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# Some Specific Suggestions for Resolving Two Lingering Law of the Sea Problems: Packages of Amendments on "The Status of the Economic Zone" and Marine Scientific Research†

JOHN NORTON MOORE\*

The complexity of the principal remaining issues in the Third United Nations Conference on the Law of the Sea makes general description a less reliable guide than suggestion for specific amendment. Accordingly, last year a Center Working Group prepared a package of amendments on deep seabed mining.<sup>1</sup> After informal discussion with Conference leaders, the package was revised and has been published with a comparative table of negotiating proposals in the Center *Oceans Policy Study Series*.<sup>2</sup>

In the same tradition, Center Working Groups now have prepared illustrative packages of amendments to two other important unresolved issues: "the status of the economic zone" and marine scientific research. Both packages (which are independent of one another) build on the Informal Composite Negotiating Text (ICNT)<sup>3</sup> and the latest negotiating proposals. Both also are efforts at fair accommodation between contending positions.

The first "package," that on the status of the economic zone, deals with the appropriate balance between coastal-State resource rights in the economic zone and community freedoms of navigation, overflight, the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms.<sup>4</sup> The most basic political underpinning of the Law of the Sea Conference has been that the acceptance of coastal-State resource rights out to 200 miles is predicated on full protection of existing high seas navigation and communication freedoms. Nevertheless, there has been

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† Following its usual practice, the Center for Oceans Law and Policy takes no position on these packages of amendments.

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1. Moore, *In Search of Common Nodules at UNCLOS III*, 18 VA. J. INT'L L. 1 (1977).

2. J. MOORE, R. WOLFRUM, P. STOPFORD & J. STENDER, *DEEP SEABED MINING IN THE LAW OF THE SEA NEGOTIATIONS II: TOWARD A BALANCED DEVELOPMENT SYSTEM* (Oceans Policy Study Series, 1:3, 1978).

3. 8 Official Records of the Third United Nations Conference on the Law of the Sea 1, U.N. Doc. A/CONF.62/WP.10 (1977).

4. The "first package" is reproduced in Appendix A.

dissatisfaction with the precise textual balance struck in this accommodation ever since the Single Negotiating Text (SNT)<sup>5</sup> failed to comply with the formula worked out in the Evensen Group in this regard.<sup>6</sup> Unless amended these "status" provisions could cause serious problems in Senate advice and consent or broad acceptance of the ICNT.

The second "package" concerns the difficult accommodation of coastal-State rights in the economic zone with the rights of third parties to conduct marine scientific research in the zone.<sup>7</sup> This is an issue on which Conference agreement has never been reached. Again, it seems to be an issue which is likely to be important during Senate consideration of a Law of the Sea Treaty. With this in mind an effort has been made to structure a short package of amendments that should stand a reasonable chance of Senate approval<sup>8</sup> without altering the fundamental thrust of the ICNT. In doing so the practical aspects of conducting research have been strengthened without changes that should cause ideological problems for coastal or landlocked and geographically disadvantaged States.<sup>9</sup>

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5. 4 Official Records of the Third United Nations Conference on the Law of the Sea 137, U.N. Doc. A/CONF.62/WP.8/Parts I, II, III (1975); 5 Official Records of the Third United Nations Conference of the Law of the Sea 111, U.N. Doc. A/CONF.62/WP.9/Part IV (1976).

The SNT was prepared following the 1975 Geneva session of the Law of the Sea Conference.

6. The "Evensen Group" is an informal Conference group chaired by Minister Jens Evensen of Norway. Because of the importance of the original Evensen Group understanding on the "status" issue, it is being reprinted in this section after the proposed Center package. The understanding is reproduced in Appendix C.

7. The "second package" is reproduced in Appendix B.

8. That means approval, of course, as part of an otherwise acceptable comprehensive Law of the Sea Treaty.

9. Thanks are due to Timothy A. Woodhouse who served as Rapporteur for the Working Group on Marine Scientific Research.

## Appendix A

### *Proposed Amendments on the "Status of the Economic Zone" [Articles 55, 56, 58, 59, 78 bis, and 86]*

#### Article 55

add a new paragraph 2 as follows: "No State shall assert sovereign rights or jurisdiction in the exclusive economic zone except as provided by the present Convention."

#### Article 56

in paragraph 2 strike "have due regard to the rights and duties" and in its place substitute "respect the rights and freedoms" and add after "Convention." the following: "and other rules of international law."\*

#### Article 58

in paragraph 1 delete "subject to the relevant provisions of the present Convention," and add the phrase "which are" after "uses of the sea" in line 4, and substitute the phrase "and which are" for ", and" in line six.

in paragraph 2 strike "in so far as they are not incompatible with this Part."\*\*

rewrite paragraph 3 as follows:

In exercising their rights and performing their duties under the present Convention in the exclusive economic zone States shall respect the rights and jurisdictions of coastal States and shall act in a manner compatible with the provisions of the present Convention and other rules of international law.\* \*\*

#### Article 59

delete in line 4 the phrase "on the basis of equity" and insert in its place "in accordance with international law and equity."

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\* Note—even if "no unjustifiable interference" and "have due regard to" were functional equivalents it does not follow that a standard suitable for the continental shelf should be applied to the entire water column as coastal State jurisdiction is extended.

\*\* Note—if any articles or portions thereof in the cross-reference were incompatible with the economic zone they should be stricken from the cross-reference.

\*\*\* Note—this change taken together with that to paragraph 2 of Article 56 results in parallel and balanced provisions in Articles 56(2) and 58(3). It also more accurately reflects Article 55(1).

**Article 78 (bis)**

Add a new article 78 bis as follows:

The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with the rights and freedoms referred to in Article 58 or other rights under this Convention.\*\*\*\*

**Article 86**

insert after "abridgment of the" in line 4 the following phrase: "rights and".

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\*\*\*\* Note—this article is suggested by Article 5 paragraph 1 of the Continental Shelf Convention. Apparently this principle was inadvertently omitted from Part IV of the text.

**Appendix B***Draft Package of Amendments on  
Marine Scientific Research***Article 239**

[Note—no amendment but it is understood that the term “States” used in this and other articles on marine scientific research includes “their natural and juridical persons.”]

**Article 241 bis\***

The coastal State in the application of this part shall provide other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health, safety and environment of persons not subject to the jurisdiction of the coastal State, such as research and monitoring data regarding weather, currents, pollution and other general processes and their causes and effects.

**Article 244 bis\***

States shall establish, through competent international organizations, international rules and standards to facilitate consent for, and the conduct of, marine scientific research projects of importance to the international community that require the consent of several coastal States.

**Article 247****Paragraph 1**

delete “regulate,” and “relevant”

**Paragraph 2**

place this paragraph as the first sentence of paragraph 3 which with all subsequent paragraphs will be renumbered paragraph 2 *et seq.*

**Paragraph 3**

delete “in normal circumstances” and add in its place “except as provided in paragraph 3,” [Note—paragraph 3 will be the renumbered paragraph 4]

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\* Informal suggestions by the United States.

## Article 250

## Paragraph 1(d)

delete and add in its place the following: "If requested, assist the coastal State by providing an assessment of the data, samples and results thereof as soon as practicable."

## Paragraph 1(e)

delete "subject to paragraph 2 of this Article"

## Paragraph 2

delete

## Article 252

place between articles 247 and 248 and renumber articles 248 *et seq.* accordingly and all cross references (as in article 253 paragraph c).

## Article 253

insert after "article" in 253 paragraph (a) the following "247(3)" [Note—this is a reference to the renumbered paragraph (3)] and renumber other cross references to articles 249 and 250 as articles 250 and 251.

## Article 254\*\*

add after the word "right" in the first line of paragraph 1 the following: "where it has been unable to secure compliance by other means within a reasonable period of time" and strike the word "initially" from paragraph 1(a).

## Article 256\*\*

This article should be moved to become the final article in Section 3 of Part XIII and should be rewritten as follows:

States shall apply reasonable and uniform measures to facilitate access to their harbours and to promote assistance for vessels engaged in marine scientific research in accordance with the present Convention.

## Article 257

delete the phrase "in conformity with the provisions of Part XI of the present Convention."

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\*\* Changes in part based on informal suggestions by the United States.

## Article 258

delete the phrase “in conformity with the present Convention.”

## Article 265

delete [Note—to be dealt with under Part XV of the ICNT]

## Article 266

delete [Note—provisional measures are dealt with by Article 290 and there seems no reason to depart from this provision when dealing with marine scientific research.]

## Article 296

Add a new paragraph 2(d) as follows: “(d) When it is alleged that a State has acted in contravention of the provisions of the present Convention in regard to marine scientific research” and reword paragraph 3 as follows: “No dispute related to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such Court or tribunal unless the conditions specified in paragraph 1 have been fulfilled.”



## Appendix C

### Excerpt from Evensen Group Proposal, Sixth Revision (April 16, 1975)

#### THE ECONOMIC ZONE

#### General provisions

#### Article 1

1. The coastal State has in an area beyond and adjacent to its territorial sea, known as the exclusive economic zone:

(a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the seabed and subsoil and the superjacent waters;

(b) Jurisdiction with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds.

(c) Jurisdiction as provided for in this Convention with regard to:

- (i) the preservation of the marine environment,
- (ii) scientific research,
- (iii) the establishment and use of artificial islands, installations and similar structures, including customs, fiscal, health and immigration regulations pertaining thereto.\*

(d) Other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article shall be without prejudice to the provisions of articles . . . of this Convention.\*\*

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\* The issue of contiguous zones for the purpose of customs, fiscal, health and immigration regulations would be dealt with elsewhere.

\*\* The basic articles concerning the Continental Shelf.

## Article 2

The economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

## Article 3

1. All States, whether coastal or land-locked, shall, subject to the relevant provisions of this Convention, enjoy in the economic zone the freedoms of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation and communication and shall have other rights and duties provided for in this Convention.\*\*\*

2. In cases where the Convention does not attribute rights or jurisdiction to the coastal State or to other States within the economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

3. In exercising their rights and performing their duties under this Convention in the economic zone, States shall have due regard to the rights and duties of the coastal State and shall act in a manner compatible with the provisions of this Convention.

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\*\*\* The question of rights and duties of other States with respect to scientific research, laying and maintenance of submarine cables and pipelines and preservation of the marine environment will be dealt with in subsequent chapters.

