

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.2/L.106-150

Annexes

Extract from the *Official Records of the United Nations Conference on the Law of the Sea, Volume IV (Second Committee (High Seas: General Regime))*

DOCUMENT A/CONF.13/C.2/L.106**United States of America: proposal**

[Original text : English]
 [3 April 1958]

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 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 pipelines 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.

DOCUMENT A/CONF.13/C.2/L.107 ***United Kingdom of Great Britain and Northern Ireland and United States of America: proposal**

[Original text : English]
 [3 April 1958]

Article 48**PARAGRAPHS 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 given 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 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.

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

DOCUMENT A/CONF.13/C.2/L.108**United States of America: proposal**

[Original text : English]
 [3 April 1958]

Article 61**PARAGRAPH 1**

Replace paragraph 1 by the following: "All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas."

Comments

Article 61 is based on article 1 of the International

Convention for the Protection of Submarine Cables which was signed in 1884 and to which thirty-five nations are parties. The draft article differs from the Convention in that it specifies the types of cables to which it applies, whereas the Convention speaks only of "submarine cables". The latter term is used in all other articles having to do with cables, including article 70, which has already been adopted by the Fourth Committee.

For purposes of uniformity the term "submarine cables" should also be used in this article.

DOCUMENT A/CONF.13/C.2/L.109**United States of America: proposal**

[Original text : English]
 [3 April 1958]

Article 62

Delete the whole of this article.

Comments

This article and the next three (articles 63, 64 and 65) all contain detailed provisions relating to the protection of submarine cables rather than basic principles. While based in the main on the Convention of 14 March 1884 for the Protection of Submarine Cables to which some 35 States have become signatories, these articles do not include a number of substantive provisions of that convention. Of the fifteen articles of that convention, the substance of only five has been dealt with here. Desirable as it might be to have all States as signatories to the principles enunciated in the Convention of 1884, it is not possible for this conference to give the detailed and

technical consideration to this matter which would be required. On the other hand, it is not desirable to include only a portion of this technical subject matter. Since the draft articles are for the most part taken almost verbatim from the 1884 Convention, the adoption of these articles without reference to the remaining articles of that convention might well raise doubts as to the continued validity of the Convention, which in its entirety represents the whole of existing international law on the protection of submarine cables.

Furthermore, article 62, while based on article 2 of the 1884 Convention, omits the provisions of that convention which provide that the criminal penalties shall be no bar to a civil action for damages. This omission, if the article were adopted, might give rise to the interpretation that this concept had been repudiated.

DOCUMENT A/CONF.13/C.2/L.110**United States of America: proposal**

[Original text : English]
 [3 April 1958]

Article 63

Delete the whole of this article.

Comment

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

DOCUMENT A/CONF.13/C.2/L.111**United States of America: proposal**

[Original text : English]
[3 April 1958]

Article 64

Delete the whole of this article.

Comments

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

In addition, this article has no counterpart in the Convention of 14 March 1884. It purports to be based on a resolution of the London Conference of 1913, which was attended by the representatives of ten States. The substance of that resolution was as follows :

It is in the interest of both the fishing industry and the submarine cable service that all gear used in

trawling should be constructed and maintained in such a condition as to reduce to a minimum the danger of catching on submarine cables on the ocean bottom.

The proposed article 64 goes beyond the language of the resolution on which it is said to be based in that it places an affirmative duty on States to regulate trawling so as to reduce the danger of fouling submarine cables. There is no principle of international law requiring that nations regulate trawling in this manner nor is there a provision in any existing international convention imposing such an obligation. If standards for the regulation of trawling to prevent injury to submarine cables are to be enacted into law and consequently have some relevance to an ultimate determination of fault or negligence they should have uniformity. This could best be done by way of an international conference devoted to this technical problem.

DOCUMENT A/CONF.13/C.2/L.112**United States of America: proposal**

[Original text : English]
[3 April 1958]

Article 65

Delete the whole of this article.

Comments

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

Additionally, this article, which is based on article VII of the 1884 Convention, omits entirely the second paragraph of that article, which reads as follows :

"In order to be entitled to such indemnity, one must prepare, whenever possible, immediately after the accident, in proof thereof, a statement supported by the testimony of the men belonging to the crew; and the captain of the vessel must, within twenty-four hours after arriving at the first port of temporary entry, make his declaration to the competent authorities. The latter shall give notice thereof to the consular authorities of the nation to which the owner of the cable belongs."

The inclusion of the first paragraph of article VII of the 1884 Convention with the omission of the second might lead to improper interpretations of the intent as to the latter.

DOCUMENT A/CONF.13/C.2/L.113**United Kingdom of Great Britain and Northern Ireland: draft resolution**

[Original text : English]
[8 April 1958]

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 33 A :

"For the purposes of the present convention ships owned or operated by a State and used only on government non-commercial 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, trooperships ;
- (ii) Cable ships, ocean weather ships, vessels carrying out scientific investigation, fishery protection vessels ;

(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 33 A. 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.

DOCUMENT A/CONF.13/C.2/L.114**Netherlands and United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[8 April 1958]

Article 34

The article to read as follows :

- “ 1. Every State shall take such measures as are necessary to ensure safety at sea for ships under its flag 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.”

[This draft supersedes the proposals submitted separately by the Netherlands and the United Kingdom, circulated as documents A/CONF.13/C.2/L.24 and Add.1, and A/CONF.13/C.2/L.82.]

DOCUMENT A/CONF.13/C.2/L.115 ***Federal Republic of Germany: proposal**

[Original text : French]
[9 April 1958]

Article 47**PARAGRAPH 1**

In the second sentence after the words “ the foreign ship ”, insert the phrase “ or one of its boats ”.

PARAGRAPH 3

Replace the words “ bearings, sextant angles or other like means ” by the words “ appropriate means ”.

Article 48**PARAGRAPH 1**

Insert after the words “ pollution of the seas ” a comma and the words “ for example.”

* Incorporating document A/CONF.13/C.2/L.115/Corr.1.

DOCUMENT A/CONF.13/C.2/L.116**Israel: proposal**

[Original text : English]
[9 April 1958]

Article 47**PARAGRAPH 1**

At the end of the first sentence, after the words “ of that State ” in the fourth line, add the following : “ provided that such laws and regulations are in conformity with international law.”

Comment

As the right of hot pursuit derives from international law, it cannot be exercised except to prevent violation of laws and regulations which themselves conform with international law ; this principle, though implicit in the formulation of article 47 as proposed, should be embodied in its text.

PARAGRAPH 3

Replace the words “ the pursuing ship has satisfied itself ” by the words “ it is established ”.

Comment

The question as to whether the hot pursuit was legal cannot, under any judicial concept, be left exclusively to the subjective appreciation of the situation by the pursuing ship, but must depend ultimately on objective examination. If the matter is controversial it is for the appropriate tribunal to satisfy itself that in the circumstances the pursuit was legitimate.

At the end of the paragraph, add the following phrase “ and after a buoy or another practicable sign has been

located by the pursuing ship at the place where the pursuit has been commenced."

Comment

The object of this proposal is to facilitate the disposal of any controversy as to whether the hot pursuit was commenced legitimately, by providing some means of ascertaining the spot at which the pursuit actually commenced.

ADDITIONAL PARAGRAPH

After paragraph 6 add the following :

" 7. The provisions of article 47, paragraph 3, apply in respect of hot pursuit."

Comment

Paragraph 3 of article 46 provides for the payment of compensation in respect of loss or damage to a ship when boarded and delayed without good reason. As the International Law Commission stated in paragraph 3 of the commentary to article 46, the purpose of this provision is to prevent the right of visit being abused. The same considerations apply to the case of hot pursuit, and warrant the award of compensation to a ship in respect of loss or damage caused to her, by reason of the improper and unfounded exercise against her of the right of hot pursuit.

DOCUMENT A/CONF.13/C.2/L.117

Bulgaria: proposal

[Original text : French]
[9 April 1958]

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."

DOCUMENT A/CONF.13/C.2/L.118

Czechoslovakia: proposal

[Original text : French]
[9 April 1958]

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."

DOCUMENT A/CONF.13/C.2/L.119

Yugoslavia: amendment to document A/CONF.13/C.2/L.96/Rev.1

[Original text : French]
[10 April 1958]

Add at the end of the operative part of the draft resolution submitted by the United Kingdom on article 48, paragraph 1 (A/CONF.13/C.2/L.96/Rev.1), the following paragraph :

" Recommends that all States participating in this conference which have not signed, ratified or acceded to the International Convention of 12 May 1954 be invited to do so as soon as possible and to take the action mentioned in the preceding paragraph."

DOCUMENT A/CONF.13/C.2/L.121/Rev.1**Argentina, Ceylon, India and Mexico: proposal**

[Original text : English and Spanish]
 [12 April 1958]

Additional article

1. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste, taking into account the norms and regulations formulated by the competent international organizations.
 2. All States shall co-operate with the competent international organizations 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.
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DOCUMENT A/CONF.13/C.2/L.121/Rev.2**Argentina, Ceylon, India and Mexico: proposal**

[Original text : English and Spanish]
 [14 April 1958]

Additional article

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 activities with radioactive materials or other harmful agents.
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DOCUMENT A/CONF.13/C.2/L.150**Union of South Africa: draft resolution**

[Original text : English]
 [15 April 1958]

The Second Committee

1. *Recommends* to the plenary session of the Conference that the draft articles adopted by the Committee be embodied in a separate instrument on the régime of the high seas which shall take the form of a declaration by the Conference that the provisions therein set forth are considered by the United Nations Conference on the Law

of the Sea, met in Geneva from 24 February to 26 April 1958, by a majority of not less than two-thirds of States present and voting, as an expression of existing principles of international law on the Régime of the High Seas.

2. *Requests* its drafting committee to draw up a suitable preamble to such an instrument and to submit the text of the preamble and the final texts of the draft articles to the Committee for approval at its next meeting.

DOCUMENT A/CONF.13/L.17/Add.1 ***Text of the articles and draft resolutions adopted by the Second Committee**

[Original text : English, French and Spanish]
 [22 April 1958]

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 ;

* Incorporating document A/CONF.13/L.17/Add.1/Corr.1.