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Report of the Chairman of the Third Committee

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Eighth Session)*

12. I should like to express my sincere thanks to the delegations participating in the work of the Second Committee for their valuable co-operation in the conduct of our programme of work, to the members of the secretariat of the Conference for their dedication and competence in the performance of their functions, to the interpreters, the translators and all the staff co-operating in this resumed eighth session.

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Report of the Chairman of the Third Committee

[Original: English]

[23 August 1979]

1. I have the honour, in accordance with the decision of the Conference, to submit for your consideration, the report on the work of the Third Committee during this resumed session. The report was considered at the 41st, 42nd, and 43rd meetings of the Committee.

2. As I have pointed out in my previous report (A/CONF.62/L.34),³⁷ in view of the progress of the negotiations made during the first part of the eighth session at Geneva and the very important positive results that were achieved, the substantive negotiations on part XII (Protection and preservation of the marine environment) and part XIV (Development and transfer of marine technology) could be considered as completed. As far as part XIII (Marine scientific research) is concerned, I pointed out in that report that, though there was substantial support for the informal composite negotiating text, and for the maintenance of the delicate balance achieved so far in the over-all package with regard to that part, several delegations maintained that they should have the opportunity to continue the negotiations on the outstanding issues relating to marine scientific research. It was agreed that we should try at this session to make an effort to broaden the basis for agreement on the pending issues.

3. Accordingly, at this resumed session, our efforts were directed to the consideration of the pending substantive issues relating to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured as well as the problem of the settlement of disputes relating to the interpretation or implementation of the provisions of this convention with regard to marine scientific research.

4. There were also some other substantive issues still pending, such as the facilities with regard to access of research vessels to the harbours of the coastal State and assistance to be rendered to such vessels conducting marine scientific research activities; the requirement for making the research results internationally available through appropriate national or international channels; the conditions for cessation or suspension of marine scientific research activities; the assistance or co-operation for providing the research vessels with information necessary to prevent and control damage to the health and safety of persons, or to the marine environment; the modalities under which marine scientific research projects could be undertaken under the auspices of an international organization etc. Informal proposals on most of these issues are contained in documents MSR/2/Rev.1, MSR/3, MSR/4 and MSR/5. At the last moment, a new proposal contained in document MSR/5 was submitted which sought to amend some of the provisions contained in article 254 relating to the rights of the neighbouring land-locked and geographically disadvantaged States.

5. These proposals were considered at six informal meetings of the Third Committee. Intensive negotiations were

also conducted through informal consultations with delegations directly concerned.

6. During these informal meetings and consultations some compromise formulae have emerged which in my personal assessment have such a considerable degree of support as to provide a reasonable prospect for consensus. These compromise formulae refer to articles 242, 246 *bis*, 247, 249, 253, 255 and 264. They are contained in an annex to this report. In my view these provisions could serve as a basis for a subsequent agreement leading to the revision of the negotiating text.

7. I wish to reiterate that, in our attempts to broaden the basis for a reasonable compromise in the field of marine scientific research, we should not lose sight of the fundamental principles of the newly emerging law of the sea and the need to keep a viable and equitable balance between the interests of all States. This has been our main concern throughout the work of the Third Committee. Evaluating the results of this session, I believe that we have succeeded in our endeavours to search for compromise formulae that do not upset the delicate balance which constitutes the very foundation of the régime for the conduct of marine scientific research. It is my submission that the compromise formulae, which emerged from the intensive negotiations during this session, are altogether the result of certain concessions made from the delegations which held opposing views. This is, indeed, the only way to achieve a compromise which provides the basis for mutual agreement. Of course, this does not mean that there is no room for improvement of the formulations contained in my report. Unfortunately, owing to lack of time during this session, we could not complete the consideration of these proposals.

8. Turning to the specific formulations and considering them in the light of the debate that took place in the Third Committee, I should like to state the following: first, the formulations on articles 242, 247 and 255 (with some drafting amendments) have acquired widespread support and therefore they can be considered as generally acceptable; secondly, on the other formulations, concerning articles 246 *bis*, 249, 253 and 264, most of the representatives expressed support in substance for the underlying basic concepts and there have been suggestions for drafting amendments. However, certain delegations opposed in principle some of these proposals or parts of them. But even they did not oppose a further consideration of those proposals. In my view, the main trends in the debate and the prevailing desire to reach a compromise represent in themselves an encouraging feature. This is, indeed, a promising avenue for our future work.

9. In conclusion, I wish to extend to all the members of the Third Committee my gratitude for their co-operation and goodwill, which enabled us to make substantial progress in our negotiating efforts. I wish also to pay special tribute to the members of the secretariat for their dedication, competence and most valuable assistance rendered to the Committee in the discharge of its mandate.

ANNEX

Compromise formulae emerging from the intensive negotiations during the resumed eighth session

Article 242

Add the following sentence at the end of the paragraph:

"In this context, without prejudice to the rights and duties of States under this Convention, a State in the application of this Part shall provide, when appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 *bis*

For the purposes of article 246:

(a) The absence of diplomatic relations between the coastal

³⁷*Ibid.*

State and the researching State does not necessarily mean that normal circumstances do not exist between them for purposes of applying article 246, paragraph 3;

(b) The exercise by the coastal State of its discretion under article 246, paragraph 4 (a), shall be deferred and its consent shall be implied with respect to marine scientific research projects undertaken outside specific areas of the continental shelf beyond 200 miles, from the baselines of which the breadth of the territorial sea is measured, which the coastal State has publicly designated as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur;

(c) The coastal State shall give reasonable notice of such areas.

Article 247

In line 1, after "global" add "intergovernmental".

Article 249

Redraft paragraph 1 (d) to read:

"(d) If requested, provide the coastal State with an assessment of such data, samples, and research results or assist in their interpretation;"

In paragraph 1 (e), delete "subject to paragraph 2 of this article".

Redraft paragraph 2 to read:

"2. The present article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 4, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources."

Article 253

Redraft the title to read:

"Suspension or cessation of research activities".

In paragraph 1, line 1, before "cessation" insert "suspension or".

Redraft paragraph 1 (a) to read:

"(a) The research activities are not being conducted in accordance with the information communicated as provided for under article 248 upon which the consent of the coastal State was based and compliance is not secured within a reasonable period of time;"

Add a new paragraph 2:

"2. The coastal State may require cessation of research activities if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time after suspension has been invoked, subject to any proceedings which may have been instituted pursuant to section 2 of Part XV."

Article 255

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research activities beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their internal law, access to their harbours and promote assistance for marine scientific research vessels, which comply with the relevant provisions of this Part.

Article 264

Add a new paragraph 2:

"2. Disputes arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with the provisions of this Convention shall be submitted, at the request of either party and notwithstanding article 284, paragraph 3, to the conciliation procedure described in annex IV, provided that the Conciliation Commission shall not call in question the exercise of the discretion to withhold consent in accordance with article 246, paragraph 4."

DOCUMENT A/CONF.62/L.40

Report of the Chairman of the Drafting Committee

[Original: English]
[22 August 1979]

At the 93rd plenary meeting of the Conference, the Drafting Committee was requested to commence work by ad-

ressing itself to the provisions of the informal composite negotiating text that appeared to be settled and to recommend changes that were considered necessary from a technical and drafting point of view, particularly the adoption of uniform terminology.

At the request of the Drafting Committee, the secretariat prepared a list of recurring words and expressions in the informal composite negotiating text which might be harmonized (informal paper 2). The examples which were selected were not exhaustive on any particular issue but they clearly indicated the difficult task which the Committee faced in carrying out the mandate of ensuring uniformity of terminology.

It was recognized that it is desirable, to the extent possible, to avoid the use of different words, where the intended meaning appears to be the same.

The following pattern has been adopted for this paper. Firstly, there is a representative list of examples which has been chosen from each section of informal paper 2, then some issues involved. This is followed by the recommendations of the Drafting Committee. The substance of these recommendations, which were themselves based on the work of the language groups, was discussed by the coordinators of the language groups under the direction of the Chairman of the Drafting Committee.

I

"All States"

Examples

Article 17:

"ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea".

Article 52, paragraph 1:

"ships of all States enjoy the right of innocent passage through archipelagic waters".

Article 90:

"every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas".

Article 116:

"all States have the right for their nationals to engage in fishing on the high seas".

Article 140:

"activities in the Area shall be carried out for the benefit of mankind as a whole irrespective of the geographical location of States, whether coastal or land-locked".

Article 150, subparagraph (f):

"for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area".

Article 238:

"States, irrespective of their geographical location . . . have the right to conduct marine scientific research".

Article 256:

"States, irrespective of their geographical location . . . shall have the right . . . to conduct marine scientific research in the Area".

Article 257:

"States, irrespective of their geographical location . . . shall have the right . . . to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone".

Some issues involved

(a) Should the term "all States", wherever it appears, be qualified by an expression such as "whether coastal or land-locked"?

(b) What is the distinction between the following expressions: "all States", "every State" and "States"?