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Annexes

Extract from the *Official Records of the United Nations Conference on the Law of the Sea, Volume VI (Fourth Committee (Continental Shelf))*

ARTICLES 67 TO 73 OF THE DRAFT OF THE INTERNATIONAL LAW COMMISSION (A/3159)

SECTION III. CONTINENTAL SHELF

Article 67

For the purposes of these articles, the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms), or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

Article 68

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources.

Article 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

Article 70

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

Article 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.
2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.

5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

Article 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement 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 baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured.

Article 73

Any disputes that may arise between States concerning the interpretation or application of articles 67-72 shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

DOCUMENT A/CONF.13/C.4/L.1

Federal Republic of Germany: Memorandum concerning draft articles 67 to 73

[Original text: French]
[4 March 1958]

1. The delegation of the Federal Republic of Germany shares the opinion of the International Law Commission that the principle of the freedom of the high seas applies equally to the exploration and exploitation of the subsoil of the high seas (*cf.* A/3159, p. 24, commentary on article 27, paragraph 2).

The delegation of the Federal Republic of Germany fully supports the view of the International Law Commission that "Any freedom that is to be exercised in the interests of all entitled to enjoy it, must be regulated... to safeguard its exercise in the interests of the entire international community" (*ibid.*, paragraph 5). And so far as the

framing of new rules is concerned, it agrees with the Commission that "the necessary steps must be taken to ensure that this development affects the freedom of the seas no more than is absolutely unavoidable, since that freedom is of paramount importance to the international community" (*ibid.*, pp. 40-41, section III, The Continental Shelf, paragraph 4).

With regard to the continental shelf in particular, the delegation of the Federal Republic of Germany considers likewise that, in view of the growing importance of the wealth of the subsoil of the high seas, it is necessary, in the interests of the international community, to establish

certain rules which will neither hamper the systematic exploration and exploitation of the subsoil of the sea nor unduly restrict the other freedoms of the high seas.

The delegation of the Federal Republic of Germany notes, however, that the draft goes beyond the principles enunciated by the International Law Commission itself. By attributing to the coastal State, under article 68, sovereign rights over part of the continental shelf for the purpose of the exploration and exploitation of the shelf's natural resources, the Commission limits the freedom of the high seas more than is "absolutely unavoidable".

With the object of remedying this defect, the delegation of the Federal Republic of Germany proposes hereunder a body of rules which, in its view, will take better account of the interests of the international community and of foreseeable developments than does the attribution of sovereign rights to the coastal State.

2. The delegation of the Federal Republic of Germany bases its thesis on the existing legal position.

According to the international law in force, the coastal State has no rights over the continental shelf beyond the outer limit of its territorial sea. Accordingly, anyone is free to explore and exploit the subsoil of the sea outside the territorial sea, provided that such activity does not unduly hamper the other activities on the high seas which under international law are open to all (*cf.* article 27).

Now, if this freedom is to be regulated in the interests of the international community, it would be both logical and sufficient to agree on self-executing rules governing the exploration and exploitation of the subsoil of the sea. The international community has set the example in this respect, for a number of multilateral conventions have been entered into which govern other activities on the high seas (safety of navigation, sea-borne traffic, regulations concerning the police of fisheries, whaling, conservation of marine species, protection of cables, pollution of the seas) (*cf.* A/CONF.13/23).

These rules should contain provisions on the following lines:

(a) As a general rule, any person may prospect for natural resources. For a reasonable period, the prospector shall not be disturbed by other undertakings on his prospecting site. If he discovers natural resources, he shall enjoy the right to work the resources without disturbance by neighbouring undertakings.

(b) The work of exploration and exploitation shall be conducted in keeping with clearly established technical principles and in conformity with safety standards.

(c) The exploitation of the natural resources in the territory of the coastal State must not suffer prejudice as a consequence.

(d) The operations of prospecting and exploitation shall not prejudice unnecessarily navigation or fishing, telegraphic communications, sea bathing, etc. — e.g.:

- (i) They must not unduly obstruct the movements of shipping;
- (ii) They must not cause excessive pollution of the sea;

(iii) They must not cause undue harm to marine fauna and flora.

(e) Installations employed for the purpose of exploitation shall be protected from damage by other users of the sea.

Such international rules would offer the advantage, among others, of permitting the exploration and exploitation of the subsoil of the sea according to uniform regulations and of forestalling malpractices.

3. It would be the responsibility of the international community to secure the observance of the rules outlined under paragraph 2 above.

The suggestion—ideal in itself—that the exploitation of the submarine areas should be entrusted to the United Nations or to one of its specialized agencies is, in the opinion of the International Law Commission, not practicable in present circumstances (*cf. loc. cit.*, p. 40, section III, The Continental Shelf, paragraph 3). Nor is there at present any other world organization capable of supervising the enforcement of these rules on behalf of the international community. A solution suited to the peculiar nature of the activities in question must therefore be sought elsewhere.

As the installations employed in the exploration and exploitation of submarine areas are comparatively immovable fixtures, it does not seem proper to subordinate the observance of the international rules to the principle of personal law—i.e., the law of the nationality of the operator. By reason of the nature of these installations the more logical course would be, rather, to vest responsibility for securing the observance of the agreed rules in the coastal State closest to the installations in question, that State to act on behalf of the international community. The functions of that State would be:

- (a) To satisfy itself that the operator fulfils the necessary conditions qualifying him to carry out the proposed work;
- (b) To supervise the concerns engaged in prospecting and exploitation;
- (c) To delimit the prospecting and exploitation areas of each operator.

This solution would not involve any delimitation in terms of depth of the areas subject to the supervision of the coastal State (*cf.* article 67).

4. The Conference could confine itself to laying down such general rules, which would be binding on all concerned.

Inasmuch as coasts vary in geographical configuration, additional rules concerning marine exploration and exploitation should be left to be settled by regional conventions, the conclusion of which might be recommended by the Conference. Such conventions might, for example, delimit the areas of supervision and provide for the establishment of joint bodies empowered to perform the supervisory functions in place of the coastal States.

5. The delegation of the Federal Republic of Germany supports the fundamental idea in article 73 of the draft (peaceful settlement of disputes).

DOCUMENT A/CONF.13/C.4/L.2

Mexico: proposal

[Original text: Spanish]
[6 March 1958]

Article 68

The article to read as follows:

"The coastal State exercises sovereignty over the seabed and subsoil of the continental shelf and over the natural resources thereof, to the exclusion of other States, physical or virtual occupation not being a necessary condition."

DOCUMENT A/CONF.13/C.4/L.3**Burma: proposal**

[Original text: English]
[7 March 1958]

Article 68

Add the following sentence:

“The term ‘natural resources’ includes so-called bottom-fish and other fish which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there.”

DOCUMENT A/CONF.13/C.4/L.4**Panama: proposal**

[Original text: Spanish]
[10 March 1958]

Article 67

The article to read as follows:

“For the purposes of these articles, the common expression ‘continental shelf’ is used as referring to the seabed, soil and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, including both constituent parts of the continental terrace, namely, the continental shelf proper and the continental slope with its gorges, valleys, depressions and ravines, as far as the further points at which the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas of the continental slope, but excluding the great depths of oceanic basins.”

Article 71**PARAGRAPH 1**

The paragraph to read as follows:

“1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing, the conservation of the living resources of the sea, or the free pursuit of disinterested scientific investigation by any country or qualified scientific institution, provided that in the latter case the said country or institution undertakes to make public the results of its investigation.”

DOCUMENT A/CONF.13/C.4/L.6**Argentina: proposal**

[Original text: Spanish]
[12 March 1958]

Article 67

The article to follow article 68 and to read as follows:

“The term ‘continental shelf’ refers to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea.”

Article 68

The article to precede article 67 and to read as follows:

“The sovereignty of a State extends over the submarine shelf contiguous to its seacoast, to a depth of 200 metres.

“This sovereignty is exercised under the conditions laid down in the following articles and in the rules of international law.

“The rights of the coastal State in respect of the soil and subsoil of the submarine shelf or the corresponding continental terrace extend to the natural resources thereof.

“The rights of the coastal State are exclusive in the sense that if that State does not exploit the continental shelf no other may do so without its consent.”

Article 69

The article to read as follows:

“The rights of the coastal State over the continental shelf do not affect the régime of freedom of navigation on the high seas or that of the air space above the superjacent waters or the epicontinental sea.”

Article 71**PARAGRAPH 1**

The paragraph to read as follows:

“1. The exploration and exploitation of the continental shelf must not result in any unjustifiable interference with navigation on the sea or in the air space above.”

PARAGRAPH 2

The paragraph to read as follows:

“2. The coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.”

Additional article

“Fishing or the conservation of the living resources of the sea in the waters above the continental shelf shall be governed by any special provisions adopted by the coastal States for the protection of marine species in accordance with quotas and scientific and technical principles. The coastal States shall be responsible for ensuring the observance of such provisions.

“Measures so adopted by a coastal State shall not prejudice rights derived from international agreements to which it is a party and shall not discriminate against foreign fishermen.”

DOCUMENT A/CONF.13/C.4/L.6/Rev.1**Argentina: proposal**

[Original text : Spanish]
[26 March 1958]

Article 68

ADDITIONAL PARAGRAPH

In document A/CONF.13/L.6 replace the proposal relating to the article by the following :

Add a second paragraph to read as follows :

“The rights of the coastal State are exclusive in the sense that if that State does not exploit the continental shelf no other may do so without its consent.”

DOCUMENT A/CONF.13/C.4/L.6/Rev.2**Argentina: revised proposal**

[Original text : Spanish]
[27 March 1958]

Article 68

ADDITIONAL PARAGRAPH

Replace the proposal in document A/CONF.13/C.4/L.6/Rev.1 by the following :

Add a second paragraph to read as follows :

“The rights of the coastal State are exclusive in the sense that if that State does not explore or exploit the continental shelf no other may undertake these activities without its consent.”

DOCUMENT A/CONF.13/C.4/L.7**France: proposal**

[Original text : French]
[13 March 1958]

Article 67

Delete the words :

“or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas”.

Article 68

Add a second paragraph based on the last sentence of paragraph 3 of the commentary by the International Law Commission, which might read as follows :

“2. The rights of the coastal State over the continental shelf, referred to in paragraph 1 above, do not cover

so-called bottom fish and others kinds (fish, crustacea and molluscs) which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there”.

Amend article 68 in order to establish the necessity of obtaining the coastal State's consent to any research in the seabed or subsoil of the continental shelf.

Article 70

Extend the provisions of article 70 to pipelines passing through the superjacent waters, in the same way as article 61 already applies to pipelines laid on the bed of the high seas.

DOCUMENT A/CONF.13/C.4/L.8**Lebanon: proposal**

[Original text: French]
[14 March 1958]

Article 67

Delete the words: "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas."

DOCUMENT A/CONF.13/C.4/L.9**Sweden: proposal**

[Original text: French]
[14 March 1958]

Article 68

The article to read as follows:

"The coastal State exercises over the continental shelf control and jurisdiction for the purpose of exploring and exploiting its mineral resources."

DOCUMENT A/CONF.13/C.4/L.10**Denmark: proposal**

[Original text: English]
[17 March 1958]

Article 68

ADDITIONAL PARAGRAPH

Add a second paragraph to read as follows:

"Notwithstanding the preceding paragraph, the coastal State may not interfere with fundamental research on the physical characteristics, geology and biology of the seabed and subsoil of the continental shelf outside the territorial sea, provided that such research is carried out with the intention of giving due publicity to the results obtained, and that an opportunity is afforded the coastal State to follow the investigations through qualified observers."

DOCUMENT A/CONF.13/C.4/L.12**Yugoslavia: proposal**

[Original text: English]
[19 March 1958]

Article 67

The article to read as follows:

"1. For the purposes of these articles the term 'continental shelf' is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, but only up to a boundary line not extending beyond 100 miles from the outer limit of the territorial sea. Local occurrences of submarine gorges, valleys, depressions and ravines shall not be taken into account in this area of 100 miles, provided they are within the outer limit of the continental shelf as described in the preceding sentence.

"2. Where such a depth is greater, the continental shelf stretches only up to a boundary line not extending beyond 50 miles in the direction of the high seas from the outer limit of the territorial sea."

DOCUMENT A/CONF.13/C.4/L.13**Yugoslavia: proposal**

[Original text: English]
[19 March 1958]

Article 68

The article to read as follows :

- “1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources, including the so-called bottom-fish and other fish which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there.
- “2. If the coastal State does not exercise the rights under paragraph 1 of the present article, no one may lay claim to its continental shelf without its express agreement.”

DOCUMENT A/CONF.13/C.4/L.14**Yugoslavia: proposal**

[Original text: English]
[19 March 1958]

Article 69

At the beginning of the article insert the following :

“Subject to the restrictions referred to in article 71 of the present convention, . . .”

DOCUMENT A/CONF.13/C.4/L.15**Yugoslavia: proposal**

[Original text: English]
[19 March 1958]

Article 71

ADDITIONAL PARAGRAPHS

1. Add a new paragraph 3 to read as follows :

“3. The safety zones referred to in paragraph 2 of the present article shall extend to a distance of 500 metres around the installations which have been erected, counting from each point of the outer edge of such installations. The air safety zone above that area shall extend up to a height of 1,000 metres, counting from the highest point of such installations. Ships and aircraft of all nationalities must respect these safety zones.”

2. Add a new paragraph 7 to read as follows :

“7. The coastal State is obliged to undertake, in the aforementioned zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.”

DOCUMENT A/CONF.13/C.4/L.16 and Add.1***Yugoslavia: proposal**

[Original text: English]
[19 March 1958]

Article 72

In both paragraphs delete the following words :

“and unless another boundary line is justified by special circumstances . . .”

* Under addendum 1 (26 March 1958), the above amendment is to be regarded also as an amendment to the Netherlands proposal (A/CONF.13/C.4/L.23).