

# **United Nations Conference on the Law of the Sea**

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## **Report of the Fourth Committee**

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume II (Plenary Meetings)*

## DOCUMENT A/CONF.13/L.12

## Report of the Fourth Committee

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[19 April 1958]

## I. OFFICERS OF THE COMMITTEE

1. At the first meeting of the Committee, on 26 February 1958, Mr. A. B. Perera (Ceylon) was elected as Chairman and, at the 2nd meeting, on 28 February, the Committee elected Mr. R. A. Quarshie (Ghana) as Vice-Chairman, and Mr. L. Díaz González (Venezuela) as Rapporteur.

## II. TERMS OF REFERENCE OF THE COMMITTEE

2. The rules of procedure adopted by the Conference at its first plenary meeting on 24 February 1958 established in rule 47 that the Fourth Committee should be a main committee of the Conference, and that to it should be allocated those articles concerning the law of the sea, contained in the report of the International Law Commission covering the work of its eighth session (A/3159), which dealt with the continental shelf. These were articles 67 to 73 inclusive.

## III. ORGANIZATION OF THE WORK OF THE COMMITTEE

3. The Fourth Committee having considered the recommendations of the General Committee on the organization of the work of the Conference (A/CONF.13/L.2) as adopted by the Conference, decided at its 3rd meeting, on 3 March, to begin its work by a general debate on the articles referred to it. The Committee held forty-one meetings; of these, ten were confined to this first stage of general debate (3rd to 12th meetings).

4. The possible need for sub-committees or working groups within the Main Committee had been anticipated and provided for in rule 46 of the rules of procedure. Having adopted all the articles referred to it, either in the original form of the International Law Commission text or with amendments, the Committee established a drafting group at its 36th meeting on 10 April. This group comprised the members of the Bureau of the Committee and the following six representatives: Miss Whiteman (United States of America), Mr. Molodtsov (Union of Soviet Socialist Republics), Mr. Patey (France), Mr. Wershof (Canada), Mr. Barros Franco (Chile) and Mr. Jhirad (India). Between 12 and 16 April, the drafting group held four meetings.

## IV. CONSIDERATION OF AND VOTING UPON THE ARTICLES AND THE PROPOSALS AND AMENDMENTS RELATING THERETO

*Article 67*

5. Article 67 and the amendments thereto were considered by the Committee during its 13th to 18th meetings. There were originally eleven amendments to this article, to which the references can be found in the summary records of those meetings. Voting on the amendments took place at the 19th meeting and, as a result, all were rejected, with the exception of that of the Philippines (A/CONF.13/C.4/L.26), the purpose of which was to add to the existing text of article 67 a second paragraph. The text of article 67, together with the amendment of the Philippines, was adopted by a roll-call vote of 51 to 9 with 9 abstentions. The text of the article as adopted, after incorporating modifications proposed by the drafting group, will be found in the annex to this report.

*Article 68*

6. The Committee considered article 68 and the amendments thereto during its 19th to 24th meetings. There were

thirteen amendments to this article, to which the references are given in the relevant summary records. Upon being put to the vote at the 24th meeting, all the amendments remaining before the Committee were rejected, except for that of the United States of America (A/CONF.13/C.4/L.31) which substituted the word "exclusive" for "sovereign"; the joint amendment of Australia, Ceylon, the Federation of Malaya, India, Norway, and the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.4/L.36) which defined "natural resources"; the amendment of Yugoslavia (A/CONF.13/C.4/L.13) adding a new paragraph (which was the second paragraph of the amendment); the amendment of Argentina (A/CONF.13/C.4/L.6/Rev.1) adding a paragraph similar in effect to the amendment of Yugoslavia and adopted subject to a redrafting of the two amendments; and the amendment of the United Kingdom (A/CONF.13/C.4/L.44) adding a new paragraph (which was the second paragraph of the amendment). The entire text of the International Law Commission, as amended, was adopted by 34 votes to 14, with 17 abstentions. The text as adopted appears in the annex to this report.

*Proposal of Cuba for a new article*

7. A proposal by Cuba (A/CONF.13/C.4/L.45) for a new article reproducing paragraph 7 of the commentary to article 68 of the International Law Commission was considered by the Committee at its 25th and 26th meetings. The proposal was adopted by 41 votes to 7, with 12 abstentions and was provisionally numbered article 68 A; it was agreed that the actual location of the new article within the framework of the articles relating to the continental shelf would be treated as a matter for the drafting group, subject to the approval of the Committee as a whole. The text of the proposal is reproduced in the annex to this report, as paragraph 3 of article 68, that being the position which the drafting group allocated to it.

*Article 69*

8. Consideration of article 69 and the amendments thereto was undertaken by the Committee at its 25th and 26th meetings. There were originally five amendments to this article, of which two only (A/CONF.13/C.4/L.6, L.14) remained at the 26th meeting when the voting took place. Both were rejected and the original International Law Commission text of the article was adopted by 54 votes to none, with 8 abstentions.

*Article 70*

9. The Committee discussed article 70 and the amendments thereto at its 27th meeting and, at the same meeting, voted on the two amendments remaining before it.<sup>1</sup> Only paragraph 2 of the amendment of the United Kingdom (A/CONF.13/C.4/L.27) was adopted; this was to add the words "or pipelines" after "submarine cables". The International Law Commission text, as amended, was then adopted by 48 votes to none with 8 abstentions. The text as adopted is reproduced in the annex to this report.

*Article 71*

10. Consideration of article 71 and the amendments

<sup>1</sup> A/CONF.13/C.4/L.27 and L.34: two amendments (C.4/L.7 and L.21) were withdrawn.

thereto took place at the 28th to 30th meetings. The amendments remaining before the Committee at the time of voting at the 30th meeting are given in the relevant summary record. Of these the following were adopted: (a) the amendment of Denmark (A/CONF.13/C.4/L.49) adding a phrase at the end of paragraph 1; (b) the amendment of the Netherlands (A/CONF.13/C.4/L.22) relating to paragraph 2; (c) the amendment of Yugoslavia (A/CONF.13/C.4/L.15) which had the effect of adding a new paragraph 3 dealing with safety zones and a new paragraph 8; (d) the amendment of the United Kingdom (A/CONF.13/C.4/L.28), replacing paragraph 4 of the International Law Commission text and being numbered paragraph 5 of the amended text; (e) the amendment of Pakistan (A/CONF.13/C.4/L.48) also replacing paragraph 4 of the International Law Commission text and being numbered paragraph 6 of the amended text; (f) the amendment of Venezuela (A/CONF.13/C.4/L.35) deleting the phrase "in narrow channels or" in paragraph 5 of the International Law Commission text, which, as thus amended, became paragraph 7 of the amended text; (g) the amendment of France (A/CONF.13/C.4/L.56) adding a new paragraph 9. The International Law Commission text of article 71, as amended, was adopted by 35 votes to none, with 13 abstentions. The text as adopted appears in the annex to this report.

#### Article 72

11. Article 72 and the amendments relating to it were considered by the Committee at its 31st to 33rd meetings. Of the five amendments before the Committee at the time of voting at the 33rd meeting, only the combined United Kingdom/Netherlands proposal (A/CONF.13/C.4/L.23 and L.28) was adopted; this was to amend paragraphs 1 and 2 of the International Law Commission text and add a third paragraph. The International Law Commission text of article 72, as amended, was adopted by 36 votes to none, with 19 abstentions, and will be found in the annex to this report.

#### Article 73

12. Article 73 and the amendments thereto were considered at the 34th and 35th meetings. At the 35th meeting, all the amendments (A/CONF.13/C.4/L.51, L.59, L.61, L.62) were rejected and the original International Law Commission text of the article was adopted by a roll-call vote of 33 to 15, with 14 abstentions.

#### V. WORK OF THE DRAFTING GROUP

13. The drafting group appointed by the Committee (see paragraph 4 above) held four meetings between 12 and 16 April, and made certain changes in the texts of the articles as adopted by the Committee. At the 39th meeting of the Committee, the drafting group submitted its report (A/CONF.13/C.4/L.65) in which the changes were outlined and in which it drew attention to certain outstanding questions. The report also included a text which had been provided by the United Kingdom and Pakistan in order to combine paragraphs 5 and 6 of article 71. As an annex to the report the revised texts as adopted by the drafting group were appended.

14. The report of the drafting group was considered by the Committee at its 41st meeting. Articles 67, 68, 69, 70, 72, 73 and 74, as submitted by the drafting group, were adopted without change. So far as article 71 was concerned, paragraphs 1, 2, 3, 4, 6 and 7 were immediately adopted without change and, by 21 votes to 4, with 16 abstentions, the Committee decided against reopening a discussion on the question of compatibility between paragraphs 1 and 8

of the article, so that paragraph 8 was adopted without change.

15. In relation to paragraph 5 of article 71, the Committee had before it the joint United Kingdom/Pakistan proposal for an alternative to paragraph 5, which the United Kingdom agreed during the meeting to amend to include the phrase "in particular those" after the word "governments". There was also before the Committee a joint proposal, made orally at the meeting, by Canada and India; this proposal was based on the original International Law Commission text of the paragraph, but added a further sentence dealing with the removal of installations. This latter proposal was adopted by 25 votes to 1, with 14 abstentions, and thus constitutes paragraph 5 of article 71 which appears in the annex to this report.

#### VI. CONSIDERATION OF THE KIND OF INSTRUMENT REQUIRED TO EMBODY THE RESULTS OF THE COMMITTEE'S WORK

16. Consideration of this question was undertaken by the Committee at its 37th and 38th meetings. At the 38th meeting, the Committee had before it a proposal by Canada, of which the original text was as follows:

"That the Fourth Committee recommends to the Conference that the results of its work be embodied in a separate convention relating only to the continental shelf."

At the suggestion of the representative of the Union of Soviet Socialist Republics, the representative of Canada agreed to delete the words "separate" and "only" and the proposal, as amended, was adopted by 39 votes to 6, with 7 abstentions.

#### VII. FINAL CLAUSES

17. The Committee considered whether to include recommendations as to any necessary final clauses in its report to the plenary Conference at its 39th and 40th meetings. After several delegations had opposed the making of recommendations by the Committee, the matter was put to the vote and the Committee decided to make such recommendations, by 21 votes to 19, with 10 abstentions. The Committee then examined the various types of clauses given in a document prepared by the Secretariat (A/CONF.13/L.7). The representative of Switzerland proposed that the Committee consider and vote upon the final clauses relating to Signature; Ratification; Accession; Entry into Force; Reservations; Denunciation; Revision; Notifications; and Deposit of the Convention, and languages.

18. Several delegations expressed the view that the final clause on Signature appearing in document A/CONF.13/L.7 should be amended to permit signature of the Convention by all States. However, the Committee rejected this view and adopted the clause, as amended by the Union of South Africa and Brazil to include States members of the specialized agencies, by 29 votes to 10, with 14 abstentions.

19. The clause on Ratification, as amended by the United Kingdom, was adopted by 30 votes to 7, with 16 abstentions.

20. The clause on Accession, as amended by the United Kingdom, was adopted by 28 votes to 7, with 18 abstentions.

21. The Entry into Force clause, taken on the assumption that the blanks would be filled in by the Drafting Committee of the Conference, was adopted by 28 votes to 6, with 17 abstentions.

22. Of the Reservations clauses, the clause prohibiting reservations to certain articles was initially adopted by 19 votes to 17, with 11 abstentions, and the Committee then discussed to which of the articles on the continental shelf reservations should be allowed.

23. The Committee then voted on each article separately to decide which articles should be inserted in the Reservations clause so as to exclude reservations to those articles. The voting was as follows, the votes in favour of inclusion in the clause being given first :

- Article 67, 27 votes to 10, with 7 abstentions ;
- Article 68, 25 votes to 12, with 7 abstentions ;
- Article 69, 27 votes to 11, with 6 abstentions ;
- Article 70, 18 votes to 14, with 13 abstentions ;
- Article 71, 18 votes to 13, with 14 abstentions ;
- Article 72, 16 votes to 17, with 12 abstentions ;
- Article 73, 17 votes to 15, with 12 abstentions ;
- Article 74, 20 votes to 18, with 9 abstentions.

The effect of these votes was, therefore, that the Committee decided to exclude reservations to all articles except article 72.

24. However, upon putting to the vote the whole of the clause, together with the insertion of those articles on the continental shelf to which the Committee had decided not to permit reservations, the clause was rejected by 21 votes to 20, with 5 abstentions. The Committee therefore makes no recommendation on the matter of reservations.

25. The Denunciation clause was rejected by 17 votes to 5, with 23 abstentions but, at the 41st meeting certain delegations questioned the wisdom of this decision and reserved the right to reconsider such a clause at the plenary meeting.

26. The Committee considered the example of the Revision clause in the secretariat paper but, on the proposal of India, preferred that which appears in article XVI of the Genocide Convention of 1948 ;<sup>2</sup> this form was adopted by 30 votes to 3, with 11 abstentions.

27. The provision on notifications was adopted by 12 votes to 5, with 25 abstentions, after the representative of Switzerland had amended the clause by inserting as subparagraph (c) "requests for revision".

28. The clause concerning the deposit of the convention and languages was adopted by 40 votes to 1, with 6 abstentions.

29. The full text of all these final clauses will be found in the annex to this report.

## Annex

### I

#### TEXT OF THE ARTICLES CONCERNING THE CONTINENTAL SHELF AS ADOPTED BY THE FOURTH COMMITTEE

##### 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 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.

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.

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 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 sea-bed 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 sea-bed or are unable to move except in constant physical contact with the sea-bed 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,

<sup>2</sup> See *Official Records of the General Assembly, Third Session, First Part, Supplement No. 1, resolution 260 (III)*.

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 73 (New article)*

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 74 (formerly article 73)*

Any disputes that may arise between States concerning the interpretation or application of articles 67 to 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 six 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 or 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 . . . . .

**DOCUMENT A/CONF.13/L.13**

**First report of the Drafting Committee of the Conference: articles and final clauses adopted by the Fourth Committee**

[Original text : English]  
[21 April 1958]

1. The Drafting Committee of the Conference met on 21 April, under the chairmanship of Mr. J. A. Correa (Ecuador), and considered the texts of articles 67 to 74 adopted by the Fourth Committee (A/CONF.13/L.12, annex), together with the final clauses adopted by that committee (A/CONF.13/L.12, annex).

2. The Drafting Committee recommends a small number of changes of a drafting nature. These are set out below as follows :

- (a) Those changes affecting the English, French and Spanish texts ;

- (b) Those changes affecting the English text only ;
- (c) Those changes affecting the French text only ;<sup>1</sup>
- (d) Those changes affecting the Spanish text only.<sup>1</sup>

CHANGES AFFECTING THE ENGLISH, FRENCH AND SPANISH TEXTS

*Article 67*

To avoid repetition, rearrange article 67 as follows :

<sup>1</sup> Changes affecting the French and Spanish texts only have not been reproduced in the present document.