to be established by (insert name or names of appropriate organizations).

4 Document A/Conf.62/C.3/L.13 supra.

aspects of marine scientific research and gave rise to serious concern. However, the draft could hardly be considered as anything other than an attempt to hinder negotiations and prevent the achievement of a consensus in the interests of all countries and all groups of countries. Adoption of the provisions in the draft would not only interfere with the progress of marine science, but might even bring scientific research to a halt with all the consequences which that would entail, primarily for the developing countries. The procedures provided for in the draft would seriously delay the organization of scientific research, which could make research outdated before it was undertaken.

41. Item 2 (a), paragraph 2, would give the International Authority a monopoly on scientific research; even those countries which supported that approach must realize that it could not serve as a basis for negotiation. The only basis for negotiation was freedom of scientific research in the high seas conducted for peaceful purposes and in accordance with the general principles of international law and environmental standards. In any case, it was quite clear that the International Authority would not have the necessary resources to conduct marine scientific research; marine scientific research was very expensive, Moreover, it was simply unrealistic to expect that sovereign States would place their own scientific personnel and research ships and institutions under the control of the International Authority. Giving the International Authority a monopoly on scientific research would only result in paralysing such research in the world oceans.

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3. The coastal State shall have the right to supervise marine scientific research activities undertaken in the area referred to in paragraph 1 and suspend or terminate them if that State finds that these activities are not being carried out for the declared objective or purpose of the research or are not being carried out in accordance with the provisions of these articles.

4. [Participation of developing land-locked States and developing geographically disadvantaged States: on this question, proposals were submitted by the delegations of Singapore, India, Peru and Lesotho and an amendment was submitted by the delegation of Iran to the proposal of Singapore. These proposals, which due to lack of time could not be considered at this session, have been given to the Chairman of the Group of 77 for circulation within the Group, with a decision by the Group that they will be considered at the next session of the Conference or, in case of an intersessional meeting of the Group, at such meeting.]

5. The exercise of innocent passage and navigation does not confer on States, international organizations or other juridical or natural persons the right to undertake marine scientific research.

42. His delegation had frequently stated its views on the manner of conducting scientific research in the high seas. With a view to reaching a compromise solution at the current session, it had proposed that research on living and non-living resources of the economic zones should be conducted with the consent of the coastal State. Unfortunately, however, no attempts whatsoever had been made towards compromise during the current session, and now a draft representing the most extreme position had been prepared at the last moment and submitted to the Committee. He reiterated his delegation's position that all problems relating to the sea were interrelated and should be approached as a whole. One of the most basic parts of the package was freedom of scientific research; mutually acceptable solutions of other problems could be achieved only if the problem of scientific research was resolved in a way which would take account of the interests, not only of one group of countries, but of all countries in the world.

43. Commenting on the draft articles contained in document A/Conf.62/C.3/L.12,5 he said they contained many interesting ideas

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5 Document A/Conf.62/C.3/L.12 Brazil, Colombia, Congo, Ecuador, Egypt, Gambia, Iran, Jamaica, Liberia, Libyan Arab Republic, Mexico, Morocco, Nigeria, Oman, Pakistan, Panama, Peru, Republic of Korea, Republic of Viet-Nam, Senegal, Somalia, Sri Lanka, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia: draft articles on the development and transfer of technology

Article 1

1. All States shall actively promote the development of the scientific and technological capacity of developing States with regard to the exploration, exploitation, conservation and management of marine resources, the preservation of the marine environment and the legitimate uses of ocean space, with a view to accelerating their social and economic development.

2. To this end, States shall, inter alia, either directly or through appropriate international organizations:

(a) Promote the acquisition, development and dissemination of of marine scientific and technological knowledge;

(b) Facilitate the transfer of technology, including knowhow and patented and non-patented technology;

(c) Promote the development of human resources and the training of personnel;

(d) Facilitate access to scientific and technological information and data;

(e) Promote international co-operation at all levels, particularly at the regional, subregional and bilateral levels.

worthy of consideration, but his delegation could not accept the provision in article 3, subparagraph 1, that the International Authority should be competent in marine scientific research as a whole. The approach taken by his delegation with regard to the development and transfer of technology was reflected in the draft it had submitted on pollution prevention and scientific research. If agreement was reached on the freedom of scientific research, his delegation was ready to support the inclusion in the future convention of provisions on the transfer of technology to the developing countries. However, if delegations were sincerely interested in the success of the Conference, they must all demonstrate a readiness to consider each other's interests.

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3. In order to achieve the above-mentioned objectives and taking into account the interests, special needs and conditions of developing States, States shall inter alia:

(a) Establish programmes of technical assistance for the effective transfer of all kinds of marine technology to developing States;

(b) Conclude agreements, contracts and other similar arrangements, under equitable and reasonable conditions;

(c) Hold conferences, meetings and seminars on appropriate scientific and technological subjects;

(d) Promote the exchange of scientists, technologists and other experts;

(e) Undertake projects, including joint ventures, mixed enterprises and other forms of bilateral and multilateral cooperation.

Article 2

All States are under a duty to co-operate actively with the "Authority" to encourage and facilitate the transfer of skills in marine scientific activities and related technology to developing States and their nationals.

Article 3

The "Authority" shall, within its competence, ensure:

(a) The adequate provisions are made in its legal arrangements with juridical and natural persons engaged in marine scientific activities, the exploration of the international area, the exploitation of its resources and related activities to take on under training, as members of the managerial, scientific and technical staff constituted for these purposes, nationals of developing States whether coastal, land-locked or otherwise geographically disadvantaged, on an equitable geographical distribution basis;

(b) That all blueprints and patents of the equipment, machinery, devices and processes used in the exploration of the international area, the exploitation of its resources and related activities be made available to all developing States upon request;

(c) That adequate provisions are made by it to facilitate the acquisition by any developing State, or its nationals, of the necessary skills and know-how including professional training in any undertaking by the Authority for exploration of the international area, exploitation of its resources and related activities;

(d) That a special fund is established to assist developing States in the acquisition of necessary equipment, processes, plant and other technical know-how required for the exploration and exploitation of their marine resources.

Article 4

1. States shall promote the establishment in developing States of regional marine scientific and technological research centres, in co-ordination with the Authority, international organizations and national marine scientific and technological institutions.

2. The functions of such regional scientific and technological research centres shall include, inter alia:

(a) Training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geology, sea-bed mining and desalination technologies;

(b) Management studies;

(c) Study programmes related to the preservation of the marine environment and the control of pollution;

(d) Organization of regional seminars, conferences and symposia;

(e) Acquisition and processing of marine scientific and technological data and information, in order to serve as regional data centres;

(f) Prompt dissemination of results of marine scientific and technological research in readily available publications;

(g) Serving as a repository of marine technologies for the States of the region covering both patented and non-patented technologies and know-how; and

(h) Technical assistance to the countries of the region.

(10 April 1975, 20th Meeting, 3rd Committee, 3rd Session)

30. Mr. Kikhonov (Union of Soviet Socialist Republics) said that his and other socialist delegations, in a desire to facilitate compromise decisions, were submitting new draft article (A/Conf.62/C.3/L.26)[6] concerning marine scientific research which, to a great extent, took account of the interests of various groups of member States.

31. At the second session the socialist countries had been willing, as indicated in their proposal in document A/Conf.62/C.2/L.38,[7] to support the developing countries' insistence on the sovereign rights of the coastal State over the living and mineral resources of the economic zone. The logical consequence of recognizing those rights was the regulation of scientific research connected with the exploration and exploitation of the resources of the zone in such a way that it could be conducted only with the coastal State's consent.

32. With regard to marine scientific research in the economic zone unrelated to the exploration and exploitation of resources, the greatest generally acceptable degree of freedom should be granted, subject, however, to respecting the interests of the coastal States, and particularly those of developing States, in the use of the results of such research. In that context, the phrase "marine scientific research unrealted to the exploration and exploitation of living and non-living resources" covered such activities as research into natural phenomena and processes occurring in the marine environment at the atmosphere-ocean interface, the study of the structure of the earth's crust under the ocean and the phenomena known as continental drift or plate tectonics, and vulcanism in various parts of the oceans. Such research undoubtedly qualified as fundamental research. A knowledge of such phenomena and processes was vital in a world in which many developing countries were permanently short of basic necessities. The forecasting of destructive processes engendered by little-known natural forces depended largely on geophysical research in the world's oceans. In those circumstances, a legal regime which enabled any Government unilaterally to forbid such scientific research would be contrary to the interests of mankind as a whole.

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6 See annex IV

7 See annex III

33. It had been repeatedly stated at the Conference that unfettered freedom of scientific research within the economic zone would mean that developing coastal States would not know what research was being done and of what use it would be to them. Such apprehensions were unwarranted and could easily be removed by suitable provisions concerning notification of research unrelated to the zone's resources. Draft article 6 in document A/Conf.62/C.3/L.26, for example, provided that the coastal State must be notified in advance of such research and given a detailed description of the research programme. Scientists of the coastal State would be given the opportunity to participate in the research. They, and the coastal State itself, could during the actual work assess the progress being made in attaining the objectives set out in the notification, and that State would have access to all data and samples obtained and would receive assistance in the interpretation of the results of the research. In order to take account of the legitimate rights and interests of land-locked and geographically disadvantaged States near the research area, draft article 7 provided that the research State would notify such States of the proposed research and would provide them, at their request, with information about the research programme.

34. The sponsors believed that, in principle, the same regime should apply to scientific research relating to the continental shelf and its resources as applied in the economic zone. All States, on a basis of equality and without any discrimination, and competent international organizations should have freedom to conduct scientific research outside the limits of the economic zone and the continental shelf in accordance with the provisions of the future convention. Furthermore, all States should promote international and regional co-operation in the dissemination of scientific data and information and in establishing a programme for the training of scientific personnel from developing countries.

35. The general conditions and principles for the conduct of marine scientific research by States and competent international organizations in the draft articles were those about which preliminary agreement had already been reached in the Committee. The draft articles also provided that States should be responsible for material damage caused by their research activities to other States and their nationals. Finally, with a view to facilitating the study and use of the world's oceans, they provided that marine scientific research could be conducted with the use of ships of all categories, fixed or mobile installations, and other means. At the same time, such research must not hamper international shipping, maritime safety or navigation.

(10 April 1975, 20th Meeting, 3rd Committee, 3rd Session)

55. Mr. Borovikov (Byelorussian Soviet Socialist Republic) said that he entirely agreed with the statements made by the Soviet Union representative and other sponsors of the nine-Power proposals.[8] The requirements listed in draft articles 6 and 7 were designed to promote research, and to protect the sovereignty and interests of all States, coastal or otherwise. He hoped that the proposal would be adopted.

(17 April 1975, 21st Meeting, 3rd Committee, 3rd Session)

29. Mr. Lo Yu-ju (China) said that the proposals in document A/Conf.62/C.3/L.26[9] nullified the reasonable principle that, in order to safeguard their sovereignty and security, the coastal State's consent should be required for any marine scientific research carried out in waters over which it had jurisdiction. It was impossible, in practice, to determine whether or not such research was related to marine resources. The pretext of scientific research was used by super-Powers to undermine the security and economic interests of the many developing countries which were coastal States. Similarly, the theory that "all States" should enjoy freedom of marine scientific research, asserted in article 5, had been firmly repudiated by third world Powers, since it merely provided an opportunity for the super-Powers, with their superior technological capability, to steal a march on the developing countries. Scientific research on the high seas, including the sea-bed, should be subject to the regime of the proposed International Authority.

30. Article 8 was unacceptable since it infringed the sovereignty of coastal States; its provisions were tantamount to imposing obligations on them, even to the extent of requiring them to take legislative measures. Similarly, the scientific research installations referred to in article 9 should be under the jurisdiction of coastal States, in addition to requiring their prior consent. Otherwise coastal States would exercise jurisdiction in name only, and their sovereignty and security could not be safeguarded.

31. Finally, his delegation disagreed with the general and indiscriminate references in the text to "in accordance with other

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8 Document A/Conf.62/C.3/L.25. See supra.

9 See Annex IV.

rules of international law". Many of those rules had been established before the majority of developing countries became independent and did not conform with their interests. The world had changed, and developing countries could not be asked to accept out-of-date laws which operated to the sole advantage of the super-Powers.

(17 April 1975, 21st Meeting, 3rd Committee, 3rd Session)

33. Mr. Taranenko (Ukrainian Soviet Socialist Republic) said that, as one of the sponsors of the draft articles,[10] he wished to elucidate some of them in the light of the views expressed by delegations.

34. Ukrainian scientists, together with scientists from other countries, played their part in studying the world's oceans for the purpose of ensuring the rational exploitation of the resources of the sea and the preservation of the marine environment in the interests of mankind.

35. His delegation was in favour of freedom for marine scientific research conducted on the high seas, including the sea-bed beyond the limits of the economic zone and the continental shelf, by all States, both coastal and land-locked, on the basis of equality and non-discrimination. That freedom should apply fully to the competent international organizations conducting such research.

36. The draft articles proposed that the conduct of scientific research on the continental shelf and in the economic zone should be regulated in two different ways, depending on whether or not the research related to the exploration and exploitation of the resources of the economic zone and the continental shelf. Under article 6, research so related would have to be conducted with the consent of the coastal State and on conditions determined by it, with the coastal State having the right to participate or be represented in such research.

37. Article 7, on the other hand, provided that in the case of scientific research in the economic zone and on the continental shelf unrelated to the exploration and exploitation of the resources of those areas, the coastal State must be notified of the planned research, be given a detailed description of the research programme and be provided with an opportunity for participation.

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10 Document A/Conf.62/C.3/L.26. See Annex IV.

38. Document A/Conf.62/C.3/L.26 had clearly aroused considerable interest, and the discussions on it had been businesslike and constructive. The delegation of Kenya, for example, had proposed that, in article 4, the word "may" should be replaced by the word "shall". His delegation was prepared to consider that proposal. As for the proposals of the delgations of Ireland and the Netherlands on the need to draft provisions on the regulation of marine research, he was sure that the sponsors would willingly discuss that matter.

39. The delegation of Nigeria had raised the question of the role of the future International Authority in marine scientific research. In his delegation's view, the functions and role of the Authority, in that field as in others, fell within the competence of the First Committee. He understood, however, that the intention was to empower the Authority to conduct such research on the high seas jointly with States and other competent international organizations.

40. Several delegations had expressed doubts as to the need for, or possibility of differentiating between marine scientific research which was related to the resources of the economic zone and that which was not so related. His delegation was convinced that it was essential to distinguish between them, for the following reason: if the rights of the coastal State were recognized, not with respect to the area of the economic zone, but only with respect to the resources in that zone, the natural conclusion would be that only in the case of scientific research relating to such resources could the coastal State decide whether such research could be conducted and on what conditions. For research unrelated to the resources of the economic zone there had to be another regime not entirely subject to the discretion of the coastal State. That was precisely what was proposed in document A/Conf.62/C.3/L.26. Those and other similar issues could be discussed and clarified during further work on the draft articles.

41. In conclusion, he said that his delegation rejected the politically-motivated observations made by one delegation, and would not waste the Committee's time by replying to them.

(17 April 1975, 21st Meeting, 3rd Committee, 3rd Session)

56. Mr. Tikhonov (Union of Soviet Socialist Republics), speaking in excercise of the right of reply, said that there had been much constructive comment on the draft articles. His delegation considered that it would be entirely feasible to have two types of regime governing research in the economic zone and was

prepared to co-operate with other delegations in drafting appropriate provisions. There was a good deal of research that was unrelated to the exploration and exploitation of marine resources, so-called "basic research". Such research included studies of the dynamics of cyclone and anti-cyclone vortices in the marine environment, research on the natural balance of chemical constituents of sea water and their dynamics, research into the processes of biological self-purification in the marine environment and many other topics of research.

57. Much basic marine research had resulted in benefits for all mankind. Examples which could be cited in that connexion included research on the hydrological regime of coastal waters that had facilitated the construction of permanent hydraulic engineering works and flood control installations; studies of waves that now made it possible to build large ships; studies of the distribution of long waves in the ocean that made it possible to predict the approach of tsunamis; and studies of anomalies in surface-water temperature in equatorial regions that made it possible to forecast the paths of tropical hurricanes and typhoons. His delegation was convinced that solutions could be found which served the interests of all countries, provided the majority of delegations adopted a reasonable approach.

58. Some delegations, however, had sounded a harshly dissonant note. Their aim was to impede the Committee's work, to deflect the discussion towards political matters and to create a distrustful attitude towards science. His delegation would confine itself to stating that such manoeuvres would fail, just as in the Middle Ages attempts to thwart progress by condemning those who carried out research had failed.

(2 May 1975, 23rd Meeting, 3rd Committee, 3rd Session)

10. Mr. Tikhonov (Union of Soviet Socialist Republics) said that, during the discussion of document A/Conf.62/C.3/L.26,[11] submitted by the group of socialist States, many representatives of developing countries had described that draft as a major step towards meeting the wishes of the developing countries, reflecting a desire to ensure that mutually acceptable decisions were adopted.

11. His delegation expressed regret that by no means all delegations were striving for the successful completion of work on the question of scientific research. In particular, as demonstrated

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11 See Supra.

by the officially submitted document A/Conf.62/C.3/L.13/Rev.2,[12] a number of States were confining themselves to repeating positions which they knew were unacceptable to other countries. The Soviet delegation believed that all delegations which were concerned about the success of the Conference should demonstrate a desire to take into account each other's positions and interests.

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12 Document A/Conf.62/C.3/L.13/Rev.2 Iraq: revised draft articles on scientific research*

Item 2 (a) - Right to undertake scientific research activities

1. Coastal States have the exclusive right to conduct and regulate scientific research activities in their (. . .)** and to authorize and regulate such research as provided for in article....

2. Scientific research activities in the international area*** shall be conducted directly by the International Authority and, if appropriate, by persons, juridical or physical, through service contracts or associations or through any other such means as the International Authority may determine, which shall ensure its direct and effective control at all times over such research.

Item 2 (b) - Consent, participation and obligations of the coastal State

1. Scientific research activities in the (. . .)** of a coastal State shall not be conducted without the explict consent of that State.

2. States and appropriate international and regional organizations, as well as persons, juridical and physical, seeking consent of the coastal State to conduct scientific research in the area referred to in paragraph 1 shall, inter alia:

(i) Undertake to conduct the research exclusively for peaceful purposes;

* The representative of Iraq, as the Chairman of the Group of 77 of the Third Committee, while presenting this document, would like to point out that it has been agreed upon by consensus by the Group of 77 of the Third Committee without committing the final position of members of the Group.

** A decision on the precise terms to be used here, such as economic zone, patrimonial sea, national sea or area under national jurisdiction and or sovereignty, and continental shelf, and which do not refer to the international area, shall be adopted in the light of the decisions on the definition and nature of those terms in the Second Committee.

*** The international area referred to in this paragraph is the area with which the First Committee is concerned. With regard to the remaining international area, the matter will be discussed at a later stage.

(ii) Disclose the nature and objective of the research, as well as the means to be used, including Oceanic Data Acquisition Systems (ODAS);

(iii) Indicate the precise geographical area in which the activities concerning such research are to be conducted;

(iv) State the proposed date for commencement of the activities and the period for completing the project;

(v) Give full information and particulars regarding the sponsoring institution, if any, the scientific staff, and the vessels, equipment and other means to be employed;

(vi) Provide the coastal State with a detailed description of the research project which shall be kept up to date;

(vii) Include active participation or representation of the coastal State, if it so desires, in all stages of the research project;

(viii) Undertake to supply on time all raw and processed data, including the final evaluations and conclusions and samples to the coastal State;

(ix) Assist the coastal State in assessing the implications of the said data and samples and the results thereof in such a manner as that State may request;

(x) Undertake that results of scientific research shall not be published without the explicit consent of the coastal State; and

(xi) Undertake to comply with all applicable environmental standards and regulations of the coastal State, as well as international standards established or to be established by (insert name or names of appropriate organizations).

3. The coastal State shall have the right to supervise scientific research activities undertaken in the area referred to in paragraph 1 and suspend or terminate them if that State finds that these activities are not being carried out for the declared objective or purpose of the research or are not being carried out in accordance with the provisions of these articles.

4. Coastal States in considering requests by States to undertake scientific research in their (. . .)** shall extend preferential treatment to developing neighbouring land-locked States and other developing neighbouring geographically disadvantaged States, as defined in this Convention.

5. The exercise of innocent passage and navigation does not confer on States, international organizations or other juridical or natural persons the right to undertake scientific research.

[6. Considering that certain scientific research activities which are not carried out directly in the marine environment should be subject to regulation by the coastal State, the Group of 77 agreed to draw up appropriate provisions on activities carried out by satellites, remote sensing devices or other means, which do not operate in the marine environment.]

(2 May 1975, 23rd Meeting, 3rd Committee, 3rd Session)

40. Mr. Borovikov (Byelorussian Soviet Socialist Republic) said that the draft articles submitted by the socialist countries took account of the interests of a large number of States, which the proposal submitted on behalf of the Group of 77 failed to do: indeed, the latter did not differ greatly from the proposal made at the second session. If any progress were to be made, every delegation must try to accommodate the interests of others.

41. For many, the denial of freedom of fundamental scientific research within the economic zone implicit in the proposal submitted on behalf of the Group of 77 was wholly unacceptable, because they believed it essential for that freedom to be given legal recognition in the convention, inasmuch as its exercise was to the advantage not only of the developed countries, but of all mankind. It would be dangerous and unrealistic to confer upon an international authority the right to regulate scientific research, as it would not have the financial resources, equipment or staff, and States would be unwilling to allow any interference with the activities of their scientific institutions. However, an international authority could certainly promote cooperation in scientific research related to the international sea-bed area and its resources.

(7 May 1975, 24th Meeting, 3rd Committee, 3rd Session)

30. Mr. Tikhonov (Union of Soviet Socialist Republics) said that the attempt by the sponsors to differentiate between fundamental and applied research and to establish separate conditions for them was a welcome move towards compromise. Unfortunately, however, the provisions of draft article 7, paragraphs 8 and 9, showed that the sponsors had not abandoned their original position in the case of non-resource oriented research. Their approach was not acceptable to his delegation. Furthermore, his delegation rejected the requirement that research States should comply with the provisions of those paragraphs pior to initiating a research project. The financing and organization of a research project had to be completed well in advance of implementation and could not go ahead if there was a risk of permission being refused or of having scientists and expensive equipment kept idle pending a decision by the coastal State.

31. He failed to see how concillation machinery could be used until a research project was under way. When it was in progress, however, the coastal State's scientists on board the research vessels could establish whether the research was fundamental or resource-oriented. Moreover, he considered that the complicated procedure envisaged in the case of research in the international

sea-bed area could be avoided and the problem resolved by the publication of the appropriate scientific data in the scientific bulletins of such organizations as the Intergovernmental Oceanographic Commission.

3. Development and transfer of technology

(19 July 1974, 9th Meeting, 3rd Committee, 2nd Session)

21. Mr. Kovalev (Union of Soviet Socialist Republics) said that his delegation's views on the freedom of scientific research in the world oceans were contained in document A/AC.138/SC.III/L.31. The position taken by some delegations that the freedom of scientific research was not one of the recognized freedoms of the high seas was not supported by current law or usage. Although freedom of scientific research was not specifically included in the freedoms of the high seas mentioned in article 2 of the 1958 Geneva Convention on the High Seas,[13] that article stated that the freedom of the high seas comprised, inter alia, four freedoms, and that all States should exercise those freedoms "and others recognized by the general principles of international law". The International Law Commission, which had prepared the draft convention, had noted in its commentary on article 27 that the list of freedoms was not exhaustive and that the high seas could be used for other purposes provided that they did not interfere with other uses of the high seas by other States, and it had specifically mentioned the freedom of scientific research. The Convention on the High Seas stated in its preamble that its provisions were generally declaratory of established principles of international law. Usage also supported the idea of freedom of scientific research in the world ocean.

22. Marine scientific research had led to many great scientific discoveries which had increased man's knowledge of his planet, the role of the seas and the potential and actual resources of the sea that could be used to raise the standard of living of peoples, particularly in developing countries. The importance of scientific research was demonstrated by a current experiment. TROPEX-74, a joint venture by 35 countries in Africa, Europe and Latin America, to provide long-term weather forecasts. The importance of scientific research was appreciated by all delegations, even those that felt there should not be complete freedom of scientific research; those delegations should realize that experiments might be hampered in future if there was any restriction on the freedom of scientific research, and that that would be prejudicial to the interests of all countries, large and small.

13 United Nations. Treaty Series, Vol. 450, p. 82.

23. Regulation of scientific research, either by the coastal State or by international machinery, would also open the path to restrictions on research. The authorities responsible for regulating research would inevitably have to consider the potential usefulness of the proposed experiment and ensure that the expenditure involved would not be too burdensome. But it was extremely difficult even impossible, for scientists to say in advance what their experiments could lead to. He stressed the danger of giving bureaucrats, even bureaucrats who were themselves scientists, the right to restrict or regulate scientific research and close off any seemingly fruitless avenues of research. The inevitable legal consequence of abandoning the concept of the freedom of scientific research and replacing it by a regime governing such research would be attempts to restrict or even prohibit research in the international area of the sea-bed and in the high seas, including the continental shelf.

24. Turning to the question of research in coastal waters, he recalled that Mr. Strong, Executive Director of the United Nations Environment Programme, had said that several important international research projects could be successful only if also carried out in coastal waters. Although it might be said that all States would be willing to co-operate in such research, there should be a firm legal basis for it. Restrictions on research not related to exploration or exploitation of resources in the extensive economic zones, would, in the view of his delegation have very grave consequences, particularly for future generations.

25. Recalling the statement made by his delegation at the 22nd plenary meeting, he reiterated his delegation's position that agreement on the most important aspects of the law of the sea, including scientific research, should include provisions recognizing the right of coastal States to establish economic zones extending for 200 miles and to exploit all living and mineral resources in their zones. That approach provided a basis for business-like negotiation to seek acceptable solutions. The basis for negotiation in the Third Committee should be the freedom of scientific research in the world oceans, including freedom of research in the economic zone, which was not related to the exploration and exploitation of its living and mineral resources. Unfortunately, some delegations would not accept that approach, and advocated that the freedom of scientific research be eliminated everywhere, by recognizing the right of coastal States to authorize or reject applications for any research in the economic zone, by granting the same right to the future International Sea-Bed Authority in respect of the rest of the world ocean, including its waters. Such a demand would weaken the very basis for possible agreement. His delegation was willing to take account of the desires and aspirations of all countries, and particularly those of the developing countries. If agreement was

reached on the freedom of scientific research, anyeffort to strengthen the provisions of the convention on co-operation to increase the research capacity of developing countries through participation by their nationals in marine research, training for their nationals, transfer of the results of scientific research and transfer of technological and scientific know-how, would meet with understanding from his delegation. The Soviet Union was willing to co-operate in multilateral programmes for the development and exploitation of the resources of the sea-bed. The positions and interests of all should, however, be taken fully into account if the Conference was to achieve its objective. He expressed his conviction that the spirit of realism and of sobriety and the desire to search for constructive solutions would prevail in the work of the Committee.

(25 April 1975, 22nd Meeting, 3rd Committee, 3rd Session)

9. Mr. Lo Yu-ju (China) said that the proposals gave expression to the desire of the developing countries to exploit their marine resources and to enhance the level of their marine science and technology, with due regard to the situation of land-locked and geographically disadvantaged countries. The proposals in article 1 concerning the development of the marine scientific and technological capacity of developing States and the transfer to them of all kinds of marine technology were reasonable and proper, and his delegation supported them as deserving consideration by the Conference.

10. Many of the developing countries were adjacent to vast areas of the sea with abundant natural resources, and had a wealth of manpower. They could certainly build up their own marine scientific and technological capacity if they relied on the strength and wisdom of their own people, and on mutual exchanges and support. China had always supported intensive transfer of marine science and technology to the developing countries as a means of promoting the exploitation of their marine resources and raising their level of technology. It believed, however, that the transfer of any kind of technology to developing countries should, as proposed in the new draft articles, take account of the economic capacity and development needs of the receiving country, strictly respect its sovereignty, and be unconditional--in other words, not associated with the grant of special privileges or excessive profits. It should be practical and cost-effective, and care should be taken to ensure that the technology was fully mastered by the developing countries, so that they could gradually move forward on the road to economic independence. In short, the transfer of technology should not serve as a means of plundering and controlling developing countries.

14. Mr. Tikhonov (Union of Soviet Socialist Republics) said that his delegation's position on the transfer to the developing countries of technology related to the exploration and exploitation of marine resources was reflected in the draft articles on the prevention of marine pollution (A/Conf.62/C.3/L.25)[14] and on scientific research (A/Conf.62/C.3/L.26)[15] sponsored by his delegation.

15. His delegation had just received the draft articles in document (A/Conf.62/C.3/L.12/Rev.1)[16] and could make only preliminary comments. They contained some reasonable elements, but also some unacceptable provisions. Articles 3 and 4 were based on the assumption that the future International Authority would undertake all forms of marine scientific research. His delegation did not endorse that approach; in its view, the Authority would exploit and explore only the resources of the international area.

16. His delegation had already stated that it would view sympathetically the inclusion in any rules for the conduct of marine scientific research of provisions on the transfer of technology to the developing countries. The Soviet Union was accordingly prepared to co-operate in devising and implementing on a multilateral and bilateral basis the necessary programmes and measures. It should be borne in mind that the success of the Conference depended on the readiness of all States to consider each other's interests.

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[14] See supra

[15] See annex IV

[16] Document A/Conf.62/C.3/L.12/Rev.1 Iraq: revised draft articles on transfer of technology*

Article 1

1. States either directly or through appropriate international organizations shall actively promote the development of the marine scientific and technological capacity of developing States, including land-locked and geographically disadvantaged State,** in consonance with their economy and needs, with regard to the ex-

* The representative of Iraq, as the Chairman of the Group of 77 of the Third Committee, is presenting this document on behalf of the Group of 77.

** The question of the definition of the words "geographically disadvantaged States" needs to be considered further in the appropriate forum of the Conference.

ploration, exploitation, conservation and management of marine resources, the preservation of the marine environment and the equitable and legitimate uses of ocean space compatible with this Convention, with a view to accelerating their social and economic development.

2. To this end, States, either directly or through appropriate international organizations, shall, inter alia:

(a) Promote the acquisition, evaluation and dissemination of marine scientific and technological knowledge and development of appropriate marine technology;

(b) Facilitate the transfer of marine scientific technology and the development of the necessary technological infrastructure in consonance with the economy and needs of the recipient country;

(c) Promote the development of human resources through training and education and especially the training of national personnel of a lesser developed State;

(d) Facilitate access to scientific and technological information and data;

(e) Promote the development of human resources particularly at the regional, subregional and bilateral levels.

3. In order to achieve the above-mentioned objectives, States, either directly or through the appropriate international organizations shall, inter alia:

(a) Establish programmes of technical co-operation for the effective transfer of all kinds of marine technology to States which, due to their geographically disadvantaged situation, have not been able to either establish or develop their own technological capacity in marine science and in the exploration and exploitation of the marine resources, and to develop the infrastructure of their technology;

(b) Conclude agreements, contracts and other similar arrangements, under equitable and reasonable conditions.

(c) Hold conferences, meetings and seminars on appropriate scientific and technological subjects;

(d) Promote the exchange of scientists, technologists and other experts;

(e) Undertake projects, including joint ventures, mixed enterprises (including State enterprises) and other forms of bilateral and multilateral co-operation.

4. When appropriate, international organizations competent in the field of the transfer of technology shall endeavour to co-ordinate their activities in this field, including any regional or international programmes, taking into account the interests and needs of the developing States, including land-locked and geographically disadvantaged States.

Article 2

All States are under a duty to co-operate actively with the International Authority to encourage and facilitate the transfer of skills in marine scientific activities and related technology to developing States and their nationals.

Article 3

The International Authority shall, within its competence, ensure:

(a) That adequate provisions are made in its legal arrangements with juridical and natural persons engaged in marine scientific activities, the exploration of the international area, the exploitation of its resources and related activities to take on under training as members of the managerial, scientific and technical staff constituted for these purposes, nationals of developing States whether coastal, land-locked or otherwise geographically disadvantaged, on an equitable geographical distribution, taking into account that this Authority exercises its functions in ocean space which is the common hertitage of mankind;

(b) That all blueprints and patents of the equipment, machinery, devices and processes used in the exploration of the international area, the exploitation of its resources and related activities be made available to all developing States upon request;

(c) That adequate provisions are made by it to facilitate the acquisition by any developing State, or its nationals, of the necessary skills and know-how including professional training in any undertaking by the Authority for exploration of the international area, exploitation of its resources and related activities;

(d) That a Special Fund be established to enable developing States, including land-locked and geographically disadvantaged States, in the acquisition of necessary equipment, processes, plant and other technical know-how required for the exploration and exploitation of their marine resources.

Article 4

1. The International Authority shall ensure the establishment in developing States of regional marine scientific and technological research centres, in co-ordination with States, international organizations and national marine scientific and technological institutions.

2. The functions of such regional scientific and technological research centres shall include, inter alia:

(a) Training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering geology, sea-bed mining and desalination technologies;

(b) Management studies;

(c) Study programmes related to the preservation of the marine

4. Report by the Chairmen on the Committee's Work

(14 September 1976, 30th Meeting, 3rd Committee, 5th Session)

5. Mr. Tikhonov (Union of Soviet Socialist Republics) said that, while he agreed with the head of the Australian delegation that consideration of the proposals presented unofficially by that country at the 29th meeting should not begin at the present session, he found it necessary to set forth his delegation's position on the question before the Committee.

6. As members were aware, his delegation had done its utmost at every session of the Conference to bring about a compromise solution of the complex problems posed by the question of marine scientific research in the economic zone and on the continental shelf. It had been concluded that those problems could not be solved without taking into account the position of the coastal countries, particularly the developing countries, which insisted on the establishment of a regime based on the principle of consent for marine scientific research of any kind in those areas. The developing countries sought in that way to obtain the assurance that research carried out off their coasts would not have purposes that were incompatible

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environment and the control of pollution;

(d) Organization of regional seminars, conferences and symposia;

(e) Acquisition and processing of marine scientific and technological data and information, in order to serve as regional data centres;

(f) Prompt dissemination of results of marine scientific and technological research in readily available publications;

(g) Serving as a repository of marine technologies for the States of the region covering both patented and nonpatented technologies and know-how; and

(h) Technical co-operation with the countries of the region.

3. When a regional approach is adopted regarding the transfer of technology, particular attention shall be paid to the special interests, needs and scientific and technological priorities of each of the countries which form a part of such a region.

Article 5

The transfer of technology shall be made to the developing countries at a concessional rate of payment taking into account their economic capacity and needs for development.

with the interests of science. At the meeting of the group set up by the Chairman, his delegation had stated that if a majority of the participants in the Conference thought it necessary to establish a regime of that nature applicable to every type of marine scientific research on the continental shelf and in the economic zone, his delegation would not raise any objection so that a comprehensive agreement could be reached on the basis of a consensus on the key issues of the law of the sea. In that connexion, he did not share the view that the establishment of such a regime would ultimately have the effect of ending such research. He was certain that the developing coastal States would not be opposed to scientific research in their economic zone and on their continental shelf since under the convention they would have an opportunity to take part in the research projects and obtain assistance in evaluating their results. He was certain that under those circumstances the coastal States not only would not oppose such activities but would encourage them. His delegation was therefore prepared to support the proposal of the developing coastal countries that marine scientific activities of any kind should be carried out only with the consent of the coastal country in question. His delegation also hoped that those countries would act in a spirit of friendly reciprocity when other key issues of the law of the sea were taken up. The consideration of basic issues now under way in other committees should not prevent the Third Committee from taking a decision that reflected the position of the majority of delegations which had called for the establishment of a regime based on the principle of consent of the coastal State for marine scientific research in the economic zone or on the continental shelf.

(14 September 1976, 30th Meeting, 3rd Committee, 5th Session)

14. Mr. Lo Yu-ju (China) associated himself with the views expressed on the issue of marine scientific research by the representatives of the United Republic of Tanzania, Brazil, Kenya and many other developing countries. His delegation was greatly encouraged by the positive efforts which many countries, especially those of the third world, had made during the current session to find a reasonable solution to the issue. Nevertheless, he could not but note that the super-Powers were still clining to their position of maritime hegemonism and opposing the exclusive jurisdiction of the coastal States over marine scientific research. Although they boasted about making concessions, in practice they wanted other countries to make concessions and had even gone so far as to blame the developing countries for the slow progress of the current session. His delegation considered that position absolutely unacceptable.

15. Both the economic zone and the continental shelf were within national jurisdiction; accordingly, it was natural and proper that the coastal States should excercise their jurisdiction over scientific activities carried out in those areas. In proposing that express consent should be obtained from the coastal States for marine scientific research in the economic zone, the developing countries had acted in accordance with the basic principle of safeguarding their security and their legitimate rights and interests. The super-Powers did not accept that position and wilfully alleged that the economic zone was a part of the high seas. Under the guise of "freedom of scientific research", they were attempting to clear the way for gathering as much information as they chose, thereby threatening the security of the coastal States.

16. Article 60 was a key article, since it involved the question of how the coastal States were to safeguard their sovereignty, their exclusive jurisdiction and their security. His delegation shared the view of many developing countries that it was essential to provide in that article that the coastal States should have "exclusive jurisdiction" in regard to marine scientific activities in their economic zones and that express consent should be obtained for such activities. Only then could that article serve as a basis for future negotiations.

(15 Septembeer 1976, 32nd Meeting, 3rd Committee, 5th Session)

2. Mr. Tikhonov (Union of Soviet Socialist Republics) said that the Chairman's oral report clearly and faithfully reflected the discussions which had taken place in the Committee.

3. The session which was about to end showed that most delegations viewed part III of the revised single negotiating text (see A/Conf.62/WP.8/Rev.1)[16] prepared by the Chairman as a compromise text which should be taken as a package. One of the positive aspects of the preceding session had been that virtually all delegations had expressed willingness to participate in negotiations aimed at finding generally acceptable solutions. That had made it possible to resolve differences and secure wider support for the revised single negotiating text. Of course, it had not been possible to reach agreement on all the points in that text either in the Committee or in the negotiating groups; a case in point had been article 21, paragraph 3. Nevertheless, there was reason to hope that on continuing its work, the Committee would manage to settle outstanding issues and find solutions through negotiations.

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[16] See Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. E. 76. V.8).

4. However, his delegation would not wish anyone to conclude that the provisions contained in the revised single negotiating text pertaining to vessel-source pollution of the marine environment reflected the national position of the Soviet Union. In order to accept some points in the negotiating text, the Soviet Union had had to depart considerably from its position of principle regarding the jurisdiction of coastal States and port States.

5. It had been proposed that the powers of the coastal State should be broadened when it had been decided that in certain areas of the economic zone national laws and standards disigned to stop vessel-source pollution of the marine environment could be applied. In the view of his delegation, such provisions should be included in future only if safeguards were also incorporated ensuring that there would be no abuse of the extensive rights granted to port States and coastal States. In that connexion, his delegation attached great importance to section 8 of part III of the revised single negotiating text pertaining to safeguards. However, the introduction into the text of exemptions or similar provisions which weakened the section on safeguards would make not only part III of the revised single negotiating text but the text in its entirety unacceptable to his delegation.

6. With regard to future work, his delegation felt that the most sensible course would be to conclude, at the next session, consideration of all of the provisions of the revised single negotiating text pertaining to vessel-source pollution of the marine environment. In that connexion, articles 30 and 38 should be kept very much in mind and, if time permitted, the amendments to other articles in that part of the text should be studied. In those future deliberations, it would be appropriate to continue to apply the methods followed so far, dealing with the articles and amendments in the Committee and in the negotiating groups, and using all other possible methods of consultation and discussion.

7. In his oral report, the Chairman had pointed out that one of the most difficult outstanding problems was to determine whether the provisions of the single text dealing with court proceedings should also apply in the case of questions relating to civil liability. His deligation did not view that problem as very serious. The articles of the single negotiating text referred to the rights and duties of States with respect to penalties to be imposed on physical persons for violations committed. The order in which the issues relating to civil liability should be decided was indicated in article 38, paragraph 3, and in article 44.

8. In his oral report, the Chairman had also pointed out that opinions differed about the jurisdiction of port States, a question which posed a number of problems for his delegation. However, his delegation realized that other delegations had difficulties with other parts of the proposed compromise text, and that was precisely why it had been agreed that a "package approach" should be adopted, thus concessions had been made by some delegations on some points and by other delegations on other points. A number of delegations felt that some parts of the single negotiating text presented as a compromise solution did not accord with the positions of their respective countries but that should not mean undermining the principle of reaching decisions by a package approach. He had to acknowledge that the question of the jurisdiction of port States was part of the package solution.

9. Earlier sessions had shown that most of the participants in the deliberations of the Committee had a clear understanding of the positions of other delegations and a sincere interest in achieving mutually acceptable results to that final success could be achieved.

APPENDIX III

ANNEX I. A/CONF.62/29

II. A/CONF.62/C.2/L.16

III. A/CONF.62/C.2/L.38

IV. A/CONF.62/C.3/L.26

V. A/CONF.62/WP.9

VI. A/CONF.62/53

Annex I

DOCUMENT A/Conf.62/29

Organization of the second session of the Conference and allocation of items: decisions taken by the Conference at its 15th meeting on 21 June 1974

I. Introduction

1. On the basis of the recommendations made by the General Committee in its first report to the Conference (A/Conf.62/28) following its consideration of the memorandum of the Secretary-General (A/Conf.62/Bur/1), the Conference at its 15th meeting decided on the organization of work for the second session and the allocation of subjects and issues to the Plenary and the three Main Committees, as set out in the following paragraphs.

II. Organization of the session

Schedule of meetings

2. Plenary and Committee meetings will begin at 10:30 a.m. and 3 p.m.; the Conference will work a five-day week, on the understanding that meetings on Saturdays, as well as night meetings, may be scheduled if necessary.

3. In this connexion, the Conference stressed the need for punctuality in opening meetings and called attention to the text of rule 21 of the rules of procedure,* whereby the President of the Conference or the Chairman of a Main Committee may declare a meeting open and permit the debate to proceed when at least one third of the members are present.

General statements

4. In view of the interest expressed by delegations in having time allotted for general statements in the Plenary, the Conference decided:

(a) That it will begin hearing general statements immediately after the adoption of the rules of procedure, and for a period not exceeding six days;

* United Nations publication, Sales No. E.74.1.18.

(b) That delegations wishing to make general statements hand in their names to the Executive Secretary by 26 June, and that the list of such speakers will be closed at 6 p.m. on that date;

(c) That representatives speak in the order of their inscription on the list of speakers, on the understanding that those prevented from doing so would normally be moved to the end of the list, unless they have arranged to change places with other representatives.

5. Aware of the need to devote as much time as possible to the discussion of concrete issues in the Main Committees, the Conference decided to schedule extra meetings of the Plenary and concurrent meetings of one or more Main Committees during that period as required. In this same connexion, the Conference appealed to delegations to restrict the length of their general statements as much as possible.

Closing date of the session

6. In accordance with paragraph 4 of General Assembly resolution 3067 (XXVIII), the closing date of the Conference will be Thursday, 29 August 1974.

Seating arrangements

7. The Conference took note of the seating arrangements to be observed in the Plenary and in the Main Committees.

Invitations to interested non-governmental organizations having consultative status with the Economic and Social Council

8. The Conference requested the Secretary-General to extend invitations forthwith to the non-governmental organizations listed in A/Conf.62/L.2, in accordance with paragraph 9 of resolution 3029 (XXVII) and resolution 3067 (XXVIII).

III. Allocation of items

9. The Conference decide that subjects and issues will be allocated to the Plenary and to the three Main Committees in the following manner, bearing in mind the introductory note to the list of subjects and issues:

The Plenary

Items to be considered directly by the Plenary

Item 22. Peaceful uses of the ocean space; zones of peace and security

Item 25. Enhancing the universal participation of States in multilateral conventions relating to the law of the sea

All Main Committees

Items to be dealt with by each Main Committee in so far as they are relevant to their mandates

Item 15. Regional arrangements

Item 20. Responsibility and liability for damage resulting from the use of the marine environment

Item 21. Settlement of disputes

Item 22. Peaceful uses of the ocean space; zones of peace and security

First Committee

Items to be considered by the First Committee

Item 1. International regime for the sea-bed and ocean floor beyond national jurisdiction
- 1.1 Nature and characteristics
- 1.2 International machinery: structure, functions, powers
- 1.3 Economic implications
- 1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries whether coastal or land-locked
- 1.5 Definition and limits of the area
- 1.6 Use exclusively for peaceful purposes

Item 23. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdcition

Second Committee

Items to be considered by the Second Committee

Item 2. Territorial sea
- 2.1 Nature and characteristics, including the question of the unity or plurality of regimes in the territorial sea
- 2.2 Historic waters
- 2.3 Limits
- 2.3.1 Question of the delimitation of the territorial sea; various aspects involved
- 2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas
- 2.4 Innocent passage in the territorial sea
- 2.5 Freedom of navigation and overflight resulting from the question of plurality of regimes in the territorial sea

Item 3. Contiguous zone
- 3.1 Nature and characteristics
- 3.2 Limits
- 3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

Item 4. Straits used for international navigation
- 4.1 Innocent passage
- 4.2 Other related matters including the question of the right of transit

Item 5. Continental shelf
- 5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States
- 5.2 Outer limit of the continental shelf: applicable criteria
- 5.3 Question of the delimitation between States; various aspects involved
- 5.4 Natural resources of the continental shelf
- 5.5 Regime for waters superjacent to the continental shelf
- 5.6 Scientific research

Item 6. Exclusive economic zone beyond the territorial sea
- 6.1 Nature and characteristics including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States
- 6.2 Resources of the zone
- 6.3 Freedom of navigation and overflight
- 6.4 Regional arrangements
- 6.5 Limits: applicable criteria
- 6.6 Fisheries
- 6.6.1 Exclusive fishery zone

6.6.2 Preferential rights of coastal States
6.6.3 Management and conservation
6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas
6.6.5 Regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
6.7 Sea-bed within national jurisdiction
6.7.1 Nature and characteristics
6.7.2 Delineation between adjacent and opposite States
6.7.3 Sovereign rights over natural resources
6.7.4 Limits: applicable criteria
6.8 Prevention and control of pollution and other hazards to the marine environment
6.8.1 Rights and responsibilities of coastal States
6.9 Scientific research

Item 7. Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea
7.1 Nature, scope and characteristics
7.2 Sea-bed resources
7.3 Fisheries
7.4 Prevention and control of pollution and other hazards to the marine environment
7.5 International co-operation in the study and rational exploitation of marine resources
7.6 Settlement of disputes
7.7 Other rights and obligations

Item 8. High seas
8.1 Nature and characteristics
8.2 Rights and duties of States
8.3 Question of the freedoms of the high seas and their regulation
8.4 Management and conservation of living resources
8.5 Slavery, piracy and drugs
8.6 Hot pursuit

Item 9. Land-locked countries
9.1 General principles of the law of the sea concerning the land-locked countries
9.2 Rights and interests of land-locked countries
9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications
9.2.2 Equality of treatment in the ports of transit States
9.2.3 Free access to the international sea-bed area beyond national jurisdiction
9.2.4 Participation in the international regime, including the machinery and the equitable sharing in the benefits of the area

9.3 Particular interests and needs of developing land-locked countries in the international regime
9.4 Rights and interests of land-locked countries in regard to living resources of the sea

Item 10. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines
10.1 International regime
10.2 Fisheries
10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines
10.4 Free access to and from the high seas

Item 11. Rights and interests of States with broad shelves

Item 16. Archipelagos

Item 17. Enclosed and semi-enclosed seas

Item 18. Artificial islands and installations

Item 19. Regime of islands
(a) Islands under colonial dependence or foreign domination or control;
(b) Other related matters

Item 24. Transmission from the high seas

Third Committee

Items to be considered by the Third Committee

Item 12. Preservation of the marine environment
12.1 Sources of pollution and other hazards and measures to combat them
12.2 Measures to preserve the ecological balance of the marine environment
12.3 Responsibility and liability for damage to the marine environment and to the coastal State
12.4 Rights and duties of coastal States
12.5 International co-operation

Item 13. Scientific research
13.1 Nature, characteristics and objectives of scientific research of the oceans
13.2 Access to scientific information
13.3 International co-operation

Item 14. Development and transfer of technology
14.1 Development of technological capabilities of developing countries
14.1.1 Sharing of knowledge and technology between developed and developing countries
14.1.2 Training of personnel from developing countries
14.1.3 Transfer of technology to developing countries

Note: The agreement reached in the sea-bed Committee on 27 August 1971 on the organization of its work read as follows:

"While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should consitute basic proposals for the consideration of the main Committee."

It is therefore recommended that the same understanding should be carried forward in respect of the Main Committees of the Conference, preliminary to the adoption of the pertinent final provisions by the Conference.

Annex II

DOCUMENT A/CONF.62/C.2/L.16

Malaysia, Morocco, Oman and Yemen: draft articles on navigation through the territorial sea, including straits used for international navigation

PART 1. RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA

1. RULES APPLICABLE TO ALL SHIPS

Article 1

RIGHT OF INNOCENT PASSAGE

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Article 2

PASSAGE

1. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port in the coastal State or its internal waters, or of proceeding to any port in the coastal State or its internal waters from the high seas, or of making for the high seas from any port in the coastal State or its internal waters.

2. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

3. Passage shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily, hovering or engaging in any activity other than mere passage.

Passage through archipelagic waters shall be governed by the provisions of chapter ... of this Convention.

Article 3

INNOCENCE OF PASSAGE

1. Passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

2. Passage of a foreign ship shall not be considered prejudicial to the peace, good order or security of the coastal State unless it engages in the territorial sea in activities such as:

(a) Any warlike act against the coastal or any other State or any threat or use of force;

(b) Any exercise or practice with weapons of any kind;

(c) The launching or taking on board of any device;

(d) The launching, landing or taking on board of any aircraft;

(e) The embarking or disembarking of any person or cargo;

(f) Any act of propaganda affecting the defence or security of the coastal State;

(g) Any act of espionage or collecting of information affecting the defence or security of the coastal State;

(h) Any act of interference with any system of communications of the coastal State;

(i) Any act of interference with any other facilities or installations of the coastal State;

(j) The carrying out of research operations of any kind.

3. Submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

4. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

5. The provisions of this article shall not apply to any activities carried out with the prior authorization of the coastal State or as are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons or vessels in danger or distress.

Article 4

DUTIES OF COASTAL STATES

1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.

2. The coastal State is required to give appropriate publicity to any obstacles or dangers to navigation, of which it has knowledge, within the territorial sea.

3. The coastal State is required to give appropriate publicity to the existence in its territorial sea of any facilities or systems of aid to navigation and of any facilities to explore and exploit marine resources which could be an obstacle to navigation, and to install in a permanent way the necessary marks to warn navigation of the existence of such facilities and systems.

4. In order to expedite the passage of ships through the territorial sea, the coastal State shall ensure that the procedures for notification provided for in these articles shall be such as not to cause undue delay.

Article 5

RIGHTS OF COASTAL STATES

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to any port in the coastal State or its internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to such ports or waters is subject.

3. Subject to the provisions of part II of this chapter, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. The coastal State may require any foreign ship that does not comply with the provisions concerning regulation of navigation through the territorial sea to leave it by such route as may be directed by the coastal State.

Article 6

Regulation of Navigation Through the Territorial Sea

1. The coastal State may make laws and regulations, in conformity with the provisions of these articles and other rules of international law, relating to navigation through its territorial sea.

2. Such laws and regulations may be in respect of all or any of the following:

(a) The safety of navigation and the regulation of maritime traffic and transport, including the establishment of sea lanes and traffic separation schemes, in accordance with article 7;

(b) The installation, utilization and protection of navigational facilities and aids;

(c) The installation, utilization and protection of facilities, structures and devices for the exploration and exploitation of the living and non-living resources of the territorial sea;

(d) The installation, utilization and protection of submarine or aerial cables and pipelines;

(e) The preservation of the marine environment of the coastal State and the prevention of pollution thereof;

(f) Research into the marine environment, including hydrographic surveying;

(g) Prevention of infringement of the customs, fiscal, immigration or sanitary regulations of the coastal State;

(h) Passage of ships with special characteristics, in accordance with article 8.

3. The coastal State shall give due publicity to all laws and regulations made under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State.

5. The coastal State shall ensure that the application, in form and in fact, of its laws and regulations upon foreign ships exercising the right of innocent passage is in conformity with the provisions of this Convention.

Article 7

Sea Lanes and Traffic Separation Schemes

1. The coastal State may designate in its territorial sea lanes and traffic separation schemes and prescribe the use of such sea lanes and traffic separation schemes as compulsory for passing ships.

2. In the designation of sea lanes and traffic separation schemes, the coastal State shall take into account:

(a) The recommendations of competent international organizations;

(b) Any channels customarily used for international navigation;

(c) The special characteristics of particular channels and the special characteristics of particular ships.

3. The coastal State shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

4. The coastal State may, after giving due publicity thereto, substitute sea lanes for any sea lanes previously designated by it or modify the traffic separation schemes also designated by it.

5. Foreign ships shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

6. Foreign ships passing through sea lanes and traffic separation schemes shall comply with appropriate rules to prevent collision at sea, and take into account instructions received from installations and systems of aids to navigation of the coastal State.

Article 8

Navigation of Ships with Special Characteristics

1. The coastal State may regulate the passage through its territorial sea of the following:

(a) Nuclear-powered ships or ships carrying nuclear weapons;

(b) Marine research and hydrographic survey ships;

(c) Oil tankers and chemical tankers carrying harmful or noxious liquid substances in bulk;

(d) Ships carrying nuclear substances or materials.

2. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign ships mentioned in subparagraph (a) of paragraph 1.

3. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea, except along designated sea lanes, of foreign ships mentioned in subparagraph (b) of paragraph 1.

4. The coastal State may require the passage through its territorial sea along designated sea lanes of foreign ships mentioned in subparagraphs (c) and (d) of paragraph 1, in conformity with article 7.

Article 9

Liability

1. If a ship exercising the right of innocent passage does not comply with laws and regulations concerning navigation and any damage is caused to the coastal State, the Coastal State shall be entitled to compensation for such damage.

2. If a coastal State acts in a manner contrary to the provisions of these articles and loss or damage to a foreign ship results, the coastal State shall compensate the owners of the ship for that loss or damage.

II. Rules Applicable to Merchant Ships

Article 10

Charges

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered. These charges shall be levied without discrimination.

Article 11

Criminal Jurisdiction

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its law for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving a port or the internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the country whose flag the ship flies, before taking any steps, and shall facilitate contacts between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. The coastal State may not take steps on board a foreign ship passing the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from any port, is only passing through the territorial sea without entering internal waters.

Article 12

CIVIL JURISDICTION

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course, or for the purpose, of its passage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

III. Rules Applicable to Government Ships

A. Government ships other than warships

Article 13

Government ships operated for commercial purposes

The rules contained in sections I and II shall apply to government ships operated for commercial purposes.

Article 14

Government ships operated for non-commercial purposes

1. The rules contained in articles 1 to 8 and article 10 shall apply to government ships operated for non-commercial purposes.

2. Subject to the provisions of paragraph 1 of this article, nothing in these articles affects the immunities which such ships enjoy under the provisions of these articles or other rules of international law.

B. Warships

Article 15

Passage of Warships

1. The rules contained in articles 1 to 8 shall apply to warships.

2. For the purpose of these articles, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government and whose name appears in the appropriate service list or its equivalent, and manned by crews who are under regular armed forces discipline.

3. The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with the regulations in force in such a State.

Article 16

Designated Sea Lanes

Foreign warships exercising the right of innocent passage may be required to pass through certain sea lanes as may be designated for this purpose by the coastal State.

Article 17

Non-compliance with Laws and Regulations of the Coastal State

If any warship does not comply with the law and regulations of the coastal State made in accordance with this Convention relating

to the passage through the territorial sea or fails to comply with the requirements of these articles and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require the warship to leave the territorial sea by such route as may be directed by the coastal State.

Article 18

Immunities

With such exceptions as are contained in these articles, nothing in the Convention affects the immunities which warships enjoy under the provisions of these articles or other rules of international law.

C. State responsibility for government ships

Article 19

State Responsibility for Government Ships

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws and regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State, including its environment and any of its facilities, installations or other property, or to any ship flying its flag, international responsibility shall be borne by the flag State of the ship causing such damage.

PART II. RIGHT OF INNOCENT PASSAGE THROUGH STRAITS USED FOR INTERNATIONAL NAVIGATION

Article 20

Straits

These articles apply to any strait which is used for international navigation and forms part of the territorial sea of one or more States.

Article 21

Right of Innocent Passage

Subject to the provisions of article 22, the passage of foreign ships through straits shall be governed by the rules contained in part I of this chapter.

Article 22

Special Duties of Coastal States

1. Passage of foreign merchant ships through straits shall be presumed to be innocent.

2. There shall be no suspension of the innocent passage of foreign ships through straits.

3. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea in straits and shall make every effort to ensure speedy and expeditious passage; in particular it shall not discriminate, in form or in fact, against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.

4. The coastal State shall not place in navigational channels in a strait facilities, structures or devices of any kind which could hamper or obstruct the passage of ships through such strait. The coastal State is required to give appropriate publicity to any obstacle or danger to navigation, of which it has knowledge, within the strait.

Article 23

Special Rights of Coastal States

The coastal State may require the co-operation of interested States and appropriate international organizations for the establishment and maintenance of navigational facilities and aids in a strait.

Annex III

DOCUMENT A/CONF.62/C.2/L.38*

Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Poland, Ukrainian Soviet Socialist Republic, and Union of Soviet Socialist Republics: draft articles on the economic zone

The delegations of the Byelorussian SSR, the German Democratic Republic, the People's Republic of Bulgaria, the Polish People's Republic, the Ukrainian SSR and the Union of Soviet Socialist Republics, noting the understanding reached at the Conference that all questions concerning the law of the sea are interrelated and must be resolved in the form of a "package deal", are prepared to agree to the establishment of an economic zone, as set forth in the present draft articles on condition that mutually acceptable decisions are also accepted by the Conference on the other basic questions of the law of the sea (12-mile breadth of territorial waters, freedom of passage through international straits, freedom of navigation, freedom of scientific research, determination of the outer limits of the continental shelf, the sea-bed regime and the prevention of pollution of the sea environment).

1. GENERAL PROVISIONS

Article 1

The coastal State shall have the right to establish a zone, contiguous to its territorial sea, for the purposes of the preservation, exploration and exploitation of the living and mineral resource therein, to be known as the economic zone.

Article 2

The coastal State shall, within the limits of the economic zone, exercise in accordance with this Convention sovereign rights over all living and mineral resources in the waters, the sea-bed and the subsoil thereof.

* Incorporating document A/CONF.62/C.2/L.38/Corr.1.

Article 3

The economic zone shall not extend beyond the limit of 200 nautical miles, calculated from the baselines used to measure the breadth of the territorial waters.

Article 4

The rights of the coastal State in the economic zone shall be exercised without prejudice to the rights of all other States, whether having access to the sea or land-locked, as recognized in the provisions of this Convention and in international law, including the right to freedom of navigation, freedom of overflight, and freedom to lay submarine cables and pipelines.

Article 5

Within the limits of the economic zone each State may freely carry out fundamental scientific research unrelated to the exploration and exploitation of the living or mineral resources of the zone. Scientific research in the economic zone related to the living and mineral resources shall be carried out with the consent of the coastal State.

Article 6

The coastal State shall exercise its rights and obligations in the economic zone in accordance with the provisions of this Convention, with due regard to the other legitimate uses of the high seas and bearing in mind the need for a rational exploitation of the natural resources of the sea and the preservation of the sea environment.

Article 7

1. Subject to the provisions of paragraphs 2 and 3 of the present article, the coastal State shall have the sovereign right to engage in, decide on and regulate, within the economic zone, the construction, operation and utilization of non-coastal installations and other facilities, set up for purposes of exploration and exploitation of the natural resources of the economic zone.

2. The coastal State shall ensure compliance with the agreed international standards concerning the breadth of the safety zone around non-coastal installations and other facilities and navigation beyond the limits of the safety zone but close to such non-coastal installations and other facilities.

3. None of the installations and other facilities or safety zones around them mentioned in paragraphs 1 and 2 of the present article may be set up in places where they might be a hindrance to the use of the regular sea routes which are of essential importance to international navigation, or of areas which are of special importance to fishing.

Article 8

In exercising their rights under this Convention States shall not hinder the exercise of the rights or the fulfilment of the obligations of the coastal State in the economic zone.

Article 9

The coastal State and all other States shall ensure that all activities for the preservation, exploration and exploitation of the living and mineral resources in the economic zone are carried out solely for peaceful purposes.

Article 10

No economic zone must be established by any State which has dominion over or controls a foreign territory in waters contiguous to that territory.

II. FISHERIES

Article 11

1. In the exercise of its rights over the living marine resources in the economic zone, the coastal State shall, through appropriate regulations, ensure the rational exploitation and the maximum use and preservation of such resources for the purpose of increasing the production of food-stuffs derived from such resources.

2. The coastal State shall co-operate with the appropriate regional and international organizations concerned with fishery matters when exercising its rights over living resources in the economic zone and taking into account their recommendations, shall maintain the maximum allowable catch of fish and other living resources.

Article 12

On the basis of appropriate scientific data and in accordance with the recommendations of the competent international fishery

organizations consisting of representatives of interested States in the region concerned and other States engaged in fishing in the region, the coastal State shall determine in the economic zone:

(a) The allowable annual catch of each species of fish or other living marine resources except highly migratory species of fish;

(b) The proportion of the allowable annual catch of each species of fish or other living marine resources that it reserves for its nationals;

(c) That part of the allowable annual catch of fish or other living marine resources that may be taken by other States holding licences to fish in the economic zone in accordance with articles 15 and 16 of this Convention;

(d) Measures to regulate the exploitation of living marine resources;

(e) Measures to conserve and renew living marine resources;

(f) Regulations for monitoring the observance of the measures specified in subparagraphs (d) and (e).

Article 13

Measures for the conservation, exploration and exploitation of living marine resources and for the monitoring of their observance may not discriminate in form or content against the fishermen of any other State.

Article 14

The size of the allowable annual catch, and the measures for conservation, exploration and exploitation of living marine ırces in the economic zone shall be established with due regard ɔropriate economic factors and to environment factors and in ance with internationally agreed rules.

Article 15

If a coastal State does not take 100 per cent of the allow- ıl catch of any stocks of fish or other living marine in the economic zone, fishermen of other States shall be ences to fish for the unused part of such catch.

2. Permission for foreign fishermen to fish in the economic zone of a developed coastal State shall be granted on an equitable basis and in accordance with the provisions of articles 16, 19 and 20 of this Convention.

3. Foreign fishermen may be allowed to fish in the economic zone of a developing coastal State by the grant of a special licence and in accordance with the provisions of articles 16, 17, 18, 19 and 20 of this Convention.

Article 16

When granting foreign vessels permission to fish in the economic zone and in order to ensure an equitable distribution of living resources, a coastal State shall observe, while respecting the priority of the States specified in articles 18 and 19 of this Convention, the following order;

(a) States which have borne considerable material and other coasts of research, discovery, identification and exploitation of living resource stocks, or which have been fishing in the region involved;

(b) Developing countries, land-locked countries, countries with narrow access to the sea or with narrow continental shelves, and countries with very limited living marine resources;

(c) All other States without discrimination.

Article 17

Any questions of payment for the grant of licences to foreign fishermen to fish in the economic zone of a developing coastal State shall be settled in accordance with the provisions of this Convention and the recommendations of the competent international fishery organizations and by agreement between the States concerned.

Payment for fishing permits granted to foreign fishermen in the economic zone of a developing coastal State shall be levied on a reasonable basis and may take various forms.

Article 18

Neighbouring developing coastal States may allow each other's nationals the right to fish in a specified area of their economic zones on the basis of long and mutually recognized use. The conditions for the exercise of this right shall be established by agreement between the States concerned, and such right cannot be transferred to a third party.

Article 19

Developing States which are land-locked or which have a narrow outlet to the sea or a narrow continental shelf shall enjoy the privilege of fishing in the economic zone of a neighbouring coastal State on the basis of equality with the nationals of that State. The conditions governing the enjoyment of this privilege shall be worked out by agreement between the parties concerned.

Article 20

1. Coastal States in whose rivers anadromous species of fish (salmonidae) spawn shall have sovereign rights over such fish and all other living marine resources within the economic zone and preferential rights outside the zone in the migration area of anadromous fish.

2. Fishing by foreign fisheries for anadromous species may be carried on by an agreement between the coastal State and another interested State establishing regulatory and other conditions governing fishing by foreign nationals.

3. Priority in obtaining the right to fish for anadromous species shall be given to States participating jointly with the coastal States in measures to renew that species of fish, particularly in expenditure for that purpose, and to States which have traditionally fished for anadromous species in the region concerned.

Article 21

In order to enable the fishing fleets of other States whose fishermen have habitually fished in the economic zone established pursuant to article of this Convention to change over to working under the new conditions, a coastal State shall continue to grant the fishermen specified in this article the right to fish in the economic zone for a transition period of not less than three years after the entry into force of this Convention.

Annex IV

DOCUMENT A/CONF.62/C.3/L.26

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics: draft articles on marine scientific research

Article 1

Definition of marine scientific research

"Marine scientific research" means any study of, or related experimental work in, the marine environment that is designed to increase man's knowledge and is conducted for peaceful purposes.

Article 2

General conditions and principles of conduct of marine scientific research

1. States shall endeavour to promote and facilitate the development and conduct of marine scientific research not only for their own benefit but also for the benefit of the international community in accordance with the provisions of this Convention.

2. In the conduct of marine scientific research the following general principles shall apply:

(a) Marine scientific research shall be conducted exclusively for peaceful purposes;

(b) Marine scientific research activities shall not unduly interfere with other legitimate uses of the sea compatible with the provisions of this Convention and shall be duly respected in the course of such uses;

(c) Such activities shall comply with regulations established in conformity with the provisions of this Convention, for the preservation of the marine environment.

3. Marine scientific research shall not form the legal basis for any claim whatsoever to any part of the marine environment or its resources.

4. Marine scientific research shall be conducted subject to the rights of coastal States as provided for by this Convention.

5. In the conduct of marine scientific research, account shall be taken of the interests and rights of land-locked and other geographically disadvantaged States as provided for in this Convention.

6. Marine scientific research may be conducted, in conformity with this Convention, with the use of appropriate scientific methods and equipment, ships of all categories, mobile and fixed installations, flying craft, and other means both specially designed and converted for the purpose.

Article 3

International and regional co-operation

The co-operation envisaged in this article shall be based on the relevant provisions of this Convention.

1. States shall, in accordance with the principle of respect for sovereignty and on a basis of mutual benefit, promote international co-operation in marine scientific research for peaceful purposes, in particular, co-operation within competent international organizations.

2. States shall co-operate with one another, through the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of, and the interrelations between, phenomena and precesses occurring in the marine environment.

3. States shall, both individually and in co-operation with other States and with competent international organizations, actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, in particular to developing countries, as well as the strengthening of the autonomous marine research capabilities of developing countries through, inter alia, programmes to provide adequate education and training of of their technical and scientific personnel.

4. The availability to every State of information and knowledge resulting from marine scientific research shall be facilitated by effective international communication of proposed major programmes and their objectives, and by publication and dissemination of the results through international channels. States shall promote participation of their country's scientists in the implementation of

marine scientific research programmes conducted under the auspices of the Intergovernmental Oceanographic Commission of UNESCO and other competent international organizations.

Article 4

Marine scientific research in territorial waters and on the continenta shelf

1. Marine scientific research within the territorial sea established in accordance with this Convention may be conducted only with the consent of, and under the conditions laid down by the coastal State. Requests for such consent shall be submitted to the coastal State well in advance and shall be answered without undue delay.

2. Scientific research relating to the continental shelf and its resources shall be conducted mutatis mutandis in accordance with the procedure laid down in article 6.

Article 5

Freedom of marine scientific research

Without prejudice to the provisions of article 6 below, all States, both coastal and land-locked on an equal footing and without any discrimination, as well as competent international organizations, shall enjoy freedom to conduct marine scientific research on the high seas including the sea-bed beyond the limits of the economic zone and of the continental shelf as defined in this Convention.

Article 6

Scientific research in the economic zone

1. In the economic zone established in accordance with this Convention, marine scientific research related to the exploration and exploitation of the living and non-living resources of the zone shall be conducted with the consent of the coastal State. Requests for such consent shall be submitted well in advance and shall be answered without undue delay. The coastal State shall be entitled to determine the conditions for conducting such research, and to participate or be represented in it.

2. In the economic zone established in accordance with this Convention marine scientific research unrelated to the exploration and exploitation of the living and non-living resources of the zone shall be conducted after advance notification of the planned research to the coastal State.

3. The notification of the planned research mentioned in paragraph 2 above shall be transmitted to the coastal State at least two months in advance. The coastal State shall be given:

(a) A detailed description of the research programme, including objectives, methods and instrumentation, locations and time schedule, and information on the institution conducting the research;

(b) Information on any major changes in the research programme;

(c) An opportunity to participate directly or indirectly in the research on board vessels at the expense of the State conducting the research but without payment of any remuneration to the scientists of the coastal State;

(d) Access to all data and samples obtained in the course of the research, and in that connexion the coastal State shall, at its request, be provided with such data and samples as can be copied or shared without harm to their scientific value;

(e) Assistance, at its request, in the interpretation of the results of the research.

Article 7

Interests of land-locked and other geographically disadvantaged States

States and competent international organizations conducting marine scientific research in the areas referred to in paragraph 2 of article 4 and in article 6 shall take due account of the legitimate interests and rights of land-locked and other geographically disadvantaged States neighbouring the research area, as they are defined in this Convention, notifying them of the proposed research and providing them, at their request, with the assistance and information specified in paragraphs 3 (a), 3 (b) and 3 (e) of article 6.

Where research facilities permit, such States shall be offered the opportunity to participate in the research under the conditions set forth in paragraph 3 (c) of article 6.

Article 8

Assistance to research vessels

In the interests of international co-operation and in order to facilitate the conduct of marine scientific research, coastal States shall adopt measures, including legislative measures, to simplify procedures for access to their ports and inland waters of vessels conducting scientific research in accordance with this Convention.

Article 9

Scientific research installations

1. Scientific research installations, whether fixed or mobile, established in the marine environment or on the sea-bed in accordance with the provisions of these articles and other rules of international law shall be subject to the jurisdiction of the State which installed them, unless other provision is made in agreements which may be concluded between the State conducting the research and the coastal State in those cases where, under articles 4 and 6, the consent of the coastal State is required for the conduct of research.

2. The installations referred to in this article shall not have the status of islands or possess their own territorial waters, and their existence shall not affect the delimitation of the territorial sea, continental shelf or economic zone of the coastal State.

3. Safety zones of a width not exceeding 500 metres measured from the outermost points of the installations referred to in this article may be created around the installations. All States shall ensure that such safety zones are respected by their ships.

4. Such installations must not serve as an obstacle on customary international shipping routes.

5. Fixed and mobile installations and floating stations shall have identification markings indicating the State or competent international organization to which they belong and the necessary permanent warning signals to ensure the safety of sea and air navigation.

To the extent that the identification markings and warning signals referred to in this article are regulated by international agreements, they shall comply with the requirements of such agreements.

6. Appropriate notification shall be given of the emplacement and removal of such installations.

Article 10

Responsibility for scientific research

States shall be responsible for ensuring that marine scientific research, whether conducted by themselves or by their nationals, physical or juridical, is conducted in accordance with the provisions of this Convention and other rules of international law.

States shall be liable for damage, arising out of marine scientific research, caused to other States or to the nationals, juridical or physical, of other States, when such damage is attributable to them. When such damage is attributable to persons under their jurisdiction or control, States undertake to provide recourse to their appropriate organs with a view to ensuring equitable compensation for the victims thereof.

Annex V

DOCUMENT A/CONF.62/WP.9

Informal single negotiating text*

Part IV

(Text presented by the President of the Conference)

CONTENTS

INTRODUCTORY NOTE

At its 15th meeting held at Caracas on 21 June 1974, the Third United Nations Conference on the Law of the Sea approved the recommendations of the General Committee on the allocation of subjects

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* This text consists of four parts: parts, I, II and III appear in document A/Conf.62/WP.8 (see Official Records of the Third United Nations Conference on the Law of the Sea, vol. IV; United Nations publication, Sales No.E.75.V.10) and part IV in the present document.

and issues as contained in its first report (A/Conf.62/28).* In that report the General Committee had recommended that "Settlement of disputes", item 21 of the list of subjects and issues, be dealt with by each committee in so far as it was relevant to their mandates. However, on account of its importance and interest to the Conference as a whole, it was left for the consideration of the Conference in plenary.

At its 55th plenary meeting on 18 April 1975, the Conference decided to request each of the chairmen of its three committees to repare an informal single negotiating text covering the subjects and issues assigned to his Committee. In keeping with the spirit of this decision and by analogy it should be the President's duty to submit to the Conferece an informal single negotiating text on any item that is not the exclusive concern of any of the main committees. As the subject of settlement of disputes would be an essential and vitally important element in the proposed convention, the President has deemed fit to present the attached informal single negotiating text in order to facilitate the process of negotiation. The text is based to a considerable extent on the work of the informal group on the settlement of disputes. Although it could not necessarily incorporate all the proposals that have been made, it seeks to blend, within the limits of practicality, the essence of the various alternatives.

This text has taken into account all the formal and informal discussions held so far, is informal in character and does not prejudice the position of any delegation nor does it represent any negotiated text or accepted compromise. It should therefore be quite clear that this negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.

It may be noted that the informal single negotiating text presented by the Chairman of the First Committee (A/Conf.62/WP.8/Part I) provides in article 24, paragraph 1, for the establishment of a tribunal as one of the principal organs of the proposed International Sea-Bed Authority and deals in article 32 with the jurisdiction, powers and functions, and composition of the tribunal and other related matters.

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* See Official Records of the Third United Nations Conference on the Law of the Sea, vol. III (United Nations publication, Sales No. E.75.V.5).

The provisions relating to the jurisdiction of the tribunal contained in article 32, paragraph I (a) would appear to be in conformity with paragraph 15 of General Assembly resolution 2749 (XXV), which contains the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

The Chairman of the Second Committee, in article 137 of his informal single negotiating text (A/Conf.62/WP.8/Part II) and the Chairman of the Third Committee, in article 37 of his text (A/Conf. 62/WP.8/Part III), have not made special provision for the settlement of disputes.

It would be necessary for the Conference to decide whether there should be separate provision for the settlement of disputes relating to matters falling within the International Sea-Bed Authority's jurisdiction.

* * *

Chapter . . . : Settlement of disputes

Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. . . .

Article 1

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of the present Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

Article 2

Nothing in this chapter shall impair the right of the Contracting Parties to agree at any time to settle a dispute between them which relates to the interpretation or application of the present Convention by any peaceful means of their own choice.

Article 3

If the Contracting Parties which are parties to a dispute relating to the interpretation or application of the present Convention have accepted, through a general, regional or special agreement, or some other instrument or instruments an obligation to settle such dispute by resort to arbitration or judicial settlement, any party to the dispute may refer it to arbitration or judicial settlement

in accordance with such agreement or instruments in place of the procedure specified in this chapter, unless the parties agree otherwise.

Article 4

1. If a dispute arises between two or more Contracting Parties with respect to the interpretation or application of the present Convention, those Parties shall proceed expeditiously to exchange views regarding settlement of the dispute.

2. Similarly, such an exchange of views shall be held whenever a procedure under the present Convention, or another procedure chosen by the parties, has been terminated without a settlement of the dispute.

Article 5

If the Contracting Parties which are parties to a dispute have agreed to settle a dispute by a peaceful means of their own choice and have agreed on a time-limit for such proceedings, the procedure specified in this chapter shall apply only after the expiration of that time-limit, provided that no settlement has been reached and the agreement between the parties does not preclude any further procedure.

Article 6

Where a chapter of the present Convention provides a special procedure for settling all or some disputes relating to the interpretation or application of that chapter, the procedure specified in this chapter shall apply only after that special procedure has been concluded, provided that no settlement has been reached and the relevant chapter does not preclude any further procedure.

Article 7

1. Where no special procedure is provided for in other chapters of the present Convention, any Contracting Party which is party to a dispute relating to the interpretation or application of the present Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with annex I A.

2. If the other party accepts this invitation, then any party to the dispute may set in motion the conciliation procedure which shall proceed in accordance with annex I A, subject to paragraph 3.

3. If a party to the dispute does not accept the invitation, or after accepting the invitation refuses, or within the time stipulated in annex I A fails, to appoint its members of the Conciliation Commission, or if the conciliators fail to agree to appoint a chairman, the part which has initiated the proceedings may terminate the proceeding by notifying the other party or parties to the dispute to this effect.

4. If the conciliation procedure is terminated in accordance with the preceding paragraph, or if the dispute is not settled by conciliation, either party to the dispute may resort to the procedure specified in this chapter.

Article 8

Subject to the preceding provisions of this chapter, any dispute relating to the interpretation or application of the present Convention which has not been settled in accordance with those provisions shall be dealt with in accordance with the provisions of articles 9 and 10 of this chapter. Any such dispute may be submitted to the tribunal having jurisdiction under these articles by application of a party to the dispute.

Article 9

1. In any dispute arising between Contracting Parties relating to the interpretation or application of the present Convention, the Law of the Sea Tribunal constituted in accordance with annex I C shall have jurisdiction, to the extent and in the manner provided for in this chapter, to decide upon the matters in dispute. The parties to the dispute shall be bound by the decisions of the Tribunal made in accordance with this chapter.

2. A Contracting Party may at any time declare that it recognizes as compulsory ipso facto, in relation to any other Contracting Party accepting the same obligation, the jurisdiction of an arbitral tribunal, to be constituted in accordance with annex IB, or of the International Court of Justice, in any dispute relating to the interpretation or application of the present Convention. If both parties have made such declarations conferring jurisdiction on the same tribunal, then not withstanding the provisions of paragraph 1, either party may submit the dispute to that tribunal and the parties to the dispute shall be bound by the decisions of that tribunal made in accordance with this chapter.

3. The declarations referred to in paragraph 2 shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the Contracting Parties.

4. Any declaration made under paragraph 2 shall be valid for a period of five years. Such a declaration shall be considered as renewed for a further period of five years and similarly thereafter, unless a notice to the contrary is received by the Secretary-General at least six months before the expiration of that period.

5. While proceedings are pending before a tribunal having jurisdciction under paragraphs 1 or 2, the expiration of a declaration, a new declaration or a change in a declaration shall not affect in any way the proceedings pending before such tribunal, unless all the parties agree otherwise.

Article 10

1. Subject to the provisions of articles 1 to 9 of this chapter, the tribunal which has jurisdiction over a Contracting Party under article 9, or the International Court of Justice as the case may be , shall be entitled to exercise its jurisdiction with respect to:

(a) Any dispute between Contracting Parties relating to the interpretation or application of the present Convention for which no special procedure has been provided in another chapter of the present Convention and in which no resort has been made to conciliation procedure under article 7 of this chapter;

(b) Any dispute between Contracting Parties relating to the interpretation or application of the present Convention which has not been settled by conciliation procedure under article 7 of the chapter or by a special procedure provided for in another chapter of the present Convention, unless that chapter expressly excludes further procedure under this chapter.

(c) Any dispute in respect of which a clause in the present Convention, the rules or regulations enacted thereunder, or an agreement or arrangement concluded pursuant to the present Convention or related to its purposes, provides that such dispute be settled in accordance with the procedure specified in this chapter.

2. The jurisdiction under paragraph 1 (a) may not be exercised:

(a) If another chapter of the present Convention expressly excludes such jurisdiction with respect to any dispute relating to that chapter; or

(b) If another chapter of the present Convention provides any dispute relating to that chapter shall be dealt with in accordance with a specified annex to this chapter.

3. If a dispute has been submitted to a special procedure provided for in the present Convention, the findings of fact made in accordance with such procedure shall be conclusive upon the tribunal having jurisdiction under article 9 of this chapter, unless one of the parties presents positive proof to the satisfaction of the tribunal that a gross error has been committed.

4. Whenever a binding decision has been rendered as a result of resort to a special procedure which is provided for in another chapter of the present Convention and with respect to which an appellate procedure is not expressly excluded, the jurisdiction of the tribunal or the Court competent under article 9 may be exercised only when one of the parties to the dispute presents a claim that the decison rendered under another chapter of the present Convention was invalid because of:

(a) Lack of jurisdiction;

(b) Infringement of basic procedural rules;

(c) Abuse or misuse of power; or

(d) Gross violation of the present Convention.

5. A claim under paragraph 4 must be submitted within three months from the date of the contested decision.

Article 11

1. When dealing with a dispute relating to chapters . . . of the present Convention, the tribunal or International Court of Justice as the case may be, exercising jurisdiction under articles 9 and 10 of this chapter may, at the request of one or more of the parties or on its own initiative, either

(a) Refer any scientific or technical matters to a committee of experts chosen from the list of qualified persons prepared in accordance with annex . . . ; or

(b) Select four technical assessors from the list mentioned in the preceding subparagraph, who shall sit with the tribunal or the Court throughout all the stages of the proceedings, but without the right to vote.

2. In a case referred to a committee of experts under subparagraph 1 (a), if the dispute is not settled on the basis of the committee's opinion, either party to the dispute may request that the tribunal or the Court proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and other pertinent information.

Article 12

1. The tribunal or the International Court of Justice as the case may be, to which a dispute has been submitted under article 9 of this chapter, shall, upon the request of a party to such dispute, have the power to indicate or prescribe, if it considers that circumstances so require and after giving the parties to the dispute an opportunity to be heard, such provisional measures as it considers appropriate to be taken to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending final adjudication.

2. If proceedings have commenced for the settlement of a dispute under the present Convention, and the organ to which such dispute has been submitted has not been constituted or does not have the power to prescribe provisional measures and if two or more parties are in dispute as to the need for such provisional measures or as to the content or extent of such measures, the Law of the Sea Tribunal, acting in conformity with paragraph 1, shall have jurisdiction to prescribe such measures, which shall remain in force subject to review by the competent tribunal.

3. Notice of any provisional measures indicated or prescribed under this article shall be given forthwith to the parties to the dispute and to all Contracting Parties.

4. Any provisional measures indicated by the International Court of Justice, or prescribed by a tribunal under this article or an annex to this chapter, shall be binding upon the parties to the dispute.

Article 13

1. The tribunals specified in article 9 of this chapter shall be open to the Contracting Parties.

2. Access to the International Court of Justice shall be subject to the Articles 93 and 96 of the Charter of the United Nations and Articles 34, 35 and 63 of the Statute of the Court.

3. The provisions of this article shall be without prejudice to the access, specified in the present Convention, to any special procedure provided for in other chapters of the present Convention or any annex thereto.

4. The procedures for the settlement of disputes provided for in the present Convention shall be open to a State which is not a party to the present Convention, a territory which has participated as an observer in the Third United Nations Conference on the Law of the Sea, an international intergovernmental organization, or a natural or juridical person, on an equal footing with Contracting Parties, upon the deposit with the Secretary-General of the United Nations of a declaration that the State, territory, organization or person concerned accepts the provisions on the settlement of disputes contained in the present Convention, agrees to comply with any binding decision rendered thereunder, and undertakes to contribute to the expenses of the institutions for the settlement of disputes such equitable amount as the Contracting Parties shall determine from time to time after consultation with the State, territory, organization or person concerned.

5. Such declaration may include a general acceptance of the jurisdiction of the Law of the Sea Tribunal or of an arbitral tribunal, or in the case of a State having access to the International Court of Justice or the jurisdiction of that Court, in relation to any Contracting Party, other State, territory, organization or person accepting the same obligation.

6. Such jurisdiction may also be specifically accepted, with respect to any dispute relating to the interpretation or application of an agreement or arrangement concluded pursuant to the present Convention or related to its purposes, by an appropriate provision in such agreement or arrangement.

7. A party to the present Convention may at any time declare that with respect to any dispute to which this chapter is applicable, it accepts the jurisdiction of the Law of the Sea Tribunal or of an arbitral tribunal, or with respect to a State having access to the International Court of Justice the jurisdiction of that Court, in relation to one or more of the following categories:

(a) Any State, not a party to the present Convention which has accepted the same jurisdiction under paragraphs 4 to 6;

(b) Any territory which has participated as an observer in the Third United Nations Conference on the Law of the Sea and which has accepted the same jurisdiction under paragraphs 4 to 6;

(c) Any international intergovernmental organization which has accepted the same jurisdiction under paragraphs 4 to 6;

(d) Any natural or juridical person which has accepted the same jurisdiction under paragraphs 4 to 6.

8. A party to the present Convention may also specifically accept the jurisdiction of the machinery for the settlement of disputes specified in the present Convention in relation to any one or more of the categories enumerated in paragraph 7, with respect to any dispute relating to the interpretation or application of an agreement or arrangement concluded pursuant to the present Convention or related to its purposes, by an appropriate provision in such agreement or arrangement.

9. Any declarations, agreements or arrangements made under this article which provide for the jurisdiction of the machinery for the settlement of disputes specified in the present Convention shall be deposited with the Secretary-General of the United Nations. He shall transmit copies thereof, and of the declarations made under paragraph 4, to all the Contracting Parties and to any State, territory, organization or person which has made a declaration under paragraph 4.

Article 14

1. In the case of a dispute between two or more Contracting Parties relating to the exercise by a coastal State of its exclusive jurisdiction under the present Convention, a Contracting Party shall not be entitled to submit such dispute to the procedure specified in articles 9 and 10 of this chapter, if local remedies have not been exhausted as required by international law.

2. In any other dispute relating to the interpretation or application of the present Convention, a Contracting Party which has taken measures alleged to be contrary to the present Convention shall not be entitled to object to the jurisdiction of the tribunal or the Court under articles 9 and 10 of this chapter solely on the ground that local remedies have not been exhausted as required under international law.

Article 15

1. In case of the detention by the authorities of a Contracting Party of a vessel flying the flag of another Contracting Party, or of its crew or passengers, in connexion with an alleged violation of the present Convention, the State of the vessel's registry shall have the right to bring the question of detention before the Law of the Sea Tribunal in order to secure prompt release of the vessel or

of its crew or passengers in accordance with the applicable provisions of the present Convention, including the presentation of a bond, and without prejudice to the merits of any case against the vessel, or its crew or passengers.

2. A decision of the tribunal that the vessel, or its crew or passengers, be released shall be promptly complied with by the Contracting Party concerned.

Article 16

1. In any dispute submitted to the tribunal or International Court of Justice as the case may be, having jurisdiction under articles 9 and 10 of this chapter, the tribunal or the Court shall apply the law of the present Convention, other rules of international law, and any other applicable law.

2. The tribunal or the Court shall ensure that the rule of law is observed in the interpretation and application of the present Convention.

3. The provisions of this chapter shall not prejudice the right of the parties to the dispute to agree that the dispute be settled ex aequo et bono.

Article 17

1. No decision rendered, settlement effected or measure prescribed or indicated in relation to any dispute submitted to a tribunal, the International Court of Justice, a committee or commission under the present Convention or an annex thereto shall have any binding force except between the parties and in respect of that particular dispute.

2. Any decision rendered, finding made, or measure prescribed by a commission or committee constituted in accordance with the special procedures provided for in the present Convention or an annex thereto shall not constitute a precedent except for that particular commission or committee.

Article 18

1. Nothing contained in the present Convention shall require any Contracting Party to submit to the dispute settlement procedures provided for in the present Convention any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction under the present Convention, except when it is claimed that a coastal

State has violated its obligations under the present Convention; (i) by interfering with the freedoms of navigation or overflight, or the freedom to lay submarine cables and pipelines, or related rights and duties of other Contracting Parties; (ii) by refusing to apply international standards or criteria established by the present Convention or in accordance there with, provided that the international standards or criteria in question shall be specified.

2. When ratifying the present Convention, or otherwise expressing its consent to be bound by it, a Contracting Party may declare that it does not accept some or all of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the exercise of discretionary right by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention;

(b) Disputes concerning sea boundary delimitations between adjacent States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third-party procedure, entailing a binding decision, which it accepts for the settlement of these disputes;

(d) Disputes concerning military activities, including those by Government vessels and aircraft engaged in noncommercial service, it being understood that law enforcement activities pursuant to the present Convention shall not be considered military activities;

(d) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council has determined that specified proceedings under the present Convention would not interfere with the exercise of such functions in a particular case.

3. If the parties to a dispute are not in agreement as to the applicability of paragraphs 1 or 2 to a particular dispute, this preliminary question may be submitted for decision to the tribunal having jurisdiction under articles 9 and 10 of this chapter by application of a party to the dispute.

4. A Contracting Party, which has made a declaration under paragraph 2, may at any time withdraw it in whole or in part.

5. Any Contracting Party which has made a declaration under paragraph 2 shall not be entitled to invoke any procedure excepted under such declaration in relation to any excepted category of dispute against any other Contracting Party

6. If one of the Contracting Parties has made a declaration under paragraph 2 (b), any other Contracting Party may compel the declarant to refer the dispute to the regional or other third-party procedure specified in such declaration.

Annex VI

DOCUMENT A/CONF.62/53

Letter Dated 8 February 1977 from the Representative of the Union of Soviet Socialist Republics to the President of the Conference

I have the honour to enclose herewith the text of the Decree "on provisional measures to Conserve living resources and regulate fishing in the sea areas adjacent to the coast of the USSR" adopted by the Presidium of the Supreme Soviet of the USSR on 10 December 1976.

I should be grateful if you would circulate the text of this Decree as an official document of the Third United Nations Conference on the Law of the Sea.

(Signed) O. TROYANOVSKY
Permanent Representative of the
Union of Soviet Socialist Republics
to the United Nations

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR ON PROVISIONAL MEASURES TO CONSERVE LIVING RESOURCES AND REGULATE FISHING IN THE SEA AREAS ADJACENT TO THE COAST OF THE USSR

The Presidium of the Supreme Soviet of the USSR notes that recently an increasing number of States, including some adjoining the USSR, have been establishing economic or fishery zones off their coasts up to a distance of 200 nautical miles without waiting for the conclusion of the international convention now in preparation at the Thire United Nations Converence on the Law of the Sea.

The Soviet Union will continue to advocate that urgent problems relating to the legal regime of the world ocean should be settled on an international basis and that a convention should be concluded to that end which will resolve such problems, in particular those of utilizing coastal living marine resources, in a comprehensive and interrelated manner and with due regard for the legitimate interests of all States.

Considering that pending the conclusion of such a convention immediate action is needed to protect the interests of the Soviet State with regard to the conservation, reproduction and optimum utilization of the living resources of the sea areas adjacent to the coast of the USSR, the Presidium of the Supreme Soviet of the USSR decrees:

1. Provisional measures are hereby established, pursuant to the provisions of this Decree, to conserve the living resources of and regulate fishing in the sea areas adjacent to the coast of the USSR and extending to a distance of up to 200 nautical miles from the baselines from which the territorial waters of the USSR are measured.

The establishment of such provisional measures shall not affect the regime of the territorial waters of the USSR.

2. The USSR shall, within the sea areas referred to in article 1 of this Decree, exercise sovereign rights over fish and other living resources for the purpose of their exploration and conservation. These rights of the USSR shall also apply to anadromous species of fish within their migration area except when they may occur within other States' territorial waters and economic or fishery zones recognized by the USSR.

3. The taking of fish and other living resources as well as exploration and other operations related thereto, which are hereinafter referred to as "fishing", may be conducted by foreign juridical and natural persons within the areas referred to in article 1 of this Decree solely on the basis of agreements or other arrangements between the USSR and foreign States.

4. Optimum utilization of fish and other living resources within the areas referred to in article 1 of this Decree shall be effected on the basis of relevant scientific data and, when appropriate, with due regard for the recommendations of competent international organizations. To this end there shall be established, inter alia:

(a) A total annual allowable catch for each species of fish and other living resources;

(b) That part of the annual allowable catch of fish or other living resources which may be harvested by foreign fishing vessels, provided that the size of the total allowable catch of any stock of commercial species exceeds the harvesting capacity of the Soviet fishing effort;

(c) Measures to ensure rational conduct of fishing as well as to conserve and reproduce living resources.

5. Subject to the provisions of articles 2, 3 and 4 of this Decree, quotas of catch may be fixed for foreign States, and in accordance with these quotas foreign fishing vessels shall be issued fishing permits. No fishing shall be permitted without such permits.

6. The Council of Ministers of the USSR shall decide upon the conditions and dates for introducing provisional measures to conserve living resources and to regulate fishing in respect of specific sea areas adjacent to the coast of the USSR, the establishment of measures to enforce the provisions of this Decree, and the procedure for application of articles 2, 3, 4 and 5 thereof.

7. Persons guilty of violating the provisions of this Decree or regulations issued in pursuance thereof shall be liable to a fine. The amount of the fine to be imposed by administrative procedure, shall not exceed 10,000 roubles.

Where such violations have caused substantial damage, have had other grave consequences or have been committed repeatedly, the persons guilty of them shall be prosecuted. The amount of the fine, to be imposed by judicial procedure, shall not exceed 100,000 roubles. Upon application by the authorities responsible for the protection of fish and other living resources in the areas referred to in article 1 of this Decree, the court may order the forfeiture of the vessel, fishing gear and appurtenances used by the violators as well as their entire illegal catch.

In the event of the seizure or detention of a foreign vessel, the competent Soviet authorities concerned shall promptly notify the flag State of the action taken and of any penalties subsequently imposed. The detained vessel and its crew shall be promptly released upon the posting of reasonable bond or other security.

8. The provisions of this Decree shall remain in force pending the adoption, in the light of the work of the Third United Nations Conference on the Law of the Sea, of another legislative act of the USSR governing the regime of the sea areas referred to in article 1 of this Decree.

(Signed) N. PODGORNY
Chairman of the Presidium of
the Supreme Soviet of the USSR

(Signed) M. GEORGADZE
Secretary of the Presidium of the
Supreme Soviet of the USSR

Kremlin, Moscow
10 December 1976