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**REPORT FROM THE NORWEGIAN DELEGATION TO THE UNITED NATIONS CONFERENCE ON THE
LAW OF THE SEA. (GENEVA, 24 FEBRUARY — 27 APRIL 1958)**

[Pages 76-82]

VI. Convention on the Continental Shelf

1. General remarks

The fourth committee considered Articles 67-73 of the International Law Commission's draft relating to the so-called continental shelf and adopted a convention on the continental shelf based on these articles. This was, in essence, later ratified in the plenary session.

The general debate showed that a large majority of the states are willing to recognise a special right for the coastal state to exploit mineral resources (petroleum) and certain other natural resources on the so-called continental shelf, which for most coastlines is located between the mainland and the deep sea.

However, a great deal of nuance was expressed in terms of the understanding of both the basis for the coastal state's rights and the specific nature and content of these rights. Among the total of approximately 30 countries from all parts of the world that have already proclaimed special rights over their continental shelves, the prevailing view was that the special rights of the coastal state are already established in existing international law and are not dependent on ratification by treaty. Many of these countries, (with Argentina and Mexico at the forefront), strongly expressed the view that the coastal state's exclusive rights over the continental shelf constituted sovereign authority of the same character as sovereignty over land territory and territorial waters. This view was supported by the Eastern Bloc countries, among others.

No country would go so far as to grant the coastal state the right to intervene in shipping above the continental shelf, however some countries wished to expand the coastal state's exclusive rights over natural resources on the seabed to also include the fish in the waters above the continental shelf to a greater or lesser extent. The most extreme among this group were Chile, Peru and Iceland, who wanted to use the regulation of the continental shelf to obtain complete control over fisheries off the coast.

The countries – particularly in Europe – that did not expect to be able to exploit their own continental shelf, were consistently of the view that the special rights of the coastal state cannot be derived from existing international law. However, they largely accepted that the coastal state should be granted an exclusive right to control the extraction of petroleum outside its land territory, principally because there could be dangerous international developments if the coastal

waters of small countries were opened up to international competition, and perhaps a race between the major powers. The states that supported the International Law Committee on these terms placed major emphasis on the proposal having set clear limits for the coastal state's rights when this would conflict with the shipping and fishing interests of other countries. In line with this recommendation, most of the states that had no interests in their own continental shelf advocated for having the clearest possible delimitation of the submarine areas that would be covered by the exclusive rights of the coastal state, and they were generally against characterising the coastal state's rights as "sovereign authority".

Of the major powers, the United States and United Kingdom were generally in support of the International Law Committee's proposal. However, both countries wanted clearer delimitation and definitions, and worked to resolve disagreements and to find wording that could garner as much support as possible. France took an unclear and somewhat more negative position, while the Soviet Union wanted to strengthen the position of the coastal state by linking its rights as closely as possible to the concept of sovereignty, albeit with clear provisos for the rights to shipping and ordinary fishing activities in the waters above.

A more critical and negative position was taken by distinctively maritime countries such as Italy, Greece, Japan, and, in part, Norway.

The German delegation made an attempt to create a constructive alternative to the International Law Committee's proposal. The delegation presented a memorandum at an early stage (Official Records, IV. P. 125) which concluded that efforts should be made to achieve a type of internationalisation of petroleum extraction in the high seas, based on equal rights for all countries, but granting the coastal state the right to enact regulatory provisions and stipulate the location etc. for the various enterprises that may compete for oil fields on the continental shelf. This idea had some support from Japan and the Vatican State, however was generally viewed as completely unrealistic and the German delegation submitted no formal proposal for its implementation.

On behalf of the Norwegian delegation, Director General Carl Stable made a statement during the general debate, (Official Records, VI, p. 4) in which he took the starting point that the coastal state's rights on the continental shelf had no authority in existing international law. However, the Norwegian delegation agreed that technical developments had resulted in there being a need for international regulation.

However, out of consideration to shipping and other interests associated with the high seas, the coastal state must not be granted more extensive rights than are necessary for the purpose, i.e. exploitation of submarine petroleum deposits, and that all statements that could support claims of sovereignty should be avoided. It was also extremely important to establish clearer delimitations and definitions. The International Law Committee's definition of the continental shelf was not suitable for the coastlines of all of the countries and could result in a lack of clarity since not every seabed creates a clear shelf off the coast. Questions were tentatively raised about whether it would be better to separate the regulation from the term "continental shelf" and instead determine a zone measured by distance from land where the coastal state should have a preferential right to exploit mineral resources.

In connection with the conditions in the North Sea, where the "Norwegian trench" is a complicating factor, it was emphasised, with reference to a statement in comments from the International Law Committee (point (8) of the comments to Article 67) and a report from the experts appointed by UNESCO (Official Records, I, p.), that the Norwegian trench cannot be said to delineate the Norwegian "continental shelf" in the North Sea and that Norway must therefore undeniably be entitled to participate on the same terms as other states that border the North Sea when concerning the exploitation of the natural resources that may be found on the seabed there. Finally, it was emphasised that the provision relating to the continental shelf had to be viewed in close connection with other issues that were being addressed at the conference, particularly the issue of the extent of territorial waters.

2. The individual articles

Article 1 defines the term "continental shelf" and is fully in line with the proposal from the International Law Commission (draft Article 67). The continental shelf is defined as 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 or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

The discussion largely concerned whether, in addition to a depth limit of 200 metres, the alternative criterion linked to opportunities for exploitation should be maintained. A number of countries, including Norway, asserted that the criterion of possible exploitation was too vague and

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imprecise, and that it did not, in reality, set any effective external limit for the areas in which the special rights of the coastal state should apply. In response to this, it was asserted (particularly by the Latin American countries) that the 200 metre limit is already in the process of being distanced by petroleum extraction technology, and that there are some countries (Chile) that do not have a continental shelf in the actual sense, but are still able to extract coal from great depths off the coast (admittedly from mines that are accessed from land).

For this reason, a French proposal to fix the criterion of possible exploitation and therefore make the 200 metre limit absolute was rejected by a large majority. The same applied to a Yugoslavian proposal to abandon the criterion of possible exploitation and instead set a maximum limit from land of 100 miles (this was increased to 200 miles in the plenary session). Not even the Norwegian delegation could support this proposal. Among other things, this was because it was assumed that this would result in the seizure of larger areas to the benefit of the coastal state than even an arrangement that was based on a significantly expanded criterion of depth, cf. the following.

There was greater interest in various proposals put forward by the United Kingdom, the Netherlands and India (see doc. C.4/L.24/Rev.1, L. 29/Rev. 1 and L. 32) to set the maximum depth at a total of 550 metres (the deepest known depth above the geological continental shelf) and, in return, abandon the criterion of possible exploitation. The delegation supported these proposals, which were, on the one hand, not considered to seize a much larger overall area than a delimitation based on the 200 metre criterion, and, on the other hand, would preclude any discussion of our right to extend beyond the Norwegian trench in the North Sea. However, none of the proposals received majority support in the committee and were not raised again in the plenary session.

In connection with the Norwegian trench, there were also certain underhand discussions that took place between representatives of the Norwegian and British delegations. The discussions resulted in the British representative clearly stating during the debate at the committee's 17th meeting that the British delegation recognised the Norwegian position that the trench does exclude Norway from the rest of the North Sea continental shelf. (Official Records, VI, p. 41). The statement was highlighted and confirmed in a Norwegian voting explanation at the committee's 19th meeting. (Official Records, VI, p. 47).

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As mentioned, the result was that the International Law Committee's proposal, including the criterion of possible exploitation, was approved with an addition that was of no significant importance. Norway voted against this part of the article due to the lack of clarity that would result from the criterion of possible exploitation.

As a whole, Article 1 was adopted in the plenary session by 51 votes to 5, with 10 abstentions. Norway abstained from voting.

Article 2, which stipulates the nature of the special rights that the coastal state may exercise over the continental shelf has essentially the same content as the International Law Committee's Article 68, however the wording is more detailed.

Subsection 2 states the fundamental principle that the coastal state exercises "sovereign rights" over the continental shelf for the purpose of exploring and exploiting its natural resources. A major issue in the discussion was whether the description of the coastal state's rights should be linked to the term "sovereignty" or to a weaker expression such as "exclusive rights" or "jurisdiction and control".

The wording used by the International Law Committee, i.e. "sovereign rights for the purpose of.....", was itself an expression of a compromise and was opposed by the most extreme supporters of the idea of sovereignty, who insisted that the coastal state's full sovereignty over its continental shelf should be recognised. On the other hand, the International Law Committee's expression was also not satisfactory for the many countries (Norway among them) who were concerned that any allusion to sovereignty could have dangerous consequences for the freedom of the seas.

The opponents of the term "sovereignty" eventually agreed to an American proposal (Doc. C.4/L 31) to use the term "exclusive rights" instead of "sovereign rights". In response to the first-mentioned expression, it was asserted – with some justification – that it did not fully cover all of the powers the coastal state must have in connection with the exploitation of the continental shelf, i.e. legislative authority and judicial jurisdiction. The American proposal was still adopted by the committee, but with such a slender majority that there was reason to believe that it would not achieve a two-thirds majority in the plenary session.

Therefore, during the plenary session, the American delegation completely changed course and actively worked towards returning to the International Law Committee's proposal for "sovereign rights". This proposal was then adopted with a relatively large majority (51-14-6). Norway voted for the original American wording.

Subsections 2 and 3 were included after proposals from Yugoslavia and Cuba respectively. These subsections state that the coastal state may oppose others exploiting the continental shelf if the coastal state does not undertake these activities itself, and that the rights of the coastal state do not depend on occupation or proclamation. These additions may appear rather superfluous and aroused little or no opposition.

Subsection 4 includes a definition of the natural resources on the continental shelf that shall be subject to the exclusive rights of the coastal state. The International Law Committee's version contained no such definition, however the Commission presupposed that the provisions would only apply to the exploitation of mineral resources (primarily petroleum), as well as pearl fisheries, oyster fisheries and similar stationary resources that have been traditionally deemed subject to the coastal state's exclusive rights as "sedentary fisheries". However, the discussion revealed that some countries, such as Chile, Peru, Iceland, Burma and Indonesia, were very strongly in favour of normal fishing activities above the continental shelf also being subject to the coastal state's "sovereign rights", and when various proposals concerning this were unsuccessful, they were prepared to strongly expand the interpretation of the expression "natural resources" to ensure special rights for fishing grounds in the high seas off their coasts without any restrictions on distance. To prevent such a development, the consequences of which would be incalculable, together with Australia, Ceylon, Malaya, India and the United Kingdom, the Norwegian delegation put forward a proposal for a definition of "natural resources" that set clear and narrow limits with regard to the species of living organisms that should be included in addition to mineral resources under the regulation of the continental shelf. (Doc. C.4/L.36).

The proposal was adopted by the committee with a very small majority. In the plenary session, the definition was adopted with a large majority after the proposers accepted a minor amendment.

The adopted definition is based on the coastal state's special rights over living organisms only including organisms that at the stage when they can be exploited ("at the harvestable stage") are stationary ("sedentary"), in the sense that they are either immobile on or the seabed or are unable to move except in constant physical contact with the

seabed or the subsoil. The coastal state will therefore be granted exclusive rights to all botanical vegetation on the seabed and for the fishing of, for example, oysters, muscles, crabs and lobsters, however, these exclusive rights will not include, for example, shrimp and, of course, all fish in the usual sense.

A proposal (that was originally put forward by Sweden) to limit the exclusive rights to only include mineral resources was voted down by a very large majority of the committee.

Article 2 as a whole was adopted in the plenary session by 59 votes to 5, with 6 abstentions. Norway voted in favour.

Article 3, which is identical to Article 69 in the International Law Committee's draft, stipulates the important principle that the waters above the continental shelf shall still be considered as high seas pursuant to international law, and the same applies to the airspace above those waters. There was no opposition to this proposal and it was adopted in the plenary session by 43 votes to 0, with 3 abstentions.

Article 4 states that, subject to its right to take reasonable measures for the exploration and exploitation of the continental shelf, the coastal state may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

The provision is identical to the International Law Commission's proposal (Article 70 of the draft), with the exception of it also being made applicable (at the initiative of the United Kingdom) to pipelines beside submarine cables.

The proposal was adopted in the plenary session by 45 votes to 0, with 2 abstentions. Norway voted in favour.

Article 5 starts with a provision in subsection 1 that the exploitation of the continental shelf must not result in any unjustifiable interference with shipping, fishing or the preservation of fish stocks etc., nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication. The provision is essentially a specification of the principle expressed in Article 3.

Subsections 2 to 7 of Article 5 then contain a number of provisions relating to the coastal state's rights and obligations in connection with the construction and operation of installations for the exploration and exploitation of....