

THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA

A STUDY OF CONTEMPORARY
INTERNATIONAL LAW

by

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INTRODUCTION

THE FREEDOM OF THE SEAS AND CONTEMPORARY PROBLEMS

The exploitation and conservation of the natural resources of the sea constitute one of the most topical problems of contemporary international law. The main reason for this lies in the extraordinary development of techniques for exploring these resources and turning them to account. Advances in techniques have made it possible both to turn to account resources hitherto unknown or which could not be tapped, and to exploit other resources on an immeasurably more intensive scale than was previously feasible. The two facts in turn have inevitably led to a corresponding increase in the importance of such resources for the economy or food supplies of a large number of countries. To grasp the full implication of this it must be born in mind that the agricultural and mineral resources of the earth are daily becoming less and less adequate to satisfy industrial and food requirements. From this point of view especially, the living resources of the sea have come to constitute one of the richest stores of food that the world possesses.

Technical developments have also had their repercussions on the yield of some resources of the sea. As long as the means and methods of fishing, whaling and sealing did not permit of large-scale operations there was no reason why exploitation of the living resources of the sea should affect their yield, at least to any appreciable extent. However, with the development of much more effective means and methods enabling the resources to be worked intensively, the situation radically changed. Catches became so large as to bring the risk of "over-fishing" of some species, and, what was more, some of the equipment used affected in some cases the living conditions and ecological environment of those and other species. Thus, the intensity with which these living resources of the sea can be exploited and the effects of the use of certain equipment and appliances have resulted in some of the resources being exposed to the risk of depletion, impairment and even annihilation. Once it was realized that fishing, whaling and similar activities could adversely affect the yield of the sea's resources, there immediately arose the question of the need to conserve them. As will be seen later, the question of "the conservation of the living resources of the sea" is coming more and more to the fore nowadays, sometimes in the shape of an urgent problem.

The technical phenomena to which we have just referred and their economic and social repercussions have naturally given birth to new needs and interests as far as the exploitation and conservation of the resources of the sea are concerned. But the recognition of these needs and the legal protection of these interests are not always compatible with certain traditional concepts and principles of the international law

State may not impede the laying or maintenance in its shelf of submarine cables or pipe lines by other States, but this right of third States in turn cannot prevent the coastal State to take those reasonable measures which were required in the exercise of its rights, such as imposing conditions concerning the route to be followed by the cables or pipe lines in order to avoid unjustifiable interference with the exploration of the shelf or with the exploitation of its resources. Likewise, the enjoyment of the other freedoms provided for in paragraph 1 of Article 5 of the Convention, cannot be the same as in other parts of the high seas. If the exploration of the shelf or the exploitation of its natural resources leads to a "justifiable interference", no matter its character or extent, such interference must be considered as a legitimate exercise of the rights of the coastal State.¹

Meaning of the expression "natural resources"

Paragraph 4 of Article 2 defines the "natural resources" referred to in the Convention. The meaning to be attached to this expression gave rise to a lengthy discussion in the Committee, where proposals of most different character and scope had been submitted. On the one hand, a proposal was submitted to the effect of confining the rights of the coastal State to the "minerals" of the continental shelf.² In contrast to this, another proposal was submitted to the effect of extending the rights of the coastal State to include 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".³ A third proposal was introduced to exclude from the expression "natural resources", the "so-called bottom-fish and other 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".⁴ This proposal would have defined the living resources of the continental shelf with the same criterion which the ILC followed when it confined the rights of the coastal State, so far as this category of resources is concerned, to the sedentary species; that is to say, to those species "permanently attached to the bed of the sea".⁵

In the course of the discussion a joint proposal was introduced by several delegations with the view of finding a compromise formula with regard to the meaning to be attributed to the expression "natural resources".⁶ This was the one that eventually became the definition contained

¹ See ILC report, commentary to Articles 70 and 71 of the draft.

² Proposal submitted by Greece (L. 39). In other proposals submitted by Sweden (L. 9) and the Federal Republic of Germany (L. 43) the word "minerals" was also used. Put to the vote the Greek proposal was rejected by 52 votes to 7 with 6 abstentions, SR. 24, p. 6.

³ Proposal submitted by Burma (L. 3). Yugoslavia submitted another of the same tenour (L. 13). Put to the vote it was rejected by 42 to 11 with 11 abstentions, SR. 24, p. 7.

⁴ Proposal submitted by France (L. 7). The proposal was never put to the vote.

⁵ See ILC report, paragraphs (3) and (4) of the commentary to Article 68 of the draft.

⁶ Proposal submitted by Australia, Ceylon, Federation of Malaya, India, Norway and the United Kingdom (L. 36).

in paragraph 4 of Article 2 of the Convention. As one of the co-sponsors explained to the Committee, so far as the living resource in question was concerned, the formula was based on "considerations of legal principles and practical utility". It was the "permanent intimate association of certain living organisms with the seabed which justified giving the coastal States exclusive rights in regard to such organisms. The words 'living organisms belonging to sedentary species' did not cover all the 'products of the *sedentary* fisheries', which was the term used by the [International Law] Commission in paragraph (3) of its commentary. The permanent association of some living resources with mineral resources of the seabed and subsoil was such that it was best that both types of resources should be exploited jointly. They were harvested in such a way that it was appropriated to give the coastal State exclusive rights in respect of both types. Some sedentary living organisms were such permanent features of the seabed that it was inadvisable to provide that they might be exploited by any State . . . It would be senseless to give coastal States exclusive rights over mineral resources such as the sands of the seabed but not over the coral, sponges and the living organisms which never move more than a few inches or a few feet on the floor of the sea."¹ In the view of other of the co-sponsors of the joint proposal, to exclude all living organisms that were not physically attached to the seabed, or subsoil, as apparently was the idea of the ILC draft, would be inconsistent both with biological considerations and with practice.² According to a third co-sponsor, the proposal had divided the natural resources into two broad groups: a) (1) mineral resources and (2) other non-living resources; b) (i) immobile living organisms, (ii) living organisms which moved only a few feet or less, and living organisms which moved considerable distances, i.e. swimming species and crustacea. To him, to agree on a reasonable definition for the purpose of the Article under discussion, a line had to be drawn between categories b (ii) and b (iii).³

When the vote was taken in the Committee the joint proposal was adopted with an additional sentence: "but crustacea and swimming species are not included". The fact that this sentence was deleted when paragraph 4 of Article 2 was voted in Plenary must not lead to the interpretation that the "crustacea and swimming species" are to be considered included among the living organisms covered by the expression "natural resources" of the continental shelf. During the vote in the Committee an amendment to delete the words "crustacea and" from the original joint proposal failed to be adopted,⁴ while the text of the proposal as a whole was approved by a substantial majority.⁵ When the question came up in Plenary, in two separate votes both the words "crustacea and" and the words "but . . . the swimming species are not included in this definition"

¹ Remarks made by the delegate from Australia, SR. 21, p. 7.

² See remarks made by the delegate from the United Kingdom, SR. 22, p. 10.

³ Remarks made by the delegate from Ceylon, *ibid.*, p. 11.

⁴ See SR. 24, p. 7.

⁵ The proposal as a whole was adopted by 41 votes to 11 with 17 abstentions.

were deleted; a number of delegations who had voted in the Committee in favour of retaining the sentence having now voted for its deletion.¹ The sentence as a whole was, in effect, obviously redundant and therefore unnecessary; for the definition, as stated in the present paragraph 4 of Article 2 of the Convention, unquestionably excludes crustacea as much as it excludes the swimming species which may be found in the superjacent waters of the shelf. The only "mobile" organisms which are included in the definition are those which, at the *harvestable stage*, "are unable to move except in constant physical contact with the sea-bed or the subsoil".

Other provisions of the Convention

The remaining provisions of the Geneva Convention do not have a direct bearing on the exploitation (or the conservation) of the resources of the sea. There is, however, an Article missing, that is, Article 73, which provided for the compulsory jurisdiction of the International Court of Justice over any dispute which might arise concerning the interpretation or application of Articles 67 to 72, unless the parties had agreed on another method of peaceful settlement. During the discussion in the Committee several proposals and amendments were rejected and the original Article 73 was adopted by a substantial vote.² In plenary the Article failed to get the required two-third majority. Accordingly, from the point of view of the instruments approved by the Conference, any dispute that may arise between the States which become parties to the Convention concerning the interpretation or application of any of its provisions, "shall lie within the compulsory jurisdiction of the International Court of Justice . . ." if the States parties to such dispute have also become parties to the "Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes", to which reference have been made in the *Introduction*. On the other hand, so far as the present *Study* is concerned, it is important to note that, according to Article 12 of the Convention, reservations are not admissible to Articles 1, 2 and 3 thereof.

VIII. NATURE AND BASIS OF THE RIGHT OF THE COASTAL STATE

As stated in the *Introduction*, the concept which has affected the principle of the freedom of the seas and the status of *res communis* traditionally attributed to the resources of the (high) seas is that of the special interests which the coastal State is acknowledged to have in those resources when near to its coasts. In the case of the marine fauna not coming within the category of living resources of the seabed of the submarine areas, the next Part of this study will show the reasons advanced in favour of recognizing the special interest of the coastal State in such species. The point for the moment, to round off the presentation made up to here, is to see what is the basis not only of the interest but more especially of

¹ See SR. 8, pp. 11-12.

² The vote was 33 in favour, 15 against and 14 abstentions, SR. 35, p. 7.