

United Nations Conference on the Law of the Sea

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Comments by Governments on the Draft Articles Concerning the Law of the Sea Adopted by the International Law Commission at Its Eighth Session

Extract from the *Official Records of the United Nations Conference on the Law of
the Sea, Volume I (Preparatory Documents)*

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In view of its categorical formulation ("for all purposes"), article 33 could also easily be construed to imply a restriction of the right of hot pursuit enunciated in article 47. If differential immunity rules are maintained, it should be made clear that it is the rule to which the ship is subject at the spot where the pursuit is commenced which is determinative.

While articles 22 and 23 speak of "government ships", article 33 speaks of "ships owned or operated by a State, etc.". If this difference in wording is intended to convey any difference in meaning, this should be made clear. As far as the Norwegian Government is able to judge, there is no valid reason for not using the same form of words in both contexts.

It should be specified that if the ship does not have the clear appearance of a warship, officials of the State entitled to exercise jurisdiction may board the ship, if this is necessary in order to verify its status, cf. article 46, paragraph 2.

Article 44

It appears from the International Law Commission *Yearbook*, 1956, II, pp. 19-20, and I, p. 48, that the Commission decided to bring the wording of article 44 (then article 19) into line with article 46, paragraph 3 (then article 21, paragraph 3). This decision, however, has not been implemented in the text of article 44, which still retains the terms "without adequate grounds" and "State".

Articles 49 to 59

The Norwegian Government wishes to present the following general comments:

1. Fisheries are at present regulated by a number of regional agreements concluded in most cases between all or the majority of the States fishing in the area concerned. Whaling is regulated on a global basis by an agreement adhered to by seventeen Governments, including all States engaged in pelagic whaling.

It would seem to be a consideration of primary importance that the proposed over-all international regulation must not in any way hobble or hinder the effectiveness of existing and future special agreements, and that it should promote the conclusion of new special agreements when required for conservation purposes. The over-all regulation must in particular be so worded as to make it clear that the new rights created by the proposed articles cannot be exercised as between the parties to any special agreement which already covers the conservation of the stock of fish and the area in question.

2. If conservation measures are to be binding upon States other than those which established them (articles 52, paragraph 2, 53 and 55), they must satisfy conditions which must be defined precisely in order to leave no more room than absolutely necessary for discretion (The criteria formulated in article 55, paragraph 2, with reference to a special case, or those suggested, for general application, in the commentary to article 58, do not seem adequate for the purpose.) Many interested States would otherwise probably find it impossible to accept the text. And in so far as the text might nevertheless become effective, it would charge

the arbitral commission, provided for in article 57, with an extremely difficult task.

3. The conservation measures cannot be based on biological criteria alone, as apparently envisaged in the present draft (articles 55 and 58). In this connexion, the Norwegian Government wishes to draw attention to two important difficulties.

During the Rome Conference on the Conservation of the Living Resources of the Sea, it was demonstrated that very detailed and extensive investigations will often be necessary in order to determine the need for conservation measures, and that further development of maritime research will be required to provide sufficiently reliable scientific evidence. But even if those conditions are met, the scientists may still find room for doubt in regard to the conclusions to be drawn from such findings and in regard to what measures of conservation they might indicate.

Account must also be taken of the technical and economic conditions of the fishing industries of the countries concerned, as has been done in the existing special agreements and in the regulations adopted under these. The matter is complicated by the great differences which exist in the various countries in regard to methods of fishing and fish processing, consumption habits and marketing conditions. Thus, one particular restriction may hit one country hard, while it may affect other countries to a far lesser extent. Consequently a regulation may be discriminatory in fact, even if it is not discriminatory in form.

4. It seems difficult to reconcile the wording of article 53, paragraph 1, with the interpretation given in paragraph (2) of the commentary.

5. As long as no conclusion has been arrived at in regard to the breadth of the territorial sea, the Norwegian Government must reserve its position on the proposal in article 55 that the coastal State be empowered to adopt measures of conservation unilaterally.

The Norwegian Government would at all events be unable to agree to such an encroachment on the freedom of the high seas unless the proposed right is checked by an unqualified right for interested States to text by arbitration whether the conservation measures conform to the prescribed criteria. The privilege should, moreover, be confined to apply within a certain, reasonable, distance from the coast and should never apply to waters which are closer to the coast of another State (cf. the Norwegian comments to article 14).

A reasonable geographical limitation appears all the more necessary after the deletion, at the eighth session of the International Law Commission, of the qualification (contained in the corresponding article of the draft adopted at the seventh session) to the effect that the right should pertain only to the coastal State "having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts".¹² It was precisely in reliance on this proviso that the Commission, at its

¹² *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934)*, p. 14, art. 5.