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23rd meeting of the Third Committee

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CONF.62/C.3/L.13/Rev.2 and its predecessors were the change in the title from "marine scientific research" to "scientific research" and a new paragraph, under item 2 (b), which extended preferential treatment to developing neighbouring land-locked States and other geographically disadvantaged States. The change in the title appeared to confer far wider powers on the coastal States and consequently represented a hardening of positions. The new provision was not nearly as specific as the relevant articles of documents A/CONF.62/C.3/L.19 and 26.

75. The degree of control which the draft articles sought to impose would be counterproductive. His delegation preferred the system outlined in document A/CONF.62/C.3/L.26, under which the consent of the coastal State was required only in the case of research relating to the exploration and exploitation of the living and non-living resources of the economic zone, while other scientific research could be conducted after advance notification to the coastal State. Indeed, a better balance of interests was to be found in documents A/CONF.62/C.3/L.19 and 26 generally, although the latter granted rather too many concessions to coastal States.

76. Mr. YUSUF (Somalia) said that his delegation fully supported document A/CONF.62/C.3/L.13/Rev.2. It was only by a consent régime that the rights of coastal States could be adequately safeguarded. A coastal State would obviously not withhold its consent if it considered the research objective appropriate and if it was allowed to participate in the research activities. The draft articles introduced by the representative of Iraq rightly presupposed a clear demarcation between national zones and the international area; jurisdiction would be meaningless if free scientific research was permitted. Paragraph 4 under item 2 (b) was a realistic provision, and it had been endorsed by many of the land-locked and geographically disadvantaged countries belonging to the Group of 77.

77. Mr. LO Yu-ju (China) expressed his delegation's support for the provisions of the document, which conferred on the coastal State the exclusive right to authorize and regulate scientific research in the area within its jurisdiction and required all scientific research activities in the international area to be conducted under the direct control of the proposed International Authority. Those provisions were entirely reasonable, and they fully reflected the common interests and aspirations of many developing countries, while giving due weight to the interests of the land-locked and other geographically disadvantaged countries.

78. In his delegation's view, any single negotiating text would necessarily have to reflect the positions and interests of the majority of countries; in particular, it would have to be consonant with the interests of the developing countries, as voiced by the Group of 77. His delegation therefore believed that documents A/CONF.62/C.3/L.13/Rev.2 and 12/Rev.1 should be used as the basis for single negotiating texts on scientific research and the transfer of technology respectively.

79. Mr. HUSSAIN (Pakistan) said that coastal States should not be subject to the mandatory obligation to notify land-locked and other geographically disadvantaged States of proposed research projects, as was provided in paragraph 1 of document A/CONF.62/C.3/L.28; such notification should be left to the coastal State's discretion. With regard to the second provision of that paragraph, he agreed that neighbouring land-locked and other geographically disadvantaged States should be given the opportunity to participate in research projects, but only after any foreign experts appointed by them had been approved by the coastal State. The procedure outlined in paragraph 2 of the same document caused his delegation serious difficulties, since it believed that the coastal State should have the right to terminate any activities of which it did not approve.

The meeting rose at 1 p.m.

23rd meeting

Friday, 2 May 1975, at 12.05 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research (continued) [Agenda item 13]

1. Mr. LUKASIK (Poland) expressed his delegation's general support for document A/CONF.62/C.3/L.28, although, as a sponsor of document A/CONF.62/C.3/L.26, his delegation's approach to the question of scientific research was different from that outlined in the original draft articles (A/CONF.62/C.3/L.19).¹ As a geographically disadvantaged State, his country welcomed the provisions of the proposed new paragraph 2 of article 6 in document A/CONF.62/C.3/L.28 under which, in appropriate cases, both developed and developing land-locked and geographically disadvantaged States would have the same rights as coastal States in the conduct of scientific research.

2. His delegation did not fully understand the concept introduced in the first sentence of paragraph 5 (a) and

reserved the right to comment on the paragraph at a later stage. However, it considered that the provisions of paragraph 5 as a whole were very useful.

3. He regretted that the revised proposals submitted on behalf of the Group of 77 (A/CONF.62/C.3/L.13/Rev.2) showed no evidence of a desire to achieve compromise or to maintain a balance between the rights and obligations of coastal States and States undertaking research. His delegation had earlier advocated full freedom of scientific research. Since that approach had been strongly criticized by coastal States, his delegation, together with other socialist countries, had submitted draft articles (A/CONF.62/C.3/L.26) requiring the consent of the coastal State to research relating to the exploration and exploitation of the living and non-living resources of the economic zone, and providing for other forms of scientific research to be conducted subject to prior notification of the coastal State. His delegation considered that the deletion of the word "marine" before the words "scientific research" throughout the revised text was a departure from the terms

¹ 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).

of reference of the Committee and from the objectives of the Conference. The reference to the research activities of satellites, in the view of his delegation, was inappropriate, since such activities came within the terms of reference of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space and if the Conference were to consider that question it would adversely affect the work of that Sub-Committee.

Mr. Kehden (Federal Republic of Germany), Vice-Chairman, took the Chair.

4. Mr. BRANKOVIĆ (Yugoslavia) said that his delegation fully supported the proposals contained in document A/CONF.62/C.3/L.13/Rev.2. Coastal States should have the exclusive right to conduct and regulate scientific research activities in the area under their jurisdiction, and the conduct of such activities should be subject to their explicit consent.

5. The general philosophy and some of the provisions of the draft articles in document A/CONF.62/C.3/L.19 and the amendments to them (A/CONF.62/C.3/L.28) were not acceptable to his delegation.

6. Mr. VON WELCK (Federal Republic of Germany) said that he was disappointed to find no improvement, either in substance or in formulation, in the revised proposals submitted on behalf of the Group of 77 (A/CONF.62/C.3/L.13/Rev.2); the document showed no evidence of spirit of co-operation or compromise. It was not clear to which parts of the marine environment the proposed provisions were meant to apply. Moreover, the only new provision, paragraph 4, was too limited in scope and too vaguely worded to satisfy the legitimate interests and rights of land-locked and other geographically disadvantaged States, which should have at least the opportunity, if not the right, to participate in research projects conducted in marine areas beyond the territorial sea of neighbouring coastal States, in which the latter States enjoyed certain rights over resources.

7. It was his hope that the document did not reflect the final position of the members of the Group of 77 and that they would co-operate with other States in working out a compromise text on the subject.

8. Mr. JARAMILLO DEL CASTILLO (Ecuador) said that the provisions relating to coastal State consent contained in the revised proposals should not be interpreted to mean that coastal States were seeking to prohibit or restrict the conduct of scientific research. Those provisions required only that the right of coastal States to exercise sovereignty and jurisdiction over a specific maritime area should be respected by other States and international organizations.

9. Coastal States appreciated the need for scientific research. His country had exercised sovereignty over 200 miles of territorial sea for over 20 years and had never refused a request for permission to conduct scientific research in that area. However, his delegation remained convinced that such research should be subject to coastal State consent. Furthermore, his delegation was opposed to the proposals in document A/CONF.62/C.3/L.28 concerning the establishment of arbitration machinery for disputes affecting an area under the jurisdiction of a coastal State.

10. Mr. TIKHONOV (Union of Soviet Socialist Republics) said that, during the discussion of document A/CONF.62/C.3/L.26, 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 by the officially submitted document A/CONF.62/C.3/L.13/Rev.2, 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.

12. Mr. KATEKA (United Republic of Tanzania) said that the revised draft articles agreed upon by the Group of 77 had been criticized as being unbalanced and unilateral. However, the proposals made by the other camp (A/CONF.62/C.3/L.26) did not strike him as being any more balanced. Each side should make a move to meet the other's point of view. Instead of making pious statements about the interests of the developing countries, some delegations should abandon their patronizing attitude and clearly state the point of view of their Governments, as the developing countries had done.

13. The argument that unrestricted scientific research was in the interests of the developing countries was illogical. The remarks made at the preceding meeting by the representative of the International Council of Scientific Unions, from whom more objective advice might have been expected, were most unfortunate. Other and equally prominent scientists had stated that there was no conflict between a consent régime and valid scientific research. His delegation had consistently rejected the proposed distinction between fundamental and non-fundamental scientific research. Fundamental geological research, after all, could be commercially valuable to multinational companies which intended to exploit the sea-bed, much pure biological research was subjected to commercial fishery interests, and nuclear tests led to nuclear weapons.

14. In the 1958 Convention on the law of the sea no distinction had been made between fundamental and non-fundamental scientific research because the coastal State's jurisdiction had then applied only to the territorial sea. However, with the introduction of the concept of the economic zone, coastal States were determined to protect their interests in that zone also.

15. Mr. JAIN (India) endorsed the views expressed by the representative of the United Republic of Tanzania concerning certain delegations' criticism of the draft articles in document A/CONF.62/C.3/L.13/Rev.2 and also his comments on the statement made by the representative of the International Council of Scientific Unions.

16. Document A/CONF.62/C.3/L.13/Rev.2 should be regarded as a more complete version, rather than a revision, of the original proposals submitted on behalf of the Group of 77 in document A/CONF.62/C.3/L.13.¹ Reference to scientific research in the marine environment rather than to marine scientific research significantly increased the scope of the provisions and was in conformity with the terms of reference of the Committee. The provisions relating to preferential treatment for developing neighbouring land-locked States and other developing neighbouring geographically disadvantaged States used a form of words proposed by certain land-locked States of the Group of 77. Paragraph 6 had been included as a result of a decision by the

Group to carry out a study of the activities to which it referred.

17. Coastal State consent to scientific research was essential, since their vital security interests and their right to participate in it and have access to the results and data deriving from such research would not be adequately covered by notification. The requirement of the explicit consent of the coastal State did not imply any intention to restrict such research unless it affected the vital interests of the coastal State. The provisions relating to coastal State supervision were necessary in order to ensure that the coastal State could suspend or terminate activities which were not being carried out in conformity with the requirements it had stipulated.

18. With regard to the statement by the representative of the International Council of Scientific Unions, his delegation did not agree that the degree of coastal State control proposed would restrict the conduct of scientific research. Developing countries would not hamper any scientific research which did not interfere with their vital security interests.

19. His delegation did not agree with the philosophy of document A/CONF.62/C.3/L.28, which was a reiteration of the proposal for a notification régime originally submitted in document A/CONF.62/C.3/L.19 and which ignored the vital interests of the coastal State. In particular, procedures for the settlement of disputes should be determined by the coastal State rather than in the manner proposed in that document.

20. Mr. JUNOD (Switzerland) said that, as a member of the group of land-locked and geographically disadvantaged States, his delegation supported the provisions of document A/CONF.62/C.3/L.28, because it considered it important to take account of the interests of those States and to institute an effective system for the settlement of disputes.

21. His delegation found it difficult to understand why, in document A/CONF.62/C.3/L.13/Rev.2, the substance of which was identical with that of the earlier draft articles it should have been found necessary to change the title, since the meaning of the terms to be used in the convention would in any case be defined during the Conference. Moreover, his delegation did not consider it appropriate to include in the convention the proposals on scientific research carried out by satellites and remote sensing devices, since such questions were either covered by existing international conventions or were being discussed by other bodies.

22. The new paragraph in the document, paragraph 4, offered only preferential treatment to land-locked and geographically disadvantaged States; no change in the régime of consent by the coastal State was envisaged, and the preferential treatment was, in any event, to be granted only to developing States. In his delegation's view, provisions favouring the interests of the States in question in the proposed economic zone should be designed to compensate for geographical, not economic, disadvantages. His delegation was therefore unable to agree to such discrimination between developed and developing States, and it opposed the idea of an absolute régime of consent by the coastal State with regard to scientific research in the economic zone and any arrangement for making research beyond that zone dependent on the will of an international authority.

23. His delegation's hope that the coastal States would be willing to meet the interests of States carrying out marine

scientific research had unfortunately not been fulfilled. It was essential to take account of the needs of the research States if man's knowledge of the marine environment was to grow and if more States were to be enabled to engage in scientific research beyond the territorial sea in future without being hampered by unduly heavy obligations or arbitrary decisions by coastal States.

24. His delegation, therefore, considered that document A/CONF.62/C.3/L.13/Rev.2 could not be used as a basis of discussion. Document A/CONF.62/C.3/L.26, however, although defective in certain respects and based on some concepts which his delegation could not support, such as that of the continental shelf, should be chosen as the single negotiating text. It represented a compromise between divergent interests in the matter of scientific research.

25. Mr. AL-HAMID (Iraq) said that since document A/CONF.62/C.3/L.28 reproduced the substance of document A/CONF.62/C.3/L.19 and was based on a process of selection in the field of scientific research, his delegation was unable to support it; it considered the authority and consent of the coastal State to be fundamental. The purpose of the document was to provide the best possible conditions for the land-locked and geographically disadvantaged States.

26. His delegation was unable to accept the provisions in the new paragraph 5 (a), because it was essential that a suspect research project should be suspended or terminated immediately. Moreover, developing countries had a number of experts who were adequately qualified to decide whether a breach of agreement had occurred; if the decision was left to experts chosen by UNESCO or another international organization, there might be a lack of perspective with regard to the developing countries.

27. Mr. DAHMOUCHE (Algeria) said that he had three comments to make on document A/CONF.62/C.3/L.28. First, the proposed paragraph 2 (a) of article 6 gave undue weight to the competence of the research State. The interests of the land-locked and other geographically disadvantaged States should be determined either by the coastal State or in the preliminary agreement between coastal and research State or again in the convention itself. Secondly, the proposed paragraph 5 (a) referred to a legal obligation arising from the work of the Conference; it was therefore inappropriate to propose in the succeeding sub-paragraphs that a panel of scientific experts should interpret a clause of a diplomatic convention. Moreover, the reference to qualified experts implied that the experts were likely to be from developed countries and consequently might be biased, even if their countries were not involved in the dispute. Thirdly, the proposals for the settlement of disputes were both extremely complicated and too flexible. It would surely be simpler to provide merely that the dispute should be settled in accordance with the procedures set out in the convention.

28. In short, his delegation was unable to support the amendments because they did not take sufficient account of the interests of coastal States, and especially those of the third world, and seemed to offer little in the way of a compromise.

29. Mr. STRÖMBERG (Sweden) said that in document A/CONF.62/C.3/L.13/Rev.2 there seemed to be no move towards a compromise but merely a change in the title and an additional paragraph on satellites and remote sensing devices. The proposed change in terminology could have far-reaching consequences, depending on the interpretation by each State; generally agreed definitions would, in any

event, have to be found. The matters covered in the new paragraph 6 under item 2 (b) could more appropriately be dealt with by bodies concerned with such devices.

30. Paragraph 4, on preferential treatment for developing land-locked and geographically disadvantaged States, was not clear and its practical implications might well be minimal. Some of the sub-paragraphs of paragraph 2 also seemed impracticable. For instance, although in principle sub-paragraph (viii) was acceptable, it might be difficult in practice to divide samples and duplicate certain types of data; in such cases access to them for the coastal State should suffice. The problem would be easier if scientists from the coastal States could participate in the research. Sub-paragraph (ix) needed to be more clearly worded. The provision in sub-paragraph (x) might damp the enthusiasm of scientists and so hamper progress in scientific research; his delegation had consistently recommended that reasonable freedom should be left for scientific research with a view to increasing human knowledge.

31. While recognizing the interests of coastal States, he appealed to them not to exercise their jurisdiction in such a way as to hamper *bona fide* marine scientific research. The international machinery to be established should exercise control over all scientific research activities in the area it administered. His delegation was not, however, convinced of the necessity for such cumbersome measures as those outlined in paragraph 2. A notification system for scientific research in the international sea-bed area should suffice.

32. In his delegation's opinion, documents A/CONF.62/C.3/L.26 and 28 showed a tendency to compromise which was lacking in document A/CONF.62/C.3/L.13/Rev.2.

33. Mr. LEGAULT (Canada) said that if the concern of both coastal and research States concerning marine scientific research could be allayed, the Conference would have done more than merely facilitate such research: it would have provided a means of transferring technology and thus made a vital contribution to the preservation of the world's marine environment.

34. Leaving aside the distinctions between the various types of research, the Committee should concentrate on the conditions in which it was to be carried out in the economic zone. Some accommodation had been attempted in the socialist countries' proposal which provided that certain types of research in the economic zone should be subject to the consent of the coastal State. However, it seemed unlikely that the sponsors of the proposal submitted on behalf of the Group of 77 in document A/CONF.62/C.3/L.13/Rev.2 would be satisfied with any régime allowing the research State to take an arbitrary decision about whether the research fell within the scope of paragraph 1 or paragraph 2 of article 6, of the socialist countries' proposal in document A/CONF.62/C.3/L.26. Such a decision would infringe upon the coastal State's right to withhold consent to a research programme which might affect its resources.

35. Some research States were concerned about the provision in the proposal submitted on behalf of the Group of 77 that coastal States should have the unqualified right to withhold consent to any research projects in their economic zone, because they contended that the provision might result in unnecessary delays or the refusal of consent to research programmes which were likely to be to the benefit of all mankind. Not only research States but coastal States, too, were concerned about impediments to vital research programmes. It was an established fact that in the

past research close to the shores of coastal States had led to important discoveries of considerable value to them. For that reason he had welcomed the assurance by the representative of Kenya that the sponsors of document A/CONF.62/C.3/L.13/Rev.2 did not intend to put unnecessary obstacles in the way of research programmes because coastal States recognized that it would not be in their interest to do so.

36. The draft articles submitted at the second session in document A/CONF.62/C.3/L.19 provided for communication between the coastal and the research States, but only after notification by the latter and an arbitrary decision as to whether the proposed research fell within the régime defined in that proposal. The proposal therefore had the same defects as that submitted by the socialist countries.

37. Research States were apprehensive about the possibility of their requests being ignored, and about delays or unreasonable refusals, whereas coastal States feared that research might be conducted for reasons other than those declared and that the research State might make arbitrary decisions as to the nature of the research or about whether to notify or ask for consent from the coastal State. Those fears were not unfounded, but neither were they insurmountable. The key to a compromise was communication, which had to take place before the research project was initiated. Communication, however, was a two-way process, and there would have to be a prompt response to a request to undertake research, indicating the extent of involvement desired by the coastal State and the disposition to be made of samples and data. Any State intending to undertake research in areas under the jurisdiction of a coastal State should communicate with it and indicate how that research might affect the coastal State's resources, if at all. The coastal State could then grant or withhold consent. That idea was embodied in the Canadian proposal submitted at the current session (CRP/Sc.Res./10 and Corr.1), which was intended to reconcile the legitimate interests of all States by providing for communication, negotiation and agreement before any research was undertaken in the economic zone.

38. The facilitation of marine scientific research, the preservation of the marine environment and the transfer of technology would be made more effective if arbitrary refusal were not allowed and if prior consultations were provided for. Arbitrary decisions by the research State about the extent to which the research affected the resources of the economic zone should also be excluded. Any consolidated text on scientific research should seek to reconcile all the views put forward in the Committee.

39. Mr. KOLCHAKOV (Bulgaria) said that he was disappointed by the uncompromising stand evinced in the proposal submitted on behalf of the Group of 77. The socialist countries in their draft articles (A/CONF.62/C.3/L.26) had consistently sought to meet the demands of developing States. If, in a conference of 130 States, none made concessions, no acceptable convention would be achieved.

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 co-operation in scientific research related to the international sea-bed area and its resources.

42. Miss AGUTA (Nigeria) supported the proposal submitted on behalf of the Group of 77, which, together with the socialist countries' proposal, provided the elements of a compromise for the Committee to work on at the following session. She reserved the right to comment on the Netherlands proposal (A/CONF.62/C.3/L.28) at a later stage because of the implications it had for land-locked and geographically disadvantaged States, of which there were a number in the African continent.

43. Mr. AL ASFOOR (Oman) said that it was most important to protect the legitimate rights of coastal States and developing countries with regard to scientific research. He supported the proposal submitted on behalf of the Group of 77 in the belief that the consent of the coastal State should be obtained before any research was under-

taken either by a State or by an international organization, and that the coastal State had the right to stop or cancel any scientific research project which failed to comply with the conditions agreed upon.

44. The International Sea-Bed Authority should be responsible for the conduct of scientific research in the international area.

45. Mr. WALKATE (Netherlands) said that the proposal submitted by his delegation on behalf of the group of land-locked and other geographically disadvantaged States in document A/CONF.62/C.3/L.28 complemented that submitted by 17 delegations concerning a notification system, in document A/CONF.62/C.3/L.19. The notification system in that text had not been fully understood: it provided for the right by the coastal State to participate in research within its economic zone through qualified experts. The coastal State would decide who the experts would be and, if it had none, might ask for the assistance of an international organization. The aim of the proposal was to allay the justified concern of coastal States about the proposed system and to enable them to object, when appropriate, to the way in which the agreed conditions for carrying out the research were being fulfilled and to suspend preparations for the research project, if necessary.

46. In view of the late hour, he would postpone the rest of his comments until the following meeting.

The meeting rose at 1.20 p.m.

24th meeting

Wednesday, 7 May 1975, at 3.40 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Development and transfer of technology (*continued*)* [Agenda item 14]

Scientific research (*concluded*) [Agenda item 13]

1. Mr. WALKATE (Netherlands), continuing his statement begun at the previous meeting concerning the comments made on his delegation's proposals (A/CONF.62/C.3/L.28), said that the document proposed a two-phase settlement of disputes procedure. During the first phase, discussions would take place between the research and the coastal State with a view to solving any difficulties that might have arisen. If they did not yield results, impartial experts would be called in, and if neither of the parties was convinced by the experts' advice the general procedures for the settlement of disputes would be followed: that would constitute the second phase. The conclusion of the draft articles might have made the procedure appear more complicated than it really was.

2. The second and final phase had to be a settlement by a third party, but as third-party settlements at the State level were usually very protracted and costly, his delegation

favoured a procedure in which experts might be called in, as that would be expeditious and therefore in the interests of all the parties concerned.

3. A convention without a satisfactory third-party settlement procedure would be unacceptable.

4. Mr. VARGAS (Mexico), introducing draft articles on marine scientific research (A/CONF.62/C.3/L.29), said that they were the culmination of a process which had begun after the second session. They incorporated ideas advanced by a great many delegations and had been prepared in consultation with them. The proposals were inspired by the conviction that in future marine scientific research would be extremely important for the developing countries.

5. One of the best ways of promoting scientific progress was the free flow of ideas, and that was the reason for the provisions in draft article 7 concerning bilateral, regional and multilateral agreements. Most participants in the Conference, including his own delegation, favoured a legal régime requiring the coastal State's consent to research. Others preferred a system requiring notification to the coastal State and participation by it. The new draft articles sought to reconcile the two schools of thought and to protect the interests of both coastal and research States.

* Resumed from the 22nd meeting.