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INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION
(of UNESCO)

REPORT OF THE CHAIRMAN ON PARTICIPATION BY
INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION REPRESENTATIVES
IN THE RESUMED EIGHTH SESSION OF THE
THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA (UNCLOS)

Document IOC/INF-403 is the report of the Chairman on the first part of the eighth session of the Third UN Conference on the Law of the Sea (UNCLOS), held in Geneva, 19 March - 27 April 1979. The attached document covers the second part of the same session, held in New York, 19 July - 24 August 1979

(SC-79/WS/102)

1. Attendance at the resumed eighth session of the Third United Nations Conference on the Law of the Sea, convened in New York from 19 July to 24 August 1979, was undertaken by the Chairman, one of the four Vice-Chairmen, and the Secretary as follows:

Mr. O.J. Østvedt	19 - 27 July
Secretary	13 - 22 August
Chairman	21 - 24 August

It was not found possible to maintain full time representation of the Commission at the resumed eighth session, owing to non-availability of any of the Office Bearers or the Secretary during the period 28 July - 12 August.

2. The positive and satisfactory outcome of the two parts of the eighth session of the Conference in 1979 is that a successful conclusion to the conference can now be confidently expected next year. For the first time a definite deadline - August 1980 - has been set for the adoption of a Convention on the New Ocean Regime. If adhered to, this will be followed by a final session in Caracas in Summer 1981.

3. The main document for the resumed eighth session was the Informal Composite Negotiating Text/ Revision 1 (doc.A/CONF.62/WP.10/Rev.1) which had been issued at the end of the first part of the session (see doc.IOC/INF-403 - final paragraph). The next revision of this document is scheduled for issue at the end of the first part of the ninth session in April next year.

4. The resumed eighth session carried out most of its work in informal sessions closed to the public and without official records. The three main committees met, as did two of the seven negotiating groups established in April 1978 to deal with "hard core" issues standing in the way of agreement on a convention. Also meeting were the Working Group of 21 on sea-bed matters, the Group of Legal Experts on sea-bed disputes and the Group of Experts on Final Clauses. The last of these was set up during the current session.

5. Of the seven negotiating groups, only two met during the resumed session: Negotiating Group 6, on definition of the outer limits of the continental shelf and revenue sharing in the area beyond 200 miles, and Negotiating Group 7, on delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon. For the first time, the continental shelf was discussed in a body of limited membership known as the Group of 38. As most of the work on the sea-bed was done in the Working Group of 21, Negotiating Groups 1, 2 and 3 did not meet, although their Chairmen served as Co-ordinators in the Working Group on topics assigned to their Negotiating Groups.

6. Two groups had substantially completed their work prior to the resumed session: Group 4, on the right of access of land-locked States and States with special geographical characteristics to the living resources of the 200-mile exclusive economic zone, and Group 5, on settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone.

7. During the final week of the session, the First and Third Committees held open meetings to debate the results of work falling within their mandate — the sea-bed in the case of the First Committee and marine scientific research in the case of the Third. The Second Committee, on general aspects of the law of the sea, met only informally.

8. The main difficulties still preventing consensus are being discussed in the First Committee. These concern the International Sea-Bed Area and include the system of exploration and exploitation, financing the proposed International Sea-Bed Authority, the structure and powers of the Authority's organs, and the settlement of sea-bed disputes.

9. New formulas on key issues relating to future exploitation of the deep sea-bed emerged from the negotiations. But although many delegations described them as another step towards agreement, only a few of the proposals were considered ready for inclusion in a consensus text. These proposals were put forward almost at the end of the session, with the result that many delegations were able to express only preliminary reactions.

Continental Shelf

10. The Conference has been working to define the outer limits of the continental shelf, to describe the rights of coastal States to the shelf and to elaborate arrangements for sharing with the international community part of the revenues derived from its exploitation beyond 200 miles.

11. Work at this session on the outer limit of the shelf was based on a revised definition of the continental shelf which had been incorporated in the revised ICNT. This states that the shelf "comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance".

12. The new formula would give States two criteria to choose from in defining the outer limit of their shelf — one based on distance (350 nautical miles from the coastal baselines) and the other on a combination of distance and depth (no more than 100 nautical miles from the 2,500 metre isobath). Several proposals were put forward to limit the extension of the continental shelf in areas where there are submarine oceanic ridges.

13. The new proposal also calls for the establishment of a Commission on the Limits of the Continental Shelf to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. It adds that "The limits of the shelf established by a coastal State taking into account these recommendations shall be final and binding".

14. The Conference continued to be unable to resolve the problem of how to draw maritime boundaries between States situated opposite one another across a narrow body of water, or adjacent to one another along the same coastline.

Marine Scientific Research

15. The Third Committee, having completed during the first part of the session packages of clauses on protection of the marine environment and on the transfer and development of marine technology, concentrated during the second part of the session on the third element of its mandate — rules to govern marine scientific research in the 200-mile exclusive economic zone and on the continental shelf.

16. At the end of the session, Committee Chairman Alexander Yankov (Bulgaria) reported widespread support for a few changes in the existing negotiating text but indicated that there were still differences of opinion on other proposed modifications.

17. The 1977 negotiating text is based on two principles intended as a counter-balance to one another. The first is that research in the economic zone and on the continental shelf is permissible only with the consent of the coastal State. The second is that such consent must be granted when the research project is conducted for peaceful purposes and fulfils other criteria laid down in the convention. At the same time, the coastal State would retain the discretion to withhold its consent for certain types of research, including that relating to natural resources.

18. Most of the proposed amendments (set out in Chairman Yankov's report to the Conference, document A/CONF.62/L.41) deal with various details of this "consent regime". In the view of their supporters, they would improve the text in the direction of greater freedom of research without upsetting the balance between coastal State and researching State interests. Opponents contend that they would upset this balance to the detriment of the coastal State.

19. The United States, which for several years has been pressing for changes that it argued would preserve freedom of research, told the Third Committee that it could accept the "modest" amendments contained in Mr. Yankov's report. However, a number of developing coastal States continued to oppose them.

20. One proposed amendment would liberalize the application of the consent regime in those parts of the continental shelf beyond 200 miles from shore. As explained by its proponents, it would allow greater freedom of scientific research in such areas until such time as the coastal State considered itself ready to exploit their resources. It would apply only to States with broad shelves.

21. As set out in a proposed new article, this provision would assume the "implied" consent of coastal States to research in these outlying areas. It also says that the exercise by such States of their discretion to withhold consent "shall be deferred". However, this provision would not apply to areas publicly designated by the coastal State "as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur".

22. Another clause in this proposed new article refers to a provision in the existing text stating that a coastal State shall grant its consent to research "in normal circumstances". The clause would specify that "the absence of diplomatic relations between the coastal State and the researching State does not necessarily mean that normal circumstances do not exist between them" for the purpose of the consent provision. The effect would be that a coastal State could not use the absence of diplomatic relations as a reason for withholding consent.

23. One objection raised to this provision in the Third Committee's discussion was that it seemed to imply that a coastal State should grant consent to research even if it was conducted by a country in a state of hostility to the coastal State.

24. As a sanction for failure to conduct a research project in the manner originally outlined to the coastal State, the negotiating text would give that State the right to require the cessation of any such project. Such a right could also be exercised when the researcher failed to respect the rights of the coastal State with respect to the project — such as the right to participate in the project, to be kept informed of the results and to be given access to all data derived from it.

25. One of the proposed changes to this text would provide for a stage of "suspension" prior to cessation. The researcher would be given "a reasonable period of time" to comply with his duties after suspension had been invoked and before cessation took effect.

26. Some delegates objected that this provision would prevent a coastal State from requiring the cessation of research that was in flagrant violation of the convention.

27. Finally, a proposed new provision would provide for a compulsory conciliation procedure for certain types of disputes over foreign research. The existing text would require States to submit disputes over research to a mutually agreed form of dispute settlement, but it would exempt two specific types of dispute from compulsory settlement procedures: disputes involving a coastal State's exercise of its right or discretion to withhold consent, and disputes relating to a coastal State's decision to terminate a research project.

28. The proposed amendment would add a new category to the list of disputes that must be settled by conciliation: cases in which a researching State alleged that a coastal State was not acting in a manner compatible with the convention when exercising its rights in regard to foreign research.

29. This amendment was described by its supporters as a compromise between States which favoured the stricter procedure of compulsory judicial settlement for such disputes and those who wanted them excluded from any compulsory procedure.

30. One of the changes which provides a reasonable prospect for consensus is an addition to article 242, which in its original version calls for States and international organizations to promote international co-operation in marine research. The addition would require each State to provide other States, when appropriate, 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".

31. Another clause placed in the consensus category is a redrafted paragraph on facilitation of research. It says: "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" of the convention.

Schedule for the ninth session in 1980

32. The ninth session of the Conference will be held in 1980 in two parts, each of five weeks duration, as follows:

Part I. 3 March - 4 April in New York;

Part II. 28 July - 29 August in Geneva.

33. The Work Programme envisaged for the ninth session is as follows:

First stage (three weeks): The chairmen of committees and negotiating groups would hold consultations with delegations in a search for compromise on outstanding issues relating to the convention.

Second stage (fourth week): A formal discussion would take place in plenary meetings to give delegates a chance to record their position on proposed revisions to the negotiating text and on the entire package. At the end of this period, the text would be revised by the president and the chairmen of the main committees — the same team that has prepared earlier revisions.

Third stage (fifth week): The Conference would decide on altering the status of the revised text to make it a draft convention. It would then decide about referring the various parts of the draft to the three main committees and to the plenary operating as a main committee. Delegations could then submit amendments.

At this point, the session would be suspended to enable governments to study the final draft convention and any amendments.

Final stage (resumed session, sixth to tenth weeks): During the first eight calendar days of the resumed session, the main committees would examine the draft convention. Any further amendments would have to be submitted on the first day of this period. During the next 10 calendar days, the chairmen and other committee officers would pursue their efforts to facilitate general agreement. By the end of this period a decision on all amendments would be taken in the committees.

Subsequent stages during the resumed session could be determined by the Conference on the first day of the resumed session, "so that the convention can be adopted by the end of the fifth week of the resumed session". This would be done with due regard to the rules of procedure of the Conference and the "gentlemen's agreement" annexed to the rules. The "gentlemen's agreement", reached at the Conference's first substantive session at Caracas in 1974, seeks to encourage consensus rather than voting on provisions of the draft convention.