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J. Ashley Roach and Robert W. Smith

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FOREWORD

The International Law Studies "Blue Book" series was initiated by the Naval War College in 1901 to publish essays, treatises, and articles that contribute to the development and broader understanding of international law. This, the sixty-sixth volume of the series, consists of an extensive analysis of the objectives, legal basis, diplomatic and operational components, and historical background of the U.S. Freedom of Navigation Program.

The national security and international commerce of the United States depend upon the freedoms of navigation and overflight on and over the seas. The Freedom of Navigation Program is designed to further the vital need to protect maritime rights by minimizing efforts of other States to reduce global mobility through the assertion of maritime claims that do not conform to the careful balance of interests reflected in the 1982 United Nations Convention on the Law of the Sea. The authors, Captain J. Ashley Roach and Doctor Robert W. Smith, both of the Department of State, have made a valuable contribution to preserving and enhancing navigational freedoms through this articulate reassertion of the U.S. determination not to acquiesce in excessive maritime claims. On behalf of the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, I extend to the authors of this exceptionally important work our gratitude and thanks.

The opinions expressed in this volume are those of the authors and are not necessarily those of the United States Navy nor of the Naval War College.

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Rear Admiral, U.S. Navy
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PREFACE

The purpose of this volume is to describe the diplomatic and military efforts undertaken by the United States Government to preserve and enhance navigation and overflight rights and freedoms worldwide, particularly in the twelve years following the adoption of the 1982 United Nations Convention on the Law of the Sea (LOS Convention). The text describes how States, including the United States, have interpreted and applied this first constitution for the oceans. This volume describes many of the actions taken under the U.S. Freedom of Navigation Program, begun in 1979, including diplomatic efforts and peaceful assertions of the rights and freedoms of navigation and overflight recognized in international law. It also considers the future of U.S. ocean policy after the Convention enters into force later this year.

This study is organized in four parts: Introduction, Legal Divisions of the Oceans and Airspace, Navigation and Overflight Rights, and The Future of U.S. Ocean Policy. In PART ONE, Chapter I examines the challenge of maintaining freedom of the seas, while Chapter II identifies the categories of the maritime claims of States that are inconsistent with international law, *i.e.*, “excessive maritime claims”. PART TWO examines in detail the international legal criteria governing the legal divisions of the oceans and airspace, excessive maritime claims of States in each legal division, and the U.S. responses to those illegal claims. Chapters III through IX consider *seriatim* historic waters, baselines, the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, and archipelagos.

PART THREE considers the navigation and overflight rights enjoyed by States, illegal claims by States to restrict the exercise of those rights, and U.S. efforts to counter those excessive maritime claims. Chapters X through XIV review those claims successively in terms of the territorial sea, international straits, overflight restrictions, archipelagic sea lanes passage and navigation in exclusive economic zones. PART FOUR (Chapter XV) considers the future of U.S. ocean policy.

Appended are the 1983 Presidential Ocean Policy Statement, the 1983 Proclamation establishing the U.S. exclusive economic zone, the 1988 Presidential Proclamation extending the U.S. territorial sea to 12 miles for international purposes, and the 1989 U.S.–U.S.S.R. statement with Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Also appended is a list of the States that have ratified or acceded to the LOS Convention. To facilitate the utilization of this volume as a working reference, all relevant articles of the Convention are reprinted in Appendix 6.

On November 16, 1994, the LOS Convention will enter into force for those States—not including the United States—that have consented to be bound by its terms. Negotiations to amend the deep seabed provisions of the Convention

have produced an agreement that will enable the United States to seek the advice and consent of the Senate to accession to a revised Convention.

Readers should be aware that the authors do not claim to have considered in this text all the relevant State practice that is in the public domain. On the other hand, particularly with the delay in publishing current volumes of the DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, we have succeeded in having declassified much of the U.S. practice during the past decade and have attempted to review the practice of other States that is in the public domain. We regret there is not more available.

Readers should also be aware that the authors do not purport to discuss every coastal State maritime claim that may be inconsistent with the law of the sea, and that the text does not describe all actions taken by the United States (and other States) in response to these excessive claims. Some remain diplomatically sensitive; others remain classified for national security reasons. Thus, the failure to mention a particular claim should not be construed as acceptance of that claim by the United States.

In addition, this analysis does not attempt to identify all the practice of States which conforms to the provisions of the LOS Convention, although basic zonal jurisdictional claims are identified. Nevertheless, the United States believes that the general practice of States reflects acceptance as international law of the non-seabeds provisions of the LOS Convention.

A summary of an earlier version of this analysis was published by the Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, as *Limits in the Seas* No. 112, United States Responses to Excessive National Maritime Claims (1992).

The authors wish to express their appreciation to the Naval War College family for their support and efforts in bringing this study to print. We extend our particular thanks to the faculty and staff of the Oceans Law and Policy Department of the Center for Naval Warfare Studies and its Naval Reserve Law Program element. The authors also extend their thanks to the Office of the Geographer, U.S. Department of State for preparation of the maps utilized in this volume.

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PART ONE

INTRODUCTION

Chapter I

Maintaining Freedom of the Seas

The oceans encompass more than 70 per cent of the surface of the globe. Prior to World War II, most of the oceans were free for use by all nations. Coastal States had sovereignty over only a narrow three mile¹ territorial sea. However, since 1945 the trend has been clearly toward enclosing the oceans with ever broader coastal State claims of sovereignty or other competence to exclude other users of the oceans. This book chronicles the United States' continuing effort, principally in the years following the conclusion of the 1982 United Nations Convention on the Law of the Sea (LOS Convention),² to maintain the freedom of the seas which is essential to its maritime commerce and national security.³

As a maritime nation, the United States' national security depends on a stable legal regime assuring freedom of navigation on, and overflight of, international waters.⁴ That regime is set out in the LOS Convention, reflecting a careful balance of coastal and maritime State interests. The LOS Convention was designed in part to halt the creeping jurisdictional claims of coastal nations, or ocean enclosure movement. While that effort appears to have met with some success, it is clear that many States presently purport to restrict navigational freedoms by a wide variety of means that are neither consistent with the LOS Convention nor with customary international law.⁵ The stability of that regime is undermined by claims to exercise jurisdiction, or to interfere with navigational rights and freedoms, that are inconsistent with the terms of the LOS Convention.

The historic trend is for the commonly shared rights of all users of the seas to be diminished by coastal State claims to exercise rights further from shore. The expansion of the territorial sea breadth from 3 to 12 miles, and the acceptance of the 200 mile exclusive economic zone (EEZ), are prime examples. While the 12 mile territorial sea and 200 mile EEZ have gained international legal acceptance, as reflected in the LOS Convention, many States have asserted claims that exceed the provisions of the Convention. Unless these excessive claims are actively opposed, the challenged rights will be effectively lost.

This book seeks to explain the United States Government's responses to excessive maritime claims through a program to preserve and enhance navigational freedoms worldwide. This program, named the U.S. Freedom of Navigation (FON) Program, was formally instituted during the Carter Administration in 1979 to highlight the navigation provisions of the LOS Convention to further the recognition of the vital national need to protect maritime rights throughout the world.⁶ The FON Program was continued by the Reagan, Bush and Clinton Administrations. It is intended to be a peaceful exercise of the rights and freedoms

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recognized by international law and is not intended to be provocative.⁷ As President Reagan stated on March 10, 1983, it has been U.S. policy to:

accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal States.

In addition, United States policy has been to:

exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the [1982 Law of the Sea] convention. The United States will not, however, acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.⁸

The FON program operates on a triple track, involving not only diplomatic representations and operational assertions, but also bilateral and multilateral consultations with other governments in an effort to promote maritime stability and consistency with international law, stressing the need for and obligation of all States to adhere to the customary international law rules and practices reflected in the LOS Convention.⁹ This study identifies those countries that have brought their offshore claims in line with accepted international standards. The FON program helps to promote this process, by lowering coastal State expectations that other States will accept their claims and reversing the creeping jurisdictional expansion which proceeded almost unchecked in the 1960's and 1970's.¹⁰

When addressing other States' specific maritime claims that are inconsistent with international law,¹¹ the United States uses, as appropriate, the various forms of diplomatic correspondence. These include first and third person diplomatic notes, and may take the form of formal notes, *notes verbale* and *aides memoire*.¹² Since 1948, the United States has filed more than 140 such protests, including more than 110 since the FON Program began.¹³ Portions of these are excerpted or cited in this study.

The objective of the FON Program is not just to maintain the legal right to operate freely in and over international waters. The more important objectives are, first, to have other nations recognize and respect the legal right to operate freely, in conformity with the navigational provisions of the LOS Convention, in and over international waters, and second, to minimize efforts by other States to reduce those rights by making excessive maritime claims. Diplomatic communications alone do not always achieve those objectives.

The United States requires maritime mobility. To the extent that mobility can be exercised consistent with international law as reflected in the LOS

Convention and without political or military opposition, U.S. national security is enhanced. The United States believes it has a responsibility actively to promote compliance with the rules reflected in the navigational provisions of the LOS Convention. The United States has more to lose than any other nation if its maritime rights are undercut. Even though the United States may have the military power to operate where and in the manner it believes it has the right to, any exercise of that power is significantly less costly if it is generally accepted as being lawful. If the United States does not exercise its rights freely to navigate and overfly international waters, international straits and archipelagic sea lanes, it will lose those rights and others, at least as a practical matter.

The necessity for diplomatic communications and operational assertions to maintain the balance of interests reflected in the LOS Convention as law is often not well understood. It is accepted international law and practice that, to prevent changes in or derogations from rules of law, States must persistently object to actions by other States that seek to change those rules. Protest "must, at the very least, be repeated" and "must be supported by conduct which opposes the presentations of the claimant State." Naturally, States are not required to adopt a course of conduct which virtually negates the rights reserved by protest. Consequently, States will not be permitted to acquiesce in emerging new rules of law and later claim exemption from them at will.¹⁴

Acquiescence is the tacit acceptance of a certain legal position as a result of a failure to make a reservation of rights at the appropriate juncture. For acquiescence to arise, a claim must have been made and accepted. The claim must be made in a manner, and in such circumstances, that the other State has been placed on notice of that claim. The conduct that allegedly constitutes acquiescence, or tacit acceptance of that claim, likewise must be clear and unequivocal. The failure to make a timely protest in circumstances when it reasonably could have been expected to do so may constitute tacit acceptance of the claim.¹⁵

Although one may question whether international law requires action by deed in order to preserve the legal position, "actions are an indication of national resolve and an affirmative effort to influence the formation of international law. . . . Action by deed . . . promotes the formation of law consistent with the action and deeds may be necessary in some circumstances to slow erosion in customary legal practice."¹⁶ Where the claim protested against has the effect of taking away a nation's right to use portions of the oceans, mere preservation of one's legal right to operate there is of little practical value when one chooses not to operate there except in extraordinary circumstances. Avoiding areas where a country needs to operate, or could be expected to operate, in the absence of the illegal claim gives both practical and legal effect to the excessive claim.

Operations by U.S. naval and air forces designed to emphasize internationally recognized navigational rights and freedoms complement U.S. diplomatic efforts.¹⁷ FON operations are conducted in a low-key and non-threatening

manner but without attempt at concealment. The FON Program impartially rejects excessive maritime claims of allied, friendly, neutral, and unfriendly States alike. These assertions of rights and freedoms tangibly exhibit U.S. determination not to acquiesce in excessive claims to maritime jurisdiction by other States. Although some operations receive public scrutiny (such as those that have occurred in the Black Sea¹⁸ and the Gulf of Sidra¹⁹), most do not. Since 1979, U.S. military ships and aircraft have exercised their rights and freedoms in all oceans against objectionable claims of more than 35 countries at the rate of some 30-40 per year.²⁰

This study summarizes relevant portions of the law of the sea, as understood by the United States, and describes, in as much detail as security and foreign policy considerations permit, the actions undertaken and results achieved by the FON Program. It should be noted that most of the illegal claims were made prior to the adoption of the LOS Convention in December 1982, and have not yet been revised to conform to the LOS Convention, even by some States which have ratified the instrument.²¹

Two caveats should be noted in regard to this study. First, it does not purport to discuss all coastal State maritime claims that may be inconsistent with the law of the sea, nor does it set out all actions taken by the United States (and other States) in response to these excessive claims. Thus, the failure to mention a particular claim should not be construed as acceptance of that claim by the United States.

Second, this analysis does not attempt to identify the practices of other States which conform to the provisions of the LOS Convention, although basic zonal jurisdictional claims are identified. In fact, the United States believes that the general practice of States reflects acceptance as international law of the non-seabed parts of the LOS Convention.²²

Notes

1. All miles in this study, unless otherwise noted, refer to nautical miles. One nautical mile equals 1,852 meters.

2. The LOS Convention, U.N. Doc. A/CONF.62/122 (1982), *reprinted in* 21 I.L.M. 1261-1354 (1982), was concluded December 10, 1982 and will enter into force on November 16, 1994 (one year following the deposit with the United Nations by Guyana of the 60th instrument of ratification) for those States that have ratified or acceded to it. See Appendix 5 for a list of States that have ratified the Convention as of July 1, 1994.

3. The National Security Strategy of the United States, Aug. 1991, at 19 [hereinafter National Security Strategy], states:

The United States has long supported international agreements designed to promote openness and freedom of navigation on the high seas. . . . As a maritime nation, with our dependence on the sea to preserve legitimate security and commercial ties, freedom of the seas is and will remain a vital interest. . . . Recent events in the Gulf, Liberia, Somalia and elsewhere show that American seapower, without arbitrary limits on its . . . operations, makes a strong contribution to global stability and mutual security.

4. Under the LOS Convention, articles 58 and 87, freedoms of navigation and overflight may be exercised in the high seas and in the exclusive economic zone.

5. See Negroponete, *Who Will Protect the Oceans?*, DEP'T ST. BULL., Oct. 1986, at 41-43; Smith, *Global Maritime Claims*, 20 *Ocean Dev. & Int'l L.* 83 (1989).

6. 1979 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 997-98 [hereinafter DIGEST].

7. Negroponete, *supra* n. 5, at 42; U.S. Department of State, GIST: US Freedom of Navigation Program, December 1988 [hereinafter GIST]. See also National Security Strategy, at 15; and Rose, *Naval Activity in the Exclusive Economic Zone—Troubled Waters Ahead?*, 39 *Nav. L. Rev.* 67, 85-90 (1990).

8. Statement on United States Oceans Policy, Mar. 10, 1983, 1 *Pub. Papers of President Reagan* (1983), at 378-79; 22 *I.L.M.* 464; 77 *Am. J. Int'l L.* 619 (1983); DEP'T ST. BULL. at 70-71 (June 1983). See Appendix 1 for the full text of this statement. Upon signature of the LOS Convention, France expressed a similar view:

The provisions of the Convention relating to the status of the different maritime spaces and to the legal regime of the uses and protection of the marine environment confirm and consolidate the general rules of the law of the sea and thus entitle the French Republic not to recognize as enforceable against it any foreign laws or regulations that are not in conformity with those general rules.

U.N. Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 768 (1993). On depositing its instrument of ratification, Malta stated that it:

does not consider itself bound by any of the declarations which other States may have made, or will make upon signing or ratifying the Convention, reserving the right as necessary to determine its position with regard to each of them at the appropriate time. In particular, ratification of the Convention does not imply automatic recognition of maritime or territorial claims by any signatory or ratifying State.

U.N. LOS BULL., No. 23, June 1993, at 7.

9. On September 23, 1989, the United States and the Soviet Union issued a joint statement in which they recognized "the need to encourage all States to harmonize their internal laws, regulations and practices" with the navigational articles of the 1982 LOS Convention. See Appendix 4 for the full text of this statement.

10. See Aceves, *Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea*, *Nav. War Coll. Rev.* 59 (Spring 1993).

11. See 1 O'CONNELL, *THE INTERNATIONAL LAW OF THE SEA* 38-44 (1982), for a discussion of the significance of protest in the law of the sea. Compare: Colson, *How Persistent Must the Persistent Objector Be?*, 61 *Wash. L. Rev.* 957, at 969 (1986):

First, States should not regard legal statements of position as provocative political acts. They are a necessary tool of the international lawyer's trade and they have a purpose beyond the political, since, occasionally, States do take their legal disputes to court.

Second, there is no requirement that a statement of position be made in a particular form or tone. A soft tone and moderate words may still effectively make the necessary legal statement.

Third, action by deed probably is not necessary to protect a State's legal position as a persistent objector when that State has otherwise clearly stated its legal position. Action by deed, however, promotes the formation of law consistent with the action and deeds may be necessary in some circumstances to slow erosion in customary legal practice.

Fourth, not every legal action needs an equal and opposite reaction to maintain one's place in the legal cosmos.

Fifth, the more isolated a State becomes in its legal perspective, the more active it must be in restating and making clear its position.

12. See 7 WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 502-04 (1970) [hereinafter WHITEMAN].

13. Negroponete, *Current Developments in U.S. Oceans Policy*, DEP'T ST. BULL., Sept. 1986, at 84, 85; *Navigation Rights and the Gulf of Sidra*, DEP'T ST. BULL., Feb. 1987, at 70; Roach, *Excessive Maritime Claims*, 1990 *Proc. Am. Soc. Int'l L.* 288, 290. Previous United States responses to excessive maritime claims are summarized in U.S. Department of State, *Limits in the Seas* No. 112 (1992).

14. CHURCHILL & LOWE, *THE LAW OF THE SEA* 6-7 (2d rev. ed. 1988); O'Connell, *Mid-Ocean Archipelagos in International Law*, 45 *Brit. Y.B. Int'l L.* 63-69 (1975). See also Colson, *supra* n. 11, at 957-70; Stein, *The Approach of the Different Drummer: The Principle of the Persistent Objector in International Law*, 26 *Harv.*

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Int'l L.J. 457 (1985); and Charney, *The Persistent Objector Rule and the Development of Customary International Law*, 56 Brit. YB Int'l L. 1 (1986) and the sources cited therein.

15. *Gulf of Maine I.C.J. Case [Canada v. United States]*, U.S. Counter Memorial, paras. 235-40 [1983].

16. Colson, *supra* n. 11, at 964 & 969. "Passage does not cease to be innocent merely because its purpose is to test or assert a right disputed or wrongfully denied by the coastal State." Fitzmaurice, *The Law and Procedure of the International Court of Justice*, 27 Brit. Y.B. Int'l L. 28 (1950), commenting on the *Cofy Channel Case* in which the Court held that the United Kingdom was not bound to abstain from exercising its right of innocent passage which Albania had illegally denied. 1949 I.C.J. Rep. 4, 4 WHITEMAN 356.

The Special Working Committee on Maritime Claims of the American Society of International Law has advised that:

programs for the routine exercise of rights should be just that, "routine" rather than unnecessarily provocative. The sudden appearance of a warship for the first time in years in a disputed area at a time of high tension is unlikely to be regarded as a largely inoffensive exercise related solely to the preservation of an underlying legal position. Those responsible for relations with particular coastal states should recognize that, so long as a program of exercise of rights is deemed necessary to protect underlying legal positions, delay for the sake of immediate political concerns may invite a deeper dispute at a latter [sic] time.

Am. Soc. Int'l L. Newsletter 6 (Mar.-May 1988); *Nonviolent Responses to Violence-Prone Problems: The Cases of Disputed Maritime Claims and State-Sponsored Terrorism*, Am. Soc. Int'l L. Studies in Transnational Legal Policy No. 22, at 5 (1991).

17. In exercising its navigational rights and freedoms, the United States "will continue to act strictly in conformance with international law and we will expect nothing less from other countries." Schachte, *The Black Sea Challenge*, U.S. Nav. Inst. Proc. 62 (June 1988). See also 1979 DIGEST 1066-69.

18. See *infra* Chapter X.

19. See *infra* Chapter III.

20. Department of State Statement, Mar. 26, 1986, DEP'T ST. BULL., May 1986, at 79; *Navigation Rights and the Gulf of Sidra*, DEP'T OF ST. BULL., Feb. 1987, at 70. See Secretary of Defense, Annual Report to the President and the Congress 77-78 (1992) for a list of FON assertions conducted by DoD assets from October 1, 1990 to September 30, 1991, *id.* at 84-85 (1993) for a list of assertions by DoD assets between October 1, 1991 and September 30, 1992; and *id.* at G-1 for a list of assertions by DOD assets from October 1, 1992 to September 30, 1993 (1994).

21. Some States with illegal maritime claims have since ceased to exist. The Yemens merged on May 22, 1990. The German Democratic Republic ceased to exist on October 3, 1990. The Soviet Union broke apart in December 1991. On January 27, 1992, the Permanent Representative of Russia to the United Nations conveyed the text of the following note addressed to the heads of diplomatic missions in Moscow:

The Russian Federation continues to exercise its rights and honour its commitments deriving from international treaties concluded by the Union of Soviet Socialist Republics.

Accordingly, the Government of the Russian Federation will perform the functions formerly performed by the Government of the Soviet Union as depository for the corresponding multilateral treaties.

In this connection, the Ministry requests that the Russian Federation be considered a party to all international agreements in force, instead of the Soviet Union.

U.N. LOS BULL., No. 20, Mar. 1992, at 6 n.9; Russian MFA circular note no. 11/UGP dated Jan. 13, 1992, American Embassy Moscow telegram 001654, Jan. 17, 1992, Department of State File No. D92 0055-0637. The status of the maritime claims made by the Yemens, the GDR and the former Soviet Union is not certain in all cases. See generally, Walker, *Integration and Disintegration in Europe: Reordering the Treaty Map of the Continent*, 6 Transnat'l Law. 1 (1993).

22. In his report to the U.N. General Assembly occasioned by the tenth anniversary of the adoption of the LOS Convention, after reviewing the practice of States and international organizations, the Secretary-General concluded that:

. . . there has been a striking convergence of practice towards accepting the concepts, principles and basic provisions embodied in the Convention. Such acceptance is notable, particularly in respect of the territorial sea, the regime of straits used for international navigation, the archipelagic waters, the exclusive economic zone, and the protection and preservation of the marine environment.

He acknowledged the existence, however, of:

. . . some exceptional cases where state practice is not in conformity with, or clearly deviates from the relevant provisions of the Convention. These are particularly in the areas of the breadth of the territorial sea and the nature of the coastal State's jurisdiction in the contiguous zone and the exclusive economic zone with respect to security, fisheries, pollution control and marine scientific research.

He concluded his report by stressing that "the Convention has contributed significantly towards a general trend of harmonization of state practice in conformity with the new legal regime it has established." U.N. G.A. Doc. A/47/512, Nov. 5, 1992, paras. 81, 85-86, at 19-20. The Secretary-General is expected to publish in 1994 a worldwide survey of State practice pursuant to U.N. G.A. Res. A/Res 46/78.

Chapter II

Identification of Excessive Maritime Claims

Claims by coastal States to sovereignty, sovereign rights or jurisdiction over ocean areas that are inconsistent with the terms of the LOS Convention are, in this study, called “excessive maritime claims”. They are illegal in international law. Since World War II, more than 80 coastal States have asserted various maritime claims that threaten the rights of other States to use the oceans. These excessive maritime claims include, but are not limited to, claims inconsistent with the legal divisions of the ocean and related airspace reflected in the LOS Convention, such as:

- unrecognized historic waters claims;
 - improperly drawn baselines for measuring the territorial sea and other maritime zones;
 - territorial sea claims greater than 12 miles;
 - other claims to jurisdiction over maritime areas in excess of 12 miles, such as security zones, that purport to restrict non-resource related high seas freedoms;
 - contiguous zone claims at variance with Article 33 of the LOS Convention;
 - exclusive economic zone (EEZ) claims inconsistent with Part V of the LOS Convention;
 - continental shelf claims inconsistent with Part VI of the LOS Convention;
- and
- archipelagic claims inconsistent with Part IV of the LOS Convention.

Other categories of excessive maritime claims include claims to restrict navigation and overflight rights reflected in the LOS Convention, such as:

- territorial sea claims that impose impermissible restrictions on the innocent passage of military and commercial vessels, of ships owned or operated by a State and used only on government noncommercial service, and of nuclear-powered warships (NPW) or warships and naval auxiliaries carrying nuclear weapons or specific cargoes;
- claims requiring advance notification or authorization for innocent passage of warships and naval auxiliaries through the territorial sea or EEZ or applying discriminatory requirements to such vessels;
- territorial sea claims not exceeding 12 miles in breadth that overlap straits used for international navigation and do not permit transit passage in conformance with the customary international law reflected in the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships and naval auxiliaries (including transit in a manner of deployment consistent with the security of the forces involved), without prior notification or authorization; and

- archipelagic claims that do not permit archipelagic sea lanes passage in conformance with international law as reflected in the LOS Convention, including all normal routes used for international navigation, submerged passage of submarines, overflight of military aircraft, and surface transit of warships and naval auxiliaries (including transit in a manner of deployment consistent with the security of the forces involved), without prior notification or authorization.

Historic Bays

Bays meeting international legal standards contain internal waters,¹ navigation and overflight of which is subject to exclusive coastal State control. Some countries claim to exclude ships and aircraft from other bodies of water, containing territorial seas or high seas, that do not qualify as juridical bays, based on their historic claim to do so. To meet the international standard for establishing a claim to historic waters, a State must demonstrate its open, effective, long term, and continuous exercise of authority over the body of water, coupled with acquiescence by foreign States in the exercise of that authority. The United States takes the position that an actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition. The United States believes few such claims meet that standard.

Eighteen countries claim historic bays. The United States has diplomatically protested 13 such claims that do not meet the international legal standard.

Operational assertions have been conducted against seven of them:

- Former-Soviet Union claims to Peter the Great Bay and three Arctic straits
- Libya's claim to the Gulf of Sidra
- Cambodia's claim to part of the Gulf of Thailand
- Vietnam's claim to part of the Gulf of Tonkin
- Kenya's claim to Ungwana Bay
- Panama's claim to the Gulf of Panama
- Dominican Republic's claim to Escocesa and Domingo Bays.²

Baselines

The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.³ The low-water line is the standard location of baselines, and is the method used by the United States.

Straight baselines may only be used in exceptional circumstances, in the particular geographic situations provided for in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party,⁴ and repeated in the LOS Convention.⁵ As a narrow exception to normal baseline rules, the LOS Convention permits the establishment of straight baselines in two limited geographic circumstances, that is, (a) in localities where the coastline is deeply indented and cut into, or (b) if there is a fringe of islands

along the coast in the immediate vicinity of the coast.⁶ Straight baselines are permitted in those geographic circumstances where the application of normal baselines would produce a complex pattern, including enclaves of territorial seas and high seas. Properly drawn straight baselines do not push the limits of the territorial sea significantly seaward from the coast which would otherwise be measured from the low-water line.⁷

More than 60 countries have delimited straight baselines along portions of their coast and approximately ten other countries have enacted enabling legislation but have yet to publish the coordinates or charts of their straight baselines. Many of these baselines have been drawn inconsistent with international law. The effect of an illegal straight baseline is a claim that detracts from the international community's right to use the oceans and superjacent airspace. One result has been that these straight baseline systems have created large areas of internal waters which legally remain either territorial seas or areas in which the freedoms of navigation and overflight may be exercised. Burma, for example, by drawing a 222-mile straight baseline across the Gulf of Martaban has claimed about 14,300 sq. miles (an area the size of Denmark) as internal waters which, absent the closing line, would be territorial seas or high seas. The United States has, so far, diplomatically protested 26 of those systems. Operational assertions have been conducted against 14 of the claims: Burma, Cambodia, Colombia, Cuba, Dominican Republic, Ecuador, Ethiopia, Guinea, Guinea-Bissau, Haiti, Mauritania, Oman, Soviet Union, and Vietnam.⁸

Territorial Sea Breadth

Despite many diplomatic protests in the decades through the 1970s,⁹ the United States failed to prevent international acceptance of the 12-mile territorial sea and in 1988 the United States extended its territorial sea to 12 miles.¹⁰ The broad consensus in a 12 mile territorial sea reflected in the LOS Convention¹¹ has led more than half the countries claiming territorial seas broader than 12 miles to roll them back to the international standard reflected in the LOS Convention (*see* Table 5). The United States has either diplomatically protested or asserted its navigation rights against all 18 territorial sea claims that now exceed the 12-mile limit (*see* Table 6). Some claims have been protested more than once.

Contiguous Zones

The contiguous zone is an area seaward of the territorial sea in which the coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur within its territory or territorial sea (but not for security purposes).¹² The contiguous zone is comprised of international waters in and over which the ships

and aircraft, including warships and military aircraft, of all nations enjoy the high seas freedoms of navigation and overflight.¹³

The maximum permissible breadth of the contiguous zone under international law is now 24 miles measured from the baseline from which the territorial sea is measured.¹⁴

Some sixteen countries claim the right to expand the competence of the contiguous zone to include protection of national security interests, and thus restrict or exclude warships and military aircraft, including: Bangladesh, Burma, Haiti, Iran, Sri Lanka, Sudan, Syria, Venezuela, Vietnam and Yemen. Syria claims a 35 mile contiguous zone; between 1990 and 1991 Namibia claimed a 200 mile contiguous zone. North Korea claims a 50 mile military boundary. The United States has diplomatically protested 14 of those claims, and conducted operational assertions against the claims by Burma, Cambodia, Haiti, North Korea, Nicaragua, Syria, Vietnam and Yemen.¹⁵

Exclusive Economic Zones

The 200 mile EEZ, which gained recognition in the LOS Convention, gives coastal States increased rights over the resources off their coasts, while curtailing the trend of national claims to broader territorial seas and preserving as many high seas freedoms as possible. Over 85 countries claim an EEZ. By virtue of its islands, territories and possessions, and long coastlines, the United States claims the largest EEZ.¹⁶

Most EEZ claims are generally consistent with the Convention's provisions relating to navigational freedoms. However, 20 States permit imprisonment for fisheries violations, contrary to the express provision of the LOS Convention.¹⁷ Further, Brazil and Uruguay do not permit foreign military exercises in their EEZs; and Colombia has claimed that foreign States do not have the right to conduct maritime counter-narcotics law enforcement operations in its EEZ, asserting exclusive jurisdiction in its EEZ to enforce its narcotics laws.¹⁸

Continental Shelves

The LOS Convention defines the continental shelf of a coastal State as comprising:

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.¹⁹

Consequently, regardless of the seabed features, a State may claim, at a minimum, a 200-mile continental shelf. Under other LOS Convention provisions, a State has the right to claim a 200-mile EEZ which includes jurisdictional

rights over the living and nonliving resources of the seafloor and seabed. Thus, for those States whose physical continental margin does not extend farther than 200 miles from the territorial sea baseline, the concept of the continental shelf is of less importance than before.

Paragraphs 3-7 of Article 76, which provide a rather complex formula for defining the "continental shelf", apply only to States that have physical continental margins extending more than 200 miles from the coast. It seems widely accepted that the broad principles of the continental shelf regime reflected in the 1982 LOS Convention, Articles 76-81, were established as customary international law by the broad consensus achieved at the Third United Nations Conference on the Law of the Sea (UNCLOS III) and the practice of nations.

Since the mid-1970s, several countries have made general claims to the continental shelf that exceed the provisions of the LOS Convention. The Governments of Guyana, India, Mauritius, Pakistan and the Seychelles, for example, enacted statutes which purport to assert jurisdiction over any act on their continental shelves, contrary to international law. The United States has protested these claims, as well as those of Ecuador and Chile to continental shelves beyond 200 miles in the vicinity of the Galapagos, Easter and Sala Y Gomez Islands.²⁰

Archipelagos

The law of the sea first recognized a special regime for archipelagic States in the LOS Convention.²¹ By definition, an archipelagic State is a State "constituted wholly by one or more archipelagos and may include other islands". An archipelago is defined in the LOS Convention as:

a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.²²

Until a State claims archipelagic status, the normal baseline is the low-water line around each island. Consequently, there may exist large areas of international waters between the islands of the archipelago. However, an archipelagic State is entitled to draw straight archipelagic baselines around the outermost islands of the archipelago, and to measure its territorial sea seaward of those baselines. Its sovereignty then extends to the archipelagic waters thereby enclosed.²³

Fourteen States have claimed archipelagic status: Antigua and Barbuda, Cape Verde, Comoros, Fiji, Indonesia, Kiribati, Marshall Islands, Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, Trinidad and Tobago, and Vanuatu. In addition, The Bahamas has legislation pending to make such a claim. The United States worked closely with a number of island nations, including The Bahamas, Fiji and Indonesia, during

UNCLOS III to develop a set of reasonable parameters for the archipelagic regime. On the other hand, despite its public commitment to conform its claim to the provisions of the LOS Convention which it has ratified, the Philippines continues to claim as archipelagic waters large areas of the Pacific to which it is not entitled under the LOS Convention.²⁴

While the Convention definition was drafted to exclude continental States with offshore groups of islands, Canada, Denmark, Ecuador, Portugal and Sudan have sought to enclose their islands (Arctic, Faroes, Galapagos, Azores and the Suakin Archipelago, respectively) with straight baselines in a manner simulating an archipelago. The United States has protested these efforts. No independent island nation has claimed archipelagic status to which it is not entitled under the LOS Convention.

Innocent Passage in the Territorial Sea

One of the fundamental tenets in the international law of the sea is the right enjoyed by all ships, including warships, regardless of cargo, armament or means of propulsion, to innocent passage through another State's territorial sea, in accordance with international law, for which neither prior notification nor authorization is required.

This right is not fully accepted by all coastal States. For example, over 30 States require either prior permission or prior notice. The United States has diplomatically protested all but four of them, and conducted operational assertions against 27 of those countries (see Table 10). A number of States have rolled back these claims as a result of the FON program. In 1979, Turkey instituted a requirement for foreign warships to give it notice before exercising innocent passage in its territorial sea. The United States diplomatically protested in 1979, and in 1983 Turkey lifted that requirement. Between 1931 and 1983 the Soviet Union required warships to obtain prior permission before entering the Soviet territorial sea. Between 1983 and 1989 the Soviet Union limited warships' right of innocent passage to five designated sea lanes. As a result of the LOS discussions following the Black Sea bumping incident in 1988, the Soviet Union conformed its claims to international law, and Russia has committed itself to continue that position.

Five States apply special requirements not recognized by international law for the innocent passage of nuclear powered warships and naval auxiliaries carrying nuclear weapons: Djibouti, Egypt, Oman, Pakistan and Yemen. The United States has diplomatically protested all of these claims and conducted operational assertions against the claims of Oman, Pakistan and Yemen.²⁵

International Straits

During the time that the maximum permissible breadth of the territorial sea was three miles, over 100 straits connecting one part of the high seas with another part of the high seas contained a high seas route. Consequently, the ships and

aircraft of all nations had the uncontested right to pass through such strategically important straits as Gibraltar, Hormuz, Bab el Mandeb, Lombok and Malacca, regardless of the political unpopularity of their mission. Consequently, there was no difficulty with the United States' use of the Strait of Gibraltar to airlift support to Israel when she was attacked in October 1973.²⁶

These critical straits are, however, less than 24 miles wide at their narrowest point. To maintain maritime mobility, a condition for U.S. acceptance of a broader 12 mile territorial sea was a guaranteed legal right for U.S. ships and aircraft to continue to be able to transit, without coastal State interference, those straits.²⁷ That right is codified in the LOS Convention as the right of transit passage.²⁸ It was because of this right that U.S. aircraft were able again to fly through the Strait of Gibraltar without protest, when USAF aircraft flew from British bases for the April 1986 attack on Libya.²⁹ In 1973 and in 1986 the littoral NATO nations refused to grant the U.S. permission to overfly their land for these missions.³⁰

Few States have explicitly accepted the transit passage regime of the LOS Convention as customary international law. Even the United Kingdom has been reluctant to do so before the Convention is universally accepted.³¹ Other States claim the right of transit passage is available only to the signatories of the LOS Convention, or otherwise seek to restrict the right by imposing conditions on its use not authorized by the terms of the LOS Convention. The United States has diplomatically protested all of these claims, and conducted assertions of right against Iran, Oman, Spain, the USSR and Yemen. In 1988, when Indonesia closed Sunda and Lombok Straits for a brief period of time, the United States, United Kingdom and Australia made very strong *demarches*, and, so far, it has not been repeated.³²

Overflight Restrictions

States with territorial sea claims greater than 12 miles, or with illegal straight baseline claims, frequently seek to prevent overflight by foreign aircraft of the international waters (i.e., waters beyond 12 miles from properly drawn baselines) that they claim as territorial sea. In 1985, two Cuban MiG-21s intercepted a U.S. Coast Guard HU-25A aircraft operating more than 12 miles offshore. In August 1986, Ecuador interfered with the flight of a U.S. Air Force aircraft flying more than 175 miles seaward from the Ecuadoran coast. In 1973, Libya established a restricted area of airspace within 100 miles of Tripoli. In August 1986, Peru claimed that a USAF C-141, 80 miles off shore, did not receive permission to fly into Peruvian-claimed airspace. Several similar incidents involving USAF aircraft occurred in 1987, 1988 and 1992. Greece restricts the use of international airspace four miles seaward of its six mile territorial sea. Nicaragua requires clearance for

overflight of its 200 mile territorial sea. The United States has protested all of these claims, and conducted assertions of right against them all.³³

Archipelagic Sea Lanes Passage

A number of strategically important international navigation routes pass through Indonesian and Philippine archipelagic waters. A condition for U.S. acceptance of the archipelago concept was a legal guarantee that freedoms of navigation and overflight be maintained in and over the waters between the islands of the archipelago.³⁴ That right was documented in the LOS Convention as archipelagic sea lanes passage, which incorporates most of the essential elements of the transit passage regime of non-archipelagic international straits. All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under, or over the waters of archipelagos and adjacent territorial seas via archipelagic sea lanes.³⁵ Those sea lanes include all routes normally used for international navigation and overflight, whether or not designated by the archipelagic State.³⁶

Indonesia was the first State to suggest it might seek to exercise its right to designate sea lanes suitable for the continuous and expeditious passage of foreign ships through its archipelagic waters.³⁷ Although such sea lanes are required to include all normal passage routes and all normal navigational channels,³⁸ the Indonesian Navy is seeking to limit them to a mere three routes, all north-to-south.³⁹ The Philippines continues to refuse to recognize the Convention's archipelagic regime notwithstanding its ratification of the LOS Convention and public international commitment to reverse its view that the Philippine archipelagic waters are akin to internal waters wherein foreign ships may not navigate, and aircraft may not overfly, without Philippine permission. The Philippines refused to repeat that commitment in the 1992 military bases negotiations, while continuing the long-standing permission for U.S. forces to operate freely in Philippine waters.⁴⁰ The base agreement having expired, operational assertions of right are now necessary to maintain U.S. freedom of navigation and overflight there.

United States responses to these claims are described in greater detail in the following chapters, which are organized along the lines of the foregoing listing. Responses of other States are included where they are known.

Notes

1. LOS Convention, article 10.
2. See *infra* Chapter III.
3. LOS Convention, article 5.
4. Convention on the Territorial Sea and the Contiguous Zone, Geneva, Apr. 29, 1958, article 4, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter, 1958 Territorial Sea Convention].
5. LOS Convention, article 7.
6. LOS Convention, article 7; 1958 Territorial Sea Convention, article 4(1).

7. *See infra* Chapter IV.
8. *See infra* Chapter IV.
9. *See* 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 61, 91, 115-19 (1965) [hereinafter WHITEMAN].
10. *See infra* Chapter V and Appendix 3.
11. LOS Convention, article 3.
12. LOS Convention, article 33; 1958 Territorial Sea Convention, article 24.
13. LOS Convention, articles 33, 58 & 87.
14. LOS Convention, article 33(2).
15. *See infra* Chapter VI.
16. *See infra* Chapter VII.
17. *See infra* Chapter VII n. 26.
18. *See infra* Chapter XIV.
19. LOS Convention, article 76(1).
20. *See infra* Chapter VIII.
21. *See* LOS Convention, Part IV.
22. LOS Convention, article 46.
23. LOS Convention, articles 46-48.
24. *See generally infra* Chapter IX.
25. *See infra* Chapter X.
26. Gelb, *U.S. Jets for Israel Took Route Around Some Allies*, N.Y. Times, Oct. 25, 1973, sec. 1, at 1, col. 2; Moore, *The Regime of Straits and the Third United Nations Conference on the Law of the Sea*, 74 Am. J. Int'l L. 77, 84 (1980); Robertson, *Passage Through International Straits: A Right Preserved in the Third United Nations Conference on the Law of the Sea*, 20 Va. J. Int'l L. 801, 841 n.198 (1980).
27. 1974 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 279 [hereinafter DIGEST]; Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session*, 69 Am. J. Int'l L. 1, 14, 15 (1975).
28. LOS Convention, article 38.
29. Treves, *Codification de Droit International et Pratique des Etats dans le Droit de la Mer*, 223 Recueil des Cours 131-32 (1990-IV, 1991). *See further*, Chapter XI *infra*, text accompanying nn. 45-59.
30. DEP'T ST. BULL. June 1986 at 5, 10; Parks, *Crossing the Line*, U.S. Nav. Inst. Proc. 49-51 (Nov. 1986); MARTIN & WALCOTT, BEST LAID PLANS 292-93, 303 (1988); REAGAN, AN AMERICAN LIFE 519 (1990); WEINBERGER, FIGHTING FOR PEACE 193 (1990); CROWE, THE LINE OF FIRE 137 (1993).
31. *See, e.g.*, 59 Brit. Y.B. Int'l L. 525 (1989); 58 Brit. Y.B. Int'l L. 600-01 (1987). *See also infra* Chapter XI text accompanying nn. 19-21.
32. *See infra* Chapter XI, text accompanying nn. 99-100.
33. *See infra* Chapter XII.
34. 1974 DIGEST at 287-88; 1978 DIGEST at 943.
35. LOS Convention, article 53(2).
36. LOS Convention, article 53(12).
37. IMO Subcommittee on Safety of Navigation, Report to the Maritime Safety Committee, IMO document NAV/37/25, para. 3.2.9, Oct. 4, 1991.
38. LOS Convention, article 53(12).
39. RADM Abdul Hakim, A Proposal in the [Eighth] International Conference on SLOC [Sea Lanes of Communication], Bali, Indonesia, Jan. 26, 1993.
40. This was one issue, among others, contributing to the U.S. decision to withdraw its military forces from the Philippines and to permit the Military Bases Agreement to expire in late 1992. *See* 3 U.S. Department of State Dispatch 824, Nov. 16, 1992.

PART TWO

LEGAL DIVISIONS OF THE OCEANS AND AIRSPACE

Chapter III

Historic Waters

Criteria

To meet the international standard for establishing a claim to historic waters, a State must demonstrate its open, effective, long term, and continuous exercise of authority over the body of water, coupled with acquiescence by foreign States in the exercise of that authority. The United States has taken the position that an actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition.¹

United States Waters

The United States Supreme Court has found the waters of **Mississippi Sound**² and **Long Island Sound**³ to be historic for purpose of disputes between the United States federal government and the coastal states regarding ownership of the seabed of the Sounds. The U.S. Supreme Court has held that certain other bodies of U.S. waters do not meet the criteria for historic waters. These include **Cook Inlet, Alaska**;⁴ **Santa Monica and San Pedro Bays, California**;⁵ **Florida Bay**;⁶ numerous bays along the coast of **Louisiana**;⁷ **Block Island Sound**;⁸ and **Nantucket Sound, Massachusetts**.⁹

Foreign Waters Considered Not to Be Historic

Table 1 lists known claims to historic waters and actions taken by the United States. Following Table 1 is a description of several claims to historic waters that have been protested by the United States.

Table 1
Claims Made to Historic Bays

<u>State</u>	<u>Body of Water</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion^a</u>
Argentina	Rio de la Plata	Joint Declaration with Uruguay, Jan. 30, 1961	1963	
Australia	Anxious, Rivoli, Encounter, Lacedepe Bays	Proclamation March 31, 1987	1991	
Cambodia	Part of Gulf of Thailand	Agreement with Vietnam July 7, 1982	1987	
Canada	Hudson Bay	Amendment to Fisheries Act July 13, 1906	1906	
Dominican Republic	Samana, ^b Ocoa, ^b Neiba ^b Bays	Law No. 3342, July 13, 1952		

Table 1 (Cont.)

<u>State</u>	<u>Body of Water</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion^a</u>
Dominican Republic	Escocesa & Santo Domingo Bays	Act No. 186, Sep. 13, 1967		1991
Egypt	Bay of el Arab ^c	Embassy Note June 4, 1951	1951	
El Salvador	Gulf of Fonseca ^d	Const. Amend. 1946, art. 3; Const. art. 84, Dec. 13, 1983		
Honduras	Gulf of Fonseca ^d	Constitution of 1982, art. 10		
India	Gulf of Mannar Palk Bay	Law No. 41, June 1, 1979 Agreement with Sri Lanka, June 28, 1974	1983 1983	1993
Italy	Gulf of Taranto	Presidential Decree No. 816, April 26, 1977	1984 ^e	
Kenya	Ungwana Bay	Territorial Waters Act, May 16, 1972		1990
Libya	Gulf of Sidra	Foreign Ministry Note Ver- bale MQ/40/5/1/3325, Oct. 11, 1973	1974 ^e	1981 ^e
Panama	Gulf of Panama	Law No. 9, Jan. 30, 1956	1956 ^e	
Soviet Union	Peter the Great Bay Laptey, Demitri, Sannikov Straits	Decree July 20, 1957 Aide Memoire July 21, 1964	1957 ^e 1965	1982 ^e 1984 ^e
Sri Lanka	Palk Bay Palk Bay, Palk Strait, Gulf of Mannar	Agreement with India June 28, 1974 Proclamation Jan. 15, 1977		
Thailand	Part of Gulf of Thailand	Decree, Sept., 22, 1959		
Uruguay	Rio de la Plata	Joint Declaration with Argentina, Jan. 30, 1961	1963 ^e	
Vietnam	Part of Gulf of Thailand Gulf of Tonkin	Agreement with Cambodia, July 7, 1982 Statement, Nov. 12, 1982	1987 1982	

^aOperational assertion of right by U.S. naval and/or air forces of internationally recognized navigational rights and freedoms against excessive maritime claim.

^bNow qualifies as a juridical bay.

^cNot maintained.

^dHistoric status confirmed by ICJ in *El Salvador v. Honduras*, 1992 ICJ Rep. 351, para. 432 at 616-17.

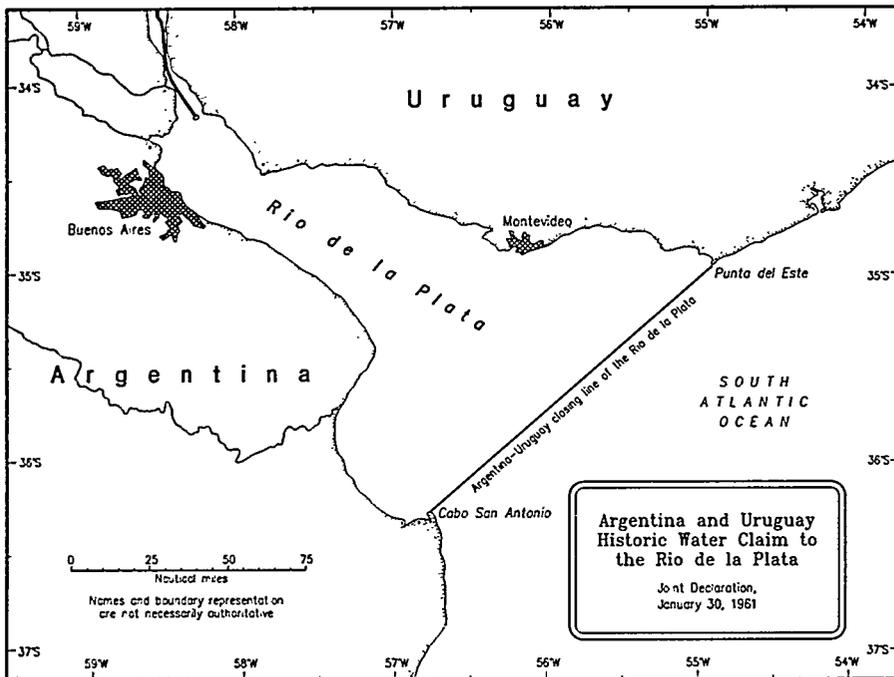
^eMore than one protest or assertion against this claim.

Source: U.S. Department of State, Office of Ocean Affairs.

Argentina and Uruguay - Rio de la Plata:

Some authorities have stated that the Rio de la Plata estuary is a historic bay (see Map 1).¹⁰ However, in drawing a straight line across the mouth of the estuary, the joint Declaration of the Governments of Argentina and Uruguay of January 30, 1961 did not assert an historic claim to the Rio de la Plata. Rather, the Declaration took into account the provisions of Article 13 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone¹¹ regarding river closing lines.

Map 1



On January 23, 1963 the United States protested on the grounds that the Declaration ran counter to international law and that Article 13 "relates to rivers which flow directly into the sea which is not the situation of the River Plate which flows into an estuary or bay".¹²

Australia - Anxious, Encounter, Lacedpede and Rivoli Bays

In 1987, Australia declared that Anxious, Encounter, Lacedpede and Rivoli Bays, in South Australia, were historic bays, and drew straight baselines across the mouths of those bays which did not meet the criteria for juridical bays. In

1991, the United States protested this claim, in a note, which after reciting the internationally accepted criteria for establishing claims to historic bays, stated:

Prior to the issuance of the 19 March 1987 Proclamation, the United States was not aware of any claim by the Government of Australia that these bays were historic, nor was such a claim mentioned in the United Nations Secretariat study on historic bays, published in 1957 as UN Document A/CONF.13/1 and in 1958 in volume I: Preparatory Documents of the first United Nations Conference on the Law of the Sea, UN Doc. A/CONF.13/37, at pages 1-38, or in any other compilation of historic bay claims of which the United States is aware.

Having reviewed the evidence submitted by the Government of Australia to support these claims, the United States regrets that it is unable to agree that Anxious, Encounter, Lacedpede and Rivoli Bays meet the requirements of international law for historic bays and reserves its rights and those of its nationals in that regard.

The United States notes that effective 20 November 1990 the Government of Australia extended its territorial sea from three to twelve nautical miles. The United States is of the view that, with the increased coastal State maritime jurisdiction now permitted under customary international law reflected in the 1982 United Nations Convention on the Law of the Sea and other rules of international law reflected therein, no new claim to historic bays or historic waters is needed to meet resource and security interests of the coastal State.¹³

Cambodia and Vietnam - Gulf of Thailand

On July 7, 1982, Cambodia and Vietnam signed an agreement which, in part, made claim to a part of the Gulf of Thailand as historic waters.¹⁴ The United States protested this claim in a note to the UN Secretary-General, as follows:

Under the terms of this agreement the parties purportedly claim as historic certain waters in the Gulf of Thailand extending from the mainland to Tho Chu and Poulo Wai Islands.

As is well known under longstanding standards of customary international law and State practice, historic waters are recognized as valid only if the following prerequisites are satisfied: (a) the State asserting claims thereto has done so openly and notoriously; (b) the State has effectively exercised its authority over a long and continuous period; and (c) other States have acquiesced therein.

In the case of the historic waters claim made by the parties to the above agreement, the claim was first made internationally no earlier than July 7, 1982, less than five years ago, notwithstanding the assertion in the agreement that the waters "have for a very long time belonged to Vietnam and Kampuchea [Cambodia] due to their special geographical conditions and their important significance towards each country's national defense and economy."

The brief period of time since the claim's promulgation is insufficient to meet the second criterion for establishing a claim to historic waters, and there is no evidence of effective exercise of authority over the claimed waters by either country before or after the date of the agreement. Moreover, without commenting on the substantive merits or lack thereof attaching to the "special geographical conditions" of the waters in question and their "important significance towards each country's defense and economy," such considerations do not fulfill any of the stated customary international legal prerequisites of a valid claim to historic waters.

Finally, the United States has not acquiesced in this claim, nor can the community of States be said to have done so. Given the nature of the claim first promulgated in 1982, such a brief period of time would not permit sufficient acquiescence to mature.

Therefore, the United States views the historic claim to the waters in question as without foundation and reserves its rights and those of its nationals in this regard.¹⁵

India and Sri Lanka - Gulf of Mannar and Palk Bay

On June 1, 1979, India claimed as historic the waters of the Gulf of Mannar (see Map 2) between the coast and its maritime boundary with Sri Lanka.¹⁶ The United States protested this claim, among other Indian maritime claims, in a note to the Indian Ministry of External Affairs on May 13, 1983.¹⁷

Italy - Gulf of Taranto

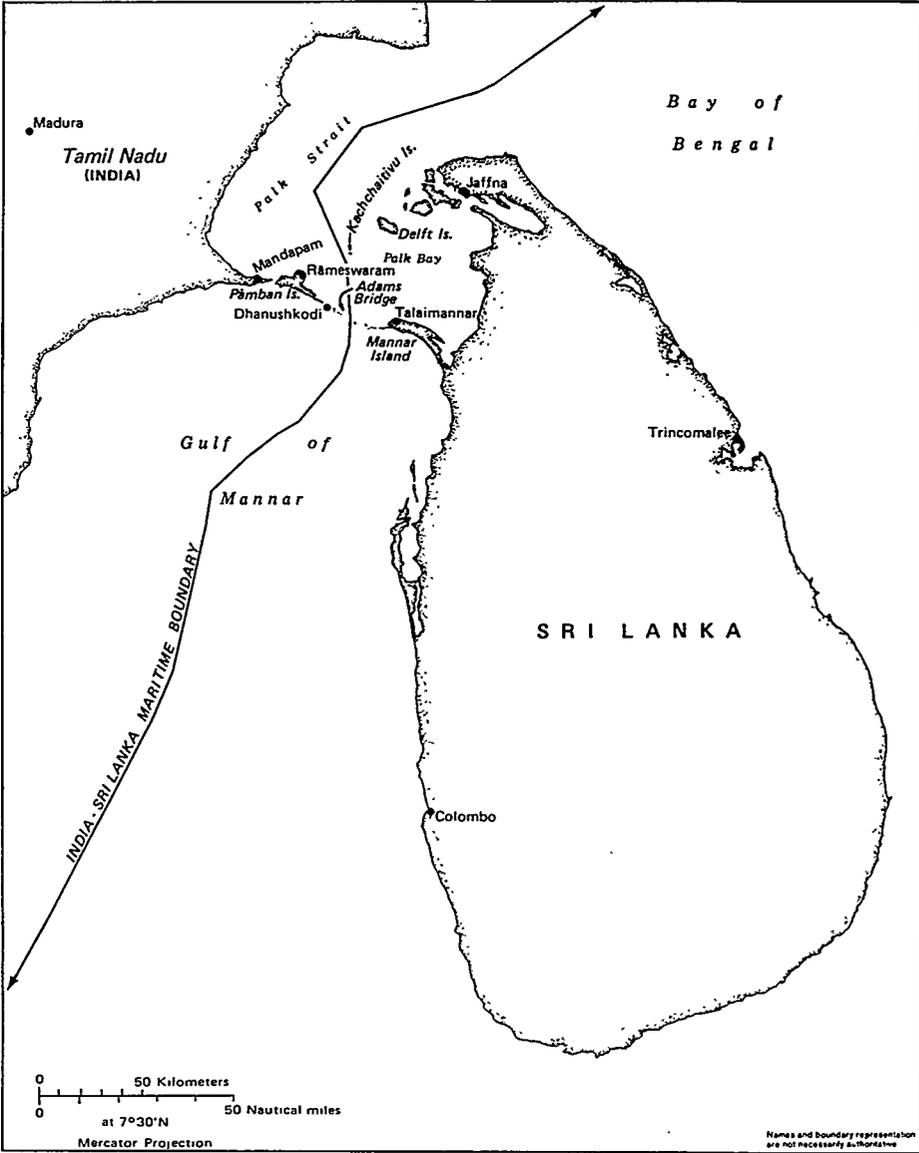
As part of its 1977 decree establishing straight baselines for portions of the Italian coast, Italy for the first time claimed the Gulf of Taranto as an historic bay (see Map 3).¹⁸ During bilateral discussions with the Italian government in 1984, the United States stated its view that the Gulf of Taranto could not be considered an historic bay since the requirements for such status were not met. The United States noted that "a coastal State claiming such status for a body of water must over a long period of time have openly and continually claimed to exercise sovereignty over the body of water, and its claims must have resulted in an absence of protest of foreign States, amounting to acquiescence on their part."¹⁹

Libya - Gulf of Sidra

In 1973 Libya's Foreign Ministry circulated a note claiming the Gulf of Sidra as Libyan internal waters. The Gulf was defined by a closing line, approximately 300 miles long, along the 32° 30' parallel of north latitude (see Map 4).²⁰ The United States first protested this claim in 1974.²¹ In a 1985 note to the Secretary-General of the United Nations, the United States reiterated "its rejection of the Libyan claim that the Gulf of Sidra constitutes internal waters

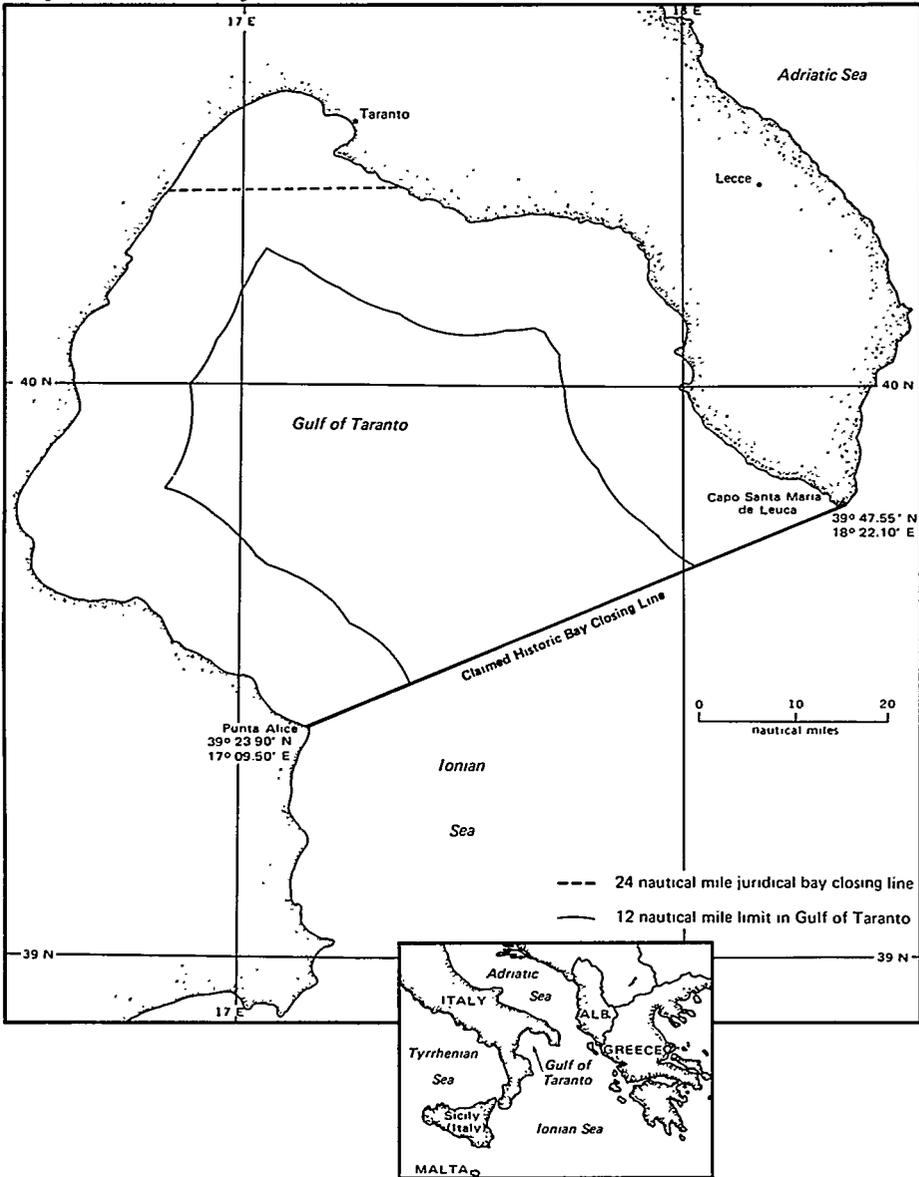
Map 2

INDIA - SRI LANKA MARITIME BOUNDARY



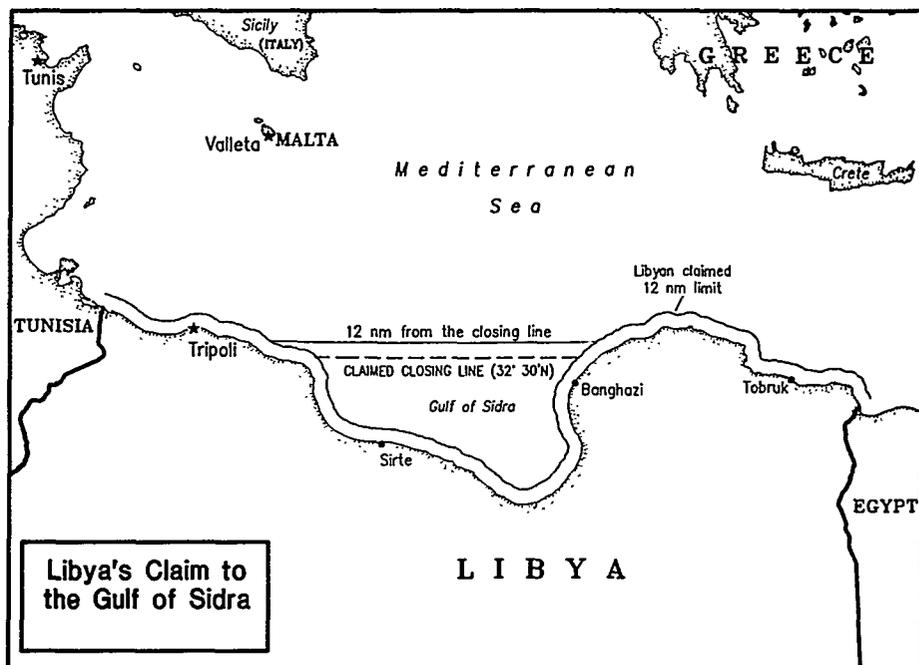
Map 3

Italy's Historic Bay Claim: Gulf of Taranto



to the latitude of 32 degrees 30 minutes North,” and rejected “as an unlawful interference with the freedoms of navigation and overflight and related high seas freedoms, the Libyan claim to prohibit navigation” in the Gulf.²²

Map 4



In December 1986, the U.S. Department of State, Bureau of Public Affairs, published “Navigation Rights and the Gulf of Sidra,” in *GIST*, a reference aid on U.S. foreign relations. The study discussed the history of U.S. responses, dating to the 18th century, to attempts by North African States to restrict navigation in these waters. The *GIST* stated, in part, that:

Current law and customs: By custom, nations may lay historic claim to those bays and gulfs over which they have exhibited such a degree of open, notorious, continuous, and unchallenged control for an extended period of time as to preclude traditional high seas freedoms within such waters. Those waters (closed off by straight baselines) are treated as if they were part of the nation’s land mass, and the navigation of foreign vessels is generally subject to complete control by the nation. Beyond lawfully closed-off bays and other areas along their coasts, nations may claim a “territorial sea” of no more than 12 nautical miles in breadth (measured 12 miles out from the coast’s low water line — or legal straight baseline) within which foreign vessels enjoy the limited navigational “right of innocent

passage." Beyond the territorial sea, vessels and aircraft of all nations enjoy freedom of navigation and overflight.

Since Libya cannot make a valid historic waters claim and meets no other international law criteria for enclosing the Gulf of Sidra, it may validly claim a 12-nautical mile territorial sea as measured from the normal low-water line along its coast. Libya also may claim up to a 200-nautical mile exclusive economic zone in which it may exercise resource jurisdiction, but such a claim would not affect freedom of navigation and overflight. (The U.S. has confined its exercises to areas beyond 12 miles from Libya's coast.)²³

Panama - Gulf of Panama

In 1956, the United States protested the unilateral declaration contained in Panamanian Law No. 9 of January 30, 1956, purporting to confirm and implement Panama's claim that it exercises sovereignty over the Gulf of Panama as an historic bay.²⁴ The note reads in part as follows:

Particular note has been taken by my Government of the statements that "the Republic of Panama and its predecessors . . . have been exercising sovereignty over the waters of the Gulf of Panama in the Pacific Ocean from time immemorial" and that "the territorial character of the Gulf under reference and the exercise of Panamanian sovereignty over it always has had the tacit acquiescence of all states."

The Government of the United States avails itself of this opportunity to take exception both to the operative provisions of Law No. 9 and the thesis on which they are based insofar as this measure purports to claim or confirm any general jurisdiction by Panama over waters of the Gulf of Panama . . .

My Government submits that the Gulf of Panama does not qualify as a historic bay under international law. This body of water has never enjoyed the character of a historic bay, whether by immemorial claim or by treatment as such by the community of nations. The Gulf of Panama was not recognized as a historic bay at the time of the separation of Panama from Colombia, and nothing that has occurred subsequently has been of a character to give the Gulf of Panama the character of a historic bay.

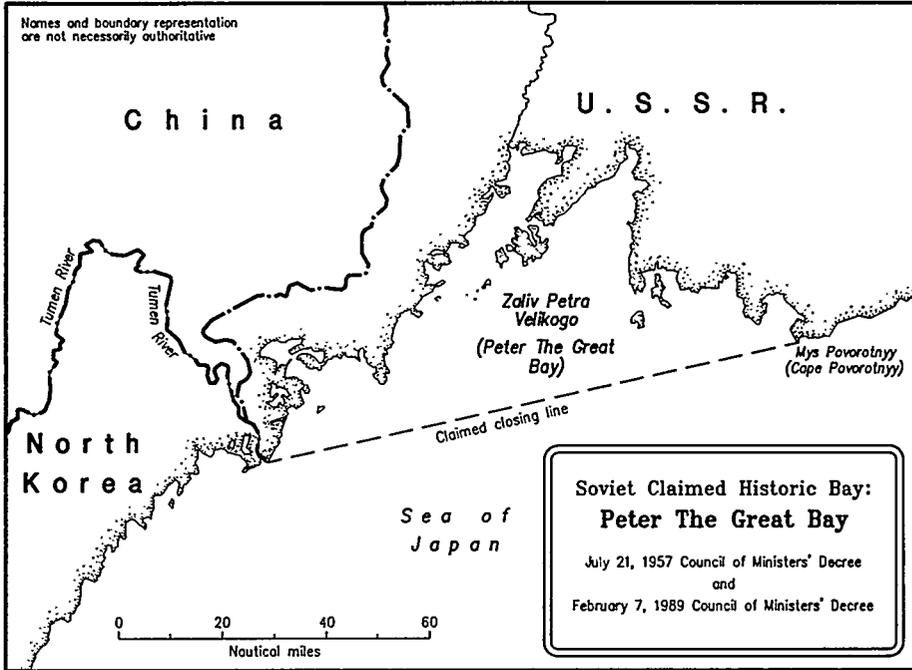
Accordingly, my Government cannot accept the unilateral declaration contained in Law No. 9 as resulting in giving the Gulf of Panama the character of a historic bay.²⁵

USSR - Peter the Great Bay

The former Soviet Union first claimed Peter the Great Bay as historic in a 1957 Decree.²⁶ The United States, and other countries, immediately protested.²⁷ The 106-mile closing line is, at one point, more than 20 miles from any land

territory, and 47 miles seaward from Vladivostok, an important Soviet naval base (see Map 5).

Map 5



Following an incident involving USS *Lockwood* (FF-1064) on May 3, 1982, the United States renewed its protest of the Soviet claim that Peter the Great Bay was an historic bay. The U.S. note read in part as follows:

... refers to an incident of May 3, 1982, when a warship of the United States of America was approached by naval units of the Union of Soviet Socialist Republics while navigating on the high seas in the vicinity of Peter the Great Bay, and was ordered to leave what the Soviet naval units referred to as waters of the Soviet Union.

In light of this incident, the Government of the United States of America wishes to state again its objection to the claim by the Government of the Union of Soviet

Socialist Republics that the waters of Peter the Great Bay landward of a line drawn between the mouth of the river Tyumen-Ula and the Povorotny promontory are internal waters of the Soviet Union. As the Government of the United States of America informed the Government of the Union of Soviet Socialist Republics in its Diplomatic Note of August 12, 1957, and reiterated in its note of March 6, 1958, there is no basis in international law for the unilateral claim to all the waters of Peter the Great Bay landward of the aforementioned line as internal waters of the Soviet Union. It continues to be the view of the Government of the United States of America that the claim that this large body of water is comprised of internal waters cannot be geographically or historically justified in international law.²⁸

USSR - Northeast Passage

The United States conducted oceanographic surveys of the Arctic north of the former Soviet Union in the summers of 1963 and 1964. During 1964, USS *Burton Island* (AGB-1) collected data in the East Siberian Sea. On July 21, 1964, the Soviet Union presented an *aide memoire* to the United States regarding this survey in which it was claimed that “the Dmitry, Laptev and Sannikov Straits, which unite the Laptev and Eastern-Siberian Seas ... belong historically to the Soviet Union.”²⁹

In response, the United States stated:

So far as the Dmitry, Laptev and Sannikov Straits are concerned, the United States is not aware of any basis for a claim to these waters on historic grounds even assuming that the doctrine of historic waters in international law can be applied to international straits.³⁰

Vietnam - Gulf of Tonkin

In addition to claiming part of the Gulf of Thailand as historic waters (*see* Cambodia and Vietnam above), in 1982 Vietnam also claimed a part of the Gulf of Tonkin as its historic waters³¹ (*see* Map 10). In December 1982, the United States protested the claim as follows:

The Government of the Socialist Republic of Vietnam also claimed that a part of the Gulf of Tonkin, not clearly defined, constitutes historic waters of the Socialist Republic of Vietnam in which the legal regime of internal waters applies. The Government of the United States wishes to state that international law requires certain standards to be met before a claim to historic waters can be established. These standards are not met in this case and, therefore, it is the view of the Government of the United States of America that there is no basis for the aforementioned claim by the Government of the Socialist Republic of Vietnam to a part of the Gulf of Tonkin.³²

In analyzing Vietnam’s claim, the Office of the Geographer of the Department of State wrote:

The occurrence of claims to historic bays that are shared by more than one state is even less common than the relatively small number of single states claiming historic bays.

The general norms for the concept of an historic bay ... and the few case studies of bays bordered by more than one state suggest that, at a minimum, the states bordering the bay must all agree that the bay is an "historic bay." The Vietnamese claim to historic waters is questionable because China, which also borders the Gulf of Tonkin, does not claim the gulf as historic waters and disputes the Vietnamese claim to the meridional boundary within the Gulf.³³

Historic Bay Claims Rolled Back

Bays now qualifying as juridical bays

Historic bay claims were frequently advanced in previous years because their mouths were too wide to qualify as juridical bays. Prior to 1958, while there was general agreement on the three-mile territorial sea, there was no agreement as to the maximum length of a closing line of a juridical bay. However, the 24-mile closing line rule was fixed for juridical bays in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and has remained unchanged since then. The U.S. Supreme Court has found that **Long Island Sound**³⁴ constitutes a juridical bay on that basis. Both **Chesapeake Bay** (with a 12 mile wide mouth) and **Delaware Bay** (with a 10 mile wide mouth) now qualify as juridical bays, notwithstanding earlier assertions they were internal waters of the United States.³⁵ Similarly, the **Gulf of Amatique**, which Guatemala claimed as historic in 1940,³⁶ now qualifies as a juridical bay, as do **Samana, Ocoa and Neiba Bays** claimed by the Dominican Republic as historic in 1952.³⁷

Egypt - Bay of El-Arab

This body of water, on Egypt's Mediterranean coast, is 75 miles wide at its opening to the sea and penetrates 18 miles into the mainland. It does not qualify as a juridical bay and may be better classified as a bight. In a letter to the League of Nations of 28 July 1928, Egypt noted it claimed a three mile territorial sea "except as regards the Bay of El Arab, the whole of which is, owing to its geographical configuration regarded as territorial waters." In 1951 an Egyptian decree stated that the inland waters of Egypt includes "all the waters of the bays along the coasts of the Kingdom of Egypt," without mentioning the Bay of El-Arab. This claim was protested by the United States and the United Kingdom in 1951. The British protest stated that no historic bays are "situated in Egypt". In 1990 Egypt promulgated the coordinates of straight baseline along its coast. No mention was made of this historic claim in the decree. The straight baseline in the Bay of El Arab is well within the "mouth" of the bay, being no more than 6 miles off shore at its furthest.³⁸

Notes

1. 1973 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 244-45 (1974) [hereinafter DIGEST]; Goldie, *Historic Bays in International Law—An Impressionistic Overview*, 11 Syracuse J. Int'l L. & Com. 205, 221-23, 248 & 259 (1984). See also 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 233-58 (1965) [hereinafter WHITEMAN]. So-called historic bays are not determined by the semicircle and 24-nautical mile closure line rules applicable to juridical bays (which are discussed in Chapter IV). Territorial Sea Convention, article 7(6); LOS Convention, article 10(6). The I.C.J. takes the view that general international law:

does not provide for a single "regime" for "historic waters" or "historic bays", but only for a particular regime for each of the concrete, recognized cases of "historic waters" or "historic bays".

Continental Shelf (Tunisia/Libya), 1982 I.C.J. Rep. 74, quoted with approval in Dispute (El Salvador/Honduras) (Judgment), 1992 I.C.J. Rep., at 589.

2. *United States v. Louisiana et al. (Alabama and Mississippi Boundary Case)*, 470 U.S. 93 (1985).

3. *United States v. Maine et al. (Rhode Island & New York Boundary Case)*, 469 U.S. 504, 509 (1985).

4. *United States v. Alaska*, 422 U.S. 184 (1975).

5. *United States v. California*, 381 U.S. 139, at 173-75 (1965).

6. *United States v. Florida*, 420 U.S. 531, 533 (1975).

7. *Louisiana Boundary Case*, 420 U.S. 529 (1975).

8. *United States v. Maine et al.*, *supra* n. 3, at 509 n.5.

9. *Massachusetts Boundary Case*, 475 U.S. 89 (1986). In the Florida, Massachusetts and Louisiana cases, the Supreme Court adopted the recommendations of its Special Masters. Their Reports, containing the primary analysis of these waters, can be found in KOESTOR AND BRISCOE, THE REPORTS OF THE SPECIAL MASTERS OF THE UNITED STATES SUPREME COURT IN THE SUBMERGED LANDS CASES, 1949-1987 (1992).

10. See, e.g., the 1910 dissenting opinion of Luis M. Drago in the *North Atlantic Coast Fisheries Case* (U.K. v. U.S.), reprinted in SCOTT, THE HAGUE COURT REPORTS 199-200 (1916); III GIDEL, LE DROIT INTERNATIONAL PUBLIC DE LA MER 653-54 (1934); Historic Bays, U.N. Doc. A/CONF.13/1, para. 43, reprinted in 1 U.N. Conference on the Law of the Sea, Official Records 8, U.N. Doc. A/CONF.13/37.

11. 15 U.S.T. 1606, 1610; T.I.A.S. No. 5639. Article 13 provides that "if a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks."

12. 57 Am. J. Int'l L. 403-04 (1963); 4 WHITEMAN 342-43. The United Kingdom (on Dec. 26, 1961) and the Netherlands (on June 26, 1962) also protested the Declaration for the same reasons. 4 WHITEMAN 343. Previously, on March 16, 1908, the United Kingdom had protested Uruguay's claim to treat the River Plata as territorial waters. PRESCOTT, MARITIME AND POLITICAL BOUNDARIES OF THE WORLD 51 & 313 (1985) [hereinafter PRESCOTT] also criticizes this line as an "extreme claim".

13. American Embassy Canberra delivered the note on April 10, 1991 to the Department of Foreign Affairs and Trade. American Embassy Canberra telegram 02400, April 10, 1991. Australia's claim to these bays was made in a March 19, 1987 proclamation by the Governor-General published in the Commonwealth Gazette No. S 57, Mar. 31, 1987, at 2-4, 11 Aust. Y.B. Int'l L. 266 (1991). The Government of Australia, in response to a request from the United States for information as to the basis of these claims, provided the Department a copy of a February 1986 Report of the Commonwealth/South Australia Committee on the "South Australia Historic Bays Issue". This report was analyzed in talking points provided the Embassy, as follows:

We note that while the Joint Committee was charged with considering the claim by South Australia that ten of its bays be considered historic bays or historic waters of Australia, only three were so ultimately considered. Two were judged to be mere curvatures, three were juridical bays, and two of the bays were not historically part of South Australia. Lacedpede Bay, although not stated to be within the terms of reference, was also found to be a historic bay of Australia.

We note that the report itself acknowledges that the international legal validity of these four claims is only "probable" and identifies some contrary evidence.

The report bases the origin of the claims in 1836 Letters Patent by the Crown establishing the Province of South Australia, which included "all and every the Bays and Gulfs thereof."

The Report further suggests that this claim "would have been known or should have been known, to all the nations then represented at the Palace of St James" and that no protests were made then or later.

A generalized claim to "all" bays and gulfs as forming part of the new Province of South Australia, coupled with persistent failure of the Government of Australia to identify the particular bays claimed as historic when the opportunity arose several times in the 20th Century, does not, we believe, rise to the level of an "open and notorious" claim.

We note that the Report provides no evidence that, until the early 1980s, any of these bays were ever specifically mentioned in any listing of the historic bays of Australia.

With regard to the attitude of foreign states to the claim, the Commission relied on the views expressed in the 1962 UN Secretariat study on the juridical regime of historic waters, that the mere absence of protest is sufficient circumstances to establish acquiescence.

On the other hand, the United States has been of the view that acquiescence in a historic claim cannot be found in the mere absence of opposition to the claim. Rather the United States considers that there must be an actual showing of acquiescence, i.e., a failure to protest what is clearly known to a foreign State as a historical claim. This burden has not been met in the case of these four bays where the historic nature of the claim to those four bays was, I must note, never made public before the early 1980s.

Concern is expressed in the Report [paragraph 24] that if the historic status of these bays was not accepted internationally, there would be areas of high seas within what are, for domestic Australian purposes, internal waters.

We note that the United States had a similar situation in the Gulf of Mexico, where the waters of the States of Texas and Florida extend nine nautical miles seaward. As you know, until 1988 the United States [like Australia] claimed only a 3 nautical mile territorial sea. Hence the waters between 3 and 9 miles offshore of Texas and the West Coast of Florida were high seas internationally yet belonged to those States.

The extension of our territorial sea to 12 nautical miles has removed that long standing anomaly for international purposes. We assume the same result has occurred since 20 November 1989 when Australia extended its territorial sea to 12 nautical miles.

In support of the claim to these four bays, the report adduces evidence of economic activity having occurred.

We note, however, that Australia claims a 200 mile exclusive fishery zone, and that in our view Australia would be entitled to claim a 200 nautical mile exclusive economic zone. In our view, the EEZ provides an adequate avenue for protecting economic interests.

Hence, my Government is of the view that, with the increased coastal State maritime jurisdiction now permitted under customary international law reflected in the 1982 United Nations Convention on the Law of the Sea and other rules of international law reflected therein, no new claim to historic bay or historic waters is needed to meet resource and security interests of the coastal State.

State Department telegram 111637, Apr. 6, 1991. See also BOUCHEZ, *THE REGIME OF BAYS IN INTERNATIONAL LAW* 228-29 (1964) [hereinafter BOUCHER]; PRESCOTT, *AUSTRALIA'S MARITIME BOUNDARIES* 58, 70-73 (1985); and PRESCOTT, at 61.

14. The text of this agreement may be found in IV FBIS Asia & Pacific, July 9, 1982, no. 132, at K3-K4.

15. United States Mission to the United Nations in New York Note dated June 17, 1987, reprinted in U.N. LOS BULL. No. 10, Nov. 1987, at 23 and U.N. Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Current Developments in State Practice* No. II, at 86 (U.N. Sales No. E.89.V.7, 1989) [hereinafter U.N. Current Developments No. II]. Thailand and Singapore protested this claim (and a claim to the airspace over these waters made by Vietnam in a statement dated June 5, 1984, U.N. Doc. A/39/309, annex) in notes to the Secretary-General of the United Nations reprinted in U.N. Office of the Special Representative of the Secretary-General for the Law of the Sea, *The Law of the Sea: Current Developments*

in State Practice 147 (U.N. Sales No. E.87.V.3, 1987) [hereinafter U.N. Current Developments No. I] (Thailand, U.N. Doc. A/40/1033), and in U.N. Current Developments No. II, at 84-85 (Singapore, U.N. Doc. A/41/967 of Dec. 15, 1986). Singapore and Thailand also stated the agreement is devoid of any legal effect since "the so-called Government of the Peoples' Republic of Kampuchea does not represent" Kampuchea. *Id.* The Federal Republic of Germany protested Vietnam's claim in June 1984. See PRESCOTT, at 212-30.

16. Article 8 of the Indian Maritime Zones Act No. 80, 1976, which may be found in United Nations Legislative Series, National Legislation and Treaties Relating to the Law of the Sea, U.N. Doc. ST/LEG/SER.B/19, at 52 (1980) [hereinafter U.N. Legislative Series B/19]. The Notice of January 15, 1977 related to Act No. 80 and Law No. 41 of June 1, 1979, may be found at 16 Indian J. Int'l L. 557-62 (1976), and SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 222-25 (1986) [hereinafter SMITH EEZ CLAIMS]. In June 1974, India and Sri Lanka signed an agreement on the boundary in historic waters between their two countries. It has been said that the question of historicity of Palk Bay was resolved in *Anna kumar Pillai v. Muthupayal*, Appellate Criminal Division, Indian High Court, Madras (H.C.) 1903-04, when both Sri Lanka (Ceylon) and India were under U.K. administration. The suit involved rights to chank beds and pearl grounds in Palk Bay and the adjacent Gulf of Mannar (Manaar). According to the decision, Palk Bay was "landlocked by His Majesty's dominions for eight-ninths of its circumference ... [and] effectively occupied for centuries by the inhabitants of the adjacent districts of India and Ceylon respectively." See JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 14-16 (1927); Limits in the Seas No. 66, Historic Water Boundary: India-Sri Lanka (Dec. 12, 1975), at 3; and PRESCOTT, at 61.

17. State Department telegram 128220, May 9, 1983; American Embassy New Delhi telegram 09947, May 16, 1983.

18. Presidential Decree No. 816 of April 26, 1977, reprinted in 2 WESTERN EUROPE AND THE DEVELOPMENT OF THE LAW OF THE SEA, ITALY 1912-1977, Doc. L.26.4.1977, at 147-51 (F. Durante & W. Rodino eds. 1979).

19. State Department telegram 249145, Aug. 23, 1984. The United Kingdom has stated that the Italian claim to the Gulf of Taranto as internal waters "is not consistent with our interpretation of the 1958 Geneva Convention on the Territorial Sea." 424 H.L. (5th Ser.) 367, Oct. 13, 1981 (written answer by Lord Carrington), reprinted in 52 Brit. Y.B. Int'l L. 465 (1982). See Ronzitti, *Is the Gulf of Taranto an Historic Bay?*, 11 Syracuse J. Int'l L. & Com. 275 (1984) (Taranto not a historic bay); Ronzitti, *New Criticism on the Gulf of Taranto Closing Line: A Restatement of a Different View*, 12 *id.* 465 (1986); Caffio, *Baia storiche a confronto*, Rivista Marittima, Nov. 1991, at 79-92 (foreign submarine transited Gulf of Taranto submerged on Feb. 24, 1985), State Department translation LS No. 138696; Caffio, *Il Golfo di Taranto come baia storica*, Rivista Marittima, 1986, II, at 73.

20. U.N. Legislative Series B/18, at 26-27; Libyan Embassy, Washington, D.C. Note dated Oct. 11, 1973, State Department File POL 33 Gulf of Sirte 019435. The Libyan claim is carefully examined in Spinatto, *Historic and Vital Bays: An Analysis of Libya's Claim to the Gulf of Sidra*, 13 Ocean Dev. & Int'l L.J. 65 (1983); Francioni, *The Status of The Gulf of Sirte in International Law*, 11 Syracuse J. Int'l L. & Com. 311 (1984); Blum, *The Gulf of Sidra Incident*, 80 Am. J. Int'l L. 668 (1986); Neutze, *The Gulf of Sidra Incident: A Legal Perspective*, U.S. Nav. Inst. Proc. at 26-31 (Jan. 1982); and Parks, *Crossing the Line*, U.S. Nav. Inst. Proc. at 41-43 (Nov. 1986).

21. 1974 DIGEST 293.

22. United States Mission to the United Nations in New York Note to the Secretary-General of the United Nations, dated July 10, 1985. The United Nations transmitted this note to the permanent missions in New York on July 10, 1985, as document NV/85/11, and subsequently published it in U.N. LOS BULL., No. 6, Oct. 1985, at 40.

Many other nations also reject Libya's claim to the Gulf of Sidra, including Australia (11 Aust. Y.B. Int'l L. 264-66, June 9, 1982; 10 Aust. Y.B. Int'l L. 405-06, Aug. 25, 1981; Hayden press conference in Brisbane, March 26, 1986), France (FBIS Western Europe, Mar. 26, 1986, at K1), Federal Republic of Germany (FBIS Western Europe Mar. 26, 1986, at J1), Italy (1976 Italian Y.B. Int'l L. 422, 1985; *id.* 246-47, 1986-87; *id.* 392-93), Norway (FBIS Western Europe, Apr. 7, 1986, at P3-P4); Spain (FBIS Western Europe, Mar. 26, 1986, at n. 1); and the United Kingdom and other EC nations (57 Brit. Y.B. Int'l L. 579, 580, 582, 1987). PRESCOTT, at 298 strongly rejects this claim.

Only Syria, Sudan, Burkina Faso (formerly Upper Volta), and Romania have publicly recognized the claim. U.N. Doc. S/PV.2670, at 12 (1986) (Syria); Foreign Broadcast Information Service (FBIS) Daily Report, Middle East & Africa, March 27, 1986, at Q5 (Sudan); *id.*, Dec. 13, 1985, at T1 (Burkina Faso); FBIS Daily Report, Eastern Europe, Mar. 27, 1986, at H1 (Romania).

23. DEP'T STATE BULL., Feb. 1987, at 69-70. The GIST also noted the prior history of United States responses to attempts by North African States to restrict navigation:

Barbary Coast history: This is not the first time that the U.S. has contended with navigational hindrances imposed by North African states. After the American Revolution, the U.S. adhered to the then common practice of paying tribute to the Barbary Coast states to ensure safe passage of U.S. merchant vessels. In 1796 the U.S. paid a one-time sum (equal to one-third of its defense budget) to Algiers, with guarantees of further annual payments. In 1801, the U.S. refused to conclude a similar agreement with Tripoli, and the Pasha of Tripoli declared war on the U.S. After negotiations failed, the U.S. blockaded Tripoli; in the autumn of 1803 Commodore Edward Preble led a squadron, including U.S.S. *Constitution* ("Old Ironsides") to the Mediterranean to continue the blockade. Shortly after the squadron arrived off Tripoli, a U.S. frigate, the *Philadelphia*, ran aground and was captured. Lt. Stephen Decatur led a team into Tripoli harbor and successfully burned the *Philadelphia*. In June 1805, the Pasha agreed to terms following a ground assault led by U.S. Marines that captured a port near Tripoli. In 1810, Algiers and Tripoli renewed raids against U.S. shipping and in 1815 Commodore Decatur's squadron caught the Algerian fleet at sea and forced the Dey of Algiers to agree to terms favorable to the U.S. Decatur then proceeded to Tunis and Tripoli and obtained their consent to similar treaties. A U.S. squadron remained in the Mediterranean for several years to ensure compliance with the treaties.

24. Panama Law No. 9 of Jan. 30, 1957, published in the Gaceta Oficial of April 24, 1956, may also be found in *ATLAS OF THE STRAIGHT BASELINES* 44 (Scovazzi ed., 2d ed. 1989) [hereinafter Scovazzi, ed.]. Colombia and Costa Rica, in their agreements with Panama delimiting their maritime boundaries, did not "object" to Panama's historic bay claim. See Article III of these 1976 (Colombia) and 1980 (Costa Rica) agreements, translations and analyses of which appear in *Limits in the Seas* Nos. 79 (1978) and 97 (1982) respectively.

25. American Embassy Panama dispatch 141, Oct. 3, 1956, forwarding a copy of Note 199 of Sept. 28, 1956 to the Panama Foreign Office, State Department File No. 397.022-IA/10-356 XR/719.022. The U.S. objection was repeated in *demarches* made February 3 and 4, 1988 by the Embassy to Foreign Ministry and other officials in Panama City. American Embassy Panama telegram 1438, Feb. 5, 1988; State Department telegram 397809, Dec. 24, 1987.

26. 4 WHITEMAN 250-51.

27. See 4 WHITEMAN 251-57 for an exchange of notes on the status of Peter the Great Bay, including the U.S. Notes of Aug. 12, 1957 and Mar. 6, 1958, as well as protests by Japan (1958), Great Britain (1957), France (Oct. 11, 1957), Canada and Sweden (Dec. 9, 1957), as well as the Federal Republic of Germany (Feb. 5, 1958) and the Netherlands (Oct. 31, 1957); see also 2 *Japanese Ann. Int'l L.* 213-18 (1958), 62 *RGDIP* 63, 159-62 (text of U.S., Japanese and French protests), 7 *Int'l & Comp. L.Q.* 112-13, 1957-1958 Y.B. Dutch Ministry of Foreign Affairs 298-300, and BUTLER, *THE SOVIET UNION AND THE LAW OF THE SEA* 110 (1971).

28. American Embassy Moscow Note No. 86/82 dated Aug. 2, 1982. State Department telegram 212128, July 30, 1982; American Embassy Moscow telegram 09344, Aug. 3, 1982. The Soviet Note read as follows:

On May 3 of this year, at 01 hours 15 minutes Moscow time, the American naval vessel "Lockwood," bow number FF-1064, violated the state maritime boundary of the USSR in the Far East at a point with the coordinates 42 degrees 21 minutes 6 seconds and 132 degrees 21 minutes 6 seconds E., and remained inside the territorial waters of the USSR until 10 hours 30 minutes. The above-mentioned vessel not only failed to react to the demands of Soviet coast guard and naval vessels to leave the territorial waters of the USSR at once, but also took a number of provocative actions, such as signalling its intentions to fire missiles, and sent up a helicopter, which made flights in Soviet airspace.

All this constitutes a flagrantly illegal action, and must be regarded as a dangerous, deliberate provocation.

In expressing its vigorous protest over the violation of the state maritime boundary of the USSR by an American warship, the Ministry of Foreign Affairs demands that the U.S. authorities take appropriate measures to prevent such occurrences in the future. The U.S. side should be aware that it will bear all responsibility for the possible consequences of further incidents of this nature.

Soviet Ministry of Foreign Affairs Note No. 30/dusa of May 4, 1982, to American Embassy Moscow. State Department Language Services translation no. 118568, File No. P86 0014-0060.

29. *Aide memoire* from the Soviet Ministry of Foreign Affairs to American Embassy Moscow, dated July 21, 1964, American Embassy Moscow telegram 222, July 21, 1964.

30. American Embassy, Moscow *aide memoire* to the Soviet Ministry of Foreign Affairs dated June 22, 1965, State Department File No. USSR POL 33 R. See *infra*, Chapter XI, for the diplomatic correspondence regarding transit rights in the Northeast Passage.

31. The November 12, 1982 declaration of Vietnam may be found in U.N. Doc. A/37/682-S/15505, Nov. 30, 1982 and U.N. Current Developments No. 1, at 143-44.

32. U.S. Mission to the United Nations Note to the Mission of the Socialist Republic of Vietnam to the United Nations in New York dated Dec. 6, 1982, State Department telegram 334675, Dec. 1, 1982. France and Thailand also protested this claim in notes to the Secretary-General of the United Nations which are reprinted in U.N. Current Developments No. 1, at 146 (France, Dec. 5, 1983) and 147 (Thailand, Nov. 22, 1985, originally circulated as U.N. Doc. A/40/1033 of Dec. 12, 1985). On November 28, 1985 China issued a statement denying any prior maritime delimitation in the Beibu Gulf (Gulf of Tonkin) and restated its claim to the Xisha (Paracels) and Nansha (Spratly) Islands. *Id.* at 145 (originally circulated as U.N. Doc. A/37/682-S/15505 of Nov. 30, 1982). China reasserted these claims in its 1992 Territorial Sea Law, U.N. LOS BULL., No. 21, Aug. 1992, at 24.

33. Limits in the Seas No. 99, Straight Baselines: Vietnam 9-10 (1983).

34. *United States v. Maine et al. (Rhode Island & New York Boundary Case)* 469 U.S. 504, 526 (the portion of Long Island Sound west of the line between Montauk Point on Long Island and Watch Hill Point in Rhode Island). See n. 3 *supra*.

35. See 4 WHITEMAN 235. In 1965 the Supreme Court declined to consider the claim that Monterey Bay, California, is historic, noting that it met the 24-nautical mile closing line test. *United States v. California*, 381 U.S. 139, at 173. See further 4 WHITEMAN 238-39, 241 & 247-48.

36. Presidential Decree No. 2393, June 17, 1940, reprinted in U.N. Laws and Regulations on the Regime of the High Seas, U.N. Doc. ST/LEG/SER.B/1, at 80 (U.N. Sales No. 1951.V.2 (1951)).

37. Art. 2, Act No. 3342, July 13, 1952, Concerning the extent of the Territorial Waters of the Dominican Republic, as transl. in U.N. Laws and Regulations on the Regime of the Territorial Sea, U.N. Doc. ST/LEG/SER.B/6, at 11 (U.N. Sales No. 1957.V.2 (1956)).

38. Diplomatic Note from the American Embassy Cairo of June 4, 1951, may be found in 7 Rev. Egypt. de Droit Int'l 94 (1951). The British Embassy at Cairo protest of May 23, 1951 may be found in *id.* at 91-94. The Egyptian Royal Decree concerning the territorial waters of the Kingdom of Egypt of January 15, 1951, may be found in 6 *id.* 175-77 (1950). See also U.N. Secretariat Memorandum, Historic Bays, U.N. Doc.A/CONF.13/1 (1957), reprinted in 1 U.N. Conference on the Law of the Sea, Official Records 6, paras. 24-26 (1958); BOUCHEZ, at 220-221; and Scovazzi ed. at 26. Presidential Decree No. 27/90, Jan. 9, 1990, concerning Egypt's baselines, and the *note verbale* of Egypt to the United Nations, May 2, 1990, may be found in translation in the U.N. LOS BULL., No. 16, Dec. 1990, at 3-9.

Chapter IV Baselines

A State's territorial sea and most other maritime zones are measured from baselines. The current rules for delimiting maritime baselines are contained in Articles 5 through 14 of the LOS Convention. They distinguish between **normal** baselines (following the low-water mark along the coast) and **straight** baselines (which can be employed only in specified geographical situations).¹ The baseline rules take into account most of the wide variety of geographical conditions existing along the coastlines of the world.

Normal Baseline

Unless other special rules apply, the baseline from which the territorial sea is to be measured is the normal baseline, *i.e.*, the low-water line along the coast as marked on the State's official large-scale charts.² United States policy is that its baseline is the normal baseline. In an *aide memoire* dated March 19, 1984, replying to a Canadian Government request for a list of the coordinates of the basepoints from which the U.S. territorial sea and the exclusive economic zone are measured, the Department of State stated "that no such list exists." The *aide memoire* continued:

The United States measures the breadth of its maritime zones from baselines drawn in accordance with the 1958 Geneva Convention on the Territorial Sea and [the] Contiguous Zone. As provided in Article 3 of the Convention, the normal baseline is the low water line along the coast. The low water line is marked on large-scale charts issued by the National Ocean Service of the Department of Commerce. Bay closing lines are also used as baselines in accordance with Article 7 of the Convention. These too are marked on the large-scale charts wherever they affect the limit of the territorial sea.³

"Low-water line" has been defined as "the intersection of the plane of low water with the shore. The line along a coast, or beach, to which the sea recedes at low-water." The actual water level taken as low-water for charting purposes is known as the level of Chart Datum.⁴

Normal baselines claims must be consistent with this rule. Excessive normal baseline claims include a claim that low-tide elevations wherever situated generate a territorial sea and that artificial islands generate a territorial sea (Egypt and Saudi Arabia).⁵

Harbor Works

The outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast for baseline purposes.

Harbor works are structures, such as jetties, breakwaters and groins, erected along the coast, usually near inlets or rivers for protective purposes or for enclosing sea areas adjacent to the coast to provide anchorage and shelter.⁶ The U.S. Supreme Court has held that “dredged channels leading to ports and harbors” are not “harbor works.”⁷

Offshore installations and artificial islands are not considered permanent harbor works for baseline purposes.⁸

Reefs

The low-water line of a drying reef may be used as the baseline for islands situated on atolls or having fringing reefs. The reefs must be depicted with an appropriate symbol on charts officially recognized by the coastal State.⁹ While the waters inside the lagoon of an atoll are internal waters, the LOS Convention does not address the matter of how to draw a closing line across the atoll entrance. Nevertheless, any such closing line must not adversely affect the rights of passage and other rights provided for in the LOS Convention.

Straight Baselines

It has been correctly noted that, while in some situations it would be impracticable to use the low-water line, “the effect of drawing straight baselines, even strictly in accordance with the rules, is often to enclose considerable bodies of sea as internal waters.”¹⁰ Consequently, international law permits States—in limited geographical circumstances—to measure the territorial sea and other national maritime zones from straight baselines drawn between defined points of the coast. The United States accepts that the specific geographical circumstances under which States may employ straight baselines are as described in article 7, paragraph 1, of the LOS Convention and article 4, paragraph 1, of the 1958 Territorial Sea Convention:

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Straight baselines must not depart “to any appreciable extent from the general direction of the coast,” and the sea areas they enclose must be “sufficiently closely linked to the land domain to be subject to the regime of internal waters.”¹¹

A State which uses straight baselines must either clearly indicate them on its charts of a scale or scales adequate for ascertaining their position or publish a list of geographical coordinates of the points, specifying the geodetic datum.¹²

If the criteria of article 7, paragraph 1, of the LOS Convention are met, then straight baselines, or straight lines, are also permitted along unstable coastlines, river mouths, and using certain low-tide elevations.

Unstable Coastlines

Where the coastline is highly unstable due to natural conditions, *e.g.*, deltas, straight baselines may be established connecting appropriate points on the low-water line. These straight baselines remain effective, despite subsequent regression or accretion of the coastline, until changed by the coastal State.¹³

River Mouths

If a river flows directly into the sea, the baseline is a straight line across the mouth of the river between points on the low-water line of its banks.¹⁴

Low-tide Elevations

A low-tide elevation is a naturally formed land area surrounded by water and which remains above water at low tide but is submerged at high tide. Straight baselines may not be drawn to or from a low-tide elevation unless a lighthouse or similar installation, which is permanently above sea level, has been erected thereon, or unless the straight baseline to such a feature has received general international recognition.¹⁵

Straight Baselines Policy of the United States

The U.S. Supreme Court has held that straight baselines could be applied in the United States only with the Federal Government's approval. In *United States v. California*, the U.S. Supreme Court agreed that the 1958 Convention on the Territorial Sea and the Contiguous Zone would permit the United States to use such baselines if it chose, but that:

California may not use such base lines to extend our international boundaries beyond their traditional international limits against the expressed opposition of the United States. . . . [A]n extension of state sovereignty to an international area by claiming it as inland water would necessarily also extend national sovereignty, and unless the Federal Government's responsibility for questions of external sovereignty is hollow, it must have the power to prevent States from so enlarging themselves. We conclude that the choice under the Convention to use the straight-base-line method for determining inland waters claimed against other nations is one that rests with the Federal Government, and not with the individual States.¹⁶

United States policy is not to use straight baselines.

Excessive Straight Baseline Claims

While no detailed internationally accepted standards currently exist that define what is meant by the terms in article 7 of the LOS Convention, it appears that only certain countries have coastlines that qualify for straight baselines.¹⁷ Nevertheless, the State practice of straight baseline delimitation has, in many instances, distorted the rules for drawing straight baselines. An illegal straight

baseline claim adversely affects the international community's rights to use the oceans and superjacent airspace. One result has been that many of these straight baseline systems have created large areas of internal waters which otherwise would legally be territorial seas or areas in which the freedoms of navigation and overflight may be exercised. Burma, for example, by drawing a 222-mile straight baseline across the Gulf of Martaban has claimed about 14,300 sq.nm (49,000 sq.km—an area similar in size to Denmark) as internal waters which, absent the closing line, would be territorial seas or high seas (*see* Map 14).¹⁸

Similarly, Colombia has claimed a 130-mile straight baseline in an area along its Caribbean coast that is neither deeply indented nor are there fringing islands. By establishing this particular straight baseline, Colombia has sought to enclose as internal waters about 2,100 sq.nm of waters which previously had been subject to the regime of innocent passage (1,500 sq.nm) or areas in which the freedom of navigation and overflight may be exercised (600 sq.nm).¹⁹

More than 60 States have delimited straight baselines along portions of their coasts, and approximately 10 other States have enacted enabling legislation but have yet to publish the coordinates or charts of the straight baselines. Table 2 gives information on those States claiming straight baselines and on any action taken by the United States against those claims not following one or more of the rules for the drawing of straight baselines. Since the FON Program is ongoing, many of the claims listed in Table 2 are, or will be, under review with possible diplomatic protests and/or operational assertions of right to follow.²⁰

Table 2
Claims Made to Straight Baselines²¹

[Absence of protest or assertion should not be inferred as acceptance or rejection by the United States of the straight baseline claims.]

<u>State</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right</u>
Albania	Decree No. 4650, April 15, 1970 Decree No. 5384, Feb. 20, 1976	1989	
Algeria	Decree No. 84-181, Aug. 4, 1984		
Angola	Portuguese Decree No. 47,771, June 17, 1967		
Argentina	Law No. 17,094, Jan. 19, 1967 Law No. 23,968, Sep. 13, 1991	1967	
Australia	Proclamation, Feb. 9, 1983		
Bangladesh	Declaration, April 13, 1974	1978	
Barbados	Act No. 26, 1976 [enabling legislation]		

Table 2 (Cont.)

<u>State</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right</u>
Brazil	Decree Law No. 1098, March 27, 1970 [enabling legislation] Law 8,617, Jan. 4, 1993 [enabling legislation]		
Bulgaria	Decree No. 514, Oct. 10, 1951 [Vanna and Bourga Bays]		
Burma	Decree, Nov. 15, 1968 Law No. 3, Apr. 9, 1977	1982	1985 ^a
Cambodia	Council of State Decree, July 31, 1982		1986 ^a
Cameroon	Decree 62-DF-216, June 25, 1962 Decree 71-DF-416, Aug. 26, 1971	1963	
Canada	Order-in-Council P.C. 1967-2025, Oct. 26, 1967 [Labrador & Newfoundland] Order-in-Council P.C. 1969-1109, May 29, 1969 [Nova Scotia, Vancouver & Queen Charlotte Island] Order-in-Council P.C. 1972-966, May 9, 1972 Order-in-Council P.C. 1985-2739, Sept. 10, 1985 [Arctic]	1967 1986 ^a	
Chile	Decree No. 416, July 14, 1977		
China	Declaration, Sept. 4, 1958 [no coordinates published] Law, Feb. 25, 1992 [enabling legislation]		
Colombia	Decree No. 1436, June 13, 1984	1988	1988
Costa Rica	Law No. 18581-RE, Nov. 21, 1988	1989	
Cote D'Ivoire	Law No. 77-926, Nov. 17, 1977 [enabling legislation]		
Cuba	Decree Law No. 1, Feb. 26, 1977	1983 ^a	1985 ^a
Cyprus	Note Ref 2001/254, May 3, 1993		
Denmark	Royal Ordinance No. 437, Dec. 21, 1966 Royal Ordinance No. 189, May 1, 1978		
Denmark (Faroe I.)	Decree No. 156, April 24, 1963 Decree No. 128, April 1, 1976 Decree No. 598, Jan. 1, 1977	1991	1991
Denmark (Greenland)	Executive Order No. 629, Jan. 1, 1977 Executive Order No. 176, May 14, 1980		

Table 2 (Cont.)

<u>State</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right</u>
Djibouti	Decree No. 52/AN/78, Jan. 9, 1979 Decree No. 85-048, May 5, 1985	1989	1992
Dominica	Act No. 26, Aug. 25, 1981 [enabling legislation]		
Dominican Republic	Law No. 186, Sept. 6, 1967 Act No. 573, Apr. 1, 1977		1987 ^a
Ecuador	Decree Law No. 1542, Nov. 10, 1966 Decree No. 959-A, July 13, 1971	1986	
Egypt	Decree No. 27, Jan. 9, 1990	1991	
Finland	Decree No. 464, Aug. 18, 1956		
France	Decree, Oct. 19, 1967		
French Departments and Dependencies:			
Fr. Guiana	Decree, June 29, 1971		
Mayotte	Decree No. 77-1067, Sept. 12, 1972		
St. Pierre & Miquelon	Decree No. 77-1068, Sept. 12, 1972		
Fr. Southern & Antarctic Lands	Decree No. 78-112, Jan. 11, 1978		
Germany	Notice to Mariners No. 2, Jan. 1969 [former GDR]		
Guinea	Decree No. 224/PRG/64, June 6, 1964 Decree No. 336/PRG/80, July 30, 1980	1964	1981
Guinea-Bissau	Decree Law No. 47,771, June 27, 1967 Decision No. 14/74, Dec. 31, 1974 Law No. 3/78, May 19, 1978 Act No. 2/85, May 17, 1985		1989
Haiti	Decree, April 6, 1972	1973	1986 ^a
Iceland	Regulations, March 19, 1952 Regulations, March 1961 Regulations, Sept. 9, 1972 Law No. 1, June 1, 1979		
Iran	Act, April 12, 1959 Decree No. 2/250-67, July 22, 1973 Act, May 2, 1993	1994	1994 ^a
Ireland	Statutory Instrument No. 173, Jan. 1, 1960		

Table 2 (Cont.)

<u>State</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right</u>
Italy	Decree No. 816, Feb. 9, 1978	1986 ^a	
Japan	Law No. 20, July 1, 1977 [enabling legislation]		
Kenya	Territorial Waters Act, May 16, 1972		
Korea, South	Decree No. 9162, Sept. 20, 1978		
Lithuania	Law on National Boundaries, June 25, 1992 [enabling legislation]		
Madagascar	Decree No. 63-131, Feb. 27, 1963		
Malta	Act No. XXXII, Dec. 7, 1971	1981 ^a	
Mauritania	Law 67-023, Jan. 21, 1967 Law 78,043, Feb. 28, 1978 Law 88-120, Aug. 31, 1988	1989	1981 ^a
Mauritius	Territorial Seas Act, April 16, 1970		
Mexico	Decree, Aug. 18, 1968 [Gulf of California] Decree, Jan. 8, 1986 [Gulf of California]	1969	
Morocco	Decree No. 2.75.311, July 21, 1975		
Mozambique	Decree Law 47, 771, June 27, 1967		
Netherlands	Territorial Sea Act, June 1, 1985		
Norway	Royal Decree, July 12, 1935 Royal Decree, July 18, 1952		
Norwegian Dependencies:			
Jan Mayen	Royal Decree, June 30, 1955		
Svalbard	Royal Decree, Sept. 25, 1970		
Oman	Decree No. 38/83, June 1, 1982	1991	1991 ^a
Portugal	Decree Law 2130, Aug. 22, 1966 Decree Law No. 495/85, Nov. 29, 1985	1986	
Romania	Act, Aug. 7, 1990		
Saudi Arabia	Decree No. 33, Feb. 16, 1958 [not delimited]		
Senegal	Decree 72-765, July 5, 1975 Decree 90-670, June 18, 1990	1989	

Table 2 (Cont.)

<u>State</u>	<u>Law and Date of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right</u>
Somalia	Law No. 37, Sept. 10, 1972 [enabling legislation]	.	.
Soviet Union (Former)	Decree, Feb. 7, 1984 Decree, Jan. 15, 1985	1984 ^a 1985 ^a	1982 ^a
Spain	Decree No. 627/1976, March 5, 1977 Decree No. 2510/1977, Aug. 5, 1977		
Sudan	Act No. 106, Dec. 31, 1970 [enabling legislation]	1989	
Sweden	Decree No. 375, July 1, 1966		
Syria	Decree No. 304, Dec. 28, 1963 [not delimited]		
Tanzania	Notice No. 209, Aug. 1973		
Thailand	Announcement, June 12, 1970, as amended by Announcement No. 2 (1993), February 2, 1993		
Tunisia	Decree No. 73-527, Nov. 3, 1973		
Turkey	Law No. 476, May 15, 1964		
United Arab Emirates	Federal Law No. 19, 1993 [enabling legislation]		
United Kingdom	Order-in-Council, Sept. 25, 1964		
UK Dependen- cies:			
Turks & Caicos	Statutory Instrument 1989 No. 1996		
Falkland Islands	Statutory Instrument 1989 No. 1993		
So. Georgia Isl.	Statutory Instrument 1989 No. 1995		
Venezuela	Decree, July 10, 1956	1956 ^a	
Vietnam	Statement, Nov. 12, 1982	1982 ^a	
Yemen	Act No. 45, Jan. 15, 1978 [enabling legislation]		
Yugoslavia (Former)	Law No. 876, Dec. 8, 1948 Law, May 22, 1965		

^a Multiple protests or assertions.

There are many ways in which straight baselines have been drawn inconsistent with the LOS Convention. The majority of straight baseline claims protested by the United States are those which do not meet the criteria set forth in Article 7(1) of the LOS Convention, that is, where straight baselines have been drawn, the coastline is either *not* “deeply indented and cut into,” or it does *not* have a “fringe of islands along the coast.” A State *must first meet* at least one of these two geographical conditions before applying the straight baseline provisions in the particular locality.²² Other excessive baseline claims meet this threshold test, but include basepoints that are not permitted under subparagraphs 3 to 6 of Article 7 of the LOS Convention.²³

Coastline not deeply indented and cut into

On October 14, 1988, the Government of Costa Rica issued a decree establishing straight baselines along its Pacific coast (*see* Map 18). The United States protested the segments in three areas which do not meet the applicable criteria, in a note of which the following is an extract:

The Government of the United States wishes to recall to the Government of Costa Rica that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a state’s official large-scale charts. Straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. Additionally, baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

While the Pacific coastline of Costa Rica contains two embayments, it is neither deeply indented and cut into, nor fringed with many islands, as those standards are employed and understood in international law. . . .²⁴

By a 1984 Presidential decree, the Government of Colombia claimed a system of straight baselines on both the Pacific and Caribbean coasts of Colombia. In 1985, the Office of the Geographer of the Department of State analyzed each baseline segment and concluded:

With the exception of several select areas, straight baselines do not appear to be appropriate for the Colombian coastline. There are very few islands off either coast; those in the Pacific are mostly islands associated with the river deltas. Except for several bays, the coastline along both coasts is relatively smooth. And, in most areas, the changes in coastal directions do not create deep indentations.²⁵

The United States Government, in a note dated July 14, 1988, of which the following is an excerpt, protested as follows:

Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the normal baseline for the measurement of the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. However, in accordance with article 7 of the Convention, coastal states may employ straight baselines to delineate the baseline from which the territorial sea is measured in two limited geographical circumstances: in localities where the coastline is deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity. In both instances the straight baselines must not depart to any appreciable extent from the general direction of the coast and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

Upon review of the claimed Colombian straight baselines system, it is the view of the United States that Colombia has established straight baselines where the requisite limited geographic circumstances do not exist. In numerous instances straight baselines have been employed in areas in which the coastline is not sufficiently indented and cut into, and in areas connecting islands which do not properly constitute a fringe of islands along the coast.

In light of the foregoing, the United States protests those baselines contained in the decree which do not comply with international law and reserves for itself and its nationals all rights in accordance with international law with respect to all waters, both on the Pacific and Caribbean coasts of Colombia, affected by the decree discussed herein.²⁶

In 1982, **Oman** established straight baselines along portions of its coast, including that bordering on the Strait of Hormuz. In 1991, the United States protested certain segments where “the coastline is too smooth landward of points 1-5, 14-16, [Group A] and 38-43 [Group D].²⁷” (See Map 6.)

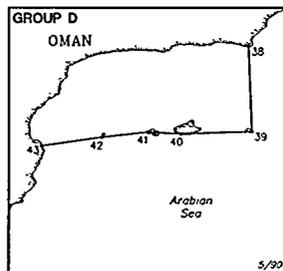
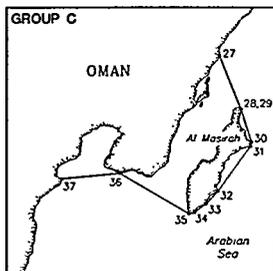
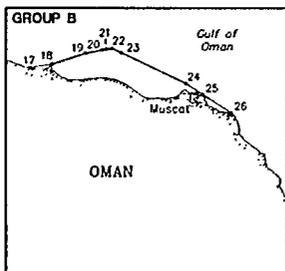
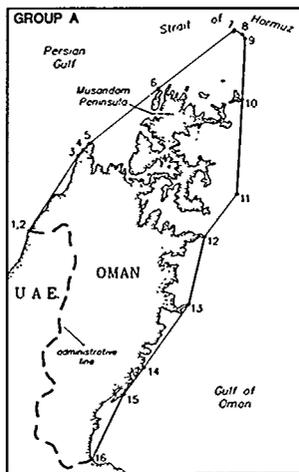
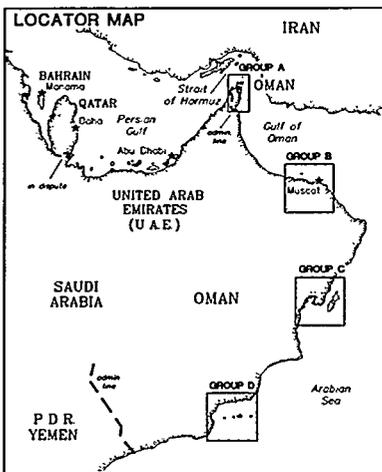
In 1990, the Government of **Egypt** established straight baselines along almost its entire coastline in the Mediterranean, Gulf of Aqaba and the Red Sea, notwithstanding the fact that the Egyptian coastline in all seas is generally smooth and gently undulating, and is neither deeply indented and cut into nor fringed with islands. (See Maps 7 & 8.) In 1991, the United States protested this claim, in a note of which the following is an extract:

The United States notes that the coastline in the vicinity of coordinates 1-32 located in the Gulf of Aqaba is neither masked by a fringe of islands nor is it deeply indented or cut into. The coastline in the vicinity of coordinates 32 and 33 also does not meet these criteria, nor does it constitute a juridical bay within the meaning of Article 10 of the LOS Convention. The United States observes that, whereas it would be possible to construct shorter baselines off the coast between coordinates 32 and 33 which could properly enclose juridical bays, such baselines were not drawn.

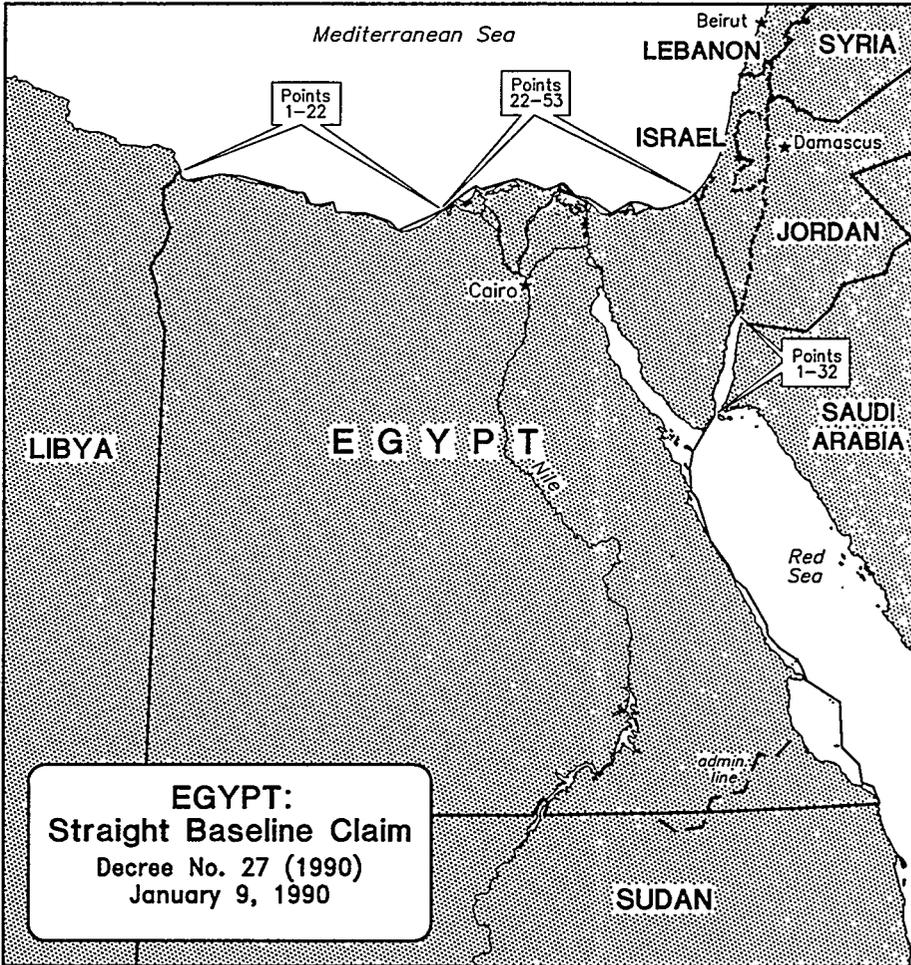
Map 6

**OMAN:
STRAIGHT
BASELINE
CLAIM**

Name and boundary representation
are not necessarily authoritative



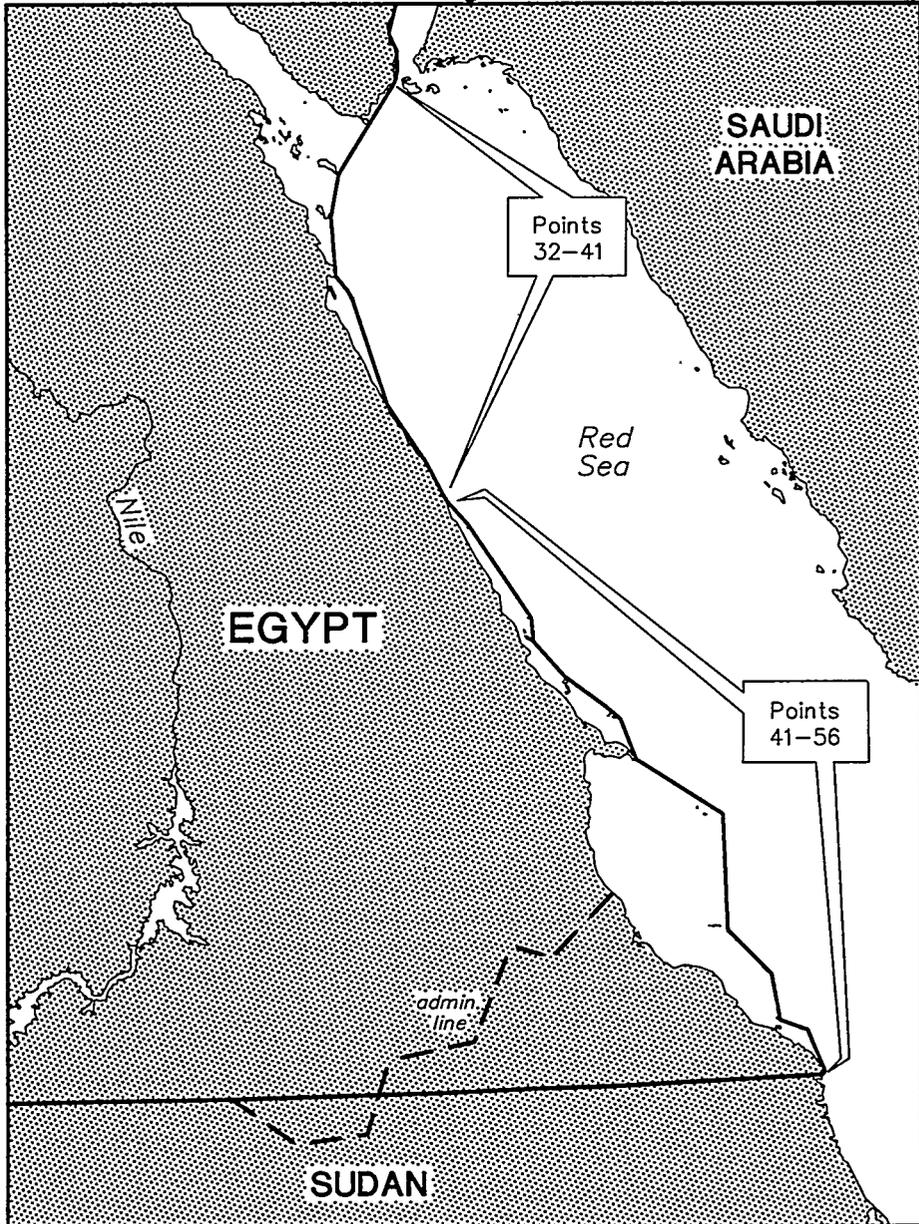
Map 7



Names and boundary representation
are not necessarily authoritative.

Map 8

EGYPT: Red Sea Straight Baselines



Names and boundary representation are not necessarily authoritative.

Baseline segments 33-36, from Ras Mumhammed to the mainland northeast of Port Safaga also satisfy neither criteria.

Baseline segments 36-56 in the Red Sea fail to meet the criteria of areas in which the coastline in the vicinity is deeply indented and cut into, or in which there exists a fringe of islands along the coast. The coastline in this vicinity is in fact practically void of islands and is relatively free from indentations. Accordingly, the normal baseline—the low water line—must be used in this vicinity.

With regard to straight baseline segments located in the Mediterranean Sea, the United States wishes to make the following observations.

The Mediterranean coastline in the vicinity of baseline segments 1-25 is clearly neither deeply indented and cut into, nor is it fringed with islands along the coast. However, Segments 25-28 enclose Abu Kir Bay, a juridical bay. The Mediterranean coastline in the vicinity of segments 28-39 is also neither deeply indented and cut into nor fringed with islands in its immediate vicinity. Baseline segments 39-41 are invalid for the same reason.

Whereas the waters behind the barrier spit between baseline segments 41 and 49 could properly be constituted as internal waters, such can be accomplished by the barrier spit itself, joining by short baseline segments the barrier segments in those few areas in which it is not continuous.

Baseline segments 49-55 are invalid since the coastline in that vicinity is also neither deeply indented and cut into nor fringed with islands.²⁸

In 1985, the Government of **Portugal** claimed a system of straight baselines along the mainland coast and around the Azores group which was contrary to international law. The United States Government, in a note of which the following is an excerpt, protested as follows:

The United States is unable to accept as valid the establishment by the Government of Portugal of many of the closing lines and straight baselines promulgated in the decree. It is the view of the United States that the lines in question do not comply with international law which in this case is reflected in the 1982 United Nations Convention on the Law of the Sea. With regard to the mainland, those segments which connect Ponta Carreiros with Barra de Aveiro, Cabo da Roca with Cabo Raso, Cabo Raso with Cabo Espichel, Cabo Espichel with Cabo Sines, Cabo Sines with Cabo de Sao Vicente and Ponta de Sagres with Cabo de Santa Maria, do not enclose juridical bays or lie in localities which meet the legal requirement that the coastline is deeply indented and cut into. . . .

Certain of the baselines around the Madeira and the Azores Islands groupings are objectionable for the same reasons, i.e., they do not lie in localities where the coastlines are deeply indented and cut into nor do they connect a fringe of islands along a coast in its immediate vicinity.²⁹

In 1976, **Albania** issued a decree which modified its straight baseline system along the Adriatic coast (*see* Map 9). The United States protested in a note which, in part, stated:

The United States wishes to point out that, for the most part, the Albanian coastline, being neither deeply indented and cut into, nor having a fringe of islands in its immediate vicinity, does not meet the geographic criteria required under international law for the establishment of straight baselines. Further, the baseline segments from the Cape of Rodom [Muzhit] to the mouth of the Vjose River, and from the Cape of Gjuhe to the Cape of Sarande, enclose waters which are neither juridical bays nor historic waters.³⁰

In 1972, **Senegal** issued a decree establishing straight baselines along much of its coastline in the eastern Atlantic. In a 1989 note to the Ministry of Foreign Affairs objecting to these baselines, the United States noted that "the coastline of Senegal is . . . neither deeply indented and cut into, nor fringed with many islands." The note also stated that "none of the minor undulations enclosed by the straight baseline constitute juridical bays as defined in international law."³¹

In 1964, **Guinea** issued a Presidential Decree defining the baseline along its coast by a 120 mile straight line "passing southwest of the island of Sene in the Tristao group and southward, by the southwestern tip of the Island of Tamara, at the low water mark." The Geographer of the Department of State described this system as "unique in the world practice of states":

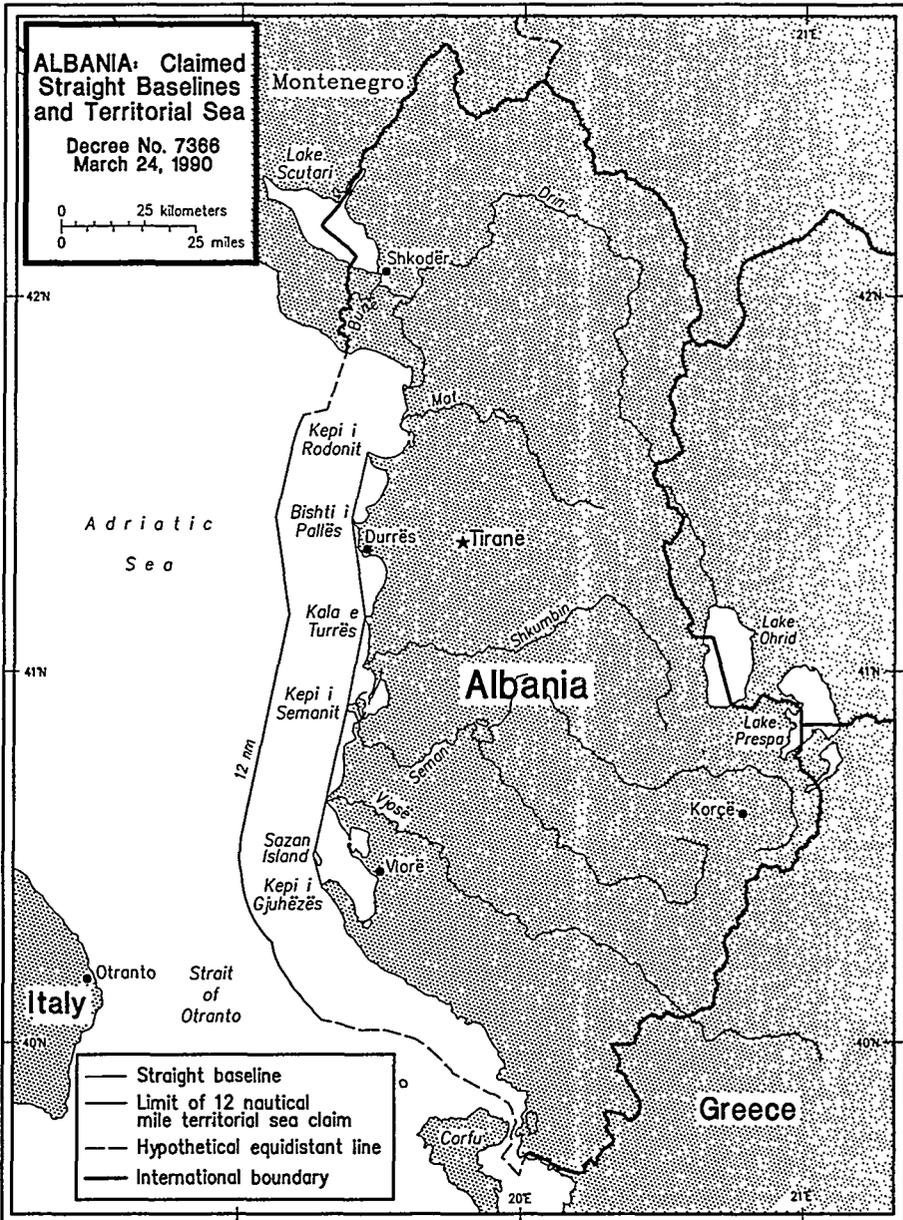
One straight line has been drawn connecting the northernmost Guinean island to the most-seaward southern island. . . . The coastline of Guinea, in addition, can scarcely be defined as "deeply indented and cut into" or "fringed with islands". The straight baseline, however, does mark the limit of shoal waters for its entire length with the exception of a bay-like indentation opposite Taboria (9°56'N.; 13°56'W.). In the vicinity of Taboria, the straight baseline is 14 nautical miles from shoal water.

The system does not otherwise meet the general standards for straight baselines which have been used to evaluate the previous studies of this series.³²

The United States protested in a note which in part said "the proclaimed straight baseline seems unjustified under the criteria set forth in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone adopted at Geneva in 1958 which the United States Government regards as expressive of international law on the subject."³³ In 1980, Guinea issued a new decree restoring the low-water line as the baseline.³⁴

In 1962, **Cameroon** issued a decree establishing straight baselines across seven indentations in the Bight of Biafra. The United States protested that claim in a note stating the view that these baselines did not conform to the criteria for

Map 9



Serbia and Montenegro have asserted the formation of a joint independent state, but this entity has not been formally recognized as a state by the US.

baselines set down in Article 4 of the 1958 Territorial Sea and The Contiguous Zone Convention.³⁵

Between 1967 and 1969, the Government of Canada claimed straight baselines along the coasts of Labrador and Newfoundland (by Order-in-Council 1967-2025), and in Nova Scotia, Vancouver Island, and Queen Charlotte Islands (by Order-in-Council 1969-1109).³⁶ The United States, in a *note verbale* of which the following is an excerpt, protested the 1967 claim as follows:

The Department of State refers to the Note Verbale of External Affairs of October 11, 1967, handed to the United States Embassy, Ottawa, October 25, 1967, concerning establishment by the Government of Canada of straight baseline system for delineation of Canada's territorial sea and contiguous fishing zone. In this connection, the Department notes the statement made by Paul Martin, Secretary of State, External Affairs, before External Affairs Committee of the House on October 26, 1967, and the Order of the Governor-General in Council on this subject issued October 26.

As the Government of Canada is aware, the United States Government considers the action of Canada to be without legal justification. It is the view of the United States that the announced lines are, in important and substantial respects, contrary to established principles of international Law of the Sea. The United States does not recognize the validity of the purported lines and reserves all rights of the United States and its nationals in the waters in question.³⁷

The United States similarly protested the 1969 additions to the system of straight baselines, in a note from which the following is an extract, as follows:

The Secretary of State presents his compliments to His Excellency the Ambassador of Canada and has the honor to refer to the announcement on April 5, 1969 of the Canadian Minister of Fisheries that the Canadian Government will (a) shortly establish further headland to headland baselines for areas on the east and west coasts of Canada

The Secretary of State also refers to the Note Verbale given to His Excellency the Ambassador of Canada on November 1, 1967 in response to a Note Verbale of the Canadian Department of External Affairs on October 25, 1967 which concerned the establishment by the Government of Canada of straight baselines for areas of the east coast of Canada. The Department of State Note Verbale set forth the position of the United States Government that the action of Canada was without legal justification, that the baselines announced by Canada were, in important and substantial respects, contrary to established principles of the international law of the sea, that the United States did not recognize the validity of the purported lines, and that the United States reserved all rights of the United States and of its nationals in the waters in question. This position, which the United States Government continues to hold, was reiterated verbally to Canadian Counselor of Embassy Burwash on November 4, 1968 together with a request that if, despite the position of the United States, Canada decided to draw additional

baselines, the United States would be consulted well in advance of any such decision and would be given an opportunity to comment on the baselines concerned before their announcement.

The Government of the United States wishes to express its disappointment in being given only a few hours advance notice of the announcement by the Canadian Minister of Fisheries on April 5, 1969 and no opportunity to comment upon it. The United States hopes it will be given an opportunity to comment on any baselines Canada plans to draw pursuant to that announcement. It would appreciate receiving their geographical coordinates in sufficient time before their intended announcement to allow proper study and discussion with the appropriate Canadian authorities.

. . .

The Secretary of States wishes to state the concern of the United States Government that measures such as those seemingly envisaged by the Government of Canada, could do serious harm to multilateral efforts to preserve freedom of the high seas as a fundamental tenet of international law.³⁸

In 1984 and 1985, the Government of the former **Union of Soviet Socialist Republics** claimed a system of straight baselines which was, in part, contrary to international law. The United States Government protested parts of the claimed system of baselines along the lines of the analyses which may be found in U.S. Department of State, Limits in the Sea No. 107 (1987) (Pacific Ocean, Sea of Japan, Sea of Okhotsk, Bering Sea) and No. 109 (1988) (Black Sea). Further, the USS *Arkansas* (CGN-41) challenged the Soviet straight baseline drawn across Avacha Bay, the entrance to Petropavlovsk, Kamchatka Peninsula, on May 17 and 21, 1987,³⁹ and USS *Baton Rouge* (SSN-689) challenged the Russian straight baseline closing access to the Barents Sea port of Murmansk on February 11, 1992.⁴⁰

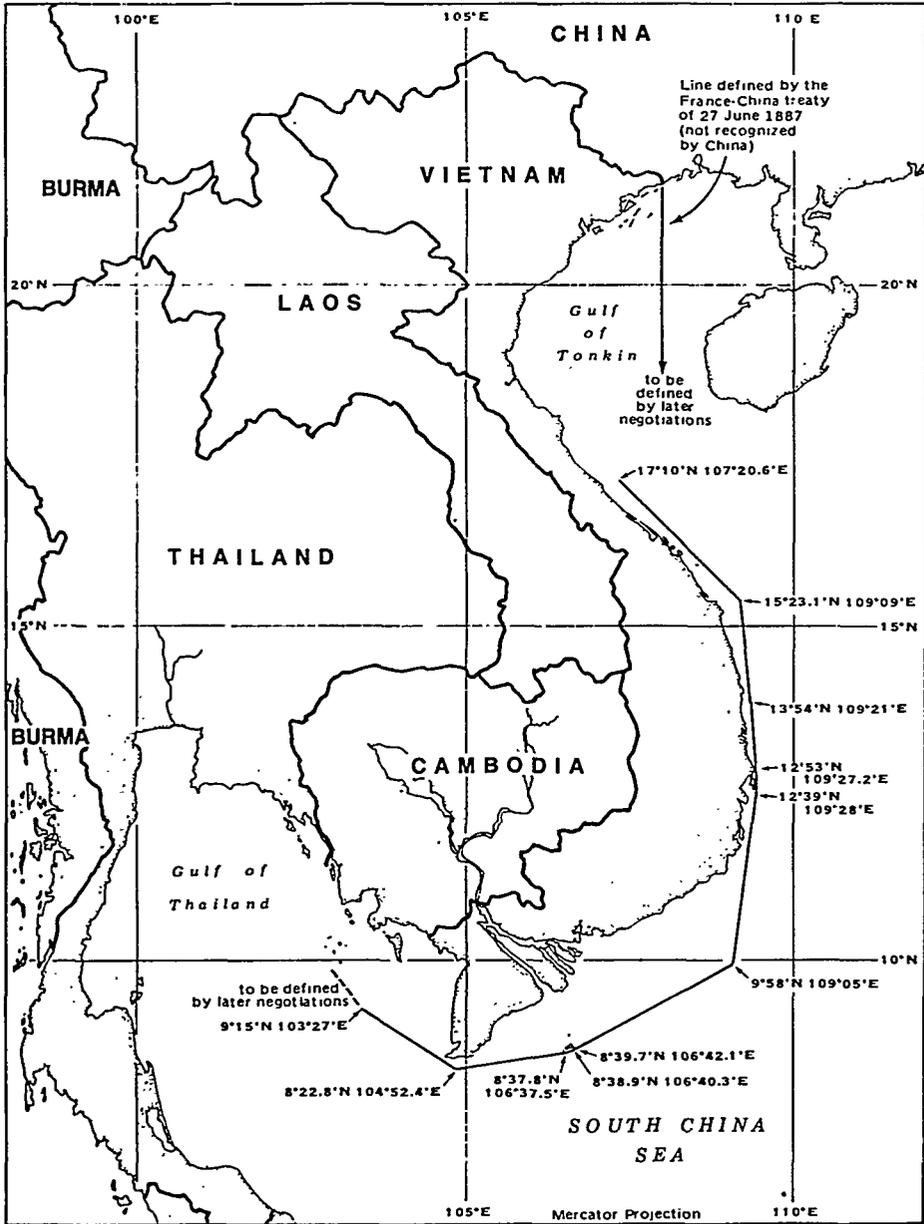
Coastline Not Fringed With Islands

In a declaration issued November 12, 1982, the Government of **Vietnam** claimed a system of ten straight baseline segments which included several examples that exceed the norms of international practice (*see* Map 10). The United States Government, in an *aide memoire* of which the following is an excerpt, protested as follows:

As to the claimed system of straight baselines, the Government of the United States of America wishes to remind the Government of the Socialist Republic of Vietnam that, under customary and conventional international law, a coastal state may employ the method of straight baselines only in localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. In so doing the baselines established by the coastal state must not depart to any appreciable extent from the general direction of the coast. It is the view of the Government of the United States of America that the baselines claimed by the Government

Map 10

VIETNAM: CLAIMED STRAIGHT BASELINES



of the Socialist Republic of Vietnam do not meet these criteria and that there is no basis in international law for the system of straight baselines provided in the declaration of November 12, 1982.⁴¹

In analyzing the baseline claim, the Office of the Geographer of the Department of State commented:

Several of the island basepoints used by Vietnam are at a considerable distance from the mainland. This is particularly true of the Tho Chu Archipelago, the Con Dao group, and the Phu Quy group (Catwick Islands), all of which are at least 50 nm from the mainland and neighboring island groups[, and the main segments of which are 99 - 160 nm long].⁴²

In 1982, **Oman** established a series of straight baselines along its coast in the Strait of Hormuz and the Arabian Sea. In 1991, the United States protested certain segments where “too few islands mask Oman’s coastline at points 6-7 [Group A in the Strait of Hormuz] and 38-43 [Group D in the Arabian Sea]” (see Map 6).⁴³

In 1977, the Government of **Italy** claimed a system of straight baselines which included several segments that were not consistent with international law. The United States, in a note of which the following is an excerpt, protested as follows:

Customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, provides that straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. Baselines established by a coastal state must not depart to any appreciable extent from the general direction of the coast. . . . It is the view of the Government of the United States that various straight baseline segments drawn by the Government of Italy do not meet these criteria and, therefore, that they have no basis in international law. In view of the foregoing, the Government of the United States reserves its rights and those of its nationals in this regard.

Additional analysis provided to American Embassy Rome included the following:

As the note makes clear, USG [United States Government] believes that a number of elements of the straight baseline claim contravene longstanding principles of international law reflected both in 1958 Convention on the Territorial Sea and the Contiguous Zone and in the 1982 LOS Convention. For instance, lines connect offshore islands between the mouth of the Arno and Civitavecchia, where those islands cannot be said to be coastal fringing islands in a legal sense. Nor is the coast between the French border and the mouth of the Arno deeply indented as that term is understood in international law.⁴⁴

In 1977, the Government of **Cuba** claimed a system of straight baselines around the entire coast of Cuba which, in part, involved basepoints on

non-fringing islands. The Office of the Geographer of the Department of State's analysis of the system noted that:

Between points 10-17 it appears (according to U.S. charts) that low-tide elevations on the Cuban fringing reefs have been utilized as basepoints for the system. From point 17 (Punta Gobunadora, west of Bahia Honda) through point 28, the Cuban coastline is neither indented nor fringed with islands. . . . From 77°40' West to No. 92, the southern entrance to the Gulf of Guacanayabo, the Cuban coastline again is not deeply indented or fringed with islands.

. . . . From 101-102 the straight baseline continues nearly due west to Cayo Trabuco, an eastern cay of the Canary Archipelago, across an area that contains no islands for over 69 nautical miles. Moreover the Cuban coast north of point 101 westward to Pta. Aristizabal is basically without indentation.

. . . .

Lines 107-110 follow the southern coast of the Isle of Pines, which is neither indented nor fringed with islands.⁴⁵

The United States Government, in a 1983 note of which the following is an excerpt, stated:

The Department of State refers the Cuban Interests Section of the Embassy of Czechoslovakia to the diplomatic note of February 2, 1983 of the Ministry of External Relations of the Republic of Cuba, alleging that a ship and aircraft of the United States of America violated Cuban territorial waters and air space on several occasions in December 1982 in the vicinity of the Bay of Cienfuegos.

The Government of the United States wishes to advise the Government of the Republic of Cuba that the ship and aircraft activities referred to in the note of February 2, 1983, were conducted in complete conformity with international law. It is the view of the Government of the United States that the sovereignty of the Republic of Cuba does not extend to the waters or superjacent air space in which the referenced activities occurred.

According to well established principles of international law, as reflected in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone and in the text of the United Nations Convention on the Law of the Sea, the method of straight baselines may be employed only in localities where the coastline is deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

In Decree Law No. 1 of February 24, 1977, the Government of the Republic of Cuba claimed a system of straight baselines connecting 124 points around the entire coast of Cuba. The Government of the United States has studied the straight baseline system of Cuba and has concluded that, in a number of areas along the coast of Cuba, lines drawn pursuant to Decree Law No. 1 do not conform to international law. Included in these objectionable straight baselines is, with reference to points established in Decree Law No. 1, the line which connects points 101 and 102, in the vicinity of the Bay of Cienfuegos.

The baseline between points 101 and 102 is 69 nautical miles long and crosses an area that contains no islands whatever. Moreover, the coastline in this area is not deeply indented and cut into. . . .

The Government of the United States therefore does not recognize the baseline claimed in Decree No. 1 of the Government of the Republic of Cuba. The Government of the United States reserves its rights and those of its nationals in regard to this and other straight baselines claimed in Decree Law No. 1 that do not conform to established principles of international law.⁴⁶

In 1985, the Government of **Portugal** claimed a system of straight baselines along the mainland coast which was contrary to international law. The United States Government, in part, protested as follows:

The United States is unable to accept as valid the establishment by the Government of Portugal of many of the closing lines and straight baselines promulgated in the decree. It is the view of the United States that the lines in question do not comply with international law which in this case is reflected in the 1982 United Nations Convention on the Law of the Sea. . . . The segments connecting Cabo Mondego with Farilhoes and Berlenga Islands and thence to Cabo da Roca are also invalid as the above islands in no way can be said to meet the legal requirement that they constitute a fringe of islands along a coast in its immediate vicinity.⁴⁷

In 1971, through the Supreme Decree No. 959-A, the Government of **Ecuador** claimed a system of straight baselines along mainland Ecuador that did not conform to international law. The United States Government, in a note of which the following is an excerpt, protested as follows:

With regard to the baselines from which [the breadth of] the territorial sea of mainland Ecuador . . . is measured, the United States does not recognize their delimitation as valid. In that the mainland baselines do not follow the low water line along the coast, two conditions must be fulfilled in order to enable a state to draw straight baselines: Either the coastline must be deeply indented and cut into; or a fringe of islands along the coast in its immediate vicinity must exist. As it is the view of the United States that neither of these conditions is fulfilled, the United States does not recognize the mainland straight baselines claimed by Ecuador.⁴⁸

In 1985, **Djibouti** issued a decree which drew straight baselines to and from the mainland around the Seba Islands in the southern reaches of the Strait of Bab al Mandeb (*see* Map 11). In 1989 the United States protested these baselines on the grounds that the Seba Islands were not fringing islands. The islands lie over seven nautical miles offshore and between two and eight miles apart from one another.⁴⁹

In 1968, **Mexico** decreed straight baselines along portions of the coast of the Gulf of California. The Office of the Geographer of the Department of State's analysis of those baselines noted that "the northern quarter of the Gulf is virtually devoid of islands ... and the coast is relatively smooth, although a few bay-like indentations exist." The United States protested the claim in a note from the American Ambassador at Mexico City on August 5, 1969.⁵⁰

Non-independent Archipelagos

In 1985, the Government of **Portugal** claimed a system of straight baselines around the Azores Islands. The United States Government, in a note of which the following is an excerpt, protested as follows:

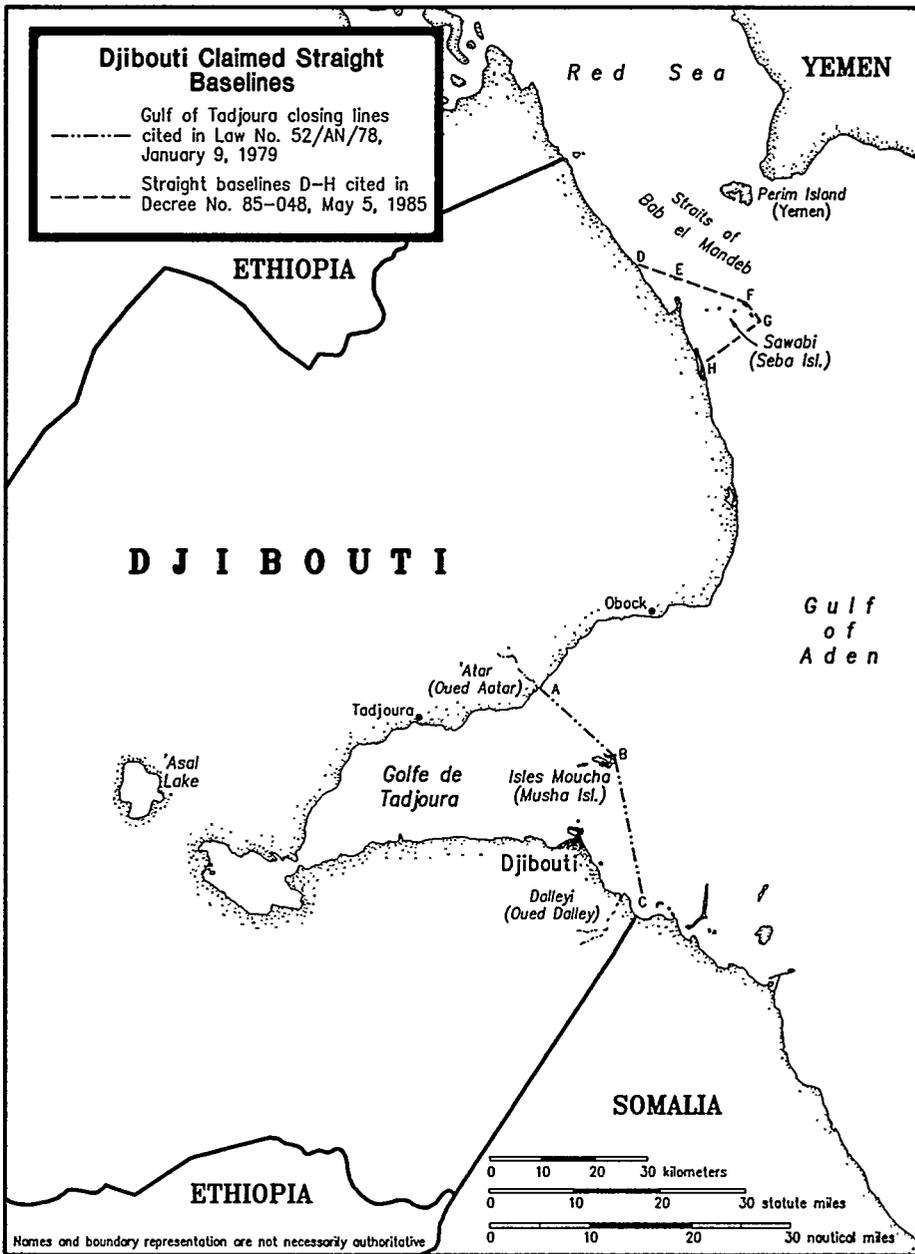
Certain of the baselines around the Madeira and the Azores Islands groupings are objectionable for the same reasons, *i.e.*, they do not lie in localities where the coastlines are deeply indented and cut into nor do they connect a fringe of islands along a coast in its immediate vicinity. Moreover, insofar as concerns the Madeira and the Azores Island groupings, archipelagic baselines cannot be justified under customary international law as reflected in Part IV the 1982 Law of the Sea Convention as Portugal is not an "archipelagic state," but in fact comprises a mainland continental state with island components.⁵¹

In 1976, **Denmark** established straight baselines around the Faroe Islands. The United States protested this claim in a note of which the following is an extract:

The United States observes that the baselines around the Faeroes are not straight baselines around individual islands, but are lines connecting the outermost islands and drying rocks of the Faeroes archipelago. Archipelagic states recognized under customary international law, as reflected in the LOS Convention, do not include mainland states, such as Denmark and the United States, which possess non-coastal archipelagos. Therefore, straight baselines cannot be drawn around mainland states' coastal archipelagos, such as the Faeroe Islands.

The United States also observes that straight baselines could be employed, consistent with international law, in certain localities of some of the Faeroe Islands which are deeply indented and cut into, or themselves fringed with islands along the coast. Furthermore, some of the islands contain juridical bays that could lawfully be enclosed by straight baselines. However, in localities where neither

Map 11



criteria is met, the method of straight baselines may not be used; rather, in those areas the low water line, as depicted on official charts, must be used.⁵²

In 1971, through the Supreme Decree No. 959-A, the Government of Ecuador claimed a system of straight baselines around the Galapagos Islands. The United States Government, in a note of which the following is an excerpt, protested as follows:

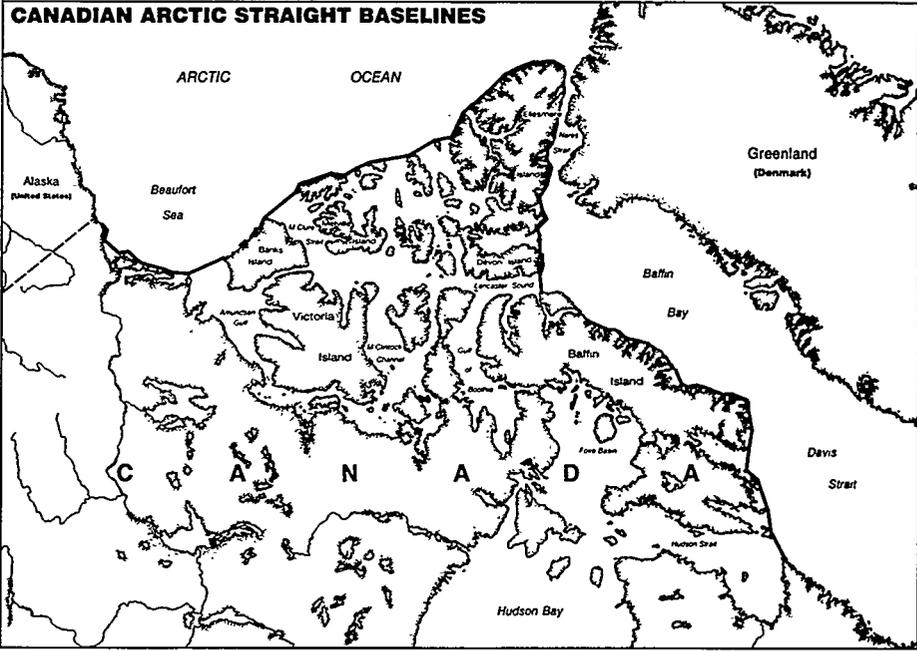
With regard to the straight baselines drawn around the Galapagos Islands, such straight baselines, which purportedly represent archipelagic baselines as contained in article 47 of the 1982 Law of the Sea Convention, may only be employed by an archipelagic state, defined in article 46 of the 1982 Law of the Sea Convention as "a state constituted wholly by one or more archipelagoes and may include other islands." As Ecuador is a continental state and the Galapagos Islands constitute part thereof, the United States does not recognize as valid the straight baseline system around the Galapagos Islands, for the purpose of delineating internal waters, territorial sea, economic zone or continental shelf.⁵³

The United States has protested those portions of paragraph 6(1) of Sudan's Territorial Waters and Continental Shelf Act of 1970 that established straight baselines (a) from the mainland to the outer shores of islands which are not more than 12 miles from the mainland, (b) from the mainland and along the outer shores of all islands forming a chain of islands where the island nearest the mainland is not more than 12 miles from the mainland and where each island in the chain may be connected by baselines not more than 12 nautical miles long, and (c) from the mainland and along the outer shores of all islands forming a chain of islands where the island nearest the mainland is more than 12 miles from the mainland and where each island in the chain may be connected by baselines not more than 12 nautical miles long.⁵⁴

In 1985, the Government of Canada established straight baselines around the perimeter of the Canadian Arctic islands (by Order-in-Council P.C. 1985-2739, *see* Map 12), effective January 1, 1986.⁵⁵ During bilateral discussions in Washington, D.C., on January 10, 1986, the United States stated that the Canadian straight baseline claim in the Arctic region was not based upon principles of international law and that Canada was not justified in stating that all the waters between Canadian islands in the Arctic were internal Canadian waters. The United States' rationale was based upon the internationally recognized law of the sea principles. The United States position with respect to Canada's straight baseline claim in the Arctic region was also addressed in a letter from James W. Dyer, Acting Assistant Secretary of State, Legislative and Intergovernmental Affairs, dated February 26, 1986, to Senator Charles McC. Mathias, Jr. (R. Maryland):

On September 10, 1985, the Government of Canada claimed all the waters among its Arctic islands as internal waters, and drew straight baselines around its

Map 12



Arctic islands to establish its claim. The United States position is that there is no basis in international law to support the Canadian claim. The United States cannot accept the Canadian claim because to do so would constitute acceptance of full Canadian control of the Northwest Passage and would terminate U.S. navigation rights through the Passage under international law. Acceptance would also complicate our maintenance of navigation rights in other areas, such as Indonesia and the Aegean.⁵⁶

The Member States of the European Communities also commented on Canada's Arctic straight baseline system as follows:

The validity of the baselines with regard to other states depends upon the relevant principles of international law applicable in this case, including the principle that the drawing of baselines must not depart to any appreciable extent from the general direction of the coast. The Member States acknowledge that elements other than purely geographical ones may be relevant for purposes of drawing baselines in particular circumstances but are not satisfied that the present baselines are justified in general. Moreover, the Member States cannot recognize the validity of a historic title as justification for the baselines drawn in accordance with the order.

The Member States of the EC cannot therefore in general acknowledge the legality of these baselines and accordingly reserve the exercise of their rights in the waters concerned according to international law.⁵⁷

Scholars have criticized the straight baselines drawn by the **United Kingdom** around the Falkland Islands (*see* Map 13) as "a pregnant rectangle . . . extremely inconsistent with the provisions of the 1958 and 1982 Conventions"⁵⁸ and **Spain's** baselines enclosing the Balearic islands of Majorca, Minorca, Ibiza and Formentera in the Mediterranean.⁵⁹

Baseline Departs from the General Direction of the Coast

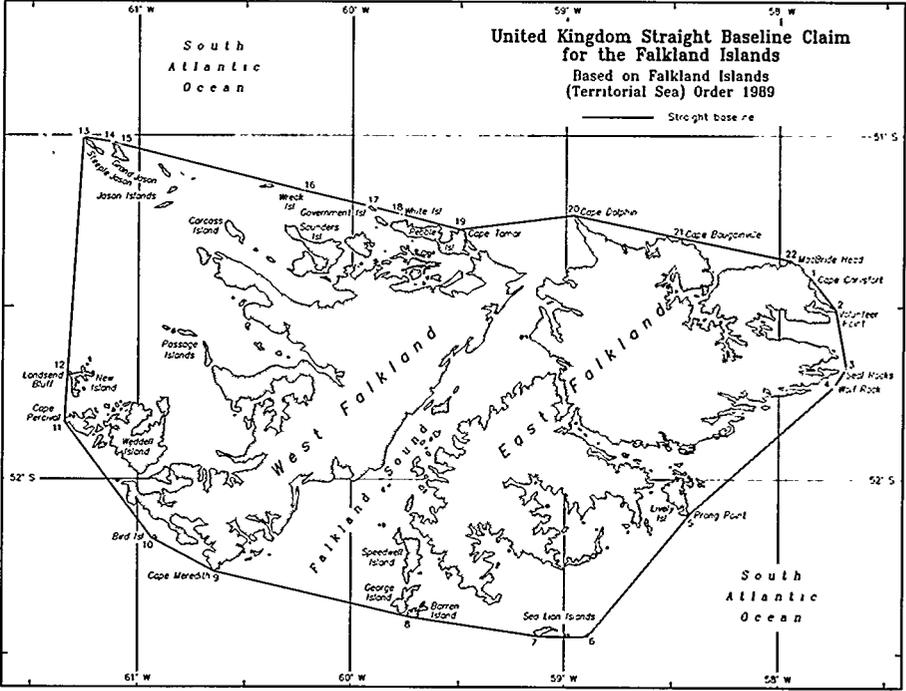
The 1977 Cuban system of straight baselines includes several segments which do not follow the general direction of the coast. The analysis of the baselines by the Office of the Geographer of the Department of State noted that:

From point No. 92 to No. 93, the baseline extends northwestward across the mouth of the bay to connect with a line of cays that are oriented in the same general direction. A more northward-trending line to follow the entire string of cays, rather than this particular line of cays, would more aptly define the natural closing points of the geographic bay and hence the general direction of the coast.

....

From 102 to 107, the straight baselines extend seaward of the Canary Archipelago cays to the Isle of Pines. Shorter straight baselines would follow more closely the general direction of the coast.

Map 13



....

West of the Isle of Pines, the straight baselines again depart from the actual general direction of the Cayos de San Felipe and extend seaward directly to Cape Frances. The departure advances the baseline approximately 25 nautical miles seaward.⁶⁰

The United States Government protested the claim in a note delivered on July 13, 1983.⁶¹

The Office of the Geographer of the Department of State has analyzed the 1968 straight baseline claim by **Mexico** along portions of the coast of the Gulf of California. The analysis noted that in four instances the straight baselines do not conform to the general trend of the coast since the lines enclosing the islands of Las Animas, San Idelfonso, Tortuga and San Pedro Nolasco all diverged from the coast at angles greater than 40 degrees. These angles are maintained over both the local and general trends of the coast. The United States protested the claim in a note from the American Ambassador at Mexico City on August 5, 1969.⁶²

Waters Are Not Closely Linked to the Land Domain

In 1977, the Government of **Burma** enacted a statute establishing a system of straight baselines. The straight baseline coordinates from the 1968 legislation were not significantly modified in the 1977 Territorial Sea and Maritime Zones Law. The most egregious segment is the line segment enclosing the Gulf of Martaban, over 222 miles long, one of the longest claimed in the world. The eastern two-thirds of this segment deviates 60° from the trend of the delta. At one point on this segment the nearest land is 75 miles away and the mouth of the Sittang River is over 120 miles distant (*see* Map 14). The United States Government protested as follows:

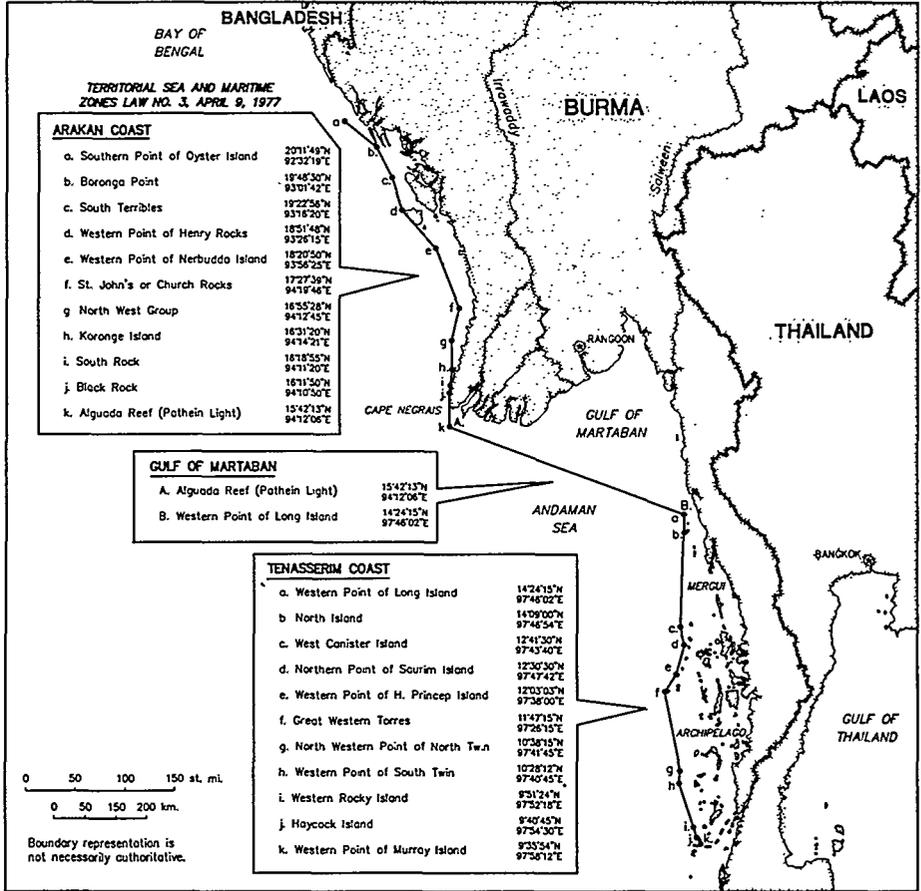
As to the system of straight baselines adopted by the Government of Burma in the Territorial Sea and Maritime Zones Law, 1977, it is the view of the Government of the United States that the baselines of such system have not been drawn in accordance with international law. It is a well-recognized principle of international law that straight baselines must not depart to any appreciable extent from the general direction of the coast. It is the view of the Government of the United States that straight baselines of the system adopted by the Government of Burma depart to an appreciable extent from the general direction of the coast of Burma and that, therefore, the system does not comport with international law.⁶³

The 1977 **Cuban** system of straight baselines included one 69 mile segment in the vicinity of the Bay of Cienfuegos. The United States Government protested as follows:

In Decree Law No. 1 of February 24, 1977, the Government of the Republic of Cuba claimed a system of straight baselines connecting 124 points around the

Map 14

BURMA: Straight Baselines Claim



entire coast of Cuba. The Government of the United States has studied the straight baseline system of Cuba and has concluded that, in a number of areas along the coast of Cuba, lines drawn pursuant to Decree Law No. 1 do not conform to international law. Included in these objectionable straight baselines is, with reference to points established in Decree Law No. 1, the line which connects points 101 and 102, in the vicinity of the Bay of Cienfuegos.

The baseline between points 101 and 102 is 69 nautical miles long and crosses an area that contains no islands whatever. Moreover, the coastline in this area is not deeply indented and cut into. It is also clear that the sea areas lying within the line are not sufficiently closely linked to the land domain to be subject to the regime of internal waters.⁶⁴

The United States protested Mexico's 1968 straight baseline claim along portions of the coast of the Gulf of California in a note from the American Ambassador at Mexico City on August 5, 1969. The protest noted the requirement that the sea areas lying within the baselines be sufficiently closely linked to the land domain to be subject to the regime of internal waters was "quite clearly not met with regard to the large body of water north of the lines extending to San Esteban Island."⁶⁵

Low-tide Elevation Improperly Used as a Basepoint

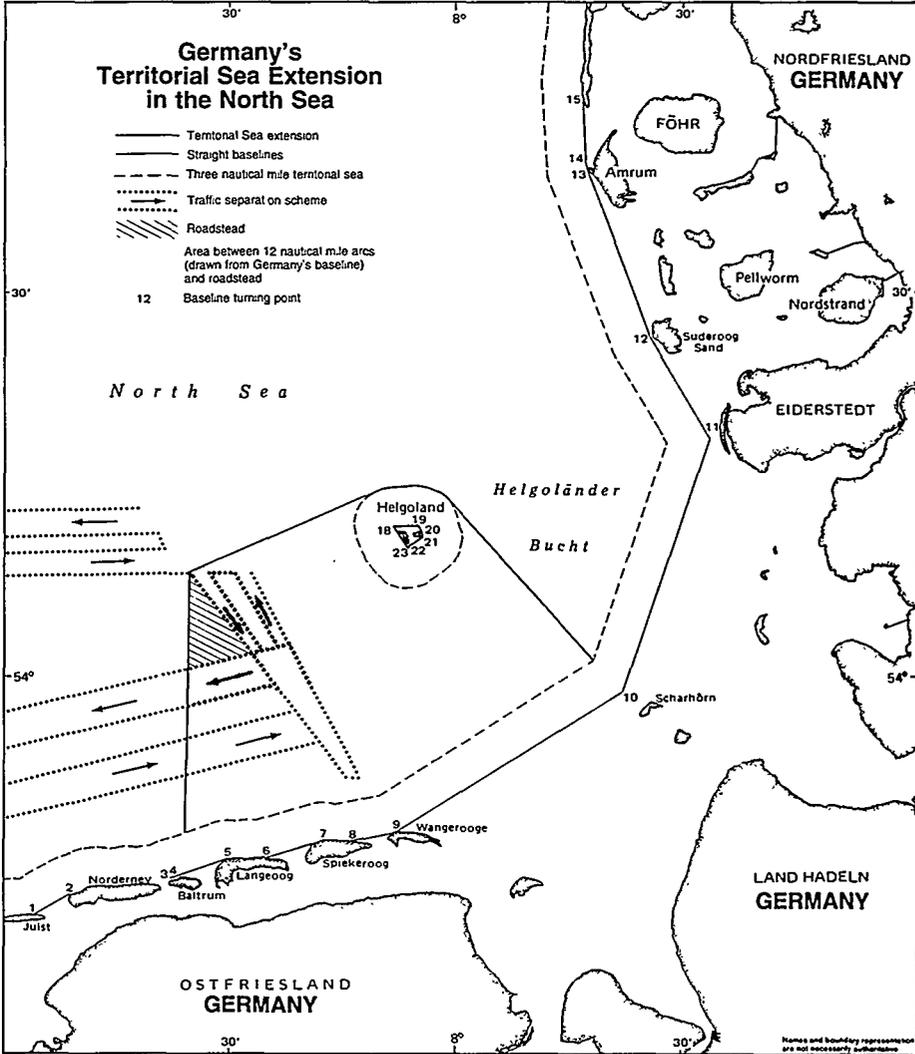
In 1984, the Government of the Federal Republic of Germany claimed, contrary to international law, closure lines out to a roadstead situated outside a properly delimited territorial sea contrary to international law (*see* Map 15). The United States, in a note of which the following is an excerpt, protested as follows:

The Department of State refers the Embassy of the Federal Republic of Germany to an announcement appearing on page 1366 of Part I of the *Bundesgesetzblatt* of 12 November 1984 entitled "Bekanntmachung des Beschlusses der Bundesregierung Über die Erweiterung des Küstenmeeres der Bundesrepublik Deutschland in der Nordsee zur Verhinderung von Tankerunfällen in der Deutschen Bucht."

. . . Equally illegal and without foundation is the use of closure lines out to a roadstead situated wholly outside a properly delimited territorial sea. While roadsteads normally used for the loading, unloading, and anchoring of ships possess the status of territorial sea, the waters between an outlying roadstead and the general territorial sea are not territorial in nature, and the high seas freedoms applicable to those intervening waters cannot be prejudiced by the coastal state.

The decision of 12 November 1984 by the Federal Republic of Germany is not in accord with established principles of the law of the sea, and with the entry into force of the decision on March 16, 1985, the United States must therefore protest. The United States refuses to recognize any aspect of the decision which purports to extend the territorial sea of the Federal Republic of Germany beyond

Map 15



twelve nautical miles from the baselines from which the territorial sea is measured. The United States expressly reserves the rights of its nationals, of ships and aircraft registered in its territory and of ships and aircraft flying its flag to exercise high seas freedoms applicable under international law, including in the areas beyond twelve nautical miles.⁶⁶

The United States has protested that portion of paragraph 6(1) of **Sudan's** Territorial Waters and Continental Shelf Act of 1970 that established baselines from the low-water line along shoals situated not more than 12 miles from the mainland, arguing that "baselines cannot be drawn to or from shoal waters which are not low tide elevations that have a lighthouse or similar installation, permanently above sea level, erected thereon".⁶⁷

Terminus Located on a Maritime Boundary at Sea

In a declaration issued November 12, 1982, the Government of **Vietnam** claimed a system of ten straight baseline segments, the yet-to-be-defined terminus of which in the Gulf of Thailand, point 0, is "located on the high sea and on a straight line linking the Tho Chu Archipelago to the Poulo Wai Island" (see Map 10). In analyzing the baseline claim, the Office of Geographer of the Department of State commented:

The Vietnamese-proposed point 0 is neither a high-tide elevation nor a low-tide elevation with a permanent structure; therefore, a basepoint at point 0 appears to be in violation of [article 4 of the 1958 Territorial Sea and the Contiguous Zone Convention and article 7 of the 1982 Law of the Sea Convention].⁶⁸

In 1971, through the Supreme Decree No. 959-A, the Government of **Ecuador** claimed a system of straight baselines along mainland Ecuador that ended at sea on the Ecuador-Peru maritime boundary. The United States protested in a note from American Embassy Quito delivered on February 24, 1986.⁶⁹

On January 30, 1961, **Uruguay** and **Argentina** signed a Declaration purporting to draw a straight line uniting Punta del Este, Uruguay with Punta Rasa, Cape San Antonio, Argentina. The line runs across the mouth of the River Plate which forms a portion of the boundary between those two countries (see Map 1). On January 23, 1963, the United States protested arguing that the Declaration ran counter to international law and that Article 13 of the Territorial Sea Convention (now Article 9 of the LOS Convention), relating to river mouths, was not applicable to the River Plate, since it did not belong solely to one State. The United Kingdom (on December 26, 1961) and the Netherlands (on June 26, 1962) also protested on this basis. The United Kingdom and the United States also protested stating that this line could not be justified as a bay closing line since the bay was a multinational bay.⁷⁰

Terminus Located on the Territory of Another State

In 1971, Ecuador established straight baselines along its Pacific coast, beginning at Cabo Manglares, Colombia, which is neither a juridical nor a historical bay. In 1986, the United States protested the straight baseline system of Ecuador.⁷¹

In 1956, the President of Venezuela issued a decree establishing a 99 mile long straight baseline closing the delta of the Orinoco River, the eastern terminus of which lays 26 miles east of Punta Playa, the coastal terminus of the current Guyana-Venezuela boundary (see Map 16). While Venezuela has laid claim to this territory as far as the Essequibo River, Guyana has rejected this claim.⁷²

This decree was issued pursuant to Article 2 of the 1956 Venezuelan Law on Territorial Waters, the Continental Shelf, Conservation of Fisheries and Airspace, which permitted the drawing of straight baselines "when circumstances impose a special case due to the configuration of the coast line, to the existence of islands close to it, or when the particular interests of a determined region justify it." This provision of the 1956 decree was protested by the United States in 1956.⁷³

Basepoints Located at Sea

On May 29, 1972, the Maldives Government transmitted to the United Nations Secretariat a note that "according to the Constitution of the Republic of Maldives the Territorial Limits of the Republic of Maldives are defined as follows":

"The Territory of the Republic of Maldives is the islands situated between latitudes 07.09½ degrees North [7°09'30"N], and 0.45¼ degrees South [0°45'15"S], and longitudes 72.30½ degrees East [72°30'30"E], and 73.48 degrees East [73°48'E], and the sea and air surrounding and in between the islands."⁷⁴

(See Map 17.)

The Geographer of the Department of State commented that:

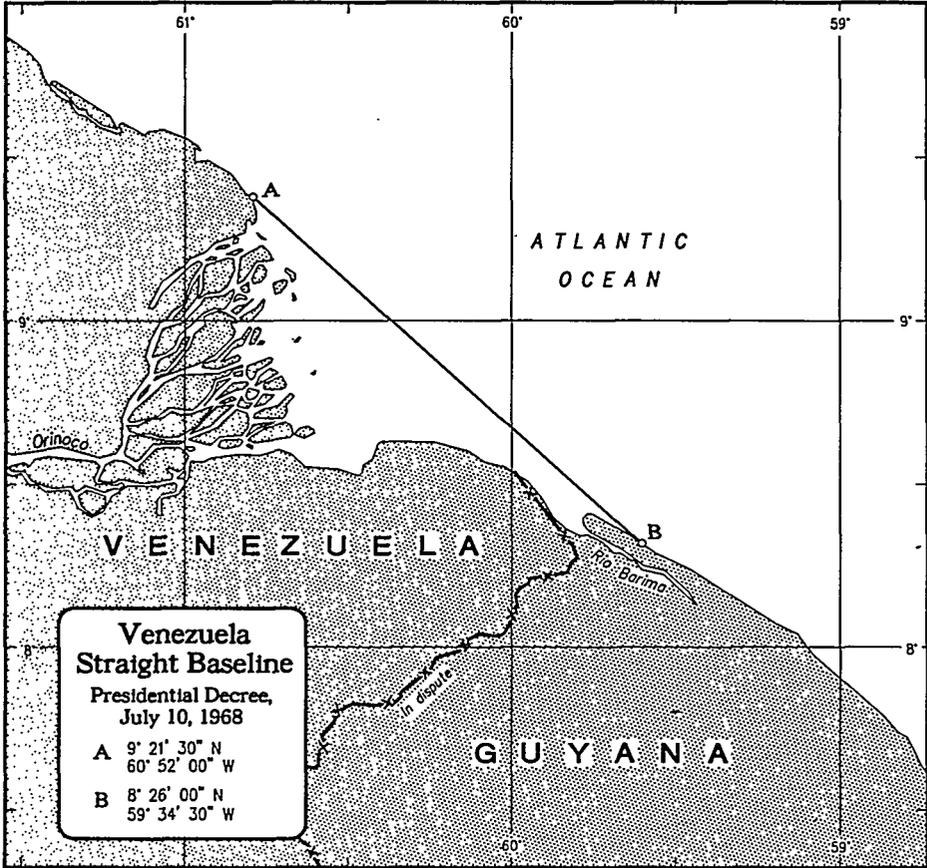
The legal status of the rectangle formed by the straight lines along the above parallels and meridians is not specified in the Constitution. If these coordinates are meant to delimit the outer limits of the Maldivian territorial sea, the validity of the lines is questionable because they do not relate directly to the atolls of the state.

. . .

It is possible that the Maldivian Government considers this rectangle to be a national baseline. But to consider lines situated from 2.75 to more than 55 nautical miles from the coastline as national baselines would be contrary to any state practice and to international legal norms.⁷⁵

The 1964 Maldives Constitution had defined the Republic as "the Islands and the sea and air surrounding and in between Latitudes 7°10-¼' [North] and 0°45-½' [South]

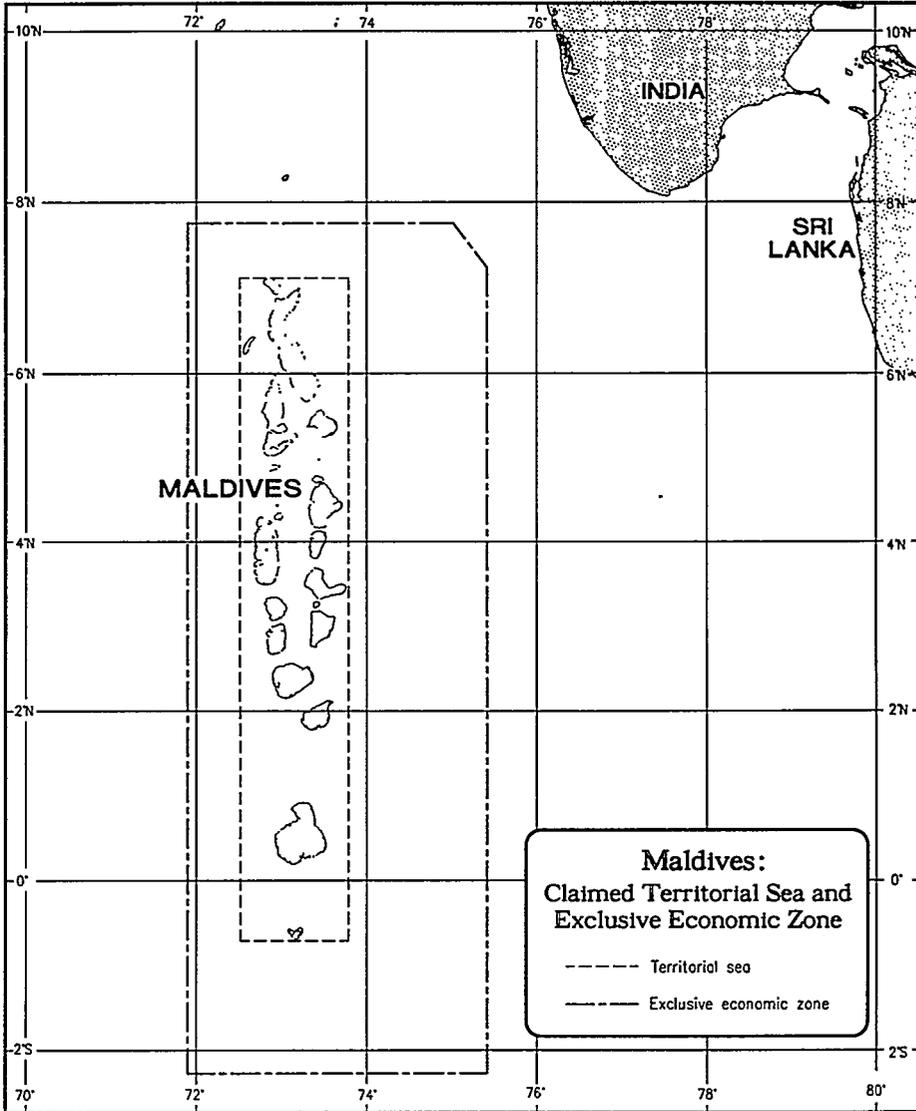
Map 16



The map is illustrative only. The depictions of Venezuelan basepoints A and B on this map are approximate.

Names and boundary representation are not necessarily authoritative.

Map 17



Names and boundary are not necessarily authoritative

and longitudes [East] 72°29-1/4' and 73°49'."⁷⁶ In protesting the Constitutional delimitation and subsequent delimitation of the Maldives exclusive economic zone with reference to geographic coordinates in the Indian Ocean, the United States said:

The Constitution and Laws of the Republic of Maldives purport to delimit the territorial sea and the claimed exclusive economic zone of the Republic of Maldives by reference to geographic coordinates in the high seas.

Such claims have no basis in international law. In asserting jurisdiction over areas extending seaward from its land territory, a coastal state must measure the breadth of any such areas from baselines drawn in accordance with international law. The normal baseline is the low-water line along the coast, and the limited exceptions to this rule only allow for the use of straight baselines to connect coastal features in certain circumstances. . . .⁷⁷

Terminus Not Located on Own Mainland

During the Third United Nations Conference on the Law of the Sea, the Government of **Bangladesh** proposed to reformulate the criteria for establishing straight baselines for those States that have shores marked by continuous fluvial erosion and sedimentation as a result of river flooding, sudden rainfall, hurricanes and other adverse weather factors. The United States responded to this proposal to reformulate Article 7(2) in a letter from the Department of State on April 25, 1978, which said in part:

Although the People's Republic of Bangladesh may have unique interests in the area due to a combination of geographic, historic, and economic considerations, the United States cannot support a system of straight baselines for the purpose of delimitation of the territorial sea which does not use fixed terrestrial (as opposed to maritime) points no further seaward than the appropriate low water mark.⁷⁸

This proposal was not incorporated into the LOS Convention.

Overlarge Bays and Gulfs

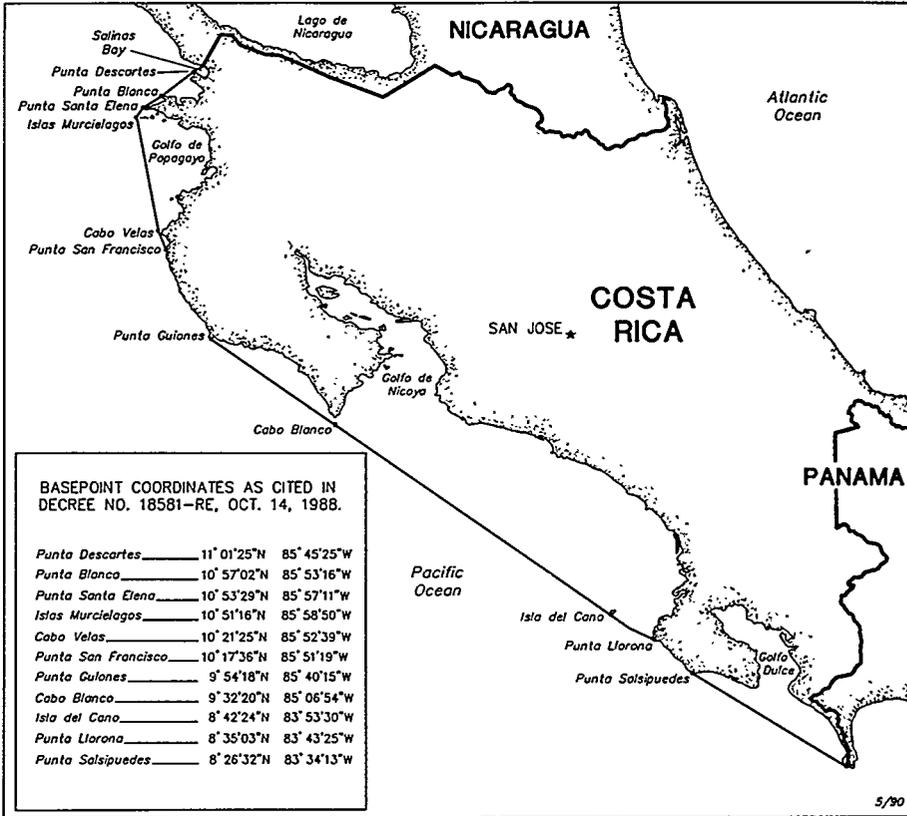
On October 14, 1988, the Government of **Costa Rica** issued Decree no. 18581-RE establishing straight baselines along its Pacific coast (*see* Map 18). The United States protested the segments in three areas which do not meet the applicable criteria:

. . . several segments, which close off geographical bays, are longer than twenty-four nautical miles and therefore exceed the juridical bay closing line length that is permitted under international law.

It is therefore the view of the Government of the United States that the straight baseline system established by the Government of Costa Rica does not meet the criteria for straight baselines nor do those lines properly constitute juridical bay

Map 18

COSTA RICA: STRAIGHT BASELINE CLAIM



closing lines in the circumstances that are recognized in customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea.

The most egregious example of a Costa Rican excessive straight baseline is the 89 mile-segment between Cabo Blanco and Isla del Cano.⁷⁹

With regard to the excessive maritime claim of **Libya** in the Gulf of Sidra, in December 1986, the U.S. Department of State, Bureau of Public Affairs, published "Navigation Rights and the Gulf of Sidra," in *GIST*, a reference aid on U.S. foreign relations, in part as follows:

Background: In October 1973, Libya announced that it considered all waters in the Gulf of Sidra south of a straight baseline drawn at 32 degrees 30 minutes north latitude to be internal Libyan waters because of the gulf's geographic location and Libya's historic control over it. The U.S. and other countries, including the USSR, protested Libya's claim as lacking any historic or legal justification and as illegally restricting freedom of navigation on the high seas. Further, the U.S. Navy has conducted many operations within the gulf during the past 12 years to protest the Libyan claim. These exercises have resulted in two shooting incidents between Libyan and U.S. forces. The first was in 1981, when two Libyan aircraft fired on U.S. aircraft and were shot down in air-to-air combat, and the second in March 1986, when the Libyans fired several missiles at U.S. forces and the U.S. responded by attacking Libyan radar installations and patrol boats.

. . .

Current law and customs: . . . Beyond lawfully closed-off bays and other areas along their coasts, nations may claim a "territorial sea" of no more than 12 nautical miles in breadth (measured 12 miles out from the coast's low water line — or legal straight baseline) within which foreign vessels enjoy the limited navigational "right of innocent passage." . . .

Since Libya . . . meets no other international law criteria for enclosing the Gulf of Sidra, it may validly claim a 12-nautical mile territorial sea as measured from the normal low-water line along its coast.⁸⁰

(See Map 4.)

On December 29, 1966, **Argentina** promulgated Law No. 17094 in which it drew straight baselines across the mouths of San Jorge and San Matias gulfs. The State Department Geographer's analysis of these baselines states:

Golfo San Matias and Golfo San Jorge do not conform to the requirements of a juridical bay in that they can not be closed by 24 nautical mile closing lines. They both, however, would meet the semi-circle criterion and could qualify as oversized bays. The closing line for San Matias measures approximately 65 nautical miles while that for San Jorge, 123 nautical miles.⁸¹

In 1988, **Mauritania** adopted an ordinance which sought to establish a straight baseline linking Cap Blanc and Cap Timiris in the vicinity of the Banc d' Arguin (*see* Map 19). The United States protested this claim in a note which stated in part:

The coast in the vicinity of Banc d' Arguin is neither deeply indented nor bounded by a fringe of islands. Furthermore, the enclosed waters along the Banc d' Arguin do not meet the requirement of a juridical bay; the closing line is almost 90 nautical miles in length.⁸²

The United States has protested that portion of paragraph 6(1) of **Sudan's** Territorial Waters and Continental Shelf Act of 1970 claiming closing lines from headland to headland across the mouth of bays regardless of their width.⁸³

Baselines Not Published

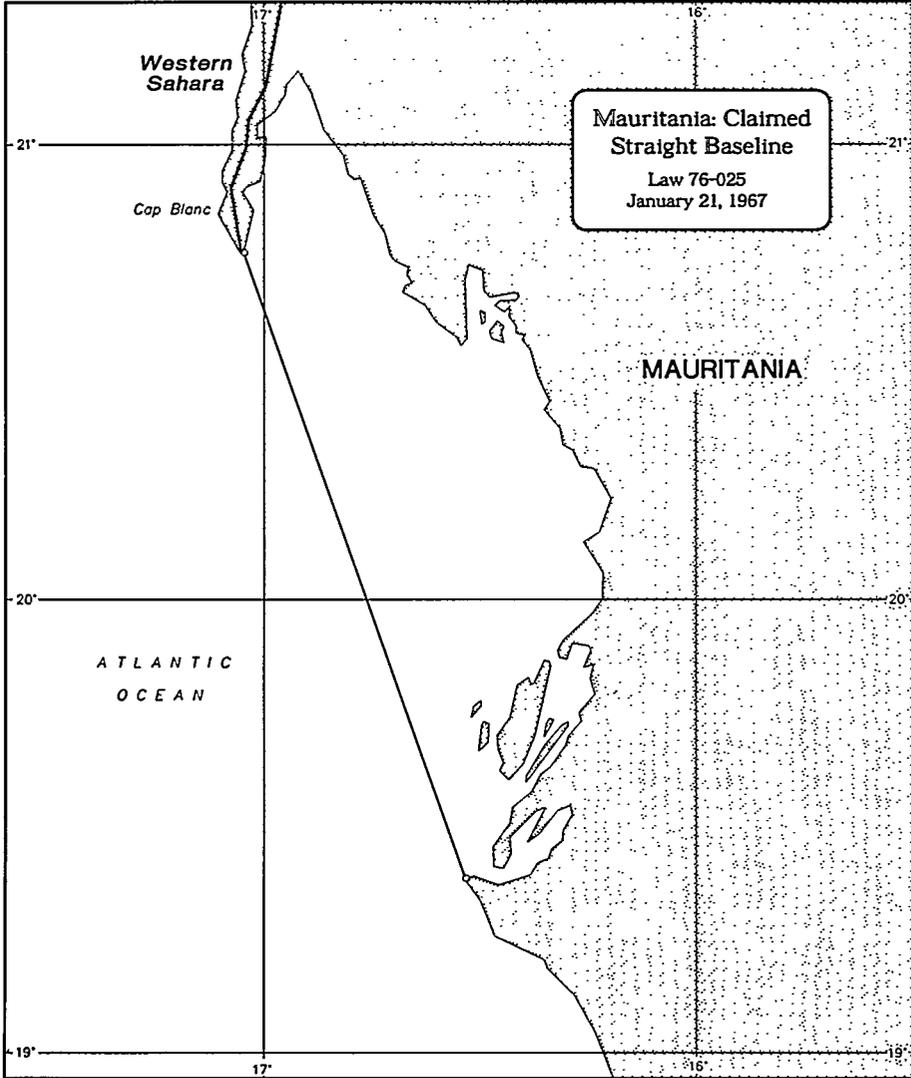
Attached to a 1972 **Haiti** decree establishing its territorial sea is a very small scale map (1:5,000,000) illustrating an irregular polygonal outer limit for the territorial sea, using specified coordinate pairs for turning points. When plotted on a larger scale chart, the inner limit of the claimed territorial sea (constructed from a similar polygon situated 12 miles landward of the outer territorial sea limits) does not relate directly to the low-water line of the Haitian coast as asserted in Article 1 of the decree. The Haitian Government subsequently described the system as utilizing *droites paralleles* from the most seaward points of the Haitian coast. In 1973, the United States protested this system in a note stating that:

neither the scale of the map chosen for the delimitation of the Haitian baselines nor the use and choice of the points meet Convention requirements.⁸⁴

On August 1, 1977, the Army Command of the **People's Democratic Republic of Korea** announced the establishment of a 50-mile maritime boundary, measured from a claimed straight baseline from the territorial sea as drawn in the Sea of Japan (East Sea), and a military maritime boundary coincident with the claimed exclusive economic zone limit in the Yellow Sea (West Sea). No precise delineation of the baselines or the limits of the military boundaries were given. The United States communicated its protest of these military boundaries in a Note to the United Nations dated January 4, 1990.⁸⁵

In 1971, **Malta** enacted a statute stating that its territorial sea is to be measured from the "low water mark on the method of straight baselines joining appropriate points." Although no coordinates have been published, in 1983 Malta published a map showing straight baselines around the outer limits of the four Maltese islands. In a note to the Maltese Embassy in Washington, the Department of

Map 19



Names and boundary representation are not necessarily authoritative

State stated that it did not recognize that claim which had been repeated in Maltese Act XXVIII of 1981.⁸⁶

In 1970, Sudan enacted legislation defining how straight baselines were to be drawn on large-scale maps recognized by Sudan. The United States has not received a response to its note delivered June 6, 1989, inquiring as to whether those maps, or a list of coordinates, had ever been published.⁸⁷

Notes

1. The baseline provisions of the 1982 LOS Convention are examined in U.N. Office for Oceans Affairs and the Law of the Sea, *The Law of the Sea: Baselines* (U.N. Sales No. E.88.V.5* (1989)) [hereinafter U.N. Baselines]. The U.S. Department of Defense publication, *Maritime Claims Reference Manual*, DoD 2005.1-M (1990) [hereinafter MCRM]; U.N. Office for Ocean Affairs and the Law of the Sea, *Baselines: National Legislation with Illustrative Maps* (U.N. Sales No. E.89.V.10 (1989)) [hereinafter U.N. Baselines: National Legislation]; and *ATLAS OF THE STRAIGHT BASELINES* (Scovazzi ed., 2d ed. 1989) [hereinafter Scovazzi, ed.] detail the baseline claims of the coastal and island States.

2. Territorial Sea Convention, article 3; LOS Convention, article 5.

3. State Department File No. P84 0040-1938, in response to Canadian *Aide Memoire* of January 20, 1984, State Department File No. P84 0012-1925.

4. Definition 50, in Consolidated Glossary of Technical Terms used in the United Nations Convention on the Law of the Sea, International Hydrographic Bureau Special Pub. No. 51, *A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea, 1982, Part I*, reprinted in U.N. Baselines 58. Since 1980, the United States has used a uniform, continuous Chart Datum of Mean Lower Low Water for all tidal waters of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, United States Virgin Islands, Commonwealth of Northern Mariana Islands, and its other territories and possessions. 45 Fed. Reg. 70,296-97 (Oct. 23, 1980); HICKS, *TIDE AND CURRENT GLOSSARY 3 & 15* (NOAA 1989).

5. CHURCHILL & LOWE, *THE LAW OF THE SEA* at 46 (2d rev. ed. 1988) [hereinafter CHURCHILL & LOWE].

6. Territorial Sea Convention, article 8; LOS Convention, article 11.

7. *United States v. Louisiana*, 394 U.S. 11, 36-38, 89 S.Ct. 773, 787-89, 22 L.Ed.2d 44 (1969).

8. LOS Convention, article 11.

9. LOS Convention, article 6. The reef must be charted as being above the level of chart datum.

10. CHURCHILL & LOWE at 33. Reisman and Westerman warn "the chief practical effect of a straight baseline claim is to augment the areas of internal and territorial waters within State control. When individual baseline segments are very long, however, significant areas of continental shelf and exclusive economic zone are also gained." REISMAN AND WESTERMAN, *STRAIGHT BASELINES IN INTERNATIONAL MARITIME BOUNDARY DELIMITATION* 105 (1992) [hereinafter REISMAN & WESTERMAN].

11. Territorial Sea Convention, article 4(2); LOS Convention, article 7(3).

12. Territorial Sea Convention, article 4(6); LOS Convention, article 16.

13. LOS Convention, article 7(2). Applicable deltas include those of the Mississippi and Nile Rivers, and the Ganges-Brahmaputra River in Bangladesh. U.N. Baselines 24 para. 50; PRESCOTT, *MARITIME AND POLITICAL BOUNDARIES OF THE WORLD*, 15 (1985) [hereinafter PRESCOTT]; REISMAN & WESTERMAN, *supra* n. 10, at 101-02.

14. Territorial Sea Convention, article 13; LOS Convention, article 9. The Conventions place no limit on the length of this line. Further, the Conventions do not state exactly where, along the banks of estuaries, the closing points should be placed. No special baseline rules have been established for rivers entering the sea through deltas, such as the Mississippi, (i.e., either the normal or straight baseline principles above may apply) or for river entrances dotted with islands.

Further, the Conventions do not address ice coast lines, where the ice coverage may be permanent or temporary. The U.S. Government considers that the edge of a coastal ice shelf does not support a legitimate baseline.

15. Territorial Sea Convention, articles 11 & 4(3); LOS Convention, articles 13 & 7(4). Low-tide elevations can be rocks, mud flats, or sand bars.

16. 381 U.S. 139, 167-69, 85 S.Ct. 1401, 14 L.Ed.2d 296, 314-15 (1965). See also *Louisiana Boundary Case*, 394 U.S. 11, 36-38, 89 S.Ct. 773, 787-89, 22 L.Ed.2d 44 (1969) and *Alabama and Mississippi Boundary Case*, 470 U.S. 93, 99, 105 S.Ct. 1074, 84 L.Ed.2d 73, 79 (1985).

17. The judgment of Professors Reisman and Westerman is that only "a small number of straight baseline claims appear to be in substantial conformity" with international law, mentioning Norway, Sweden, Finland, Canada, Ireland, and The Netherlands, among others. They are of the view, however, that "there is probably no State to date which has entered a comprehensive claim which could be characterized as totally conforming." REISMAN & WESTERMAN, at 107 & n. 5.

18. See *infra* text accompanying n. 63.

19. For additional analysis of the Colombian straight baseline claim, see *Limits in the Sea* No. 103, *Straight Baselines: Colombia* (1985).

20. [W]here a baseline is clearly contrary to international law, it will not be valid, certainly in respect of States which have objected to it, though a State which has accepted the baseline (for example in a boundary treaty) might be estopped from later denying its validity. In border-line cases — for example, where there is doubt as to whether a State's straight baseline system conforms to all the criteria laid down in customary and conventional law — the attitude of other States in acquiescing in or objecting to the baseline is likely to prove crucial in determining its validity. CHURCHILL & LOWE, at 46-47.

21. Scholars have criticized aspects of the following claims, as noted:

Australia:	PRESCOTT 183; REISMAN & WESTERMAN 121-22.
Cambodia:	REISMAN & WESTERMAN 172.
Chile:	REISMAN & WESTERMAN 175; <i>Limits in the Seas</i> No. 80.
Denmark (Faroes):	PRESCOTT 261.
France:	PRESCOTT 314; REISMAN & WESTERMAN 129; <i>Limits in the Seas</i> No. 37.
Guinea-Bissau:	PRESCOTT 316 (1978 law); <i>Limits in the Seas</i> No. 30.
Iceland:	PRESCOTT 260 (1972 Regulations); REISMAN & WESTERMAN 125; <i>Limits in the Seas</i> No. 34 (rev.).
Iran:	REISMAN & WESTERMAN 183.
Italy:	PRESCOTT 297-98; REISMAN & WESTERMAN 31, 133, 135.
Korea, South:	PRESCOTT 239; REISMAN & WESTERMAN 178; <i>Limits in the Seas</i> No. 82.
Madagascar:	REISMAN & WESTERMAN 147; <i>Limits in the Seas</i> No. 15.
Norway (Jan Mayen):	PRESCOTT 259.
Portugal:	PRESCOTT 315 (1985 law).
Soviet Union:	REISMAN & WESTERMAN 150-51; <i>Limits in the Seas</i> Nos. 107 & 109.
Spain:	PRESCOTT 156-57; REISMAN & WESTERMAN 297, 314-15.
Tunisia:	PRESCOTT 297.

22. REISMAN & WESTERMAN, at 120-21.

23. Reisman & Westerman assert the majority of excessive straight baseline claims fail to meet the threshold test. REISMAN & WESTERMAN, at 118 & 120.

24. Diplomatic Note dated Dec. 18, 1989 from American Embassy San Jose, reprinted in *Limits in the Seas* No. 111, and American Embassy San Jose telegram 15581, Dec. 18, 1989. Costa Rica's decree No. 18581-RE, of Oct. 14, 1988, may be found in *Limits in the Seas* No. 111, *Straight Baselines: Costa Rica* (1990).

25. *Limits in the Seas* No. 103, at 8 (1985). The study also notes that several juridical bays could be enclosed by properly drawn closing lines. These include in the Caribbean: Honda Bay, El Portete Bay, the waters between Cape de la Aguja and Tajamar Bocas de Ceniza (point 7), Morrosquillo Gulf, and Uruba Gulf; and on the Pacific side: Cupica Gulf, Buenaventura Bay, and Rada de Tumaco.

26. American Embassy Bogota Note No. 500 dated July 14, 1988. State Department telegram 019016, Jan. 22, 1988; American Embassy Bogota telegram 10640, July 15, 1988. REISMAN & WESTERMAN, at 144-47 & 175, strongly criticize this claim, particularly the 130 mile segment enclosing the large but shallow curvature between Cabo de la Vela and Cabo de la Aguja. The Colombian Presidential Decree No. 1436 of 1984 may be found in *Limits in the Seas* No. 103, at 1-3, and in U.N. *Baselines: National Legislation* 107-111.

27. American Embassy Muscat Note 0606 dated Aug. 12, 1991, delivery of which was reported in American Embassy Muscat telegram 03528, Aug. 13, 1991, pursuant to instructions contained in State Department telegram 187028, June 9, 1990. Oman replied in a note to the American Embassy Muscat dated Dec. 2, 1991 that the baselines were "drawn with a view toward maintaining the distinguishing economic interests of the region in question, interests which have established their significance and importance over a long period." American Embassy Muscat telegram 5320, Dec. 4, 1991. It should be noted that, under article 7(5) of the LOS Convention, such economic interests can be taken into account only when the basic geographic criteria of article 7(1) are met. Oman's notice of June 1, 1982 establishing these straight baselines may be found in U.N. Office of the Special Representative of the Secretary-General for the Law of the Sea: *Current Developments in State Practice* 80-81 (U.N. Sales No. E.87.4.3, 1987) [hereinafter U.N. *Current Developments* No. I]; U.N., *Baselines: National Legislation* 247-48; and II MCRM 2-239 to 2-240. See *Limits in the Seas* No. 113 (Mar. 1992). Iran's protest Note dated Feb. 4, 1983, of Oman's straight baselines, originally

circulated by the UN Secretary-General as *Note Verbale* LE 113(3.3) of June 21, 1983, may be found in U.N. Current Developments No. 1 at 82.

28. American Embassy Cairo Note delivered June 13, 1991, State Department telegram 188615, June 8, 1991, American Embassy Cairo telegram 11009, June 19, 1991. Presidential Decree No. 27/90 concerning the baselines of the maritime areas of the Arab Republic of Egypt, Jan. 9, 1990, is reproduced in U.N. LOS BULL., No. 16, Dec. 1990, at 3-11 and Limits in the Seas No. 116, at 4 and 6 (1994).

29. American Embassy at Lisbon note based on instructions transmitted in State Department telegram 266998, Aug. 25, 1986. The Portuguese Ministry of Sea Decree Law No. 495/85 of Nov. 29, 1985 may be found in II MCRM 2-363 to 2-367, and U.N. Baselines: National Legislation 260-66.

30. French Embassy at Tirana Note delivered on July 21, 1989, on behalf of the United States, State Department telegram 193134 (to Paris), June 17, 1989, and Limits in the Seas No. 116, Annex 3 (1994). PRESCOTT, at 67-68 & 296 similarly criticizes this claim. The Albanian Decree No. 4650 of Mar. 9, 1970 as amended by Decree No. 5384 of Feb. 23, 1976 may be found in U.N. Legislative Series B/19, at 3 and Limits in the Seas No. 116, Annex 2 (1994). U.N. Baselines: National Legislation 1, Decree No. 7366 of Mar. 24, 1990, making further amendment to these decrees, is annexed to U.N. Doc. A/45/261, and is reproduced in U.N. LOS BULL., No. 16, Dec. 1990, at 2. (See Map 9.)

31. Diplomatic note from American Embassy Dakar delivered Nov. 29, 1989, State Department telegram 301866, Sept. 20, 1989. The Senegalese Decree No. 72-765 of July 6, 1972 may be found in Limits in the Seas No. 54, Oct. 11, 1973 and in U.N. Baselines: National Legislation 274-75. PRESCOTT, at 64 & 315, similarly criticizes this claim, as do REISMAN & WESTERMAN, at 125-26 & 147-50.

32. Limits in the Seas No. 40, Mar. 7, 1972, which includes a translation of Decree No. 244. See also U.N. Legislative Series: National Legislation and Treaties Relating to the Law of the Sea, U.N. Doc. ST/LEG/SER. B/15, at 87 [hereinafter U.N. Legislative Series] (130 mile territorial sea claim); Decree 426/PRG of Dec. 31, 1965, (proclaiming a 200 mile territorial sea) may be found in U.N. Legislative Series B/19 at 32-33.

33. American Embassy Conakry Note No. 25, Dec. 4, 1964, reported in its Airgram No. 123 of Dec. 17, 1964, State Department File No. POL-334-GUIN, pursuant to instructions contained in State Department Airgram No. A-27 of Nov. 27, 1964, State Department File No. POL 33-4 GUIN. REISMAN & WESTERMAN at 131, and PRESCOTT at 316-17, also criticize this claim.

34. Article 1 of Decree No. 336/PRG/80, July 30, 1980, reprinted in U.N. LOS BULL., No. 2, Dec. 1983, at 37. During oral proceedings before the Arbitration Tribunal for the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, Guinea was represented as having set aside this decree. Award of February 14, 1985, para. 96, reprinted in 25 I.L.M. 292 (1986). However, a recent UN compilation of relevant national legislation quotes the 1980 decree as still being in force. U.N. Law of the Sea: National Claims to Maritime Jurisdiction 59 (U.N. Sales No. E.91.V.15, 1992).

35. American Embassy Yaounde *Note Verbale* No. 207, dated May 15, 1963, reported in American Embassy Yaounde Airgram A-135, Feb. 20, 1963, protesting Cameroon Decree No. 62/DF/216 of June 25, 1962, State Department File POL 33-4 CAM. This baseline claim was slightly revised in Decree No. 71/DF/416 of Aug. 26, 1971 which may be found in U.N. Legislative Series B/19, at 131 (French) and in U.N. Baselines: National Legislation 67 (English translation). REISMAN & WESTERMAN criticize three of these segments for enclosing shallow local indentations that do not qualify as juridical bays (while accepting two others as such), and note that "the waters enclosed are no more closely linked to the land domain than if the coast were totally unindented in those localities." The Government of Cameroon has indicated its intention to conform its legislation to the provisions of the Law of the Sea Convention which it has ratified. American Embassy Yaounde telegram 00665, Jan. 23, 1991.

36. Order-in-Council 1967-2025 may be found in U.N. Legislative Series B/15, at 52-54. Order-in-Council 1969-1109 may be found in U.N. Legislative Series B/16, at 6-9. The 1972 revision of these baselines may be found in U.N. Baselines: National Legislation 69-85.

37. *Note verbale* from the United States Department of State to Embassy of Canada, dated Nov. 1, 1967, as reported in a telegram from the Department of State to American Embassy Ottawa dated Nov. 2, 1967, State Department File No. POL 33-8 CAN-US, reprinted in Annex 4 to volume I of the Documentary Annexes to the United States Reply in the *Gulf of Maine Case* before the I.C.J. (1983), and in 5 *id.* Pleadings, Oral Arguments, Documents 503 (I.C.J. 1984).

The Government of Canada responded to the United State's note as follows:

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the United States Aide-Memoire of November 1. The Canadian Government has noted the objections raised in that Aide-Memoire concerning the decision of the Canadian Government to implement the straight baseline system as a means of delineating the baselines from which Canada's territorial sea and contiguous zones are measured. The Canadian Government is satisfied that the

straight baseline system is being implemented by Canada in a manner wholly in accordance with the recognized principles of international law and regrets that it is not able to agree with the interpretation which has been placed on this action by the Government of the United States.

Aide memoire from the Embassy of Canada to the Department of State, dated Nov. 11, 1967, State Department File No. POL 33-4 CAN-US, reprinted in Annex 4 to volume I of the Documentary Annexes to the United States Reply in the *Gulf of Maine Case* before the I.C.J. (1983), and in 4 *id.* Pleadings, Oral Arguments, Documents 474. On the other hand, PRESCOTT, at 314, considers the straight baselines along the south and east coasts of Newfoundland and the coasts of Nova Scotia to "have been drawn in a meticulous fashion." While generally treating the Canadian baselines for Vancouver and Queen Charlotte Islands as substantially conforming to the LOS Convention, REISMAN & WESTERMAN note that in the case of Vancouver "there is a severe departure from the coastline between segments 23 and 26 and in several cases, rocks are used as basepoints." REISMAN & WESTERMAN, at 111. Their criticism of certain lines along the coasts of Newfoundland and Baffin Island is detailed at pages 166-68.

38. Note from the Secretary of State to Embassy of Canada, dated April 25, 1969, State Department File No. POL 33-8, reprinted in Annex 4 to volume I of the Documentary Annexes to the United States Reply in the *Gulf of Maine Case* before the I.C.J. (1983), and in 5 *id.* Pleadings, Oral Arguments, Documents 503-04 (I.C.J. 1984). The baselines may be found in I MCRM 2-74 to 2-94. PRESCOTT, at 239, while asserting the coastlines of Vancouver Island and Queen Charlotte Islands are "certainly cut into and deeply indented" and that "it is apparent that straight baselines should be used", criticizes the baseline system for terminating on islands, since it is "impossible to know the exact extent of internal waters." He rightly points out "the baseline must terminate on the mainland, or in this case on the main island, so that the area of internal waters is completely defined." Canada's Arctic straight baselines are discussed below beginning at text accompanying n. 55.

39. Washington Post, May 22, 1987, at A34; Pravda, May 23, 1987, 2d ed., at 5 & Sovetskaya Rossiya, May 23, 1987, 1st ed., at 3, in FBIS-SOV-87-107, June 4, 1987, at A2-A4; 39 Current Dig. Soviet Press, June 24, 1987, at 18; U.S. Nav. Inst. Proc., at 231 (May 1988). The USSR Council of Ministers Declaration 4450, Jan. 15, 1985, and Declaration 4604, Feb. 7, 1984, may be found in U.N. Baselines: National Legislation 315-70, and in II MCRM 2-456 to 2-504.

40. Washington Post, Feb. 19, 1992, at A1, A24; N.Y. Times, Feb. 19, 1992, at A6; FBIS-SOV-92-032, Feb. 18, 1992, at 7; FBIS-SOV-92-033, Feb. 19, 1992, at 5; FBIS-SOV-92-034, Feb. 20, 1992, at 14-15; FBIS-SOV-92-037, Feb. 25, 1992, at 6; FBIS-SOV-92-046, Mar. 9, 1992, at 12.

41. U.S. Mission to the United Nations in New York Note dated Dec. 6, 1982, State Department telegram 334675, Dec. 1, 1982. The Vietnamese declaration of Nov. 12, 1982 may be found in Limits in the Sea No. 99 (1983) and in U.N. Baselines: National Legislation 384-387. Protests of this decree by China and Thailand may be found in U.N. Docs. A/37/682-S/15505 of Nov. 30, 1982 (China) and A/40/1033 of Dec. 12, 1985 (Thailand) and in U.N. Current Developments No. I, at 145 (China) and 147-48 (Thailand) (U.N. Sales No. E.87.V.3 (1987)); the French protest of Dec. 5, 1983 may be found in *id.* at 146. The Federal Republic of Germany also protested this claim in June 1984.

42. Limits in the Sea No. 99, at 10. *Accord*, PRESCOTT, at 212, and REISMAN & WESTERMAN, at 133, 135-36.

43. American Embassy Muscat Note 0606 dated Aug. 12, 1991, *supra* n. 27.

44. American Embassy Rome note 1174 delivered Dec. 10, 1986. State Department telegram 309312, Oct. 1, 1986; American Embassy Rome telegram 29799, Dec. 16, 1986. The Italian Presidential Decree No. 816 of Apr. 26, 1977 and its accompanying chart may be found in 2 WESTERN EUROPE AND THE DEVELOPMENT OF THE LAW OF THE SEA 147-53 (F. Durante & W. Rodino eds., 1979), and in U.N. Baselines: National Legislation 201-06.

45. Limits in the Seas No. 76, at 7-8 (1977).

46. Department of State Note dated July 5, 1983, to the Cuban Interests Section of the Embassy of Czechoslovakia. PRESCOTT, at 337, also criticizes these segments. REISMAN & WESTERMAN, at 122, criticize other segments. The Cuban Decree Law No. 1 of February 24, 1977, may be found in Limits in the Seas No. 76, which also analyzes the baseline segments, and in U.N. Baselines: National Legislation 112-118. Cuba responded to a similar protest made by U.S. Interests Section, Embassy of Switzerland, Note No. 259 of May 14, 1984, in part as follows:

The Ministry of Foreign Relations presents its compliments to the Embassy of Switzerland, U.S. Interest Section, and takes this opportunity to refer to the Section's Note No. 259, dated May 14, 1984, concerning the protest contained in the Ministry's Note No. 484, dated Mar. 29, 1984, regarding the violation of the Republic of Cuba's sovereign air space over its territorial sea south of Baitiquiri, Guantanamo Province.

In the aforementioned Note No. 259, the U.S. authorities attempt to shirk their responsibility for these violations, and once again tendentious arguments are used with regard to the drawing of Cuban base lines from which the breadth of the territorial sea, and thus sovereignty over the corresponding air space, is measured.

It does not fall within the jurisdiction of the United States Government to analyze, much less approve, Cuban base lines. With a view to aiding the U.S. authorities in correcting their reasoning, however, the Cuban authorities would like to remind them that there is no rule of international law that stipulates that one State must approve the base lines drawn by another State.

In the case of the territorial sea of Cuba relative to the United States of America, there is no possible justification for analysis, inasmuch as no U.S. island or territory was affected. One State's sovereignty over its air space and territorial sea has been violated by another State, and efforts have been made to cloud the issue of this violation.

It should be recalled that the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone cannot be invoked, inasmuch as the Republic of Cuba is not a party to it, nor can the 1982 Convention on the Law of the Sea be invoked inasmuch as the United States of America has not even signed it. Since it has been cited, however, it should be noted that the latter Convention contains no provision whatsoever on extending straight base lines between points, except with respect to archipelagic States (which Cuba is not), which may draw their base lines up to 100 nautical miles, except that 3% of the lines may extend 125 miles (Article 47, paragraph 2). Furthermore, Decree-Law No. 1 of February 24, 1977, which established the points of the straight Cuban base lines, was enacted well before conclusions were made on the drawing of these lines at the Third United Nations Conference on the Law of the Sea, which from its beginning imperiled, or at least rendered obsolete the precepts of, the above-cited 1958 Geneva Convention.

Nevertheless, in the absence of an international standard accepted worldwide, legal provisions on the drawing of Cuban baselines reflect the most advanced thinking of that time, and incorporate the criteria used by the Cuban people as far back as 1934 in Decree-Law No. 8, in which they claimed their internal waters.

Because of the geographic formation of Cuba, which has fringes of islands along its coasts in the immediate vicinity of its major island that are clearly under its sovereignty inasmuch as the space between them is governed by internal waters regulations, the right of the Republic of Cuba to draw straight base lines is irrefutable.

Furthermore, the daily exercise of the right of innocent passage through Cuban waters, which Cuba allows, recognizes, and practices, and with which the United States of America is perfectly familiar, does not limit the right of the Cuban authorities to act in accordance with their national law when they deem that a violation of another nature may have occurred. For example, there have been innumerable cases of illegal narcotics traffic, in which boats run by U.S. citizens have been used precisely in these zones, and there are other, past cases of U.S. ships bringing counterrevolutionaries to infiltrate Cuba and commit acts of piracy against the sovereign territory of the Republic of Cuba.

Moreover, there is no justification whatsoever for U.S. Air Force planes or U.S. Navy vessels to be in these zones, much less acting dangerously and in violation of the sovereign air space of the Republic of Cuba over its territorial sea south of Baitiquiri, Province of Guantanamo, as was the case between 6:30 p.m. and 7:00 p.m. on March 20, 1984, when three U.S. Air Force fighter planes, apparently proceeding from the Guantanamo Naval Base, synchronized their flight with the passage of the U.S. yachts *Brigadoon III* and *Cashash a*, an act which can only be construed as a deliberate provocation.

The Ministry of Foreign Relations reiterates the vigorous protest contained in its Note No. 484 of March 29, 1984, and once again, through the Embassy of Switzerland, U.S. Interests Section, appeals to the good sense of the U.S. authorities and their respect for the rules of international law and the sovereignty of the Cuban State, to take the necessary measures to avoid actions such as those described in Note No. 484 and in the present note which were committed by U.S. Air Force personnel. A repetition of such incidents can only lead to incalculable harm, the responsibility for which will fall exclusively on the authorities of the Government of the United States of America.

Ministry of Foreign Relations, Havana, Note dated June 26, 1984, State Language Services translation no. 113320, State Department File No. P92 0100-0942.

47. American Embassy Lisbon note delivered in the Fall of 1986, State Department telegram 266998, Aug. 25, 1986. The Portuguese Ministry of Sea Decree Law No. 495/85 of Nov. 29, 1985, may be found in II MCRM 2-363 to 2-367, and U.N. Baselines: National Legislation 260-66.

48. American Embassy Quito note delivered Feb. 24, 1986. State Department telegram 033256, Feb. 3, 1986; American Embassy Quito telegram 01651, Feb. 25, 1986. The Ecuadoran Supreme Decree No. 959-A, may be found in Limits in the Sea No. 42 (1972), which also provides a detailed point-by-point analysis of the straight baseline segments, in U.N. Legislative Series B/18, at 15-16, and in U.N. Baselines: National Legislation 154-56. PRESCOTT, at 64 & 202, and REISMAN & WESTERMAN, at 154, similarly criticize this claim.

49. American Embassy Djibouti Note dated May 22, 1989. State Department telegram 100762, Mar. 31, 1989; American Embassy Djibouti 1481, June 1, 1989. Decree No. 85-048 of May 5, 1985, may be found in I MCRM 2-142 to 2-143, and U.N. Baselines: National Legislation 149. See Limits in the Seas No. 113 (March 1992).

50. Limits in the Seas No. 4, at 2 (1970); American Embassy Mexico City telegram 4292, Aug. 5, 1969, State Department File POL 33-4 MEX, XR Pol Mex-US. The Decree of Aug. 29, 1968, may also be found in U.N. Legislative Series B/16, at 17-19 and U.N. Baselines: National Legislation 221-22.

51. American Embassy Lisbon note delivered in the Fall of 1986, State Department telegram 266998, Aug. 25, 1986, n. 47 *supra*. In its reply, the Government of Portugal stated:

a reading of the geographic coordinates cited in the Annex to this Decree-Law demonstrates that the procedure adopted in locating the relevant baselines of the Azorean and Madeiran archipelagoes was not predicated on Part IV of the Convention, but rather the authority comes from its article 121 (Part VIII), which refers to the applicable dispositions of geographic formations in general.

Portuguese Ministry of Foreign Affairs Note DSA 3057 33/EUA/3 of Nov. 28, 1986, to American Embassy Lisbon. It should be noted that article 121 provides that the territorial sea of an island is determined in accordance with the provisions of the LOS Convention "applicable to other land territory", and that these straight baselines do not meet the preliminary criteria for drawing straight baselines under article 7 of the LOS Convention.

52. American Embassy Copenhagen Notes Nos. 061 and 065 of July 12 and 18, 1991. State Department telegram 223707, July 9, 1991; American Embassy Copenhagen telegram 02435, Oct. 24, 1991. Ordinance No. 599 of Dec. 21, 1976, on the delimitation of the territorial sea around the Faeroe Islands, may be found in U.N. Baselines: National Legislation 131-32. The same coordinates were used in Ordinance No. 598 establishing fishing limits around the Faroes, which may be found in II MCRM 2-130 to 2-131. The Danish Ministry of Foreign Affairs replied in a *Note Verbale* dated Oct. 3, 1991, which stated in part:

these baselines are permitted in international law in view of the compact nature of the group of islands involved. The islands, 18 in all, are lying so close together, that a hypothetical 3 mile limit, drawn around each separate island without the use of any straight baseline would create a continuous outward boundary around the island group as a whole. In consequence, the Danish Government has since 1927, without meeting with any protest, declared the sounds between the islands to be internal waters. Cf. Ordinance No. 4 of 21 February 1927 concerning access of foreign warships to Danish waters and harbours in peacetime.

The baselines laid down in Ordinances Nos. 598 and 599 were determined in accordance with Article 4 of the above mentioned [1958] Geneva Convention [on the Territorial Sea and the Contiguous Zone]. Article 4(4) states that in determining the particular baselines account may be taken of the economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by a long usage. This is highly relevant to the Faroe Islands in view of their dependence on fisheries in the areas defined by the baselines.

It may be recalled that a special resolution was adopted on 26 April 1958 in connection with the Convention of 29 April 1958 on fishing and conservation of the living resources of the high seas designed to safeguard the interests of countries or territories heavily dependent on fisheries in waters bordering their territorial seas. At the introduction of this resolution it was underlined that among others it referred in particular to the Faroe Islands.

American Embassy Copenhagen telegram 07435, Oct. 24, 1991.

53. American Embassy Quito Note delivered Feb. 24, 1986. State Department telegram 033256, Feb. 3, 1986; American Embassy Quito telegram 01651, Feb. 25, 1986. The Federal Republic of Germany also protested this claim in Nov. 1986. PRESCOTT, at 202-03, notes it has "never been conclusively established that baselines may be drawn by coastal states around offshore archipelagos" such as the Galapagos. The Ecuadoran Supreme Decree No. 959-A, may be found in Limits in the Sea No. 42 (1972), which also provides a detailed segment by segment analysis of the straight baseline system; in U.N. Legislative Series B/18, at 16; and in U.N. Baselines: National Legislation 154-156. The exclusion of offshore archipelagos of continental States from the archipelagic provisions formed one reason Ecuador refused to sign the LOS Convention. 16 U.N. Official Records 155, para. 30; 17 *id.* 97, para. 200. The United States had previously protested an Ecuadoran decree of February 21, 1951, delimiting a territorial sea around the Galapagos Islands by a note dated June 7, 1951 (4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 800-01 (1965) [hereinafter WHITEMAN]) as did the United Kingdom in its note of September 14, 1951 (4 *Anglo-Norwegian Fisheries Case*, Pleadings 587-89).

54. Diplomatic Note from American Embassy Khartoum delivered June 6, 1989. State Department telegram 174664, June 2, 1989; American Embassy Khartoum telegram 06535, June 7, 1989. Sudan's Territorial Waters and Continental Shelf Act No. 106 of 1970 may be found in U.N. Legislative Series B/16, at 31.

55. The Canadian straight baseline claims may be found in U.N. Baselines: National Legislation 69-98. The Canadian Arctic straight baseline claim was enacted in reaction to a USCG icebreaker transit of the Northwest Passage earlier in 1985. See *infra* Chapter XI, text accompanying nn. 77-81. The September 10, 1985 statement in the House of Commons by Canada's Secretary of State for External Affairs concerning Arctic sovereignty is reproduced in 24 I.L.M. 1723-27 (1985). Previously the Canadian Hydrographic Service had published a chart identified as "7000 Arctic Archipelago, 1:5,000,000, Mar. 5, 1982." The Department of State commented on this chart in a note to the Canadian Embassy, dated May 2, 1983, in part as follows:

. . . Although the Government of the United States of America does not normally examine or comment upon charts published by the Government of Canada, this chart provides a useful opportunity to present the positions of the United States Government on several issues.

The Government of the United States of America understands the title of the chart, "Arctic Archipelago", to be using the term "archipelago" in its geographic sense, as a large body of water with many islands, and not in its legal sense, as used, for example, in the United Nations Convention on the Law of the Sea. Under the terms of that Convention, only mid-oceanic states that are wholly constituted by one or more archipelagos and other islands may be considered to be "archipelagic states" entitled to use archipelagic baselines. There is of course no basis in international law for a claim of archipelagic status for any Canadian islands and their offshore waters.

State Department File No. P83 0056-1091. Replying on June 3, 1983, to the Department's Note of May 2, 1983, the Canadian Embassy stated in its Note No. 81, among other things, that the Government of Canada saw no need to comment on the understanding of the United States Government regarding the use of the term 'archipelago' on this chart, beyond pointing out that it reserved its right to attach any meaning to the term 'archipelago' that may be consistent with ordinary linguistic usage, geography or international law. State Department File No. P83 0076-1115.

56. State Department File No. P86 0019-8641.

57. British High Commission Note No. 90/86 of July 9, 1986, reported in American Embassy Paris telegram 33625, July 24, 1986. The Canadian Department of External Affairs responded in its Note No. JCD-0257 of Aug. 7, 1986, in part as follows:

As to any precedential significance of the Canadian baselines, they can have little or none in view of the unique characteristics of the Canadian Arctic archipelago.

REISMAN & WESTERMAN, at 111, suggest some of the baseline segments "appear inappropriate" since they make frequent use of islets or rocks as basepoints, and a few segments depart from the general direction of the coast.

58. REISMAN & WESTERMAN, at 163 n.93. The British Order in Council, Falklands Islands Statutory Instruments 1989 No. 1993, (Territorial Sea) Order 1989 may be found in 60 Brit. Y.B. Int'l L. 1989, at 657-58 (1990). The United States has made known its concerns with the baselines to the United Kingdom.

59. REISMAN & WESTERMAN, at 156-59; PRESCOTT, at 315.

60. Limits in the Seas No. 76, at 7-8 (1977).

61. Department Note dated July 5, 1983, to the Cuban Interests Section of the Embassy of Czechoslovakia, *supra* n. 46.

62. Limits in the Seas No. 4, Jan. 24, 1970, at 2. PRESCOTT, at 237 also criticizes these lines. The Decree of August 29, 1968 may also be found in U.N. Legislative Series B/16, at 17-19, and U.N. Baselines: National Legislation 221-22.

63. American Embassy Rangoon Note delivered on Aug. 6, 1982. State Department telegram 196007, July 15, 1982; American Embassy Rangoon telegram 3243, Aug. 9, 1982. The Burma Territorial Sea and Maritime Zones Law, 1977, may be found in U.N. Legislative Series B/19, at 8-13; in SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 85-89 (1986) [hereinafter SMITH, EEZ CLAIMS]; and in U.N. Baselines: National Legislation 64-66. Burma's 1968 legislation on the territorial sea can be found in Limits in the Seas No. 14 (1970). PRESCOTT, at 166, and REISMAN & WESTERMAN, at 168 & 172-73 also severely criticize this claim.

64. State Department Note dated July 5, 1983, to the Cuban Interests Section of the Embassy of Czechoslovakia, *supra* n. 46. PRESCOTT, at 166 & 337, and REISMAN & WESTERMAN, at 168, 172-73 also severely criticize this claim.

65. American Embassy Mexico City Note No. 1042, July 23, 1969; State Department telegram 115918, July 14, 1969; American Embassy Mexico City telegrams 4110, July 26, 1969, and 4292, Aug. 5, 1969. See Limits in the Seas No. 4, Jan. 24, 1970. PRESCOTT, at 279, comments that "it is far from clear why this [straight baseline] was necessary." The Decree of August 29, 1968, may also be found in U.N. Legislative Series B/16, at 17-19 and U.N. Baselines: National Legislation 221-22.

66. Department Note dated Mar. 15, 1985 to the FRG Embassy in Washington, *reported in* State Department telegram 080298, Mar. 16, 1985. The FRG claim appears in the U.N. Current Developments Series No. I, at 20-32, and in U.N. Baselines: National Legislation 176-79.

67. *Supra* n. 54.

68. Limits in the Seas No. 99, at 7. See PRESCOTT, at 212, and n. 42.

69. See *supra* n. 48. Limits in the Sea No. 42 states that such a segment "does not qualify as a basepoint as it is simply the site of the intersection of two baselines and is located in the water".

70. 4 WHITEMAN 342-43; 57 Am. J. Int'l L. 403-04 (1963).

71. See *supra* n. 48. Limits in the Seas No. 42, at 5-6, notes that "bay closing lines are applicable only to bays which are in a single State there is no evidence to support Colombia's concurrence in the use of Cabo Manglares as a basepoint in the Ecuadorian straight baseline system".

72. PRESCOTT, at 64 & 313-14, and REISMAN & WESTERMAN, at 187, criticize this claim, the latter as violating Article 7(6) of the LOS Convention rule that a straight baseline cannot be drawn so as to cut off the territorial sea of another State from the high seas.

73. American Embassy Foreign Office Note No. 113 of Oct. 22, 1956, to the Venezuelan Ministry of Foreign Affairs (American Embassy Caracas despatch 294, Oct. 22, 1956), State Department File No. 731.022/10-22-56, pursuant to instructions in State Department Airgram A-69, Oct. 16, 1956, and by the British Embassy at Caracas Note No. 118 of Nov. 14, 1956, reported in American Embassy Caracas despatch 365, Nov. 30, 1956, State Department File 731.022/103056. The 1956 Law may be found in U.N. Legislative Series B/15, at 132, and in U.N. Baselines: National Legislation 381. The 1968 Presidential Decree may be found in Limits in the Seas No. 21 (1970), and in U.N. Baselines: National Legislation 382. The Guyanan rejection of Venezuela's claim to the territory as far as the Essequibo River may be found in the Department of State's International Boundary Study No. 21: British Guiana (Guyana) - Venezuela Boundary, Mar. 14, 1963.

74. Enclosure to U.N. letter LE 113(3-3) MALDI, *quoted in* Limits in the Seas No. 78, at 9.

75. *Id.* at 9 & 10.

76. *Id.* at 8.

77. American Embassy Colombo Note dated Aug. 2, 1982. State Department telegram 150666, June 2, 1982; American Embassy Colombo telegram 4672, Aug. 6, 1982. REISMAN & WESTERMAN, at 160-63, strongly criticize these claims. PRESCOTT, at 161, suggests that the Maldives could establish straight archipelagic baselines.

78. See further 1978 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 942-43 [hereinafter DIGEST]. The Bangladeshi claim to straight baselines, set out in its Declaration LT-1/3/74 of April 13, 1974, may be found in V NEW DIRECTIONS IN THE LAW OF THE SEA 290-91 (R. Churchill, M. Nordquist & S.H. Lay eds., 1977); SMITH, EEZ CLAIMS at 69-72; and in U.N. Baselines: National Legislation 62. PRESCOTT, at 64 and 168, and REISMAN & WESTERMAN, at 183-87, criticize this claim.

On April 28, 1982, the Government of Bangladesh reasserted its proposal to reformulate the criteria for establishing straight baselines for those deltaic countries whose shores were marked by continuous fluvial erosion and sedimentation as a result of river flooding, sudden rainfall, hurricanes and other adverse weather factors. In a letter to the President of the Third United Nations Conference on the Law of the Sea, the representative of the Government of Bangladesh stated:

the unique configuration of its coastline associated with peculiar geomorphological and geological conditions obtaining off-shore — conditions that lead to a highly fluctuating low-water mark and areas of shallow water so unstable and variable as not to be amenable to conventional charting. Except for the channels leading to the two riverine ports of Chalna and Chittagong, the off-shore area has not historically been navigable and that situation continues to remain so. These conditions have a manifest impact on the drawing of the baselines in an area where the waters immediately off-shore have a closer affinity to the land than to the ocean.

In this background, Bangladesh proposed a formulation based upon depth criteria and bathymetric factors which in the circumstances of the case mark the limits of navigation and charting. When the Bangladesh proposal was originally made, it received substantial and favourable support from a large number of delegations and it is our estimate that such support still exists. It is in this background that the Bangladesh Government considers that article 7 of the draft convention (A/CONF.62/L.78) cannot preclude the founding of its baseline on depth criteria and bathymetric factors.

On April 30, 1982, the representative from India responded to the Bangladesh proposal in a letter, of which the following is an excerpt, to the President of the Conference:

2. . . . The proposal concerning the drawing of baselines in the deltaic area referred to in the aforementioned letter by the representative of Bangladesh was made as an informal suggestion with respect to the contents of paragraph 2 of article 7 of the informal composite negotiating text at the seventh session of the Conference held at Geneva from 28 March to 19 May 1978. Their proposal would have allowed the establishment of straight baselines joining base points at sea rather than base points located along the coastline. With reference to their suggestion, and the claim that it had received substantial support, I, as representative of India at the Conference, had made the following statement at the 104th plenary meeting on 18 May 1978:

“54. . . . the informal suggestion made by Bangladesh with respect to the content of paragraph 2 of article 7 (C.2/Informal meeting/6) would have the effect of establishing a new rule of international law, under which a coastal State would be able to establish straight baselines from base points at sea, and would therefore require wide acceptance by the international community before it could come into force. As his delegation has stated at an informal meeting of the Committee on 28 April, such a suggestion must be considered in the light of the distance from the coastline of the base points for the future baselines; the effect which the new baselines would have on the general direction of the coastline; the possibility that the baselines would be used in fixing the outer limits of the territorial sea or exclusive economic zone, or maritime boundaries with neighbouring coastal States; and the effects on navigation in the enclosed internal waters. It was therefore gratified that Bangladesh was willing to discuss its suggestion with the other States interested in the matter and to raise it again at the Conference’s next session. That attitude on the part of Bangladesh showed that its suggestion could not be regarded as having already obtained the substantial support to which reference was made in subparagraph 2 of paragraph 9 of document A/CONF.62/L.28 [9 Official Records 183].” [9 Official Records 73.]

3. The suggestion of Bangladesh was not discussed with India after the aforementioned statement, nor has the Bangladesh suggestion been raised at the Conference since 1978, except at the present session and particularly in the form of the letter dated 28 April 1982, referred to at the outset.

4. In view of the above, it will not be correct to say that article 7 of the draft convention (A/CONF.62/L.78) [15 Official Records 177] cannot preclude the founding of a baseline on depth criteria and bathymetric factors, as stated by the representative of Bangladesh. In fact, the Conference has not accepted the suggestion of Bangladesh.

5. Article 7, paragraph 2, of the draft convention reads as follows:

“2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baseline shall remain effective until changed by the coastal state in accordance with this Convention.”

U.N. Doc. A/CONF.62/L.148, 16 Official Records of the Third United Nations Conference on the Law of the Sea 254-55 [hereinafter Official Records].

On the same day, the representative from Burma also responded to the proposal from the Government of Bangladesh in a letter, of which the following is an excerpt, to the President of the Conference:

In his letter dated 28 April 1982 addressed to you and circulated to all delegations in document A/CONF.62/L.140 of the same date, the representative of Bangladesh asserts that his delegation's proposal concerning the establishment of a straight baselines system on the depth criteria and bathymetric factors had received, and continues to enjoy "substantial and favourable support from a large number of delegations" and further that his Government considers that "article 7 of the draft convention (A/CONF.62/L.78) cannot preclude the founding of its baselines" on such a basis.

In this connection, my delegation is of the view that the above-mentioned assertions are not borne out by the history of the negotiations on the proposal at the Conference, particularly in the broadly representative informal negotiating group on baselines established during the third session. Nor are they supported by the text of article 7, paragraph 2 of the draft convention embodying the results of the said negotiations, which specifies in precise and unambiguous terms the fundamental rule that straight baselines may be drawn only from land-point to land-point, and not from sea-point to sea-point.

U.N. Doc. A/CONF.62/L.149, 16 Official Records 255. See also PRESCOTT, at 163, 166 (by claiming this baseline, Bangladesh has sought to convert 6200 square nautical miles of potential exclusive economic zone into territorial sea and internal waters).

79. Diplomatic Note dated Dec. 18, 1989 from American Embassy San Jose, *reprinted in Limits in the Seas* No. 111. Costa Rica's decree No. 18581-RE, of Oct. 14, 1988, may be found in *Limits in the Seas* No. 111.

80. DEP'T ST. BULL., Feb. 1987, at 69-70. See further *supra* Chapter III text accompanying nn. 20-23.

81. *Limits in the Seas* No. 44, at 2 (1972). The United States had previously protested these straight baselines in an *aide memoire* from American Embassy Buenos Aires dated Mar. 2, 1967. State Department telegram 146551, Mar. 1, 1967, File POL 33-4 ARG, quoted in State Department airgram CA-393, July 17, 1967, File POL 33-4 ARG. PRESCOTT, at 313, also criticizes this claim.

82. Diplomatic Note from American Embassy Nouakchott delivered Jan. 25, 1990, based on instructions contained in State Department telegram 248628, Aug. 4, 1989; American Embassy Nouakchott telegram 00448, Jan. 30, 1990. PRESCOTT, at 315, also criticizes this claim, noting "this line could only be considered to conform to the general direction of the coast if the entire coast of Mauritania was viewed in its entirety" and that it might have been taken to strengthen measures against poaching by foreign fishing fleets in the valuable fishing ground. Article 1[a] of Mauritania's Aug. 31, 1988 Ordinance 88-120 may be found in U.N. Baselines: National Legislation 219 (English translation). Earlier legislation containing the same claim, Article 179 (1)(b) of Law No. 78,043, Feb. 28, 1978, may be found in translation in 9 NEW DIRECTIONS IN THE LAW OF THE SEA 78 (Nordquist & Simmonds eds.); Law No. 67-023, Jan. 21, 1967, may be found in translation in *Limits in the Seas* No. 8, Feb. 18, 1970, where the State Department Geographer noted that the greatest indentation of the bay is about 34 miles from the straight baseline, and that Banc d'Arguin is everywhere less than 10 fathoms deep; Law No. 62-038, Jan. 20, 1962, may be found in U.N. Legislative Series B/15, at 100, and Scovazzi ed. at 42.

83. Diplomatic Note from American Embassy Khartoum delivered June 6, 1989, *supra* n. 54.

84. American Embassy Port au Prince Note delivered Jan. 11, 1973. State Department telegram 004532, Jan. 9, 1973, File POL 33-8; American Embassy Port au Prince telegram 0060, Jan. 11, 1973. The decree of April 6, 1972 may be found in *Limits in the Seas* No. 51, May 25, 1973 and in U.N. Baselines: National Legislation 182. REISMAN & WESTERMAN, at 158 & 60, criticize the inferred straight baselines surrounding Haiti, including the line enclosing the overlarge bay, Golfe de la Gonave.

85. U.N. LOS BULL., No. 15, May 1990, at 8-9. PRESCOTT, at 239-41, criticizes the assumed straight baseline. See also *infra* Chapter VI n. 13.

86. Department of State Diplomatic Note dated October 16, 1981, *repeated in* State Department telegram 335752, Dec. 19, 1981. The Maltese Territorial Waters and Contiguous Zone Act of 1971 may be found in U.N. Legislative Series B/16, at 16. The map was reproduced in the memorial of April 26, 1983, submitted by Malta to the International Court of Justice in the *Continental Shelf (Libya v. Malta) Case*, and may be found in U.N. Baselines: National Legislation 218. In the declaration accompanying its instrument of ratification of the LOS Convention on May 20, 1993, Malta stated "[t]he baselines as established by Maltese legislation for the delimitation of the territorial sea and related areas, for the archipelago of the islands of Malta and which incorporate the island of Filfla as one of the points from which baselines are drawn, are fully in line with the relevant provisions of the Convention." U.N. LOS BULL., No. 23, June 1993, at 6.

87. *Supra* n. 54.

Chapter V

Territorial Sea

International consensus, as reflected in Article 3 of the LOS Convention, provides that:

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the Convention.

United States Policy

In 1988, President Reagan, acting under his constitutional authority “and in accordance with international law,” extended the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, to 12 miles from the baselines of the United States determined “in accordance with international law.”¹

The preamble to the Proclamation explains the action taken as follows:

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.²

As is reflected in Table 3, the State practice of territorial sea claims has become, by large measure, relatively stable and in line with the customary international law reflected in the LOS Convention. Table 4 lists the territorial sea claims of States of 12 miles or less.

Table 3
Territorial Sea Claims

National claims	1945	1958	1965	1974	1979	1983	1994
3 miles	46	45	32	28	23	25	5
4-11 miles	12	19	24	14	7	5	5
12 miles	2	9	26	54	76	79	119
Over 12 miles	0	2	3	20	25	20	17
Number of coastal or island States	60	75	85	116	131	129	146

Note: At time of publication, information was not available on the territorial sea claims of Bosnia-Herzegovina, Croatia, Georgia, and Slovenia.

Source: U.S. Department of State, Office of Ocean Affairs.

Table 4
Territorial Sea Claims of 12 Miles or Less
(as of July 1, 1994)

Three miles (5)

The Bahamas ^a	Germany ^{d, e}	Singapore
Denmark ^{b, c, d}	Jordan	

Four miles (2)

Finland ^{a, b, d}	Norway
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Six miles (3)

Dominican Republic ^{c, d}	Greece	Turkey ^h
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Twelve miles (119)

Albania ^d	Bulgaria ^{c, d}	Cuba ^a
Algeria	Burma	Cyprus ^{a, d}
Antigua and Barbuda ^a	Cambodia ^{c, d}	Djibouti ^a
Argentina ^a	Canada	Dominica ^a
Australia ^{c, d}	Cape Verde ^{a, h}	Egypt ^a
Bahrain ^a	Chile	Equatorial Guinea
Bangladesh	China	Eritrea
Barbados ^a	Colombia	Estonia
Belgium ^c	Comoros ^{a, h}	Fiji ^{a, c, d, h}
Belize ^{a, g}	Cook Islands	France ⁱ
Brazil ^a	Costa Rica ^{a, d}	Gabon
Brunei	Cote d'Ivoire ^a	Gambia, The ^a

Table 4 (Cont.)

Twelve Miles ((Cont.))

Ghana ^a	Malaysia ^{c, d}	Sao Tome & Principe ^{a, h}
Grenada ^a	Maldives	Saudi Arabia
Guatemala ^d	Malta ^{a, c}	Senegal ^{a, d}
Guinea ^a	Marshall Islands ^a	Seychelles ^a
Guinea-Bissau ^a	Mauritania	Solomon Islands ^{c, d, h}
Guyana ^a	Mauritius ^{c, d}	South Africa ^{c, d}
Haiti ^{c, d}	Mexico ^{a, c, d}	Spain ^{c, d}
Honduras ^a	Micronesia, Fed. States of ^a	Sri Lanka
Iceland ^a	Monaco	Sudan ^a
India	Morocco	Suriname
Indonesia ^{a, d, h}	Mozambique	Sweden
Iran	Namibia ^a	Tanzania ^a
Iraq ^a	Nauru	Thailand ^{c, d}
Ireland	Netherlands ^{c, d}	Tonga ^{c, d}
Israel ^{c, d}	New Zealand ^l	Trinidad & Tobago ^{a, c, d, h}
Italy ^{c, d}	Niue	Tunisia ^{a, c}
Jamaica ^{a, c, d}	Oman ^a	Tuvalu
Japan ^{c, d, j}	Pakistan	Ukraine
Kenya ^{a, c, d}	Papua New Guinea ^h	United Arab Emirates
Kiribati	Poland ^d	United Kingdom ^{c, d, m}
Korea, North	Portugal ^{c, d}	United States ^{c, d, n}
Korea, South ^k	Qatar	Vanuatu ^h
Kuwait ^a	Romania ^{c, d}	Venezuela ^{c, d}
Latvia	Russia ^{c, d}	Vietnam
Lebanon	Saint Kitts and Nevis ^a	Western Samoa
Libya	Saint Lucia ^a	Yemen ^a
Lithuania	Saint Vincent and the Grenadines ^a	Yugoslavia, Former ^{a, c, d}
Madagascar ^{c, d}		Zaire ^a

^aRatified the 1982 Convention.

^bIncludes Greenland and the Faroe Islands.

^cParty to the 1958 Territorial Sea Convention.

^dParty to the 1958 High Seas Convention.

^eThe Federal Republic of Germany and the German Democratic Republic unified on October 3, 1990.

Its territorial sea claim is considered to be 3 miles, except in the Helgolander Bucht where the limit extends, at one point, to 16 miles; and, in the Baltic, off the former GDR, the limit is 12 miles.

^fIn the Aegean Sea. Turkey claims a 12-mile territorial sea off its coast in the Black Sea and the Mediterranean.

^gFrom the mouth of the Sarstoon River to Ranguana Caye, Belize's territorial sea is 3 miles; according to Belize's Maritime Areas Act, 1992, the purpose of this limitation is "to provide a framework for the negotiation of a definitive agreement on territorial differences with the Republic of Guatemala".

^hMaritime limits are measured from claimed "archipelagic baselines" which generally connect the outermost points of outer islands or drying reefs.

ⁱIncludes all French overseas departments and territories.

^jJapan's territorial sea remains 3 miles in five "international straits", i.e., Soya (LaPerouse), Tsugaru, Osumi, and the eastern and western channels of Tsushima.

^kSouth Korea's territorial sea remains 3 miles in the Korea Strait.

^lIncludes Tokelau.

^mIncludes Bermuda, Cayman Islands, Falkland Islands, St. Helena, Ascension, Tristan de Cunha, Gough Island, Nightengale Island, Inaccessible Island, South Georgia, South Sandwich Islands, and the Turks and Caicos Islands.

ⁿIncludes Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, Johnston Atoll, Palmyra Atoll, Midway Island, Wake Island, Jarvis Island, Kingman Reef, Howland Island, Baker Island, Northern Marianas. Palau, which is still part of the Trust Territory of the Pacific Islands, claims a 3-mile territorial sea and a 200-mile fishery zone.

Source: U.S. Department of State, Office of Ocean Affairs; U.N. LOS BULL., No. 23, June 1993.

Excessive Claims Rolled Back

There is a definite trend for States to reduce excess territorial sea claims to the norm of 12 miles set forth in the LOS Convention, as reflected in Table 5.

Table 5
Excessive Territorial Sea Claims Rolled Back

State	Excessive Claim Year	Breadth	Date Rolled Back to 12 Miles
Albania	1976	15 nm ^a	1990
Argentina	1967	200 nm ^b	1991
Brazil	1970	200 nm ^c	1993
Cape Verde	1975	200 nm	1977
Gabon	1970	25 nm	
	1972	30 nm	
	1972	100 nm	1984
Ghana	1963	12 nm	
	1973	30 nm	
	1977	200 nm	1986
Guinea	1964	130 nm	
	1965	200 nm	1980
Guinea-Bissau	1974	150 nm	1978
Haiti	1972	12 nm	
	1977	100 nm	1977
Madagascar	1963	12 nm	
	1973	50 nm	1985
Maldives	1964	rectangle	1976
Mauritania	1962	6 nm	
	1967	12 nm	
	1972	30 nm	
	1977	70 nm	1988
Senegal	1961	6 nm	
	1968	12 nm	
	1976	200 nm	1985
Tanzania	1963	12 nm	
	1973	50 nm	1989
Tonga	1989	rectangle	1972

^aDecree No. 5,384 of February 23, 1976, FBIS-EEU, No. 41, Mar. 1, 1976, at B1, protested by the United States by diplomatic note delivered July 21, 1989, on behalf of the United States by the French Embassy in Tirane, pursuant to instructions contained in State Department telegram to American Embassy Paris 193134, June 17, 1989.

^bLaw 17, 094-M-24, December 29, 1966, in which navigation and overflight beyond 12 miles was unaffected, which may be found in UN Legislative Series B.15, at 45, was protested by American Embassy Buenos Aires note dated March 2, 1967 (pursuant to instructions contained in State Department telegram 146551, Mar. 1, 1967), also protested by the United Kingdom on June 23, 1967, Norway on May 22, 1967,

and Sweden and Denmark in 1967 (American Embassy Buenos Aires Airgram A-961, June 24, 1967, State Department File POL 33-4 ARG), rolled back to 12 miles in 1991 by Law No. 23,968.

^cDecree Law No. 1098 of March 25, 1970, asserting a 200-mile territorial sea, may be found in UN Legislative Series B/16, at 4, protested by State Department Diplomatic Note to the Brazilian Embassy delivered April 21, 1970, and reported in State Department telegram 059824, Apr. 22, 1970, File POL 33-4 BRAZ (Brazil ratified the LOS Convention on December 22, 1988), and rolled back to 12 miles by Law 8,617, January 4, 1993, the text of which may be found in U.N. LOS BULL., No. 23, June 1993, at 17.

Source: U.S. Department of State, Office of Ocean Affairs.

Territorial Sea Claims Greater Than 12 Miles

The United States has either protested or asserted its navigation rights against all territorial sea claims that exceed the 12-mile limit (*see* Table 6).³ Some claims have been protested more than once.⁴ Navigation assertions of right, either surface transits or overflights, are conducted in the course of normal operations.

Table 6
Territorial Sea Claims
Greater Than 12 Miles

State	Breadth; Law, Date of Claim	U.S. Protest	U.S. Assertion of Right
Angola	20; Decree No. 159/75, November 6, 1975		1985 ^a
Benin	200; Decree No. 76-92, April 2, 1976	1989	1981 ^a
Cameroon	50; Law No. 74/16, December 5, 1974	1968	1988 ^a
Congo	200; Ordinance No. 049/77, December 20, 1977	1987	1981 ^a
Ecuador	200; Decree Law No. 1542, November 11, 1966	1967 ^a	1979 ^a
El Salvador ^d	200; Constitution, September 7, 1950	1950	1979 ^a
Germany ^b	16; Federal Gazette, March 16, 1985	1985	
Liberia	200; Act, May 5, 1977	1977	1981 ^a
Nicaragua	200; Act No. 205, December 19, 1979	1982 ^a	1982 ^a
Nigeria	30; Decree No. 38, August 26, 1971	1984 ^a	1992 ^a
Panama	200; Law No. 31, February 2, 1967	1967 ^a	1979 ^a
Peru	200; Supreme Decree, August 1, 1947	1948 ^a	1980 ^a
Philippines	Rectangle; Act. No. 3046, June 17, 1961	1986	1994 ^a
Sierra Leone	200; Interpretation Act, April 19, 1971	1973	1981 ^a
Somalia	200; Law No. 37, September 10, 1972	1982	1979 ^a
Syria	35; Law No. 37, August 16, 1981	1981 ^a	1981 ^a
Togo	30; Ordinance No. 24, August 16, 1977	1984	
Uruguay	200; Decree 604/969, December 3, 1969	1970	

^aClaim protested or assertion operations conducted more than once.

^bIncluded in Table 3 as claiming 12 miles.

Source: U.S. Department of State, Office of Ocean Affairs.

Notes

1. Proclamation No. 5928, 54 Fed. Reg. 777 (1989); 24 Weekly Comp. Pres. Doc. 1661 (Jan. 2, 1989); DEPT STATE BULL., Mar. 1989, at 72; U.N. Office for Ocean Affairs and the Law of the Sea, *The Law*

of the Sea: Current Developments in State Practice No. II, at 83 (U.N. Sales No. E.89.V.7, 1989) [hereinafter U.N. Current Developments No. II]; 83 Am. J. Int'l L. 349-51 (1989). The full text of the Proclamation is set out in Appendix 3.

2. See Schachte, *The History of the Territorial Sea From a National Security Perspective*, 1 Terr. Sea J. 143 (1990). The Proclamation also provided that nothing therein "(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or (b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction."

3. Belgium, on signing the LOS Convention, declared:

The limitation of the breadth of the territorial sea, as established by Article 3 of the Convention, confirms and codifies a widely observed customary practice which it is incumbent on every State to respect, as it is the only one admitted by international law; the Government of the Kingdom of Belgium will not therefore recognize, as territorial sea, waters which are, or may be, claimed to be such beyond 12 nautical miles measured from baselines determined by the riparian State in accordance with the Convention.

UN, Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1992, UN Doc. ST/LEG/SER.E/11, at 764 (1993).

4. **Benin:** Decree No. 76-92 of April 2, 1976, asserting a 200-mile territorial sea, may be found in U.N. Legislative Series: National Legislation and Treaties Relating to the Law of the Sea, U.N. Doc. ST/LEG/SER. B/19 at 7 [hereinafter U.N. Legislative Series], protested by the U.S. on December 7, 1989, State Department telegram 275853, Aug. 28, 1989, American Embassy Cotonou telegram 03297, Dec. 8, 1989 (the United Kingdom had previously protested this claim on October 11, 1976).

Cameroon: Law No. 67/LF/25 of November 3, 1967, amending the Cameroon Merchant Marine Code, asserting an 18-mile territorial sea, may be found in U.N. Legislative Series B/15, at 51, protested by the U.S. in January 1968, pursuant to instructions contained in State Department telegram 091170, Dec. 29, 1967, File POL 22-4 CAM; subsequently extended to 50-miles by Law No. 74/16, of December 5, 1974 (which may be found in U.N. Legislative Series B/19, at 130).

Congo: Ordinance No. 49/77 of December 20, 1977, asserting a 200-mile territorial sea, may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 15, protested by American Embassy Brazzaville Note No. 191/87 of December 15, 1987 (State Department telegram 382072, Dec. 10, 1987; American Embassy Brazzaville telegram 0520, Feb. 26, 1988).

Ecuador: Decree Law No. 1542 of November 10, 1966, asserting a 200-mile territorial sea, may be found in U.N. Legislative Series B/15, at 78, originally protested by American Embassy Quito Note 63 of January 23, 1967 (State Department telegram 122548, Jan. 20, 1967; American Embassy Quito telegrams 03129, January 23, 1967 and 03264, Jan. 30, 1967), subsequently protested by American Embassy Quito note of February 24, 1986 (American Embassy Quito telegram 01651, Feb. 25, 1986, pursuant to instructions contained in State Department telegram 033256, Feb. 3, 1986) (also protested by the Federal Republic of Germany in November 1986), and in its Note 025/92, dated May 29, 1992, to the United States as depositary of the Whaling Convention, State Department File No. P92 0070-1325; by State Department Circular Note dated May 1, 1992 to the parties to the 1946 International Convention for the Regulation of Whaling, State Department File No. P92 0060-1226; and by Russia in its Note No. 11 dated Feb. 10, 1992 to the Department of State as depositary, State Department File No. P92 0106-0536. Ecuador refused to sign the LOS Convention in part in defense of its 200-mile territorial sea claim; 16 Official Records of the Third United Nations Conference on the Law of the Sea 155, para 2a [hereinafter Official Records], 17 Official Records 97, para. 202. The Government of Ecuador replied to the 1967 protests by the United States, United Kingdom, Sweden, The Netherlands, Denmark and West Germany, of the 1966 Ecuadoran claim, in identical notes the substance of which was published in a news report in the Guayaquil daily newspaper *El Universo* on November 21, 1967. The American Embassy's unofficial English translation reads in part as follows:

. . . referring to Decree Number 1542 (Official Register Number 158 of November 11, 1966) by which the Government of Ecuador has revised Article 633 of the Civil Code, fixing the territorial sea at two-hundred nautical miles, measured from the most salient points of the Ecuadoran coast and from the outermost extremes of the outermost islands of the Colón Archipelago.

The Government of Ecuador considers that the issuance of the aforesaid Decree, which is now the law of the Republic, constitutes the exercise of its clear rights as a free and sovereign country.

The antiquated rule of three miles as territorial sea, respected when the range of a cannon shot was no longer than that distance, is now to be found to be completely abandoned, as is recognized by the most distinguished authors of treatises on international law and by the practice of states.

New factors have been accepted as determinants of the breadth of the territorial sea. These have been indicated in Paragraph II [sic Paragraph I] of the Declaration of Santiago, signed on August 18, 1952 by Ecuador, Peru and Chile (ratified by Ecuador in Official Register Number 1029 of January 24, 1956), which states:

Owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of these waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit the conservation, development and use of those resources, to which the coastal countries are entitled.

These factors led the Governments of the three countries to set forth in the Declaration of Santiago:

The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possess sole sovereignty and jurisdiction over the area of the sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast. Their sole jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the sea floor and subsoil thereof.

The position of these three countries - that for this reason was not a unilateral act of Ecuador - found its support in the resolution adopted in February of 1956 by the Inter-American Juridical Council entitled "Principles of Mexico on the Juridical System of the Sea," a position that in October of 1957 was reaffirmed by the Third Hispano-Luso American Congress on International Law, according to which today "each State has the right to fix its territorial sea out to reasonable limits, taking into consideration geographic, geologic and biologic factors as well as economic necessities of its population and its security and defense."

The United Nations Conferences on the Law of the Sea, held at Geneva in 1958 and 1960, did not arrive at any agreement with respect to the breadth of the territorial sea. The Conventions that were approved at that time did not contain any rules establishing this breadth and, even in the hypothetical case that they had, Ecuador is not a party to any of these instruments nor is it a signatory. The proposals that were presented in the Conferences, including that which advocated a territorial sea of six miles plus an exclusive fishing zone of six miles [in 1960], were not approved whatever the number of votes that they obtained. The results of these Conferences proved, therefore, that it was impossible to arrive at an international agreement establishing the breadth of the territorial sea. Therefore, in the absence of such an agreement, it has been recognized that this expanse can be determined by the sovereign acts of the riparian state. Given such right, the states have extended their territorial sea: (1) because of defense requirements; (2) in consideration of the expanse of the sea which bathes their coasts; and (3) for reasons of economic defense.

Based on these antecedents, the Complimentary Convention to the Declaration of Santiago on the Maritime Zone of 200 Miles, also ratified by Ecuador and by that reason the Law of the Republic (Official Register Number 376 of November 18, 1964) states:

Chile, Ecuador and Peru will proceed by common accord in the juridical defense of the principle of sovereignty over the maritime zone out to a minimum distance of 200 marine miles, including the respective soil and subsoil . . .

As a consequence, the Government of Ecuador considers that, in issuing Decree Number 1542, it was complying with international commitments contracted and was following the modern practice recognized by States.

Ministry of Foreign Relations Note No. 15 AT dated Feb. 14, 1967, enclosed with American Embassy Quito Airgram A-306, Feb. 18, 1967, and Ministry of Foreign Relations Notes dated Nov. 9, 1967, American Embassy Quito Airgram A-202, Nov. 28, 1967, Department of State File No. POL 33-4 Ecuador. The Santiago Declaration may be found in MacChesney, *Situation, Documents and Commentary on Recent Developments in the International Law of the Sea*, 51 Naval War College, International Law Situation and Documents

1956, at 265-67 (1957). It does not appear that Chile ever claimed a 200-mile territorial sea; rather by Supreme Resolution No. 179 of April 1953, Chile claimed a 3-mile territorial sea, and by Law No. 18.565 of October 1986, a 12-mile territorial sea. See I MCRM 2-97.

El Salvador: Article 7 of the Political Constitution of September 7, 1950, asserting a claim to a 200-mile territorial sea with navigation and overflight permitted, may be found in U.N. Legislative Series B/6, at 14 and 4 WHITEMAN 801-02, protested by American Embassy San Salvador Diplomatic Note No. 160 delivered December 12, 1950, 4 WHITEMAN 802 (and by the United Kingdom on the same date).

Federal Republic of Germany: November 12, 1984 Notice 85-574, effective March 16, 1985, establishing certain straight baselines in the North Sea which had the effect of establishing a 16-mile territorial sea in certain areas of the Helgolander Bucht (see Map 15), may be found in U.N. Current Developments No. 1, at 20-22, protested by State Department Diplomatic Note to the Embassy of the Federal Republic of Germany, March 15, 1985, reported in State Department telegram 080298, Mar. 16, 1985.

Liberia: Act of February 16, 1977, to a 200-mile territorial sea, may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 53, protested by American Embassy Monrovia Diplomatic Note dated Mar. 14, 1977, American Embassy Monrovia telegram 1886, Mar. 18, 1977.

Nicaragua: Decree No. 205 dated Dec. 19, 1979, asserting a 200-mile territorial sea, may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 62, protested by American Embassy Managua Notes of April 23, 1982 (State Department telegram 107747, Apr. 24, 1982, American Embassy Managua telegram 02939, June 28, 1982), and June 17, 1985 (State Department telegram 180536, June 13, 1985, American Embassy Managua telegram 03686, June 17, 1985), and State Department Note dated Sep. 30, 1993, State Department File No. P92 0113-1248.

Nigeria: A party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. Territorial Waters (Amendment) Decree No. 38 of August 26, 1971 assertion to a 30-mile territorial sea may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 63, protested by *demarches* in Lagos on November 29, 1984 (American Embassy Lagos telegram 14309, Dec. 4, 1984), and September 2, 1986 (State Department telegram 113743, Apr. 11, 1986, American Embassy Lagos telegram 09631, Sept. 2, 1986) (also protested by the Federal Republic of Germany).

Panama: Law 31 of February 2, 1967, asserting a 200-mile territorial sea, may be found in U.N. Legislative Series B/15, at 105, originally protested by American Embassy Panama City Note No. 471 of March 28, 1967 (American Embassy Panama City Airgram A-643, July 24, 1968), subsequently by *demarche* on February 3 & 4, 1988 (American Embassy Panama City telegram 01438, Feb. 5, 1988) (also protested by the Federal Republic of Germany in June 1987).

Peru: Presidential Decree No. 781, Aug. 1, 1947, to a 200-mile territorial sea in which free navigation was preserved, may be found in U.N. Legislative Series B/1, at 16-17, and 4 WHITEMAN 797-98, originally protested by American Embassy Lima Note of July 2, 1948 (4 WHITEMAN 798-99 (1965)). Also protested by the United Kingdom on Mar. 1, 1984, 55 Brit. YB Int'l L. 556 (1985), and by Germany by its Note dated May 27, 1983, State Department File No. P83 0091-1552. This claim was incorporated in Articles 98 and 99 of Peru's Political Constitution of July 1979, the text of which may be found in 14 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, Peru 56-57 (Blaustein & Flanz eds. 1989), and protested by American Embassy Lima Note delivered August 15, 1986 (State Department telegram 255297, Aug. 14, 1986, American Embassy Lima telegram 9602, Aug. 19, 1986), and by American Embassy Lima Note delivered July 3, 1992 (American Embassy Lima telegram 09328, June 4, 1992), pursuant to instructions contained in State Department telegram 204139, June 26, 1992, and by American Embassy Lima Note No. 541, dated July 14, 1993, and by the EC Note 348/B dated July 6, 1993. The Peruvian claim was slightly modified in its 1993 Constitution.

Philippines: Republic Act No. 3046, June 1961, asserting a territorial sea of up to 285 miles, may be found in U.N. Legislative Series B/15, at 105, protested by American Embassy Manila note delivered Jan. 29, 1986 (State Department telegram 115912, April 17, 1985, American Embassy Manila telegram 03261, Jan. 29, 1986).

Sierra Leone: A party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. Territorial Sea Act of April 19, 1971, asserting a 200-mile territorial sea, may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 76, protested by American Embassy Freetown Diplomatic Note delivered January 30, 1973 (State Department telegram 015074, Jan. 26, 1973; American Embassy Freetown telegram 0153, Jan. 30, 1973).

Somalia: Law No. 37 of September 10, 1972, asserting a 200-mile territorial sea, may be found in U.N. LOS BULL., No. 2, Mar. 1985, at 76, protested by American Embassy Mogadishu note dated Aug. 28, 1982 (State Department telegram 231502, Aug. 18, 1982; American Embassy Mogadishu telegram 6215, Aug. 29, 1982).

Syria: Law No. 37 of August 11, 1981, asserting a 35-mile territorial sea, may be found in U.N. LOS BULL., No. 1, Sept. 1983, at 61, protested by State Department note to the Syrian Embassy in Washington, of October 10, 1981, reported in State Department telegram 288959, Oct. 29, 1981, and reaffirmed by

American Embassy Damascus Diplomatic Note dated Nov. 21, 1989 (State Department telegram 337081, Oct. 20, 1989; American Embassy Damascus telegram 03212, May 23, 1990) (also protested in 1981 by Turkey, by Israel on March 12, 1982, the text of which may be found in the U.N. LOS BULL., No. 1, at 62, and by New Zealand on June 3, 1982, the text of which may be found *id.*, at 63). (In 1982, the Syrian Foreign Ministry stated Syria was committed to recognize the 12-mile limit when the LOS Convention was adopted).

Togo: Ordinance No. 24, Aug. 16, 1977, to a 30-mile territorial sea, may be found in U.N. Legislative Series B/19, at 130, protested by American Embassy Lome *demanche* on November 8, 1984 (State Department telegram 325607, Nov. 1, 1984; American Embassy Lome telegram 06567, Nov. 9, 1984). (Togo ratified the LOS Convention on April 16, 1985.)

Uruguay: Executive Decree D.604/1969, Dec. 3, 1969, to a 200-mile territorial sea while preserving freedoms of navigation and overflight beyond 12 miles, and innocent passage within 12 miles, may be found in U.N. Legislative Series B/19, at 90, protested by American Embassy Montevideo Diplomatic Note delivered March 3, 1970 (State Department telegram 030281, Mar. 2, 1970; American Embassy Montevideo Airgram A-194, Oct. 7, 1970, State Department File POL 33-4 UR). On signing the Convention, and repeated on ratification, Uruguay declared:

the provisions of the Convention concerning the territorial sea and the exclusive economic zone are compatible with the main purposes and principles underlying Uruguayan legislation in respect of Uruguay's sovereignty and jurisdiction over the sea area adjacent to its coast and over its bed and subsoil up to a limit of 200 miles.

UN, Multilateral Treaties Deposited with the Secretary-General: Status as of 31 December 1992, UN Doc. ST/LEG/SER.E/11, at 774 (1993).

Chapter VI

Contiguous Zone

Juridical Regime

The contiguous zone is an area seaward of the territorial sea in which the coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur within its territory or territorial sea¹ (but not for so-called security purposes²). The contiguous zone is comprised of international waters through which ships and aircraft, including warships and military aircraft, of all nations enjoy the high seas freedoms of navigation and overflight.³

The maximum permissible breadth of the contiguous zone under international law is 24 miles measured from the baseline from which the territorial sea is measured.⁴ Contiguous zones may be proclaimed around both islands and rocks following appropriate baseline principles.⁵ Low-tide elevations which are not part of the baseline (i.e., those situated beyond the territorial sea as measured from the mainland or an island) and artificial islands, installations and structures, cannot have contiguous zones in their own right.⁶ Such man-made objects include oil drilling rigs, light towers, and off-shore docking and oil pumping facilities.

The United States claims a contiguous zone extending 12 miles from the baselines used to measure its territorial sea,⁷ but respects contiguous zones extending up to 24 miles in breadth that are consistent with the LOS Convention. Table 7 lists the 53 states claiming a contiguous zone beyond their territorial sea.

Table 7
States Claiming a Contiguous Zone Beyond the Territorial Sea

	Territorial Sea	Contiguous Zone ^a
	nm	nm
Antigua and Barbuda	12	24
Argentina	12	24
Bahrain	12	24
Bangladesh	12	18
Brazil	12	24
Bulgaria	12	24
Burma	12	24
Cambodia	12	24
Chile	12	24
China	12	24
Denmark	3	4
Djibouti	12	24
Dominica	12	24
Dominican Republic	6	24
Egypt	12	24
Finland	4	6

Table 7 (Cont.)

	Territorial Sea	Contiguous Zone ^a
	nm	nm
France	12	24
Gabon	12	24
Gambia, The	12	18
Ghana	12	24
Haiti	12	24
Honduras	12	24
India	12	24
Iran	12	24
Madagascar	12	24
Malta	12	24
Marshall Islands	12	24
Mauritania	12	24
Mexico	12	24
Morocco	12	24
Namibia	12	24
Norway	4	10
Oman	12	24
Pakistan	12	24
Qatar	12	24
Romania	12	24
St. Kitts and Nevis	12	24
Saint Lucia	12	24
St. Vincent & The Grenadines	12	24
Saudi Arabia	12	18
Senegal	12	24
Spain	12	24
Sri Lanka	12	24
Sudan	12	18 ^b
Syria	35	41 ^b
Trinidad and Tobago	12	24
Tunisia	12	24
Tuvalu	12	24
United Arab Emirates	12	24
Vanuatu	12	24
Venezuela	12	15
Vietnam	12	24
Yemen	12	24

Total of States: 53

^aBreadth is measured from territorial sea baseline.

^bClaim protested by the United States.

Sources: Department of State, Office of Ocean Affairs; U.N. LOS BULL., No. 23, June 1993, at 67-68.

Excessive Claims

There are few instances of claims to a contiguous zone that exceed the rights permitted coastal States under international law. Most involve attempts by coastal States to expand the competence of the contiguous zone to include protection

of national security interests. The United States has protested these excessive claims. (See Table 8.) For example, in 1989, the United States protested article 4 of **Haiti** Decree No. 38 of July 12, 1977, as follows:

The Government of the United States wishes to recall to the Government of Haiti that customary international law, as reflected in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, to which Haiti and the United States are party, and in the 1982 United Nations Convention on the Law of the Sea, does not recognize the right of coastal States to assert powers or rights for security purposes in peacetime that would restrict the exercise of the high seas freedoms of navigation and overflight beyond the territorial sea.⁸

In a decree of March 17, 1980, the Government of the **Socialist Republic of Vietnam** claimed that military vessels must have its permission and must also give notice before entering Vietnam's contiguous zone. In a Diplomatic Note, the United States protested these claimed restrictions on high seas freedoms, as follows:

The Government of the United States of America also wishes to refer to specific provisions of the Decree of March 17, 1980 which assert jurisdiction in a manner which is contrary to international law with respect to the activities of foreign vessels operating in the territorial sea or the contiguous zone of the Socialist Republic of Vietnam, including, inter alia: a claim that submarines in the contiguous zone must navigate on the surface and show their flag; a claim that aircraft may not be launched from or taken aboard ships operating in the contiguous zone; and, a claim that, before entering the contiguous zone or the territorial sea, ships equipped with weapons must take prescribed steps to render such weapons less readily available for use. The Government of the United States of America wishes to remind the Government of the Socialist Republic of Vietnam that international law limits the jurisdiction which a coastal State may exercise in maritime areas. It is the view of the Government of the United States of America that the aforementioned claims made in the decree of March 17, 1980 exceed such limits.⁹

The United States has also protested attempts to establish contiguous and security zones in areas of the high seas more than 24 miles from the baselines from which the territorial sea is measured. For example, the **Syrian** claim to a 6-mile contiguous zone adjacent to its 35-mile territorial sea asserted in Article 13 of its Legislative Decree no. 304, of December 28, 1963, concerning the territorial sea of the Syrian Arab Republic, was protested by the United States in a Diplomatic Note from American Embassy Damascus to the Ministry of Foreign Affairs dated November 21, 1989.¹⁰

In a Diplomatic Note to the Ministry of Foreign Affairs, the United States expressed its concern over **Namibia's** claim to establish control within the full extent of its 200-mile exclusive economic zone to prevent infringement of its fiscal, customs, immigration, and health laws. The note read in part:

As recognized in customary international law and as reflected in articles 33 and 56 of the 1982 United Nations Convention on the Law of the Sea, the right of a coastal State to prevent infringement of its fiscal, customs, immigration, and health laws within its territory or territorial sea does not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

... The Government of Namibia may wish to consider establishing a contiguous zone, consistent with international law, in which those powers may lawfully be exercised.¹¹

On December 12, 1991, Namibia amended its law to conform with Article 33 of the LOS Convention.¹²

The United States also protested the 50-mile military maritime boundary proclaimed in a North Korean Army Command announcement on August 1, 1977.¹³

Table 8
States Claiming Security as a Contiguous Zone Interest

	Breadth ^a	U.S. Protest	U.S. Assertion of Navigation Rights
Bangladesh	18	1982	
Burma	24	1982	1985 ^b
Cambodia	24		1992
China (PRC)	24	1992	
Egypt	24		
Haiti	24	1989	
Iran	24	1994	
Nicaragua	25		1993
Pakistan	24		1986 ^b
Saudi Arabia	18		
Sri Lanka	24	1986	
Sudan	18	1989	1979 ^b
Syria	41	1989	1981 ^b
United Arab Emirates	20		
Venezuela	15	1989	
Vietnam	24	1982	1982 ^b
Yemen	24	1982 ^b	

^aBreadth in nautical miles as measured from the territorial sea baseline.

^bClaim protested or assertion conducted more than once.

Notes

1. Territorial Sea Convention, article 24; LOS Convention, article 33; RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES §513 Cmt. f, §511 Cmt. k. The term "sanitary," a literal translation from the French "*sanitaire*," refers to "health and quarantine" matters. See Lowe, *The*

Development of the Concept of the Contiguous Zone, 52 Brit. Y.B. Int'l L. 109 (1982), and Oda, *The Concept of the Contiguous Zone*, 11 Int'l & Comp. L.Q. 31 (1962).

2. See *infra* n. 8 and accompanying text.
3. U.S. Department of the Navy, *Annotated Supplement to The Commander's Handbook on the Law of Naval Operations*, NWP 9 (Rev. A)/FMFM 1-10, paras. 1.5.1 & 2.4.1 (1989) [hereinafter NWP 9 (Rev. A) ANN. SUPP.].
4. LOS Convention, article 33(2).
5. LOS Convention, article 121(2).
6. LOS Convention, articles 13 & 60(8).
7. State Department Public Notice 358, 37 Fed. Reg. 11,906, June 15, 1972. Legislation was considered during the 102d Congress to establish a 24 mile contiguous zone, H.R. 3842, 102d Cong., 1st Sess. (1991). Although hearings were held on this bill by the House Merchant Marine and Fisheries Committee on February 4, 1992 (Ser. 102-62), the bill failed to pass the House. The 12-mile limit is now also the outer limit of the U.S. territorial sea for international purposes; for U.S. domestic law purposes, the U.S. territorial sea remains at 3 nautical miles. H.R. 3842 would have extended the U.S. territorial sea to 12 miles for the purpose of enumerated Federal statutes.
8. Diplomatic Note of August 1, 1989, from American Embassy Port au Prince; State Department telegram 229980, July 20, 1989; American Embassy Port au Prince telegram 05277, Aug. 7, 1989. Haitian Decree No. 38 of July 12, 1977 (which may be found in SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 202). The United States protested similar claims of other States, including **Bangladesh**, regarding section 1(2)(a) of its Territorial Waters and Maritime Zones Act of 1974 (which may be found in U.N. Legislative Series: National Legislation and Treaties Relating to the Law of the Sea, U.N. Doc. ST/LEG/SER.B/19, at 5 [hereinafter U.N. Legislative Series] by Diplomatic Note of September 7, 1982 from American Embassy Dacca, State Department telegram 208007, July 22, 1982, American Embassy Dacca telegram 5873, Sept. 10, 1982 (also protested by the Federal Republic of Germany in April 1986); **Burma**, regarding article 11(a) of its Territorial Sea and Maritime Zones Law, 1977 (which may be found in U.N. Legislative Series B/19, at 9), by Diplomatic Note of August 6, 1982 from American Embassy Rangoon, State Department telegram 196007, July 15, 1982, American Embassy Rangoon telegram 3243, August 9, 1982 (also protested by the United Kingdom in 1993); **Sri Lanka**, regarding section 4(2) of the Maritime Zones Law No. 22 of 1976 (which may be found in U.N. Legislative Series B/19, at 121), by Diplomatic Note on September 12, 1986, from American Embassy Colombo, State Department telegram 246211, Aug. 6, 1986, American Embassy Colombo telegram 06963, Sept. 13, 1986; **Sudan**, regarding paragraph 9(a) of its Territorial Waters and Continental Shelf Act No. 106 of 1970 (which may be found in U.N. Legislative Series B/16, at 33), by Diplomatic Note on June 6, 1989, from American Embassy Khartoum, State Department telegram 174664, June 2, 1989, American Embassy Khartoum telegram 06535, July 7, 1989; **Syria**, regarding article 13 of its Legislative Decree No. 304 of December 28, 1963, concerning the territorial sea of the Syrian Arab Republic (which may be found in *Limits in the Seas* No. 53, at 6), in a Diplomatic Note from American Embassy Damascus to the Ministry of Foreign Affairs dated Nov. 21, 1989, State Department telegram 337081, Oct. 20, 1989, American Embassy Damascus telegram 03212, May 23, 1990; **Venezuela**, regarding article 3 of its Territorial Waters, Continental Shelf, Conservation of Fisheries and Airspace Law of July 2, 1956 (the 1941 version which may be found in U.N. Legislative Series B/15, at 132), in a *démarche* by American Embassy Caracas on June 22, 1989, State Department telegram 193416, June 18, 1989, American Embassy Caracas 05889, June 23, 1989; **Vietnam**, regarding its statement of May 12, 1977 (which may be found in FBIS Asia & Pacific, May 24, 1977, at K-5, and 8 NEW DIRECTIONS IN THE LAW OF THE SEA 36 (Nordquist et al. eds., 1980), to exercise such control in its 24-mile contiguous zone as it considers necessary for security and other purposes, by *aide memoire* from the U.S. Mission to the United Nations in New York to the SRV mission dated Aug. 24, 1982. State Department telegram 232901, Aug. 19, 1982, U.S. Mission to the United Nations, New York, telegram 03590, Nov. 23, 1982; **Yemen Arab Republic**, regarding Republican Decrees No. 15 and 16 of 1967 establishing a 18-mile security zone (which does not appear to have been published in English), by Diplomatic Note No. 449, dated Oct. 6, 1986, State Department telegram 312052, Oct. 3, 1986, American Embassy Sanaa telegram 06770, Oct. 6, 1986; and the **Peoples Democratic Republic of Yemen**, regarding article 12 of its Act No. 45 of 1977 (which may be found in U.N. Legislative Series B.19, at 24), by Diplomatic Note from the U.S. Mission to the United Nations in New York dated Aug. 2, 1982, State Department telegram 208006, July 27, 1982. On May 22, 1990, these two countries merged to form the Republic of Yemen. U.N. Doc. ST/CS/SER.A/31, *reprinted* in U.N. LOS BULL., No. 16, Dec. 1990, at 67, and 30 I.L.M. 820-23 (1991).
9. *Aide memoire* from the U.S. Mission to the United Nations in New York to the Socialist Republic of Vietnam (SRV) mission dated Aug. 24, 1982. State Department telegram 232901, Aug. 19, 1982, U.S. Mission to the United Nations, New York, telegram 03590, Nov. 23, 1982. The Mar. 17, 1980 decree may be found in FBIS Asia and Pacific, Mar. 19, 1980, at K2-K8. The *aide memoire* also protested the claim in SRV's statement,

on May 12, 1977, to exercise such control in its 24 mile contiguous zone as it considers necessary for security and other purposes.

10. *See supra* n. 8.

11. Diplomatic Note No. 196 dated Dec. 24, 1990, from American Embassy Windhoek. State Department telegram 420846, Dec. 13, 1990, American Embassy Windhoek telegram 00121, Jan. 22, 1991. Germany also protested this claim in Oct. 1990. Section 4(3)(b) of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990, appears in the Government Gazette of the Republic of Namibia, No. 28, June 11, 1990, at 3, and is *reprinted in* U.N. LOS BULL., No. 21, Aug. 1992, at 59.

12. Territorial Sea and Exclusive Economic Zone of Namibia Amendment Act, 1991, Government Gazette No. 332, Dec. 30, 1991, at 2, *reprinted in* U.N. LOS BULL., No. 21, Aug. 1992, at 64.

13. The protest is contained in the United States Diplomatic Note to the U.N. Secretary General from the U.S. Mission to the United Nations in New York, Jan. 4, 1990, and was printed in U.N. LOS BULL., No. 15, May 1990, at 8-9. The Government of Japan also rejected this North Korean claim; *See* 28 Japanese Ann. Int' L. 122-23 (1985). The U.S.S.R. protested this claim on January 5, 1978. The North Korean claim may be found in The U.S. Department of Defense publication, Maritime Claims Reference Manual, Vol. I, DOD 2005.1-M (1990) at 2-258 to 259; PARK, EAST ASIA AND THE LAW OF THE SEA 172 (1983); 72 Am. J. Int'l L. 866 (1978). *See supra* Chapter IV, n. 85.

Chapter VII

Exclusive Economic Zone

Juridical Regime

The Exclusive Economic Zone (EEZ) concept gained general acceptance early in the negotiations at the Third United Nations Conference on the Law of the Sea (UNCLOS III). A balance between coastal State interests, particularly developing States, and the interests of maritime, land-locked, and geographically disadvantaged States was required, however, before final acceptance of an EEZ text could be achieved. The underlying purpose for creating this new maritime regime was to give coastal States increased rights over the resources off their coasts, while curtailing the trend of national claims to broader territorial seas and preserving as many high seas freedoms as possible.¹

At UNCLOS III, a fundamental issue was the legal status of EEZ waters. Intense debates arose regarding the legal nature of coastal State rights in the EEZ and the relationship to the rights of other States in the same EEZ. The consensus developed that non-resource-related high seas freedoms, including the freedoms of navigation and overflight, and the freedoms to lay pipelines and submarine cables, would be preserved in the EEZ. Yet, even the exercise of these freedoms had to be balanced against the exercise of EEZ rights by the coastal State. Article 58, for example, recognizes the enjoyment of high seas freedoms by all States, "subject to the relevant provisions of this Convention," and with "due regard to the rights and duties of the coastal State."

The LOS Convention strikes a balance between the rights and duties of coastal States on the one hand, and of all other States on the other. Part V, articles 53 through 75, of the LOS Convention, pertains to the EEZ. Article 56 addresses the rights, jurisdiction, and duties of the coastal State in the EEZ. Paragraph 1 of this article distinguishes sovereign rights from jurisdiction:

1. In the exclusive economic zone, the coastal State has:
 - (a) **sovereign rights** for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) **jurisdiction** as provided for in the relevant provisions of this Convention with regard to:

- (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

Article 57 defines the breadth of the EEZ to be no more than 200 miles from the baseline from which breadth of the territorial sea is measured.

Article 58 pertains to the rights and duties of other States in the EEZ. Whereas Article 56(2) proclaims that coastal States “shall have due regard to the rights and duties of other States” in the EEZ, Article 58(3) places similar requirements on other States:

In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Although it is not specific, Article 59 provides a basis for resolving disputes over rights and duties not addressed in the Convention. 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.”

Article 60 sets out the provisions for the coastal State to construct and to authorize and regulate the construction, operation, and use of artificial islands, installations, and structures in its EEZ.

Of the remaining 15 articles on the EEZ, 13 specifically relate to living resources jurisdiction in the zone. Of particular importance to foreign fishermen is Article 73 on the enforcement of laws and regulations by the coastal State. Paragraph 3 provides that coastal State penalties for violation of fisheries legislation in the EEZ “may not include imprisonment, in the absence of agreements to the contrary by the States concerned.”

Status as Customary Law

The American Law Institute describes the evolution of the exclusive economic zone, as follows:

In the decades following the Second World War, several Latin American states, and later a few African states, purported to extend their territorial sea to 200 nautical miles, principally to obtain the exclusive right to fish and to regulate

fishing in that area. For some time, major maritime powers, including the United States, resisted that expansion. . . . However, in 1976, the United States itself adopted the Fishery Conservation and Management Act, 16 U.S.C. sec. 1811, which established a 200-mile fishery zone, and was followed promptly by Canada, Mexico, and several other countries. This development was encouraged by the compromise on the subject developed at the Third United Nations Conference on the Law of the Sea, which gave to the coastal states jurisdiction over certain activities in a 200-mile zone, including "sovereign rights" for the purpose of exploring and exploiting, conserving and managing both the living and nonliving natural resources of that zone, but preserved for maritime states most high seas freedoms.

In 1983, President Reagan, by Proclamation No. 5030, established an exclusive economic zone of the United States and asserted rights over natural resources thereof, both living and nonliving, as well as over economic activities in the zone. . . .

The Soviet Union objected to this proclamation, arguing that it constituted a unilateral attempt to break up "the package" agreed upon at the Law of the Sea Conference (U.N. Doc. A/38/175 (1983), reprinted in UN Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Current Developments in State Practice* (UN Sales No. E.87.V.3), p.141); the Group of 77 (representing the developing countries) and the Group of Eastern European (Socialist) Countries made similar objections (U.N. Doc LOS/PCN/5 & LOS/PCN/6 (1983)). Many states that signed the Convention, presumably with the intent to ratify it, also proclaimed exclusive economic zones before they ratified the Convention and without waiting for the LOS Convention to come into force.²

In 1984, a Chamber of the International Court of Justice expressed its opinion as to the status of the exclusive economic zone in customary international law, which included the following:

Turning lastly to the proceedings of the Third United Nations Conference on the Law of the Sea and the final result of that Conference, the Chamber notes in the first place that the Convention adopted at the end of the Conference has not yet come into force and that a number of States do not appear inclined to ratify it. This, however, in no way detracts from the consensus reached on large portions of the instrument and, above all, cannot invalidate the observation that certain provisions of the Convention, concerning the continental shelf and the exclusive economic zone, which may, in fact, be relevant to the present case, were adopted without any objections. The United States, in particular, in 1983 . . . proclaimed an economic zone on the basis of Part V of the 1982 Convention. This proclamation was accompanied by a statement by the President to the effect that in that respect the Convention generally confirmed existing rules of international law. Canada, which has not at present made a similar proclamation, has for its part also recognized the legal significance of the nature and purpose of the 200-mile regime. This concordance of views is worthy of note, even though the present judgment is not directed to the delimitation of the exclusive economic zone as such. In the Chamber's opinion, these provisions, even if in some respects they bear the mark of the compromise surrounding their adoption, may nevertheless be regarded as consonant at present with general international law on the question.³

Table 9 lists those States claiming an exclusive economic zone as of July 1994. In addition, the eight coastal States of the North Sea have agreed to:

either establish . . . Exclusive Economic Zones in the areas of the North Sea where they do not exist for the purpose of protecting the marine environment, or of increasing coastal State jurisdiction for that purpose, in accordance with international law and without going beyond the scope of the provisions of the United Nations Convention on the Law of the Sea (1982).⁴

Table 9
Exclusive Economic Zones (94)

Antigua and Barbuda ^a	Guinea-Bissau ^a	Portugal
Argentina ^a	Haiti	Qatar
Bangladesh	Honduras ^a	Romania
Barbados ^a	Iceland ^a	Russia
Belize ^a	India	Saint Kitts and Nevis ^a
Brazil ^a	Indonesia ^a	Saint Lucia ^a
Brunei	Iran	Saint Vincent and the Grenadines ^a
Bulgaria	Jamaica ^a	Sao Tome & Principe ^a
Burma	Kenya ^a	Senegal ^a
Cambodia	Kiribati	Seychelles ^a
Cape Verde ^a	Korea, North ^c	Solomon Islands
Chile	Latvia	Spain
Colombia	Madagascar	Sri Lanka
Comoros	Malaysia	Suriname
Cook Islands	Maldives ^d	Sweden
Costa Rica ^a	Marshall Islands ^a	Tanzania ^a
Cote d'Ivoire ^a	Mauritania	Thailand
Cuba ^a	Mauritius	Togo ^a
Djibouti ^a	Mexico ^a	Tonga
Dominica ^a	Micronesia, Fed. States of ^a	Trinidad & Tobago ^a
Dominican Republic	Morocco	Turkey (Black Sea)
Egypt ^a	Mozambique	Tuvalu
Equatorial Guinea	Namibia ^a	Ukraine
Estonia	New Zealand ^c	United Arab Emirates
Fiji ^a	Nigeria ^a	United States ^f
France ^b	Niue	Vanuatu
Gabon	Norway	Venezuela
Ghana ^a	Oman ^a	Vietnam
Grenada ^a	Pakistan	Western Samoa
Guatemala	Philippines ^a	Yemen ^a
Guinea ^a	Poland	Zaire ^a

^aRatified the 1982 LOS Convention.

^bIncludes all French overseas departments and territories.

^cNorth Korea also claims a 50 mile "military boundary line" in the Sea of Japan and to the EEZ median line in the Yellow Sea within which all foreign vessels and aircraft are banned without permission.

^dThe Maldives' economic zone is defined by geographical coordinates. The zone is, in part, a rectangle and, in part, a boundary with India. The breadth of the zone varies from approximately 35 miles to more than 300 miles.

^eIncludes Tokelau.

^fIncludes Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, Johnston Atoll, Palmyra Atoll, Midway Island, Wake Island, Jarvis Island, Kingman Reef, Howland Island, Baker Island, Northern Marianas, Palau, which is still part of the Trust Territory of the Pacific Islands, claims a 3-mile territorial sea and a 200-mile fishery zone.

Source: U.S. Department of State, Office of Ocean Affairs.

The Restatement (Third) distinguishes those aspects of the regime of the EEZ considered to be customary law from those which are contractual in nature:

Recent practice of states, supported by the broad consensus achieved at the Third United Nations Conference on the Law of the Sea, has effectively established as customary law the concept of the exclusive economic zone, the width of the zone (up to 200 nautical miles), and the basic rules governing it. These are binding, therefore, on states generally even before the LOS Convention comes into effect and thereafter even as to states not party to the Convention. In those respects the Convention is an authoritative statement of customary law. . . . When the Convention enters into force, parties to the Convention will have rights and obligations with respect to the exclusive economic zone in addition to those applicable to all states under this section.

Disputes between parties to the Convention with respect to violations of provisions that relate to “the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines” in the exclusive economic zone, or to “other internationally lawful uses of the sea related to those freedoms,” whether committed by the coastal state or the state exercising those freedoms, would be subject to the jurisdiction of the courts and arbitral tribunals provided for by Article 287 of the Convention. . . . Disputes that relate to the fulfillment by a coastal state of certain obligations with respect to the conservation of and access to living resources of the zone, or with respect to scientific research in the zone, can be submitted to a conciliation commission by any party to the dispute. . . .⁵

United States Policy

On March 8, 1983, the United States, in response to statements made during the December 1982 plenary meetings of UNCLOS III, exercised its right of reply, which in regard to the exclusive economic zone said:

Some speakers described the concept of the exclusive economic zone in a manner inconsistent with the text of the relevant provisions of the Convention adopted by the Conference.

. . . .

In this zone beyond its territory and territorial sea, a coastal State may assert sovereign rights over natural resources and related jurisdiction, but may not claim or exercise sovereignty. The extent of coastal State authority is carefully defined in the Convention adopted by the Conference. For instance, the Convention, in

codifying customary international law, recognizes the authority of the coastal State to control all fishing (except for the highly migratory tuna) in its exclusive economic zone, subject only to the duty to maintain the living resources through proper conservation and management measures and to promote the objective of optimum utilization. Article 64 of the Convention adopted by the Conference recognizes the traditional position of the United States that highly migratory species of tuna cannot be adequately conserved or managed by a single coastal State and that effective management can only be achieved through international cooperation. With respect to artificial islands, installations and structures, the Convention recognizes that the coastal State has the exclusive right to control the construction, operation and use of all artificial islands, of those installations and structures having economic purposes and of those installations and structures that may interfere with the coastal State's exercise of its resource rights in the zone. This right of control is limited to those categories.⁶

The Comments of the Restatement (Third) to the section on the EEZ describe the limited authority of the coastal State in the exclusive economic zone in part as follows:

The coastal state does not have sovereignty over the exclusive economic zone but only "sovereign rights" for a specific purpose—the management of natural resources and other economic activities. . . . The coastal state's authority (called "jurisdiction" in the LOS Convention) is even more limited with respect to artificial islands in the exclusive economic zone and such installations and structures as may be required for economic purposes, and with respect to marine scientific research and the protection of the marine environment.⁷

By Presidential Proclamation, the United States established an Exclusive Economic in 1983. (See Appendix 2.)⁸

In a speech at the 10th annual seminar sponsored by the Center for Ocean Law and Policy, Southampton, Bermuda, March 14, 1986, Ambassador John D. Negroponte, Assistant Secretary for Oceans and International Environmental, and Scientific Affairs, explained the United States approach to U.S. legislation on the exclusive economic zone, as follows:

From a broad domestic policy vantage, the Administration — pursuant to the President's EEZ proclamation and accompanying oceans policy statement of March 10, 1983 — decided that, in lieu of enacting comprehensive EEZ legislation reflecting the jurisdiction accorded coastal states in the EEZ, it was preferable to amend individually the numerous Federal statutory provisions regulating activities in the EEZ. This decision was taken for numerous reasons. Not least among them was the desire to avoid, wherever possible, the consideration of such omnibus legislation by the myriad of congressional committees which would have cognizance over such proposals. We also wished to avoid engaging in possible State/Federal debates. Consequently, the executive branch, at the request of the National Advisory Committee on the Oceans and Atmosphere, undertook a comprehensive analysis of present statutory authorities. The review

is well along and will ultimately be filed with the committee. It should be noted, however, that the review does not, in the main, recommend any particular course of action, concentrating primarily on identifying jurisdictional shortfalls.⁹

Excessive Claims

Several States have enacted laws claiming rights that could exceed those authorized in the LOS Convention. For example, in 1978, the Government of **Barbados** claimed the right to extend the application of any of its laws to its EEZ. The United States protested as follows:

Of particular concern . . . is the provision of the Marine Boundaries and Jurisdiction Act, 1978 which purports to grant authority to the Governor-General of Barbados to extend the application of any law of Barbados to the claimed exclusive economic zone of Barbados. It is the view of the Government of the United States that claims made by the Marine Boundaries and Jurisdiction Act, 1978, including the claim of unlimited authority to extend the law of Barbados over maritime areas, are without foundation in international law.¹⁰

Burma also claims broad authority in its EEZ. In Article 18(b) of the Territorial Sea and Maritime Zones Law, 1977, Burma claimed:

exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, offshore terminals, installations and other structures *and devices* necessary for the exploration of its natural resources, both living and non-living, *or for the convenience of shipping or for any other purpose.*¹¹

The relevant portion of the U.S. protest note read as follows:

The Government of the United States also wishes to refer to those provisions of the Territorial Sea and Maritime Zones Law, 1977 which purport to assert jurisdiction over the . . . exclusive economic zone of Burma in a manner which is contrary to international law, including inter alia: . . . a claim of authority to subject the exercise of freedom of navigation and overflight in the exclusive economic zone to the exercise by Burma of broadly-defined rights. The Government of the United States wishes to remind the Government of Burma that international law limits the jurisdiction which a coastal state may exercise in maritime areas. It is the view of the Government of the United States that the aforementioned claims made in the Territorial Sea and Maritime Zones Law, 1977 exceed such limits.¹²

Additional guidance provided to the Embassy for use when delivering the note included the following:

The provision of Burmese law which claims broadly-defined rights of Burma to control activities in the claimed economic zone is also particularly troublesome. This assertion of jurisdiction seaward for 200 miles is of greatest concern to the USG because enjoyment of high seas freedoms in the zone is specifically made

subject to such broadly-defined rights. The end result is, in effect, a denial that there are freedoms to be enjoyed in the zone. The USG cannot accept that result as being lawful.¹³

The United States protested similar legislation by **Grenada**¹⁴ and **Guyana**¹⁵ in 1982, **India**¹⁶ in 1983, and **Mauritius**,¹⁷ **Pakistan**¹⁸ and the **Seychelles**¹⁹ in 1982.

The Department of State provided the following background when explaining its concern about these laws:

The draft LOS treaty does not authorize a coastal state to exercise the type of jurisdiction claimed by [the government], such as the unlimited authority to designate areas within various maritime zones and to regulate to any extent considered necessary the use of such areas, and, if [the government's] laws and regulations can be extended over claimed maritime zones without limitation, every human endeavor that might take place within hundreds of miles of the coast is being subjected to [the government's] control. In our opinion, the draft LOS treaty does not authorize unilateral claims to such comprehensive authority over these broad ocean areas.²⁰

In response to a declaration concerning the exclusive economic zone accompanying **Egypt's** deposit of its instrument of ratification of the 1982 Law of the Sea Convention on August 26, 1983, the United States expressed its concerns in a diplomatic note, as follows:

With respect to the declaration of the Government of Egypt, that it will exercise its rights in an exclusive economic zone and will take the necessary arrangements to regulate all matters relating to that zone, the United States notes with satisfaction the declaration of the Government of Egypt that it will act in a manner compatible with international law and having due regard for the rights and duties of other states. The United States assumes that the exercise of the types of jurisdiction in the exclusive economic zone, claimed by the Government of Egypt in the declaration, will, accordingly, be limited by the rules of international law reflected in the applicable provisions of the Convention.²¹

The Department of State sought clarification that Article 22(c) of the Archipelagic Waters and Exclusive Economic Zone Act No. 24 of 1986, which required the written permission of **Trinidad and Tobago** to establish or use *any* artificial island, installation or structure in its EEZ, would be applied in accordance with the principles of international law:²²

Under customary international law, as reflected in article 60 of the 1982 Convention, coastal states have the exclusive right to authorize and regulate the construction, operation and use of *only* those installations and structures which relate to natural resources under article 56, or other economic purposes, or which may interfere with the exercise of the rights of the coastal state in the zone.²³

The Ministry of External Affairs replied as follows:

With respect to the scope of application of section 22(c) of the Act, it is advised that article 60(1) refers to two distinct classes of installations and structures, namely installations and structures for the purposes provided for in article 56 and other economic purposes; as well as installations and structures which may interfere with the exercise of the rights of the coastal state in the exclusive economic zone. In addition, under article 258 of the Convention the deployment and use of any type of scientific research installation or equipment in any area of the marine environment is subject to the same conditions as are prescribed in the Convention for the conduct of marine scientific research in any such area. Accordingly, the requirement in section 22(c) of the Act that written consent be obtained for the establishment and use of artificial islands, installations and structures in the exclusive economic zone of Trinidad and Tobago will be applied in accordance with the relevant provisions of the Convention in respect of artificial islands, installations and structures herein before referred to and, in particular, in respect of those which may interfere with the exercise of the rights of Trinidad and Tobago in the exclusive economic zone, as determined by Trinidad and Tobago.²⁴

Maldives, in Law No. 30/76, 5 December 1976, delimited its exclusive economic zone by reference to geographic coordinates in the high seas. A 1982 United States' Diplomatic Note challenging this law read in part:

Such claims have no basis in international law. In asserting jurisdiction over areas extending seaward from its land territory, a coastal state must measure the breadth of any such areas from baselines drawn in accordance with international law. The normal baseline is the low-water line along the coast, and the limited exceptions to this rule only allow for the use of straight baselines to connect coastal features in certain circumstances.²⁵

Article 73(1) of the LOS Convention expressly prohibits the coastal State from imprisoning violators of national fishery regulations, unless agreed to between the concerned States. Nevertheless, the following countries have included imprisonment provisions, or potential for imprisonment penalties, in their EEZ laws:²⁶

Antigua & Barbuda	Grenada	Nigeria	Senegal
Bangladesh	Guinea-Bissau	Niue	Seychelles
Barbados	India	Pakistan	Suriname
Burma	Maldives	Philippines	Vanuatu
Cape Verde	Mauritius	Portugal	Yemen

Notes

1. CHURCHILL & LOWE, *THE LAW OF THE SEA* 133-34 (2d rev. ed. 1988).

2. 2 RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES, §511 Reporters' Note 7, at 33-34 [hereinafter RESTATEMENT (THIRD)]. For the 1984 decree as to the exclusive economic zone of the U.S.S.R., see U.N. LOS BULL., No. 4, Feb. 1985, at 31. See also United Nations, Law of the Sea: National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone, U.N. Pub. E.85.V.10 (1986) [hereinafter U.N. National Legislation on the EEZ], containing the legislation of 78 States with respect to such zones. The Office of Ocean Affairs, U.S. Department of State on July 1, 1994, lists 94 States claiming an exclusive economic zone. See Table 9.

3. *Case Concerning Delimitation of the Maritime Boundary of the Gulf of Maine (Canada/United States)*, [1984] I.C.J. 246, 294, at para. 94. The full court has also expressed its view that the concept of the EEZ is customary law: *Case Concerning the Continental Shelf (Tunisia/Libya)*, [1982] ICJ Rep. 74, at para 100; *Case Concerning the Continental Shelf (Libya/Malta)*, [1985] ICJ Rep. 33, at para. 34; *Case Concerning the Maritime Delimitation in the Area between Greenland and Jan Mayen*, judgment para. 47-48 (June 14, 1993). The United Kingdom has indicated it agrees with this view. See Brit. Y.B. Int'l L. 1984, at 557 (1985). *Accord*, KWIATKOWSKA, THE 200 MILE EXCLUSIVE ECONOMIC ZONE IN THE NEW LAW OF THE SEA 27-37 (1989) and ATTARD, THE EXCLUSIVE ECONOMIC ZONE IN INTERNATIONAL LAW 277-309 (1987).

4. Declaration on the coordinated extension of jurisdiction in the North Sea, Sep. 22, 1992, U.N. LOS BULL., No. 23, June 1993, at 65.

5. RESTATEMENT (THIRD), §514 Cmt. a, at 56, and Cmt. j, at 61. See also *id.*, Reporters' Note 1, at 62, and *infra* Chapter XIV.

6. U.N. Doc. A/CONF.62/WS/37, 17 Official Records of the Third U.N. Conference on the Law of the Sea 244 [hereinafter Official Records]. Effective January 1, 1992, the United States exercised jurisdiction over highly migratory species of tuna within its EEZ. Section 103 of the Fisheries Conservation Amendments of 1990, Pub.L. No. 101-627, amending 16 U.S.C. §1812. Effective November 28, 1990, the United States recognized similar assertions by coastal nations regarding their EEZs. Presidential Statement on Signing the Fishery Conservation Amendments of 1990, Weekly Comp. Pres. Doc., 1990 (Dec. 3, 1990).

The United States statement in reply was referring, in particular, to this portion of the December 7, 1982, statement by the representative of Brazil:

. . . Furthermore, it is our understanding that in accordance with the Convention the coastal State has the exclusive right to construct and to authorize the construction, operation and use of all types of installations and structures within the maritime areas under its sovereignty or jurisdiction and that there are no exceptions to this right. In other words, no State has the right to place or to operate any type of installation or structure in the exclusive economic zone or on the continental shelf without the consent of the coastal State.

17 Official Records 40, paras. 26 & 28. Brazil's declarations on ratification of the Convention were substantially similar to the above; they may be found in U.N. Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: Current Developments in State Practice No. II, at 88 (U.N. Sales No. E.89.V.7, 1989) [hereinafter U.N. Current Developments No. II]. Brazil's implementing legislation, Law 8,617 of January 4, 1993, articles 8 and 10, continue to assert these views which are inconsistent with the relevant provisions of the LOS Convention. Uruguay made a similar declaration on signature and ratification of the LOS Convention. U.N. Multilateral Treaties Deposited with the Secretary-General: Status as of December 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 774 (1993). Italy rejected these claims in its declaration on signature of the Convention, confirming its written statement dated Mar. 7 1983, as follows:

the rights of the Coastal State to build and to authorize the construction, operation and the use of installations and structures in the exclusive economic zone and on the continental shelf is limited only to the categories of such installations and structures as listed in article 60 of the Convention.

Id. at 770.

7. *Id.*, sec. 514, Cmt. c at 57. See also *id.*, sec. 511, Cmt. b, and Sec. 514, Cmts. g-i. In a Declaration on the coordinated extension of jurisdiction in the North Sea, Sept. 22, 1992, for the purpose of protecting the marine environment, the EC Ministers agreed to: ct "in accordance with international law and without going beyond the scope of the provisions of" the LOS Convention and to implement in their national legislation those generally accepted international rules and standards, including the relevant provisions of the LOS Convention. U.N. LOS BULL., No. 23, June 1993, at 65-66.

8. Presidential Proclamation 5030, Mar. 10, 1983, 48 Fed. Reg. 10,601; 3 CFR 2 (1983 Comp.); 16 U.S.C.A. §1453 Note; reprinted in U.N. Office of the Special Representative of the Secretary-General for the Law of the Sea, The Law of the Sea: Current Developments in State Practice, at 135 (U.N. Sales No. E.87.v.3,

- 1987) [hereinafter U.N. Current Developments No. I]; 83 DEP'T ST. BULL., No. 2075, June 1983, at 71; and 77 Am. J. Int'l L. 619 (1983).
9. DEP'T ST. BULL., Sept. 1986, at 85. The analysis of statutory authorities referred to in Ambassador Negroponte's speech never received interagency clearance and thus was not delivered to Congress.
10. Diplomatic Note No. 152 dated June 14, 1982, from American Embassy Bridgetown. State Department telegram 116140, June 11, 1982, American Embassy Bridgetown telegram 02993, June 15, 1982. Barbados' Marine Boundaries and Jurisdiction Act, 1978, may be found in U.N. National Legislation on the EEZ, at 40-48.
11. Territorial Sea and Maritime Zones Law, 1977, may be found in U.N. National Legislation on the EEZ at 49, and in SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 85 [hereinafter SMITH, EEZ CLAIMS] (emphasis added).
12. American Embassy Rangoon Diplomatic Note delivered on Aug. 6, 1982, pursuant to instructions contained in State Department telegram 196007, July 15, 1982; American Embassy Rangoon telegram 03243, Aug. 9, 1982.
13. State Department telegram 196007, July 15, 1982.
14. American Embassy Bridgetown, July 21, 1982, Note No. 004. State Department telegram 200855, July 20, 1982, American Embassy Bridgetown telegram 03658, July 23, 1982. The Grenada Marine Boundaries Act, 1978, may be found in U.N. National Legislation on the EEZ, at 116-24.
15. American Embassy Georgetown Diplomatic Note dated July 20, 1982. State Department telegram 194561, July 14, 1982, American Embassy Georgetown telegram 3242, July 23, 1982. The Guyana Maritime Boundaries Act, 1977, may be found in U.N. National Legislation on the EEZ, at 128-37, and in U.N. Office for Ocean Affairs and the Law of the Sea, The Law of the Sea, National Legislation on the Continental Shelf, at 117-22 (U.N. Sales No. E.89.V.5, 1989) [hereinafter U.N. Legislation on the Continental Shelf].
16. American Embassy New Delhi Diplomatic Note delivered May 13 & 16, 1983. State Department telegram 128220, May 9, 1983, American Embassy New Delhi telegram 09947, May 16, 1983. India Maritime Zones Act, 1976, may be found in U.N. National Legislation on the EEZ, at 144-49 and in U.N. Legislation on the Continental Shelf, at 129-34.
17. American Embassy Port Louis Diplomatic Note No. 83 dated July 17, 1982. State Department telegram 204808, July 23, 1982, American Embassy Port Louis telegram 02502, July 28, 1982. Mauritius Maritime Zones Act, 1977, may be found in U.N. National Legislation on the EEZ, at 183-86 and in U.N. Legislation on the Continental Shelf, at 168-72.
18. American Embassy Islamabad Diplomatic Note No. 694 dated June 8, 1982. State Department telegram 155385, June 7, 1982, American Embassy Islamabad telegram 09069, June 14, 1982. Pakistan's Territorial Waters and Maritime Zones Act, 1976 may be found in U.N. Legislation on the Continental Shelf, at 189-93.
19. American Embassy Victoria Diplomatic Note No. 37, dated July 8, 1982. State Department telegram 156775, June 8, 1982, American Embassy Victoria telegram 01170, July 14, 1982. Seychelles Maritime Zones Act, 1977, may be found in U.N. National Legislation on the EEZ, at 275-79 and in U.N. Legislation on the Continental Shelf, at 236-39.
20. E.g., State Department telegram 204808, July 23, 1982, to American Embassy Port Louis *supra* n. 17.
21. Diplomatic Note delivered Feb. 26, 1985, by American Embassy Cairo pursuant to instructions contained in State Department telegram 364687, Dec. 12, 1984. American Embassy Cairo telegram 05527, Feb. 27, 1985. Egypt's declaration may be found in U.N. Status of the United Nations Convention on the Law of the Sea, at 35-36 (U.N. Sales No. E.85.V.5, 1985).
22. Article 22(c) of the Act may be found in U.N. Current Developments No. II, at 42. This right was first claimed in Ministry of Foreign Affairs Notice 500, May 27, 1983, which may be found in SMITH, EEZ CLAIMS, at 455. See also KWIATOKWSKA, *supra* n. 3, at 113-15.
23. Diplomatic Note No. 34 delivered in Mar. 1987, from American Embassy Port of Spain (emphasis added), pursuant to instructions contained in State Department telegram 075631, Mar. 14, 1987. American Embassy Port of Spain telegram 00822, Mar. 23, 1987.
24. Diplomatic Note No. 743 dated July 9, 1987, from the Ministry of External Affairs at Port of Spain reported in American Embassy Port of Spain telegram 01973, June 14, 1987.
25. Diplomatic Note dated Aug. 2, 1982, from American Embassy Colombo, pursuant to instructions contained in State Department telegram 150666, June 2, 1982; American Embassy Colombo telegram 04672, Aug. 6, 1982.
26. The legislation is reproduced in U.N. National Legislation on the EEZ. The Secretary-General has also noted that such provisions are "contrary" to the Convention (U.N. Doc. A/47/512, para. 36, at 10), as has Professor Kwiatkowska, who suggests some 32 states have enacted legislation inconsistent with this provision (*supra* n. 3, at 87).

Chapter VIII

Continental Shelf

Geologic Definition

The scientific (geomorphological) definition of a continental shelf differs from the juridical definition. In a model geomorphological situation, the continental shelf is the submerged prolongation of the coastal State and consists of the gently-sloping platform which extends seaward from the land to a point where the downward inclination increases markedly as one proceeds down the continental slope. The depth at which the break in angle of inclination occurs varies widely from place to place and often is difficult to define precisely. At the foot of the slope, the continental rise begins; a second gently-sloping plain which gradually merges with the floor of the deep seabed. The shelf, slope, and rise, taken together, are geologically known as the continental margin.¹

Juridical Definition

The first wave of post-World War II national claims to expanded ocean areas began with President Truman's 1945 Proclamation on the Continental Shelf, by which the United States asserted exclusive sovereign rights over the resources of the continental shelf off its coasts. The Truman Proclamation specifically stated that waters above the shelf were to remain high seas and that freedom of navigation and overflight were not affected.²

The definition of the continental shelf established at the First United Nations Conference on the Law of the Sea in 1958 was vague and flexible. Article 1(a) of the Convention on the Continental Shelf states that the continental shelf refers:

to 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 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.³

At the Third United Nations Conference on the Law of the Sea (UNCLOS III), the 1958 definition was discarded and an attempt was made to develop a logical and satisfactory definition of the continental margin that included not only the continental shelf but also the continental slope and rise. Article 76(1) of the LOS Convention defines the continental shelf:

The continental shelf of a coastal State 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.

Regardless of the seafloor features, a State may claim, at a minimum, a 200-mile continental shelf. Under other LOS Convention provisions, a State has the right to claim a 200-mile EEZ which includes jurisdictional rights over the living and nonliving resources of the seafloor and seabed. Thus, for those States whose physical continental margin does not extend farther than 200 miles from the territorial sea baseline, the concept of the continental shelf is of less importance than before.

Paragraphs 3-7 of Article 76, which provide a rather complex formula for defining the "continental shelf", apply only to States that have physical continental margins extending more than 200 miles from the coast. A few items in these paragraphs are of particular interest:

- the margin does not include the deep ocean floor with its ocean ridges (paragraph 3);

- if the continental margin extends beyond 200 miles, the outer limit shall be measured by one of two methods described in paragraph 4:

- the subparagraph (a)(i) margin definition is based on the determination of thickness of sediments. The margin can extend to that point where the thickness of sediments "is at least 1 percent of the shortest distance from such point to the foot of the continental slope." Thus, if at a given point beyond 200 miles from the baseline, the sediment thickness is 3 kilometers, then that point could be as much as 300 kilometers seaward of the foot of the continental slope, subject to the provisions of paragraph 5;

- subparagraph (a)(ii) defines the continental margin using a limit not more than 60 miles from the foot of the continental slope;

- paragraph 5 limits any continental shelf definition at either 350 miles from the territorial sea baseline or 100 miles from the 2,500 meter isobath, whichever is further seaward. It is important to recognize that for paragraph 5 to be relevant, the requirements set forth in paragraph 4 must first be met;

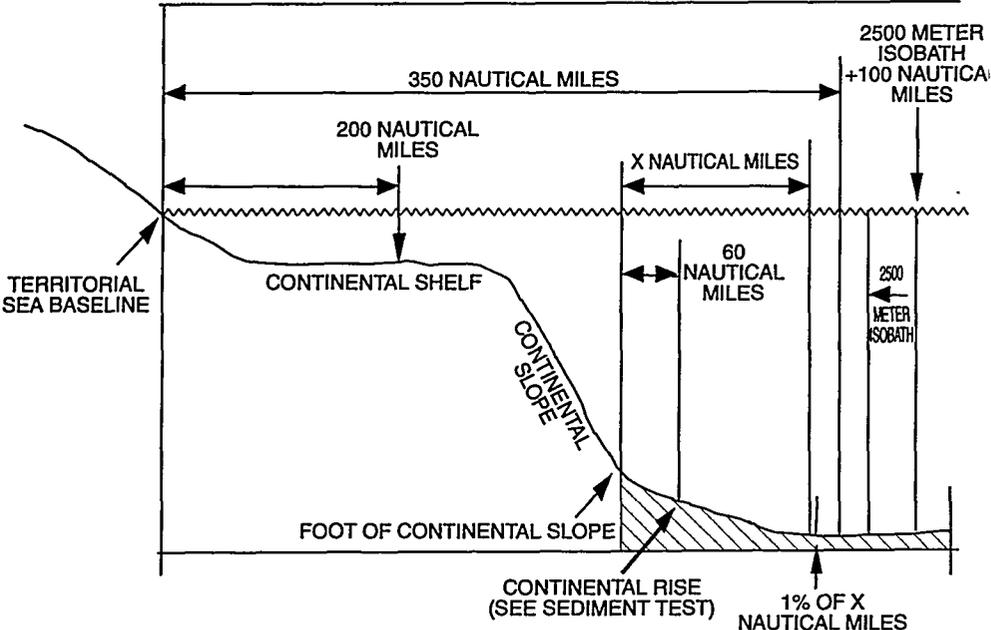
- on submarine ridges, the outer limit shall not exceed 350 miles from the territorial sea baselines, but this provision does not apply "to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs" (paragraph 6). (See Figure 1.)

It seems widely accepted that the broad principles of the continental shelf regime reflected in Articles 76-81 of the 1982 LOS Convention were established as customary international law by the broad consensus achieved at UNCLOS III and the practice of nations.⁴ The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the airspace above those waters.⁵ Coastal or island nations do not have sovereign rights *per*

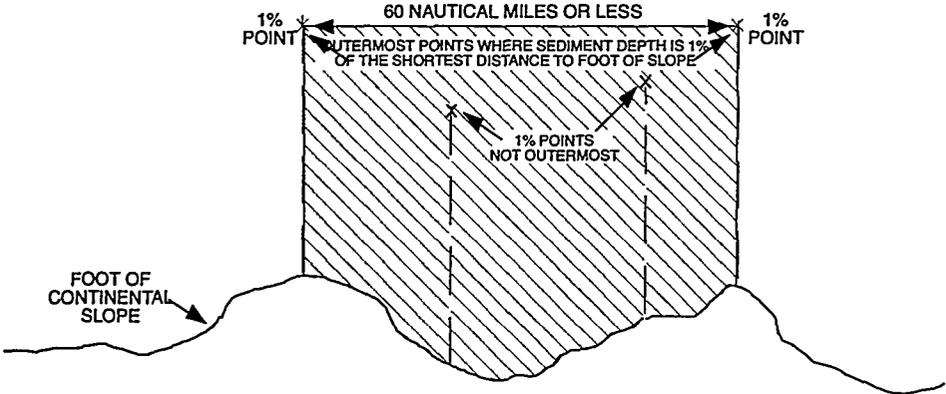
Figure 1

CONTINENTAL SHELF DELIMITATION

CONTINENTAL MARGIN



DEPTH OF SEDIMENT TEST



se to that part of its continental shelf extending beyond the territorial sea, only to the exploration and exploitation of its natural resources.⁶ Shipwrecks lying on the continental shelf beyond the outer limit of the contiguous zone are not considered to be “natural resources.”⁷ All nations have the right to lay submarine cables and pipelines on the continental shelf, in accordance with Article 79 of the LOS Convention.⁸ Submarine cables include telegraph, telephone, and high-voltage power cables.⁹

Delimitation of the Outer Edge of the Continental Shelf

In response to statements made during the December 1982 plenary meetings of UNCLOS III, on March 8, 1983, the United States exercised its right of reply, which, in regard to the continental shelf regime stated:

Some speakers made observations concerning the continental shelf. The Convention adopted by the Conference recognizes that the legal character of the continental shelf remains the natural prolongation of the land territory of the coastal State wherein the coastal State has sovereign rights for the purpose of exploring and exploiting its natural resources. In describing the outer limits of the continental shelf, the Convention applies, in a practical manner, the basic elements of natural prolongation and adjacency fundamental to the doctrine of the continental shelf under international law. This description prejudices neither the existing sovereign rights of all coastal States with respect to the natural prolongation of their land territory into and under the sea, which exists *ipso facto* and *ab initio* by virtue of their sovereignty over the land territory, nor freedom of the high seas, including the freedom to exploit the sea-bed and subsoil beyond the limits of coastal State jurisdiction.¹⁰

As stated above, the outer edge of any juridical (as opposed to physical) continental margin extending beyond 200 miles from the baseline is to be determined in accordance with *either* the depth of sediment test (set forth in Article 76(4)(a)(i) of the 1982 LOS Convention), *or* along a line connecting points not more than 60 miles from the foot of the continental slope (Article 76(4)(a)(ii)). The line of the outer limit of the continental shelf, drawn in accordance with paragraph 4(a)(i) and (ii) either may not exceed 350 miles from the baseline or not exceed 100 miles from the 2500 meter isobath (article 76(5)).¹¹ And, Article 76(6) states that the limit of the continental shelf on submarine ridges shall not exceed 350 miles from the territorial sea baseline.

Although the United States has not yet determined the outer limit of its continental margin, it has recognized Article 76 as reflecting customary international law. On November 17, 1987, the Interagency Group on the Law of the Sea and Ocean Policy established the policy of the United States on delimitation of the outer limit of the U.S. continental shelf. The Interagency Group decision, reflected in a memorandum of November 17, 1987, provided “that the delimitation provisions of Article 76 of the 1982 United

Nations Convention on the Law of the Sea reflect customary international law and that the United States will use these rules when delimiting its continental shelf and in evaluating the continental shelf claims of other countries."¹²

Attached to that memorandum was the statement of policy, which reads:

**United States Policy Governing
The Continental Shelf of the United States of America**

After reviewing the question of how to define and delimit the continental shelf of the United States and its island territories and overseas possessions, the Interagency Group on Ocean Policy and Law of the Sea has determined that the proper definition and means of delimitation in international law are reflected in Article 76 of the 1982 United Nations Convention on the Law of the Sea. The United States has exercised and shall continue to exercise jurisdiction over its continental shelf in accordance with and to the full extent permitted by international law as reflected in Article 76, paragraphs (1), (2) and (3). At such time in the future that it is determined desirable to delimit the outer limit of the continental shelf of the United States beyond two hundred nautical miles from the baseline from which the territorial sea is measured, such delimitation shall be carried out in accordance with paragraphs (4), (5), (6) and (7).

No agency shall seek to delimit [the outer limit of the continental shelf] on behalf of the United States without first obtaining the concurrence of the Interagency Group for Ocean Policy and Law of the Sea. After delimitation is completed, the results of any such delimitation shall be reviewed by the Senior Interagency Group on Oceans Policy and Law of the Sea and transmitted to the President for review. If approved, the Department of State shall transmit charts depicting the delimitation and other relevant information to the Secretary-General of the United Nations and any other organizations as the Interagency Group shall determine to be desirable.

Because of the need to ensure that United States' practice is consistent with international law, before the continental shelf is delimited, an agency planning any leasing or licensing activity on the continental shelf beyond 200 nautical miles from the baseline from which the territorial sea is measured, shall provide notice to the Department of State for transmittal to the Interagency Group with a brief description of the location and type of activity. An opportunity for consultation and comment among all interested agencies shall be provided through the Interagency Group. The Interagency Group shall have 45 days to comment on the proposed action.

The United States shall continue to exercise its rights and duties pertaining to its continental shelf in accordance with international law.

Delimitation of the continental shelf between the United States and a neighboring State with an opposite or adjacent coast shall be determined by the United States and the other State concerned in accordance with equitable principles.

Excessive Claims

Since the mid-1970s, several countries have made general claims to the continental shelf that the United States believes exceed the provisions of the LOS Convention. For example, in 1976, the Government of **Pakistan** enacted a statute which purports to assert jurisdiction over the continental shelf of Pakistan in a manner which is contrary to international law. The United States Government protested as follows:

The Government of the United States also wishes to refer to those provisions of the Territorial Waters and Maritime Zones Act, 1976 which purport to assert jurisdiction over the continental shelf . . . in a manner which is contrary to international law, including, inter alia: a claim of authority to designate areas of the continental shelf . . . and to restrict navigation and certain other activities therein, and, a claim of authority to extend any law over, and to prescribe and enforce any regulation necessary to control the conduct of any person in, . . . the continental shelf . . . of Pakistan. The Government of the United States wishes to remind the Government of Pakistan that international law limits the jurisdiction which a coastal state may exercise in maritime areas. It is the view of the Government of the United States that the aforementioned claims made in the Territorial Waters and Maritime Zones Act, 1976 exceed such limits.

The Government of the United States therefore protests the assertions of jurisdiction made by the Government of Pakistan in the Territorial Waters and Maritime Zones Act, 1976, in so far as such claims are not valid in international law, and reserves its rights and those of its nationals in this regard.¹³

The Department provided the following additional information to American Embassy Islamabad:

As to the claims associated with the continental shelf . . ., we believe that if the Government of Pakistan has used the draft LOS treaty as its guide, it has not followed closely enough the treaty's specific provisions. The draft LOS treaty does not authorize a coastal State to exercise the type of jurisdiction claimed by the Government of Pakistan, such as the unlimited authority to designate areas within various maritime zones and to regulate to any extent considered necessary the use of such areas. And, if Government of Pakistan laws and regulations can be extended over claimed maritime zones without limitation, every human endeavor that might take place within hundreds of miles of the coast is being subjected to Government of Pakistan control. The Government of Pakistan cannot, in our opinion, cite any provision of the draft LOS treaty which authorizes it to claim such comprehensive authority over very broad ocean areas.¹⁴

The United States has protested similar legislation in the case of **Guyana**,¹⁵ **India**,¹⁶ **Mauritius**,¹⁷ and the **Seychelles**.¹⁸

At least two countries, Ecuador and Chile,¹⁹ have made specific continental shelf claims involving limits beyond 200 miles. In a 1985 Presidential Proclamation, the Government of **Ecuador** claimed the underseas Carnegie range

(Cordillera de Carnegie) as its continental shelf. This claim created a “bridge” between the 200-mile limits drawn from Ecuador’s mainland and from the Galapagos Islands. A 100-mile continental shelf was claimed on either side of the 2,500 meter isobath along this ridge. Ecuador applied Article 75(6) of the LOS Convention which sets these maximum limits, but did so without first satisfying the physical criteria set forth in Article 76(4). (It is unlikely that Ecuador could satisfy the sedimentary rock thickness test since this cordillera is an oceanic ridge.) The United States Government protested this claim in 1986, in a note which included the following:

refers to a proclamation of 19 September [1985] by President Febres Cordero on the continental shelf of Ecuador that states, i.e., that “. . . in addition to the continental and island shelves in Ecuador’s 200 mile territorial sea, the seabed and subsoil between its continental territorial sea and the territorial sea around the archipelago De Colon [Galapagos Islands] for a distance of 100 miles from the isobath at a depth of 2,500 meters also form part of Ecuador’s continental shelf.”

Customary international law on delimitation of the continental shelf as reflected in Article 76 of the Law of the Sea Convention provides that the continental shelf of a coastal State extends throughout the natural prolongation of its land territory to the 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. Article 76(4) further provides that when the outer edge of the continental margin does extend beyond the aforementioned 200 nautical mile distance the outer limit of the continental shelf either: (a) coincides with fixed points at each of which the thickness of sedimentary rocks is at least 1 percent of the shortest distance from such point to the foot of the continental slope; or (b) coincides with fixed points not more than 60 nautical miles from the foot of the continental slope.

In its 19 September proclamation Ecuador has apparently relied on article 76(5) which provides: “the fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4(a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 meter isobath, which is a line connecting the depth of 2,500 meters.”

Article 76(5) may, however, only be invoked if either of the conditions precedent in article 76(4) cited above are fulfilled. We believe these conditions cannot be invoked in support of the Ecuadorian position. Therefore, it is the view of the United States that part of Ecuador’s continental shelf claim falling beyond the 200 mile exclusive economic zone off the coasts of the Galapagos Islands and mainland Ecuador are without legal foundation. For the above reason, the United States does not recognize that part of the Ecuadorian continental shelf claim which extends beyond 200 miles from the baselines properly drawn in accordance with LOS Convention articles 5 and 7, from which the territorial sea is measured.

In light of the foregoing, the United States reserves for itself and its nationals all rights in accordance with international law which are contravened by all the claims of Ecuador referred to above.²⁰

Chile also has made a claim to the continental shelf that exceeds the provisions of the LOS Convention. In 1985, Chile claimed a continental shelf of 350 miles around its Pacific Ocean territories of Easter Island and Sala Y Gomez Island.²¹ Chile, however, failed to prove, under Article 76(4), that the continental shelf extends to 200 miles, much less to 350 miles. The United States protested the claim in May 1986, in a note that states in part:

In its September 12, 1985 statement Chile has relied on article 76(6) of the 1982 Law of the Sea Convention, which provides: "Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs."

Article 76(6) may, however, only be invoked if the conditions precedent in article 76(4) cited above are fulfilled. The Government of the United States does not believe that these conditions can be met in these cases. Therefore, it is the position of the United States that part of Chile's continental shelf claim falling beyond a 200 nautical mile limit is without legal foundation. For the above reason, the United States does not recognize that part of the Chilean continental shelf claim off Sala y Gomez and Easter Islands, which extends beyond 200 miles from the baselines from which the territorial sea is measured, properly drawn in accordance with international law. In light of the foregoing, the United States reserves for itself and its nationals all rights in accordance with international law which are contravened by all the claims of Chile referred to above.²²

Notes

1. OFFSHORE CONSULTANTS, INC., NAVIGATIONAL RESTRICTIONS WITHIN THE NEW LOS CONTEXT: GEOGRAPHICAL IMPLICATIONS FOR THE UNITED STATES 22-23 (L.M. Alexander, ed., Final Report under Defense Supply Service Contract 903-84-C-0276, Dec. 1986) [hereinafter ALEXANDER, NAVIGATIONAL RESTRICTIONS].

2. Presidential Proclamation No. 2667, Sept. 28, 1945, 3 C.F.R. 67 (1943-48 Comp.), 13 DEP'T ST. BULL., Sept. 30, 1945, at 484-85, 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 752-64 (1965).

3. 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311, entered in force June 10, 1964.

4. *Case Concerning Delimitation of the Maritime Boundary of the Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 246, 294; 2 RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES, § 515 Cmt. a & Reporter's Note 1, at 66-69; SOHN & GUSTAFSON, THE LAW OF THE SEA 158 (1984). *Contra*, WALLACE, Introduction, 1 INTERNATIONAL BOUNDARY CASES: THE CONTINENTAL SHELF 38 (1992).

5. LOS Convention, article 78.

6. U.S. statement in right of reply, Mar. 8, 1983, U.N. Doc. A/CONF.62/WS/37, 17 Official Records of the Third U.N. Conference on the Law of the Sea 244.

7. *Cf.* LOS Convention, articles 33 and 303.
8. Continental Shelf Convention, articles 1-3 & 5; LOS Convention, articles 60(7), 76-78 & 80-81.
9. Commentary of the International Law Commission on draft articles 27 and 35 on the Law of the Sea, U.N. GAOR Supp. 9, U.N. Doc. A/3159, II Int'l L. Com. Y.B. 278 & 281 (1956).
10. *See supra* n. 6.
11. The France (New Caledonia)-Australia Continental Shelf Boundary Agreement of January 4, 1982 divides the continental shelf beyond 200 miles east of Fraser Island. PRESCOTT, MARITIME AND POLITICAL BOUNDARIES OF THE WORLD 191. The Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources agreed that the "geographic extent of the continental shelf referred to in Article 5(3) of the Convention [on the Regulation of Antarctic Mineral Resource Activities] would be determined by reference to all the criteria and the rules embodied in paragraphs 1 to 7 of Article 76 of the United Nations Convention on the Law of the Sea." Final Act 4, Wellington, June 2, 1988, 27 I.L.M. 866 (1988). On the other hand, the Court of Arbitration for the delimitation of maritime areas between Canada and France considered it was not competent to effect a delimitation beyond 200 miles from St. Pierre and Miquelon, because the international community was not represented before the Court. Decision paras. 75-82, *reprinted in* 31 I.L.M. at 1171-73 (1992).
12. Memorandum from Assistant Secretary John D. Negroponte to Deputy Legal Adviser Elizabeth Verville, Nov. 17, 1987, State Department File No. P89 0140-0428.
13. Diplomatic Note No. 694 dated June 8, 1982, from American Embassy Islamabad pursuant to instructions contained in State Department telegram 155385, June 7, 1982. American Embassy Islamabad telegram 09069, June 14, 1982.
14. State Department telegram 155385, June 7, 1982.
15. American Embassy Georgetown Diplomatic Note dated July 20, 1982, pursuant to instructions contained in State Department telegram 194561, July 14, 1982. American Embassy Georgetown telegram 03242, July 23, 1982.
16. American Embassy New Delhi Diplomatic Note delivered May 13 & 16, 1983, pursuant to instructions contained in State Department telegram 128220, May 9, 1983. American Embassy New Delhi telegram 09947, May 16, 1983.
17. American Embassy Port Louis Diplomatic Note dated July 27, 1982, pursuant to instructions contained in State Department telegram 204808, July 23, 1982. American Embassy Port Louis telegram 02502, July 28, 1982.
18. American Embassy Victoria Diplomatic Note No. 37, dated July 8, 1982, pursuant to instructions contained in State Department telegram 156775, June 8, 1982. American Embassy Victoria telegram 01170, July 14, 1982.
19. In 1985 Iceland adopted Regulation No. 196 of May 9, 1985, defining the borders of its continental shelf, in part a 350-mile distance line from Iceland and in part extending beyond 350 miles from Iceland a line 60 miles beyond the foot of the continental slope, and saying explicitly that Article 76 of the LOS Convention had been used to define the boundaries where applicable. U.N. Legislation on the Continental Shelf at 127. On June 16, 1985, the United Kingdom protested this claim on the grounds that there was "no link of any kind between Iceland and the Hatton/Rockall plateau" and "the Icelandic Regulations have no basis in international law." 56 Brit. Y.B. Int'l L. 1985, at 493 & 494 (1986).
20. Diplomatic Note delivered Feb. 24, 1986 by American Embassy Quito. State Department telegram 033256, Feb. 3, 1986; American Embassy Quito telegram 01651, Feb. 25, 1986. France and the Federal Republic of Germany also have protested this claim by Ecuador. *See Treves, Codification de Droit International et Pratique des États dans le Droit de la Mer*, 223 Recueil des Cours 98 (1990-IV, 1991). Ecuador's continental shelf proclamation may be found at U.N. Legislation on the Continental Shelf, at 82. *See supra* Chapter V n. 4 for the U.S. protests of Ecuador's 200-mile territorial sea claim first made in 1966.
21. Chile's September 12, 1985, claim may be found in U.N. Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea*, National Legislation on the Continental Shelf, at 62 (U.N. Sales No. E.89.v.5, 1989) [hereinafter U.N. Legislation on the Continental Shelf].
22. Diplomatic Note delivered May 20, 1986, by American Embassy Santiago. State Department telegram 153793, May 15, 1986; American Embassy Santiago telegram 03167, May 22, 1986. In December 1986, France and the Federal Republic of Germany also protested the claim by Chile. *See Treves*, 223 Recueil des Cours 97 (1990-IV) (Germany). These Chilean and Ecuadoran claims and the U.S. protests are analyzed in Ramakrishna, Bowen & Archer, *Outer Limits of Continental Shelf*, Marine Policy, Jan. 1987, at 58-60.

Chapter IX Archipelagos

Archipelagic States

The law of the sea first recognized a special regime for archipelagic States in the 1982 Law of the Sea Convention. By definition, an archipelagic State is a State “constituted wholly by one or more archipelagos and may include other islands.”¹ Article 46 of the LOS Convention defines an “archipelago” as a

group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.²

In a letter dated April 4, 1989, David H. Small, Assistant Legal Adviser for Oceans and International Environmental and Scientific Affairs, noted:

Prior to the Third United Nations Conference on the Law of the Sea, international law did not permit archipelagic claims. Although the 1982 Law of the Sea Convention is not yet in force, the archipelagic provisions reflect customary international law and codify the only rules by which a nation can now rightfully assert an archipelagic claim. Recognition of Indonesia’s archipelagic claim by the United States in 1986 and reaffirmed in 1988 was conditioned on Indonesia’s commitment that its claim was then and would be in the future applied toward other States and their nationals in full conformity with international law.³

An exchange of notes accompanying the Tax Convention with **Indonesia**, set out and confirmed the agreed interpretation of Article 3(1)(a) of the Tax Convention, as follows:

In signing this Convention, it is the understanding of the Government of the United States of America that:

The United States recognizes the archipelagic States principles as applied by Indonesia on the understanding that they are applied in accordance with the provisions of Part IV of the 1982 United Nations Convention on the Law of the Sea and that Indonesia respects international rights and obligations pertaining to transit of the Indonesian archipelagic waters in accordance with international law and reflected in that Part.

The confirmation of this understanding by the Government of the Republic of Indonesia will constitute the agreed interpretation of Article 3(1)(a) of the Convention.

Under Article 3(1)(a) of this Tax Convention, for the purposes of this Convention only, unless otherwise required by the context, the term “Indonesia’ comprises the territory of the Republic of Indonesia and the adjacent seas which [sic] the Republic of Indonesia has sovereignty, sovereign rights or jurisdictions in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.”⁴ (See Map 20.)

As of July 1994, the following sixteen States have claimed archipelagic status:⁵

Antigua & Barbuda	Kiribati ^a	Sao Tome & Principe
The Bahamas (pending) ^a	Marshall Islands ^a	Solomon Islands
Cape Verde	Papua New Guinea	Trinidad & Tobago
Comoros ^a	Philippines	Tuvalu
Fiji	Saint Vincent and the Grenadines ^a	Vanuatu
Indonesia		

^aHave not specified archipelagic baselines.

Island-Mainland States

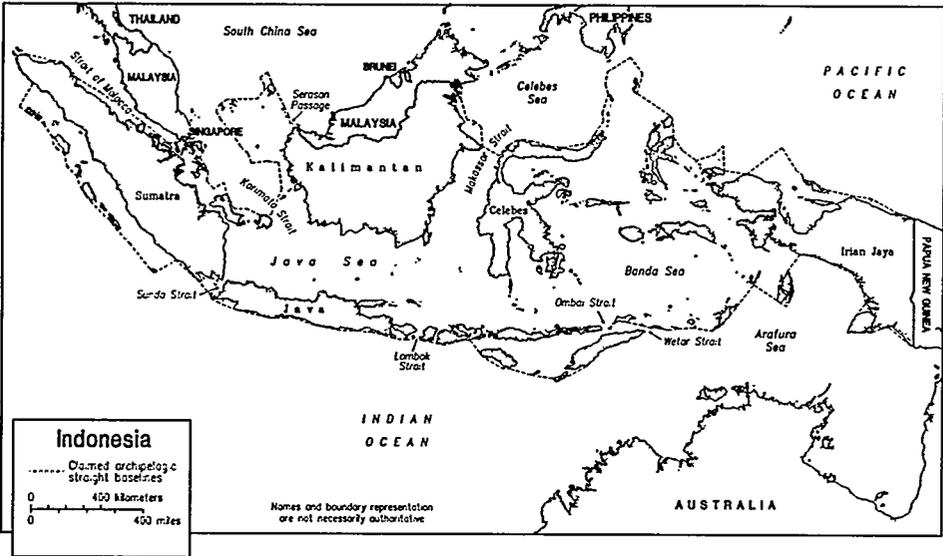
Since an archipelago must consist wholly of islands, a continental State that has offshore groups of islands may not claim archipelagic status for those islands. Nevertheless, several continental States with offshore groups of islands which may be geographically described as archipelagos but which do not meet the juridical definition set out in Article 46 of the 1982 Law of the Sea Convention, have sought to enclose those islands with straight baselines in a manner simulating an archipelago. Following adoption of the Law of the Sea Convention, the United States protested the claims of **Denmark, Ecuador, Portugal and Sudan**.⁶

Baselines

To define the archipelago, a State must draw archipelagic baselines meeting certain requirements specified in Article 47. For example, the length of the baselines may not exceed 100 miles, except that up to 3 percent of the total number of baselines may be drawn to a maximum length of 125 miles.⁷ The baselines are to be drawn in such a manner that the area of water to area of land ratio enclosed by the baselines must be between 1:1 and 9:1.⁸ A State claiming itself an archipelagic State must give due publicity to charts or lists of coordinates that define the archipelago and deposit such charts or lists with the UN.⁹

Fiji’s archipelagic claim in its Maritime Spaces Act of 1977 & 1978, and associated Marine Spaces Orders, reveals that Fiji’s claim meets the Convention’s criteria for archipelagic baseline length and water-to-land ratio.¹⁰ The State Department has prepared a similar analysis of the archipelagic baselines constructed by **Sao Tome and Principe**.¹¹ At least one scholar has expressed the

Map 20



view that the straight baselines claimed by **Indonesia**,¹² **Vanuatu** and **Papua New Guinea**¹³ satisfy the requirements of Article 47.

Cape Verde claimed archipelagic baselines in 1977, through legislation which created 14 basepoints, which when connected comprise the archipelagic baseline system.¹⁴ Two baseline segments exceed the permissible maximum 125 mile length. The water area enclosed by the archipelagic baselines is 50,546 sq.km.; the Cape Verde land area is 4,031 sq.km. The resulting water:land ratio is 12.54:1, which exceeds the maximum allowable 9:1 ratio. Because of these technical flaws in the law, the United States protested Cape Verde's claim in 1980.¹⁵ Both elements can be corrected with some modifications to the baselines (*see* Map 21).¹⁶

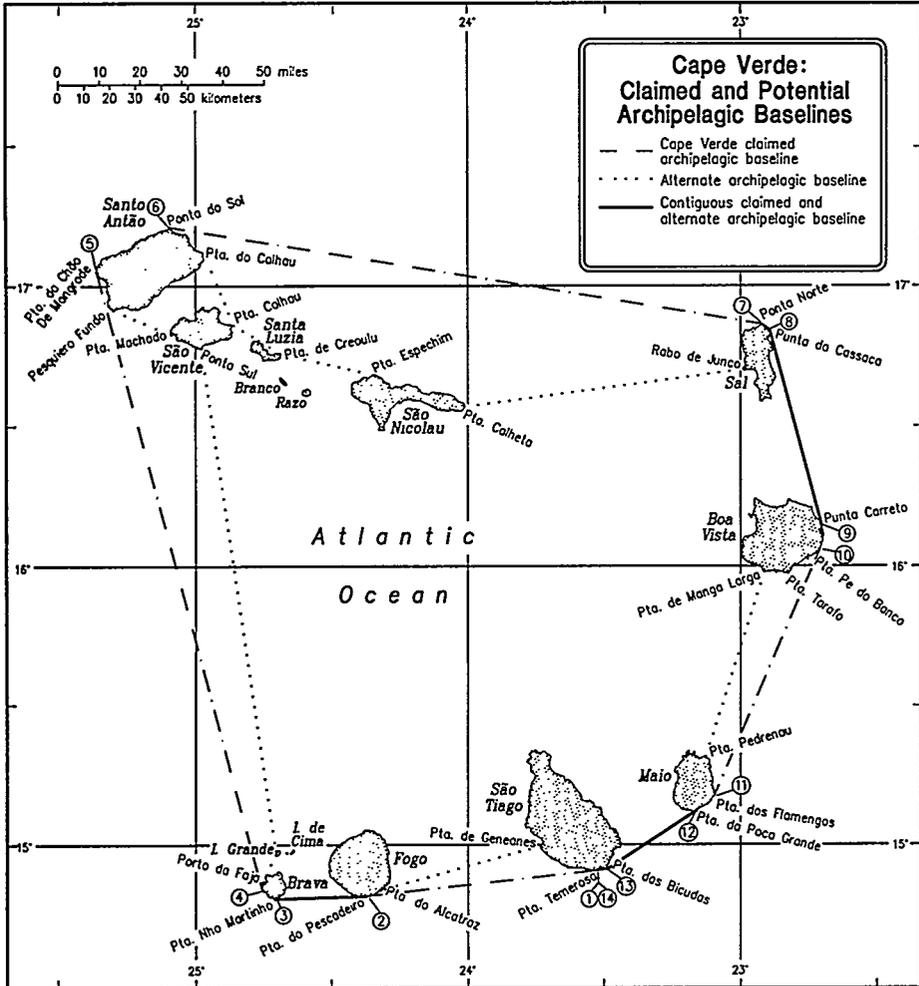
In 1961, the Government of the **Philippines** claimed the waters within the limits set out in Article III of the Treaty of Paris between the United States and Spain of December 10, 1898 as part of the territory of the Philippines (except the Spratlys). The longest segment measures 140 miles in the Gulf of Moro, but that segment could be adjusted without difficulty to reduce it to 125 miles. The land to water ratio is 1:1.8.¹⁷ The Philippines also claimed straight baselines connecting the outer points of its outer islands. (*See* Map 22.) The United States did not accept that claim in a 1961 note of which the following is an extract:

. . . [I]ts purpose is to reduce to Philippine sovereignty large areas of sea which are regarded by the United States and all other nations as part of the High Seas. The Embassy, therefore, considers it necessary to point out that there is no recognition in international law of any special regime for archipelagoes, and no warrant for attempting to reduce to national sovereignty large areas of high seas between the islands of an archipelago, through the device of drawing baselines connecting the outermost islands and claiming as internal waters all of the waters within such baselines.

Due to its complexity, the subject of archipelagoes was left pending at The Hague Conference of 1930, and by the International Law Commission in its studies which preceded the First Law of the Sea Conference in Geneva in 1958. Proposals dealing with the subject were introduced at the First Law of the Sea Conference, but were not pursued because it was felt that the subject needed further study.

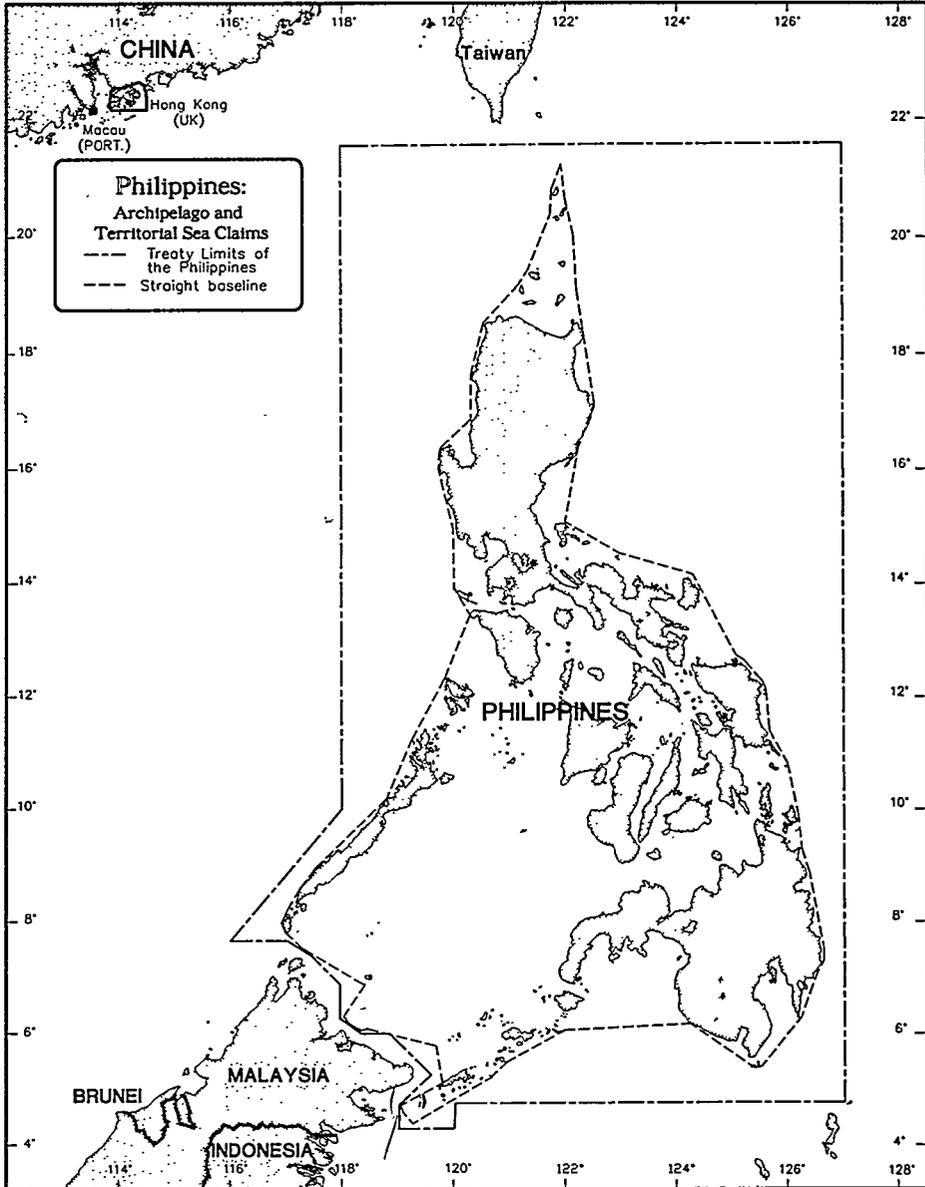
The Philippine Government is also aware that the United States Government does not share its view concerning the proper interpretation of the provisions of the Treaty of Peace of December 10, 1898, between the United States and Spain, and the Treaty of Washington of November 7, 1900, by which Spain ceded the islands of the Philippine archipelago to the United States. Moreover, neither of the Parties to the Convention of January 2, 1930, between the United States and the United Kingdom, defining the boundary between the Philippines and North Borneo agrees with the Philippine interpretation of the provisions of that Convention relied on as one of the bases for the proposed legislation.¹⁸

Map 21



Names and boundary representation are not necessarily authoritative

Map 22



On May 8, 1984, the Philippines deposited, with its instrument of ratification of the 1982 LOS Convention, a declaration reaffirming certain understandings regarding the Convention made in 1982 when the Philippines signed the Convention. The declaration read in part:

1. By signing the Convention the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines;

2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;

...

5. The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines; the Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippines Constitution;

...

7. The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines and removes straits connecting these waters with the economic zone or high seas from the rights of foreign vessels to transit passage for international navigation.¹⁹

In January 1986, the United States protested this declaration, stating with regard to the first statement and statement number 5 that:

The Government of the United States wishes to point out, however, that, with respect to other states and the nationals of such other states, the rights and duties of states are defined by international law, both customary and conventional. The rights of states under international law cannot be enlarged by their domestic legislation, absent acceptance of such enlargement by affected states. In this regard, the Government of the United States notes that the Constitution of the Philippines declares, "The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines." The Government of the United States further notes that customary international law, as reflected in the 1982 Law of the Sea Convention, does not apply to such waters the regime of internal waters. Therefore, the Government of the United States renews its protests, made in 1961 and 1969, of the claim by the Government of the Republic of the Philippines that

such waters constitute internal waters, and the Government of the United States reserves its rights and those of its nationals in this regard.

With regard to the second understanding:

the Government of the United States does not share its view concerning the proper interpretation of the provisions of those treaties, as they relate to the rights of the Philippines in the waters surrounding the Philippine Islands. The Government of the United States continues to be of the opinion that neither those treaties, nor subsequent practice, has conferred upon the United States, nor upon the Republic of the Philippines as successor to the United States, greater rights in the waters surrounding the Philippine Islands than are otherwise recognized in customary international law.

With regard to understanding number 7:

The Government of the United States wishes to observe that, as generally understood in international law, including that reflected in the 1982 Law of the Sea Convention, the concept of internal waters differs significantly from the concept of archipelagic waters. Archipelagic waters are only those enclosed by properly drawn archipelagic baselines and are subject to the regimes of innocent passage and archipelagic sea lanes passage. The Government of the United States further wishes to point out that straits linking the high seas or exclusive economic zone with archipelagic waters, as well as straits within archipelagic waters, are, if part of normal passage routes used for international navigation or overflight through or over archipelagic waters, subject to the regime of archipelagic sea lanes passage.²⁰

Notes

1. LOS Convention, article 46.

2. The concept of archipelagos is examined in detail in CHURCHILL & LOWE, *THE LAW OF THE SEA* 98-111 (2d rev. ed. 1988); Herman, *The Modern Concept of the Off-Lying Archipelago in International Law*, Can. Y.B. Int'l L. 1985 at 172; 1 O'CONNELL, *THE INTERNATIONAL LAW OF THE SEA*, 236-258 (1982); RODGERS, *MIDOCEAN ARCHIPELAGOS AND INTERNATIONAL LAW* (1981); SYMMONS, *THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW* 68-81 (1979); DUBNER, *THE LAW OF TERRITORIAL WATERS OF MID-OCEAN ARCHIPELAGOS AND ARCHIPELAGIC STATES* (1976); and O'Connell, *Mid-ocean Archipelagos*, 45 Brit. Y.B. Int'l L. 1 (1971). The *travaux préparatoires* of the archipelagic articles of the LOS Convention may be found in U.N. Office for Ocean Affairs and the Law of the Sea, *Archipelagic States: Legislative History of Part IV of the United Nations Convention on the Law of the Sea* (U.N. Sales No. E.90.V.2 (1990)); and in a series of articles by the principal U.S. negotiators: Stevenson & Oxman, *The Preparations for the Law of the Sea Conference*, 68 Am. J. Int'l L. 1, 12-13 (1974); *id.* The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session, 1, 21-22 (1975); *id.* The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session, 69 Am. J. Int'l L. 763, 784-85 (1975); and Oxman, *The Third United Nations Conference on the Law of the Sea: The 1977 New York Session*, 72 Am. J. Int'l L. 57, 63-66 (1978).

3. 83 Am. J. Int'l L. 559 (1989), State Department File No. P89 0049-0148.

4. Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Related Protocol and Exchange of Notes, July 11, 1988, United States-Indonesia, T.I.A.S. No. 11593, entered into force Dec. 30, 1990, quoted in 83 Am. J. Int'l L. 559-61 (1989), State Department File No. P89 0049-0148, and confirmed by Indonesia in the protocol of exchange of instruments of ratification, Nov. 30, 1990. Malaysia recognized Indonesia's claim to archipelagic status in the Treaty

between Malaysia and the Republic of Indonesia relating to the Legal Regime of Archipelagic State and the Rights of Malaysia in the Territorial Sea and Archipelagic Waters as well as in the Airspace above the Territorial Sea, Archipelagic Waters and the Territory of the Republic of Indonesia Lying between East and West Malaysia, Feb. 25, 1982, the text of which may be found in U.N. Law of the Sea: Practice of Archipelagic States 144, U.N. Sales No. E.92.V.3, (1992) [hereinafter U.N. LOS: Practice of Archipelagic States]. For reactions to Indonesia's initial archipelagic claim in 1957, see 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 284-85 (1965) [hereinafter WHITEMAN], and O'Connell, *Mid-Ocean Archipelagos in International Law*, 45 Brit. Y.B. Int'l L. 38-42, 62.

5. See *Antigua and Barbuda*, U.N. Office for Ocean Affairs and the Law of the Sea, Baselines: National Legislation with Illustrative Maps (U.N. Sales No. E.89.V.10 (1989) at 13-15 [hereinafter U.N. Baselines: Legislation 13-15]; U.N. LOS: Practice of Archipelagic States 1-16; *The Bahamas*, legislation pending; *Cape Verde*, U.N. Baselines: Legislation 99-100; U.N. LOS: Practice of Archipelagic States 17-19; *Comoros*, Law No. 82-005, U.N. National Claims to Maritime Jurisdiction, U.N. Sales No. E.91.V.15 (1992), at 31; U.N. LOS: Practice of Archipelagic States 20-22; *Fiji*, U.N. Baselines: Legislation 157-61; *Limits in the Seas No. 101* (1984); U.N. LOS: Practice of Archipelagic States 23-44; *Indonesia*, U.N. Baselines: Legislation 187-93; *Limits in the Seas No. 35* (1971); U.N. LOS: Practice of Archipelagic States 45-55; *Kiribati*, Maritime Zones (Declaration) Act, 1983; SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 245 [hereinafter SMITH, EEZ CLAIMS]; U.N. LOS: Practice of Archipelagic States 56-60; *Marshall Islands*, Marine Zones Declaration Act, 1984, MCRM p. 2-284 (1990); *Papua New Guinea*, Offshore Seas Declaration 1978, SMITH, EEZ CLAIMS 363; U.N. LOS: Practice of Archipelagic States 68-74; *Philippines*, U.N. Baselines: Legislation 250-59; *Limits in the Seas No. 33* (1971); U.N. LOS: Practice of Archipelagic States 75-85; *Saint Vincent and the Grenadines*, Maritime Areas Act, 1983, Smith, EEZ Claims 399; U.N. LOS: Practice of Archipelagic States 86-92; *Sao Tome and Principe*, U.N. Baselines: Legislation 271-73; *Limits in the Seas No. 98*; U.N. LOS: Practice of Archipelagic States 93-99; *Solomon Islands*, U.N. Baselines: Legislation 277-280; U.N. LOS: Practice of Archipelagic States 100-108; *Trinidad and Tobago*, LOS Bull. No. 9; U.N. LOS: Practice of Archipelagic States 109-23; *Tuvalu*, Marine Zones (Declaration) Ordinance, 1983, U.N. LOS: Practice of Archipelagic States 124-30; *Vanuatu*, U.N. Baselines: Legislation 376-80; U.N. LOS: Practice of Archipelagic States 131-35.

6. For details see *supra* Chapter IV, text accompanying nn. 51-54.

7. LOS Convention, article 47(2).

8. LOS Convention, article 47(1).

9. LOS Convention, article 47(9).

10. PRESCOTT, MARITIME AND POLITICAL BOUNDARIES OF THE WORLD 186 (1985). The Fiji documents may be found in *Limits in the Seas No. 101*, Fiji's Maritime Claims (1984). Fiji's Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order, 1981, may also be found in U.N. Law of the Sea: National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone, U.N. Pub. E.85.V.10 (1986) at 96-100.

11. *Limits in the Seas No. 98. Accord*, PRESCOTT, *supra* n. 10, at 318 (longest baseline measures 99 miles; water to land ratio is 3:1).

12. PRESCOTT, *supra* n. 10, at 163. See *supra* n. 5.

13. *Id.* at 185.

14. Cape Verde's Decree Law No. 126/77, may be found in U.N. Baselines: Legislation 99 and SMITH, EEZ CLAIMS 96.

15. State Department Note dated June 2, 1980, File No. P80 0073-0828.

16. See PRESCOTT, *supra* n. 10, at 318.

17. *Id.* at 211.

18. American Embassy Manila Diplomatic Note no. 836 of May 18, 1961, State Department File No. 796.022/5-2461. See also *Limits in the Seas No. 33* (March 26, 1971) and 4 WHITEMAN 283, 286-87. The Philippine Act No. 3046 of June 17, 1961 defining the baselines of the territorial sea of the Philippines may be found in U.N., Legislative Series B/15, at 105; U.N., Baselines: Legislation 250; and *Limits in the Seas No. 33*. Article III of the Treaty of Peace, Paris, Dec. 10, 1898, 30 Stat. 1754, T.S. 343, 11 Bevans 616, reads in part "Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line ..." (emphasis added); Article I of the Treaty between the United States and the United Kingdom concerning the Boundaries of the Philippines and North Borneo, Washington, Jan. 2, 1930, 47 Stat. 2198, T.S. 856, 12 Bevans 474, states in part "the line separating the islands belonging to the Philippine Archipelago on the one hand and the islands belonging to the State of North Borneo which is under British protection on the other hand shall be and is hereby established as follows ..." (emphasis added). By American Embassy Manila Note No. 169 of Mar. 10, 1969, the United States similarly protested Republic Act No. 5446, signed Sept. 18, 1968 amending Republic Act No. 3046 (which may be found in U.N., Baselines: Legislation 251-58). State Department File POL 33-4 PHIL. For other protests of the Philippines archipelagic claim, first made in 1955, see 4 WHITEMAN 286-87 and O'Connell, *Mid-Ocean Archipelagos in*

International Law, 45 Brit. Y.B. Int'l L. 25-38, 60-61. Prescott is of the view that it is "certain" that the Philippines has failed to win international approval for this historic claim. PRESCOTT, *supra* n. 10, at 230.

19. The Philippines statement on signature of the LOS Convention may be found in U.N., Status of the United Nations Convention on the Law of the Sea 22 (1985). The Philippines declaration accompanying deposit of its instrument of ratification on May 8, 1984, may be found in *id.* at 37.

20. American Embassy Manila Note delivered Jan. 29, 1986. State Department telegram 115912, Apr. 17, 1985; American Embassy Manila telegram 03261, Jan. 29, 1986.

Several other nations have also protested the Philippine declaration, including Australia, Bulgaria, Byelorussia, Czechoslovakia, the Ukraine and USSR. Thereafter, on October 26, 1988, the Secretary-General received from the Government of the Philippines a declaration concerning the Australian objection which reads in part:

The Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention.

The necessary steps are being taken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.

The Philippine Government, therefore, wishes to assure the Australian Government and the States Parties to the Convention that the Philippines will abide by the provisions of said Convention.

U.N., Status of the United Nations Convention on the Law of the Sea 41-43 (objections by Byelorussia and Czechoslovakia), 44-45 (objection by the USSR); U.N., Current Developments in State Practice No. II, at 95-98 (objections from Australia and Bulgaria, and Philippine response); 12 Aust. Y.B. Int'l L. 383-85 (1992) (same); U.N. LOS BULL. Special Issue I: Status of the United Nations Convention on the Law of the Sea 13-14 (Ukrainian objection) (Mar. 1987). As of January 1994, the Philippines has not reformed its legislation.

Subject to the provisions of Part IV of the LOS Convention, an archipelagic State may claim sovereignty over the waters, airspace, seabed and subsoil enclosed by the archipelagic baselines (Article 49). Within the archipelago, the State may claim internal waters, in accordance with articles 9 (mouths of rivers), 10 (bays) and 11 (ports).

PART THREE
NAVIGATION AND OVERFLIGHT RIGHTS

Chapter X

In the Territorial Sea

Right of Innocent Passage

One of the fundamental tenets in the international law of the sea is that all ships of all States enjoy the right of innocent passage through the territorial sea of other States.¹ The LOS Convention provides definitions for the meaning of “passage” (Article 18),² and of “innocent passage” (Article 19), and lists those activities not innocent or “prejudicial to the peace, good order or security of the coastal State” (Article 19(2) a-l).

The United States reaffirmed its position on innocent passage in Proclamation No. 5928, December 27, 1988 (by which the President extended the territorial sea of the United States for international purposes to 12 miles) which states in part:

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage . . .³

Since 1986, government officials from the United States and the Soviet Union (now Russia) have met periodically to discuss certain international legal aspects of traditional uses of the ocean, particularly navigation. On September 23, 1989, the United States and the Soviet Union issued a joint statement adopting a uniform interpretation of the rules of international law governing innocent passage through the territorial sea, which all governments were urged to accept⁴ (*see* Appendix 4 for the full text). Highlights of this joint statement include the following:

- The LOS Convention is cited as containing the relevant rules of international law governing innocent passage of ships in the territorial sea.
- All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage, for which neither prior notification nor authorization is required.
- The list set out in Article 19(2) of the LOS Convention is an exhaustive list of activities that would render passage not innocent. A ship not engaging in any of those listed activities is in innocent passage.⁵
- A coastal State which questions whether a ship is in innocent passage must give that ship an opportunity to clarify its intentions or correct its conduct.

- Ships exercising the right of innocent passage must abide by all laws and regulations of the coastal State adopted in conformity with international law as reflected in Articles 21, 22, 23, and 25 of the LOS Convention.

- If a warship acts in a manner contrary to innocent passage, and does not correct its action upon request, the coastal State may require it to leave the territorial sea in accordance with Article 30. In such case the warship shall do so immediately.

- Without prejudice to the exercise of rights of coastal and flag States, all differences regarding a particular case of innocent passage shall be resolved through diplomatic channels or other agreed means.

Permissible Restrictions on Innocent Passage

For purposes such as resource conservation, environmental protection, and navigational safety, a coastal State may establish certain restrictions upon the right of innocent passage of foreign vessels. Such restrictions must be reasonable and necessary, and not have the practical effect of denying or impairing the right of innocent passage. The restrictions must not discriminate in form or in fact against the ships of any State or those carrying cargoes to, from, or on behalf of any State.⁶ The coastal State may, where navigational safety dictates, require foreign ships exercising the right of innocent passage to utilize designated sea lanes and traffic separation schemes.⁷ Tankers, nuclear powered vessels, and ships carrying dangerous or noxious substances may be required, for safety reasons, to utilize designated sea lanes.⁸

Article 21 of the LOS Convention empowers a coastal State to adopt, with due publicity, laws and regulations relating to innocent passage through the territorial sea in respect of all or any of the following eight subject areas (which do not include security):

1. The safety of navigation and the regulation of marine traffic (including traffic separation schemes).
2. The protection of navigational aids and facilities and other facilities or installations.
3. The protection of cables and pipelines.
4. The conservation of living resources of the sea.
5. The prevention of infringement of the fisheries regulations of the coastal State.
6. The preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof.
7. Marine scientific research and hydrographic surveys.
8. The prevention of infringement of the customs, fiscal, immigration or sanitary regulations of the coastal State.

This list is exhaustive and inclusive. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

The coastal State is required to give appropriate publicity to any dangers to navigation within its territorial sea of which it has knowledge.⁹

Temporary Suspension of Innocent Passage

A coastal or island nation may suspend innocent passage temporarily in specified areas of its territorial sea, when essential for the protection of its security. Such a suspension must be preceded by a published notice to the international community and may not discriminate in form or in fact among foreign ships.¹⁰

International law does not define how large an area of territorial sea may be temporarily closed to innocent passage. Since the maximum permissible breadth of the territorial sea is 12 miles, any suspension of passage seaward of this limit would be contrary to international law. The law of the sea conventions do not explain the phrase "protection of its security" beyond the example of "weapons exercises" added in the 1982 LOS Convention. Further, the length of "temporarily" is not specified, but it clearly is not to be factually permanent.¹¹ The prohibition against "discrimination in form or fact among foreign ships" refers to discrimination among flag nations, and in the view of the United States, includes direct and indirect discrimination on the basis of cargo or propulsion. This position is strengthened by the provisions in the LOS Convention explicitly dealing with nuclear-powered and nuclear-capable ships.¹²

In 1986, **Sri Lanka** issued a Notice to Mariners, which purported to require that, with certain exceptions, all vessels must obtain permission before entering Sri Lanka's territorial sea. The United States protested this action in a note which read, in part:

The Government of the United States acknowledges the efforts of the Government of Sri Lanka to interdict maritime activities of armed anti-government groups. The United States Government recognizes the right of the Government of Sri Lanka under customary international law as reflected in article 25 of the 1982 Convention on the Law of the Sea to prevent passage which is not innocent and to suspend temporarily, in specified areas of its territorial sea, innocent passage of foreign ships if such suspension is essential to its security. However, the Notice to Mariners is not in accordance with the right of innocent passage because the suspension of innocent passage is overly broad and because the duration of the suspension is not indicated as being temporary.¹³

The Government of Sri Lanka replied in a diplomatic note which read, in part:

The Notice to Mariners was issued as a measure essential for the protection of Sri Lanka's security, in the light of the prevailing security situation. It is a temporary measure and is not intended to be of a permanent nature. The Notice also contains

a comprehensive list of exempted categories to which it would not apply. These include vessels entering or leaving Sri Lanka ports, vessels navigating through the traffic separation zones off Dondra, vessels engaged in Sri Lanka's coastal trade and vessels navigating in the Palk Strait with the permission of the Commander of the Sri Lanka Navy. [See Map 2.]

The Notice therefore ensures that the right of innocent passage in routes used for international maritime traffic are not interfered with. The Ministry wishes to reiterate that the Notice to Mariners is consistent with international law as reflected in the 1982 UN Convention on the Law of the Sea.¹⁴

Excessive Restrictions on Innocent Passage

A concern of many maritime states pertains to requirements placed by some coastal States on certain types of ships either prior to entering the territorial sea or during transit through these waters. The following analysis highlights the types of restrictions the United States finds excessive under international law.

Time Limits for Passage; Prohibited Zones

In 1985, Libya announced regulations which, in part, purported to limit the right of innocent passage of commercial vessels in the Libyan territorial sea to daylight hours only with prior notification and all ships were required to remain out of certain prohibited zones located within the Libyan territorial sea. The United States protested these claims in a *note verbale* to the Secretary-General of the United Nations:

The Government of the United States notes, however, that [Libyan] regulations 6 and 7 do not appear to be limited in their application to vessels intending to call at Libyan ports, but rather that they address themselves to vessels exercising the internationally recognized right of innocent passage. With regard to the said regulations 6 and 7, the Government of the United States makes the following observations: first, the right of innocent passage is one that under long-standing principles of international law may be exercised by all vessels, whether or not engaged in commercial service; second, international law does not permit a coastal state to limit innocent passage of vessels through its territorial sea to certain periods of time, such as daylight hours only; third, under long-standing principles of international law, the coastal State may not claim to condition the right of innocent passage upon prior notification to it.

The United States further notes that regulation 10 of the said Notice to Mariners requires that vessels strictly comply with directives pertaining to the so-called prohibited zones specified in that regulation. In this regard, the United States observes that zones A, B and D [in the vicinity of Tripoli] are all areas within the territorial sea of Libya and therefore subject to innocent passage by vessels of all States. International law does not permit a coastal State to subject an area of its territorial sea to a permanent prohibition of navigation. . . .¹⁵ [See Map 4.]

In 1981, **Finland** prohibited innocent passage through fortified areas or other areas of the Finnish territorial sea declared to be of military importance, and prohibited the arrival of vessels in such areas except between sunrise and sunset.¹⁶ The United States protest stated that:

the right of innocent passage through the territorial sea extends to the whole of the territorial sea except as it may be suspended temporarily when such suspension is essential for the protection of security of the coastal state and is duly published. This limited right to suspend innocent passage is recognized in customary international law as reflected in article 25 of the 1982 United Nations Convention on the Law of the Sea, as well as in the second paragraph of article 9 of aforesaid Finnish decree.¹⁷

The State Department provided the following information to the Embassy:

The claim in the first paragraph of article 9, to deny any right of innocent passage through those portions of the Finnish territorial sea which are fortified areas or other areas declared by the Finnish Government to be of military importance, and in article 21 to limit arrival of government vessels in such areas only to the time between sunrise and sunset, are without foundation in international law. The national security interests which these provision are apparently designed to protect would seem capable of adequate protection through the generally recognized provisions for temporary suspension of innocent passage set out in the second paragraph of article 9, and in article 16 for arrivals of vessels intending to enter Finnish internal waters.

The United States is concerned that article 21, limiting arrival of government vessels in such areas between sunrise and sunset, could be applied in a manner to restrict further the innocent passage of vessels. The United States seeks the assurances of the Government of Finland that article 21 is not intended to impose restrictions on the right of all vessels to engage in innocent passage through such areas inconsistent with international law.¹⁸

Compulsory Pilotage for Sovereign Immune Vessels

The United States also protested the Finnish requirement to use pilot service when navigating in Finnish territorial waters, by stating that:¹⁹

there is no authority in international law to require compulsory pilotage of vessels entitled to sovereign immunity engaged in innocent passage through the Finnish territorial sea, as is asserted by Article 10 of the aforementioned Finnish law.

The following comment was provided to American Embassy Helsinki:

While the United States has no objection to the Government of Finland offering pilotage services to United States warships and other government ships operated for non-commercial purposes and engaged in innocent passage through the territorial sea of Finland, the Government of the United States understands that, consistent with the immunities of those vessels, such services may be accepted or declined at the discretion of the flag state.²⁰

In response to an attempt in April 1985 by the Government of Italy to require compulsory pilotage for ships over 5,000 tons carrying oil and other pollutants while transiting the Strait of Messina (*see* Map 28), the United States protested in a note dated April 5, 1985, in part as follows:

. . . the Government of the United States must express its objection to the requirement, in the decree, that certain other vessels require pilots in order to exercise the right of innocent passage through the Strait of Messina. The Government of the United States notes that this requirement is inconsistent with the regime of non-suspendable innocent passage that applies in the Strait of Messina. Accordingly, the Government of the United States reserves its rights and those of its nationals, in this regard, as well.

Additional information was provided to the U.S. Embassy: "The USG [United States Government] further considers the compulsory pilotage requirement to be inconsistent with the non-suspendable right of innocent passage enjoyed by vessels of all States in the Strait of Messina."²¹

Passage Limited to Sea Lanes

In the 1981 Finnish decree discussed above, **Finland** also required that vessels use "public" sea lanes when navigating that country's territorial waters.²² The following analysis was provided to the Embassy for use in presenting the United States protest of this requirement:

Customary international law, as reflected in article 22 of the Law of the Sea Convention, permits a coastal state to establish sea lanes in its territorial sea where needed for the safety of navigation, after taking into account the recommendations of the competent international organization [i.e., the International Maritime Organization]; any channels customarily used for international navigation; the special characteristics of particular ships and channels; and the density of traffic.

Articles 10 and 20 of the Finnish law do not specify the criteria to be used by Finland in specially regulating public sea lanes.

Thus, the United States sought the assurances of the Government of Finland that it will follow these generally recognized provisions of international law in regulating any sea lanes in its territorial sea.²³

A 1982 law of the former **Soviet Union** claimed that:

Foreign warships and underwater vehicles shall enjoy the right of innocent passage through the territorial waters (territorial sea) of the USSR in accordance with the procedure to be established by the Council of Ministers of the USSR.²⁴

Then, in 1983, the Soviet government published rules for warship navigation in the Soviet territorial sea. In these rules, the Soviet Union acknowledged the right of innocent passage of foreign warships only in limited areas of the Soviet territorial sea in the Baltic, the Sea of Okhotsk, and in the Sea of Japan.²⁵

In March 1986, two U.S. warships, USS *Caron* and USS *Yorktown*, exercised the right of innocent passage through the territorial sea of the Soviet Union in the Black Sea. The Soviet Union protested in two notes. The first, presented the same day to the Naval Attache of the American Embassy in Moscow, read as follows:

On March 13, 1986, at 11 hours 11 minutes (Moscow time) the guided missile cruiser *Yorktown* and destroyer *Caron* violated the state border of the USSR, entering Soviet territorial waters at 44-13.5N 34-09.3E (south of the Crimean peninsula) and penetrated them up to 6 miles.

Disregarding the repeated signals of warning from a Soviet ship about the violation, the American ships continued their illegal operation and not until 13 hours 32 minutes at 44-19.0N 33-21.0E did they leave Soviet territorial waters.

The command of the Soviet Navy calls the attention of the command of the US Navy to the repeated violations of Soviet territorial waters by US Navy ships, which may lead to serious consequences, and requests it to act urgently to take appropriate measures to observe the existing laws and regulations of the Soviet Union with respect to the regime of territorial waters.²⁶

A similar note from the Soviet Ministry of Foreign Affairs, presented to the American Embassy in Moscow on March 17, 1986, added "This is not the first occasion when American naval vessels deliberately failed to observe provisions of the laws and regulations of the USSR relating to operating conditions within Soviet territorial waters."²⁷

The United States responded to the latter *note verbale* as follows:

The transit of the USS *Yorktown* and USS *Caron* through the claimed Soviet territorial sea on March 13, 1986 was a proper exercise of the right of innocent passage, which international law, both customary and conventional, has long accorded ships of all states. The exercise of the right of innocent passage is in no way a violation of a country's territorial sea nor is it "provocative"; it is, rather, an essential part of the international law regime of the territorial sea. The right of ships of all states to engage in innocent passage without prior notification to, or permission of, the coastal state is firmly grounded in international law, including customary law reflected both in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and in the 1982 United Nations Convention on the Law of the Sea. The right of innocent passage may be exercised by all types of vessels, whether they are traversing the territorial sea in connection with a call at a port or traversing the territorial sea without making such a call. Therefore, it is meaningless for the Ministry's note to have alleged that there was "no basis" for

the entry by the two ships into Soviet claimed waters. Regardless of the unknown restrictions of Soviet law alluded to in the Ministry's note, the right of innocent passage is one guaranteed by international law and is not dependent on the legislation of the coastal state.

Therefore, the United States rejects the protest of the Ministry of Foreign Affairs and reserves its rights and those of its nationals.

The Department of State's instructions to American Embassy Moscow noted that the United States "would not want to lend any validity to a Soviet position that their domestic law was at all relevant in determining U.S. navigational rights under international law."²⁸

Two years later, the same two U.S. warships were again involved in an incident in the Black Sea. On February 12, 1988, two Soviet vessels "bumped" the two U.S. Navy ships in the Soviet territorial sea (see Map 23). A number of press accounts, letters, and editorial articles misconstrued the law, the facts and the fundamental issues involved.²⁹ In an unpublished article offered to several major newspapers, the United States stated in part:

Since World War II, an increasing number of coastal states have asserted claims to control activities off their shores in ways contrary to traditional freedoms of the sea. Concern grew that a failure to exercise our navigational rights could progressively undermine these rights. Accordingly, President Carter in 1979 established a program to preserve our international legal rights and freedoms of navigation by having United States ships and aircraft exercise them periodically in areas where coastal states assert the ability to deny them. President Reagan has continued this program.

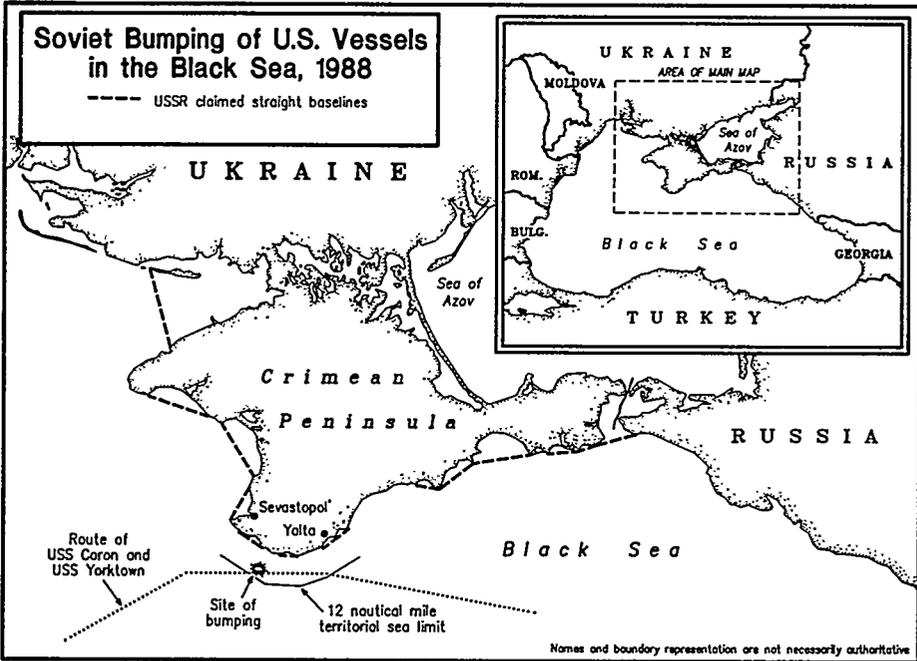
The USS *Yorktown* and the USS *Caron* were in the Soviet territorial sea as part of this program. At issue was not the breadth of the Soviet territorial sea, much less that of our own. . . .

Our disagreement with the USSR involves Soviet efforts to limit, indeed virtually to abrogate, the right of innocent passage for warships through the Soviet territorial sea. According to Soviet legislation, foreign warships may exercise innocent passage in only five specified locations out of the thousands of miles of Soviet coastline. The Soviets made no provision for innocent passage in the Black Sea.

. . . .

The Soviet legislation at issue severely restricts innocent passage, contrary to international law. Nowhere does the 1982 Convention declare that innocent passage is a right limited to particular types of ships; the right applies to warships just as much as to merchant vessels. Nor does the Convention declare that innocent passage applies only in limited areas of the territorial seas — for example areas that are somehow judged to be normal or traditional sea lanes. On the contrary, the Convention declares that the laws of coastal states shall not "impose requirements on foreign ships which have the practical effect of denying or impairing the

Map 23



right of innocent passage.” For the USSR to prohibit warship passage in all but a few places is to do exactly that.³⁰

The 1988 incident was followed by an exchange of notes between the two governments. The Soviet Ministry of Foreign Affairs protested in a note to the American Embassy in Moscow as follows:

On 12 February 1988 the U.S. Navy vessels destroyer *Caron* at 1045 hours (Moscow time) and cruiser *Yorktown* at 1103 hours (Moscow time) violated the USSR state border in the region of the southern coast of the Crimea at the point with the coordinates 44 degrees, 15.6 minutes north latitude, 33 degrees, 30 minutes east longitude. The American vessels neither responded to the warning signals that were issued in advance by Soviet border vessels, nor undertook the recommended change of course. Having gone deeper into the territorial waters of the USSR for a significant distance, the American warships conducted dangerous maneuvers which led to a collision with Soviet warships.

Despite this collision, the cruiser *Yorktown* and destroyer *Caron* remained in USSR territorial waters and only departed at 1249 hours at the point with the coordinates 44 degrees, 12.5 minutes north latitude, 34 degrees, 05.5 minutes east longitude.

Regarding with all seriousness the dangerous incident which has occurred, the Soviet side declares a strong protest in connection with the provocational and clearly intentional action of the American naval forces.

The Soviet side cannot consider the activities of the USA Navy as other than directed at undermining the notable process of recent improvement of Soviet-American relations, and at charging international tension.

The responsibility for this provocation, which led to the collision of warships of the two countries, lies fully and completely with the American side.

The American side has already been warned about the impermissibility of violating USSR laws and regulations with regard to the regime of Soviet territorial waters and of the serious consequences to which such actions can lead.

The Ministry demands that the Government of the USA undertake immediate measures that will exclude such incidents in the future.³¹

The United States responded:

The United States rejects the protest of the Soviet Union. Moreover, the United States protests the actions of the Soviet Union in this matter as inconsistent with its international law obligation to respect the right of innocent passage and to ensure that its state vessels navigate in a manner that does not endanger other vessels.

The United States rejects the contention of the Soviet Union that the US Navy ships *Yorktown* and *Caron* at any time violated the borders of the Soviet Union. Rather, at all times that the two vessels were within the territorial sea of the Soviet Union, they were exercising the right of innocent passage in complete conformance with relevant customary international law, including that reflected in the 1982 United Nations Convention on the Law of the Sea. Under customary international law, including that reflected in the 1982 United Nations Convention on the Law of the Sea, ships of all states, including warships, have a right of innocent passage through the territorial seas of other states.

The coastal state may not subject the exercise of the right of innocent passage to requirements of prior notification or authorization, nor may the coastal state purport to limit the innocent passage of certain ships or types of ships to areas of its territorial sea which it has designated as traditional routes or sea lanes. The United States reaffirms the right, under international law, for the US Navy ships *Yorktown* and *Caron* to have engaged in innocent passage through the Soviet territorial sea at the place and time, and in the manner, in which they did.

The Soviet Union is well aware, not only of the fact that international law guarantees all ships, including warships, the right of innocent passage, but also that the United States is committed to exercising its navigational rights and freedoms around the world. Such exercises of navigational rights and freedoms are not in any way intended to be provocative; they are a necessary part of the process of preserving international law rights through consistent practice as well as diplomatic communications. The Soviet Union has no reason to interpret this routine exercise of international law rights as intended to bear upon the current state of US-Soviet relations.

Nevertheless, the United States notes with grave concern the actions of the Soviet vessels during this incident. After the Soviet warships improperly directed the US warship to depart the Soviet territorial sea, the US warships maintained course and speed and clearly informed the Soviet warships that they were engaged in innocent passage. Thereupon, the Soviet warships deliberately struck the US Navy warships, endangering both the vessels and their crews. The actions of the Soviet warships were utterly unjustified in international law and thoroughly incompatible with prudent seamanship.

As a result of the unlawful and unseamanlike actions of the Soviet warships, both the US Navy warships suffered damage. The United States hereby informs it reserves the right to seek from the Soviet Union appropriate compensation for such damage.

The United States vigorously protests both the illegal Soviet restrictions on innocent passage of warships in the Soviet territorial sea and the deliberate infliction of damage on US Navy warships exercising that right. The United States reserves its rights and those of its nationals in this regard.³²

The issue of innocent passage of warships was resolved between the United States and the Soviet Union by the issuance on September 23, 1989, of a Joint

Statement with attached Uniform Interpretation of the Rules of Innocent Passage signed by Secretary Baker and Foreign Minister Schevardnadze. This understanding clearly reflects the right of warships to conduct innocent passage through the Soviet territorial sea.³³

Prior Notice or Permission for Passage of Warships

The content of the right of innocent passage of warships was much debated during the Third United Nations Conference on the Law of the Sea (UNCLOS III). That debate has been summarized as follows:

Many delegations were engaged on both sides of this issue during the general debates. (The basic split, of course, was between the maritime powers and the coastal states and their supporters. The debates took place in Committee Two on several occasions, as well as in small groups chaired by Ambassador Aguilar, chairman of the Second Committee. While the opponents of innocent passage for warships appeared at times to outnumber the maritimes, they were in fact split among themselves. A final attempt was made by Ambassador Aguilar to achieve a negotiated solution during the final week of the substantive negotiations, without avail.) All the debates proved that there was no middle ground between the antagonists. (At one point, the opponents of innocent passage for warships offered to settle for prior notification only, but this was seen by the maritimes as no different from requiring authorization.) For that reason, no accommodation of views was possible through the medium of negotiation. In the closing days of the Conference, Gabon offered a formal amendment to Article 21 to allow coastal states to require prior authorization or notification for passage of warships through the territorial sea. (U.N. Doc. A/CONF.62/L.97 (1982).) The proposal, of course, was tenaciously opposed by the maritime states, and, in the end, the amendment was withdrawn (partially in response to a plea by the Conference President for the withdrawal of all formal amendments to better enhance consensus) in favor of a proposal to add a reference to "security" to the provision in Article 21(1)(h), which gives coastal states the authority to enact laws regarding customs, fiscal, immigration, or sanitary laws. (U.N. Doc. A/CONF.62/L.117 (1982).) To permit a coastal state to enact laws preventing infringement of security regulations would give such states extremely broad regulatory powers in the territorial sea—not necessarily limited even to warships. This proposal was even more strongly resisted. It therefore appeared imminent that the issue would go to a vote in the plenary. At the last minute, however, the sponsors of the proposal agreed to withdraw it in favor of a statement by the President of the Conference on the record, that its withdrawal was "without prejudice to the rights of coastal states to adopt measures to safeguard their security interests, in accordance with articles 19 and 25 of this Convention." (This statement was made by President T.T.B. Koh in plenary session on April 24, 1982. U.N. Doc. A/CONF.62/SR.176 (1982).) Since those articles had already been accepted as governing the rights of coastal states, it cannot be said that the President's statement does more than restate the obvious. Accordingly, the traditional view of the maritime States that warships, like other ships, are entitled to a right of innocent passage in the territorial sea is still the law of the sea.³⁴

At noon, April 26, 1982, the Conference President Tommy Koh announced that the amendment offered by Gabon³⁵ had been withdrawn;³⁶ that evening he read the following statement:

Although the sponsors of the amendment in document A/CONF.62/L.117 had proposed the amendment with a view to clarifying the text of the draft convention, in response to the President's appeal [to consider carefully and seriously what the consequences of their actions might be and to not press for their amendments to be put to the vote] they have agreed not to press it to a vote. They would, however, like to reaffirm that their decision is without prejudice to the rights of coastal States to adopt measures to safeguard their security interests, in accordance with articles 19 and 25 of the draft convention.³⁷

Following the Conference President's statement from the chair, a number of speakers continued to insist on the right to restrict the innocent passage of warships: **Albania** ("the right of innocent passage did not apply to warships. . . . The warships of a State had no right to pass through the territorial sea of another State without prior consent of the latter");³⁸ **Benin** ("there was no such thing as innocent passage of warships");³⁹ **China** ("the right of the coastal State to require prior authorization or notification for the passage of foreign warships through the territorial sea in accordance with its laws and regulations");⁴⁰ **Iran** ("in the light of customary international law, provisions of Article 21, read in conjunction with Article 19, on the meaning of innocent passage, and Article 25, on the rights of protection of coastal States, recognize, though implicitly, the rights of coastal States to take measures to safeguard their security interests, including the adoption of laws and regulations regarding, *inter alia*, the requirement of prior authorization for warships willing to exercise the right of innocent passage through the territorial sea");⁴¹ **Malta** (the Convention "recognizes the right of coastal States to adopt measures to safeguard their security, including the requirement of prior authorization or notice for the innocent passage of warships through territorial waters");⁴² **North Korea** ("reaffirms the right of coastal States to adopt measures to safeguard their security interests, including the right to require prior notification or consent in regard to passage of foreign warships through their territorial sea");⁴³ and **Pakistan** ("coastal States could demand prior notification or authorization for the innocent passage of warships through their territorial waters").⁴⁴

During the debate on the amendments, a number of other speakers insisted that all ships, including warships, enjoyed the right of innocent passage without prior notification or authorization: e.g., **France** ("any amendment to article 21 would create a serious obstacle to participation in the convention by maritime Powers such as France and the United States");⁴⁵ and **Thailand** ("current opinion appeared to favour freedom of navigation and the right of innocent passage by vessels of all kinds even through territorial waters, since that was vital

to the national security of all countries, including Thailand").⁴⁶ Other States spoke to the same effect after the Conference President read his statement, including the **United Kingdom** ("Many of the Convention's provisions are a restatement or codification of existing conventional and customary international law and State practice. Within this category are the articles concerning the right of innocent passage through the territorial sea, which is not subject to prior notification or authorization by the coastal State").⁴⁷ Other States exercised their right of reply to the same effect, including the **Federal Republic of Germany**⁴⁸ and **France**.⁴⁹ On signature to the Convention, **Italy** stated:

None of the provisions of the Convention, which corresponds on this matter to customary International Law, can be regarded as entitling the Coastal State to make innocent passage of particular categories of foreign ships dependent on prior consent or notification.⁵⁰

Shortly before the concluding session of the Conference in Montego Bay, Jamaica, during an address to the Duke Symposium on the Law of the Sea on October 30, 1982, Ambassador Koh stated:

I think the Convention is quite clear on this point. Warships do, like other ships, have a right of innocent passage through the territorial sea, and there is no need for warships to acquire the prior consent or even notification of the coastal State.⁵¹

In response to the statements made during December 1982 plenary meetings of UNCLOS III, on March 8, 1983, the United States exercised its right of reply, which in regard to innocent passage in the territorial sea stated:

Some speakers spoke to the right of innocent passage in the territorial sea and asserted that a coastal State may require prior notification or authorization before warships or other governmental ships on non-commercial service may enter the territorial sea. Such assertions are contrary to the clear import of the Convention's provisions on innocent passage. Those provisions, which reflect long-standing international law, are clear in denying coastal State competence to impose such restrictions. During the eleventh session of the Conference formal amendments which would have afforded such competence were withdrawn. The withdrawal was accompanied by a statement read from the Chair, and that statement clearly placed coastal State security interests within the context of articles 19 and 25. Neither of those articles permits the imposition of notification or authorization requirements on foreign ships exercising the right of innocent passage.⁵²

The Uniform Interpretation of the Rules of Innocent Passage attached to the Joint Statement signed by U.S. Secretary of State Baker and Soviet Foreign Minister Shevardnadze⁵³ provides, in part, that "[a]ll ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent

passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.”

Table 10, below, provides a listing of those States which have promulgated claims that restrict the innocent passage of warships. The United States has protested the claims of various of these States to require prior notice or authorization for innocent passage of warships. For example in a 1984 *aide memoire* to the Government of Sweden, the United States said:

The United States similarly considers the 1982 Law of the Sea Convention to be reflective of existing maritime law and practice with regard to the regime of innocent passage within the territorial sea. The Convention clearly recognizes the right of vessels of all States to engage in innocent passage through the territorial seas of other States. International law as reflected in the 1982 Law of the Sea Convention permits no distinction, for these purposes, between vessels on commercial service and warships or other governmental vessels on non-commercial service, except as specifically contained in the Convention. Neither does international law permit a coastal State to condition another State's exercise of that right on prior notification to the coastal State.

The 1958 Convention on the Territorial Sea and the Contiguous Zone contains no provision explicitly or implicitly recognizing a right of a coastal State to condition innocent passage on prior notification. On this point, the meaning of the Convention is neither ambiguous nor obscure.

Although international maritime law and practice has continued to develop since the First United Nations Conference on the Law of the Sea, on that issue, international law has remained the same. Recent developments in international maritime law and practice give juridical support to Sweden's post-1958 extensions of maritime jurisdiction, both in the territorial sea and in the 200 nautical mile fisheries zone. The practice of a vast number of States, both coastal and maritime, amply supports the proposition that coastal States may claim territorial seas of up to twelve nautical miles and economic zones of up to 200 nautical miles, provided that they recognize the rights and freedoms of other States in those waters. By contrast, the requirement of prior notification as a condition to warship innocent passage has no such broad base in contemporary practice.

The 1982 Law of the Sea Convention reflects this contrast. Whereas the concepts of a twelve-nautical-mile territorial sea and of a 200-nautical mile exclusive economic zone both commanded consensus acceptance in the Convention text, the conditioning of innocent passage on prior notification clearly did not. It may be noted that the 1982 Convention reflects, in its provisions relating to navigation and other traditional uses of the oceans, worldwide, rather than regional, maritime law and practice. As a matter of customary international law as reflected in the Convention, a coastal State's rights are neither increased nor diminished by virtue of practices peculiar to its region of the globe.

In stating this position, and in exercising its right of warship innocent passage in accordance with international law, the United States implies no disregard for

the sovereignty of Sweden or for its rights in the territorial sea. Innocent passage of any vessel, including a warship, is the continuous and expeditious transit of such a vessel in a manner not prejudicial to the peace, good order or security of the coastal State. United States warships engaged in innocent passage adhere strictly to the requirements of international maritime law and practice regarding the modalities of innocent passage. Thus, for example, submarines must navigate on the surface and fly their national flags. Ships may neither launch nor recover aircraft, and there may be no exercise or practice with weapons. The passage of United States warships under such conditions poses no threat to the security of the coastal State and constitutes no violation of its territorial sovereignty.⁵⁴

Protests have also been submitted to other States purporting to require prior notice, including Egypt,⁵⁵ Finland,⁵⁶ Guyana,⁵⁷ India,⁵⁸ Libya,⁵⁹ Malta,⁶⁰ Mauritius,⁶¹ Seychelles,⁶² People's Democratic Republic of Yemen,⁶³ and the former Yugoslavia.⁶⁴

The United States has similarly protested the claims of other States to require prior permission before warships may engage in innocent passage: Albania,⁶⁵ Algeria,⁶⁶ Antigua & Barbuda,⁶⁷ Bangladesh,⁶⁸ Barbados,⁶⁹ Bulgaria,⁷⁰ Burma,⁷¹ Cape Verde,⁷² China,⁷³ Congo,⁷⁴ German Democratic Republic,⁷⁵ Grenada,⁷⁶ Iran,⁷⁷ Maldives,⁷⁸ Oman,⁷⁹ Pakistan,⁸⁰ Philippines,⁸¹ Poland,⁸² Romania,⁸³ Somalia,⁸⁴ Sri Lanka,⁸⁵ Sudan,⁸⁶ Syria,⁸⁷ Vietnam,⁸⁸ and the Yemen Arab Republic.⁸⁹

Table 10
Restrictions on Warship Innocent Passage

<u>State</u>	<u>Restriction, Year of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right of Innocent Passage</u>
Albania	Special permission; 1946	1989	1985 ^a
Algeria	Prior permission; 1963	1964 ^a	1979 ^a
Antigua & Barbuda	Prior permission; 1982	1987	1987
Bangladesh	Prior permission; 1974	1982	
Barbados	Prior permission; 1979	1982	1982 ^a
Brazil	Prior permission; 1954		
Bulgaria	Limited to sea lanes; 1987		
Burma	Prior permission; 1977	1982	1985 ^a
Cambodia	Prior permission; 1982		1986 ^a
Cape Verde	Prior permission; 1982	1989	1991
China (P.R.C.)	Prior permission; 1958, 1992	1992	1986 ^a
Congo	Prior permission; 1977	1987	
Denmark	Prior permission; 1976	1991	
Egypt	Prior notification; 1983	1985	1993
Finland	Prior notification; 1981	1989	
Grenada	Prior permission; 1978	1982 ^a	1988
Guyana	Prior notification; 1977	1982	1988
India	Prior notification; 1976	1976 ^a	1985 ^a
Indonesia	Prior notice; 1962		
Iran	Prior permission; 1982, 1993	1987 ^a	1989 ^a

Table 10 (Cont.)

<u>State</u>	<u>Restriction, Year of Claim</u>	<u>U.S. Protest</u>	<u>U.S. Assertion of Right of Innocent Passage</u>
Korea, South	Prior notification; 1978	1977	
Libya	Prior notice; 1985	1985	
Maldives	Prior permission; 1976	1982	1981 ^a
Malta	Prior notification; 1981	1981 ^a	
Mauritius	Prior notification; 1977	1982	
Oman	Prior permission; 1989	1991	1991 ^a
Pakistan	Prior permission; 1976	1982	1986 ^a
Philippines	Prior permission; 1968	1969	1994
Poland	Prior permission; 1968	1989	
Romania	Prior permission; 1956	1989	1985 ^a
St. Vincent & the Grenadines	Prior permission; 1983		
Seychelles	Prior notification; 1977	1982	
Somalia	Prior permission; 1972	1982	1979 ^a
Sri Lanka	Prior permission; 1977	1986	1985 ^a
Sudan	Prior permission; 1970	1989	1979 ^a
Sweden	Prior notification; 1966	1984 ^a	1991 ^a
Syria	Prior permission; 1963	1989	1984 ^a
Vietnam	Prior permission; 1980	1982	1982 ^a
Yemen	Prior permission (PDRY); 1967	1982	1982 ^a
	Prior notification (YAR); 1978	1986	1979 ^a
Yugoslavia, Former	Prior notification; 1965	1986 ^a	1990

^aMultiple protests or assertions

Source: U.S. Department of State, Office of Ocean Affairs.

Enforcement of Violations

In 1981, the United States expressed its concerns to Malta regarding a portion of a Maltese law which claimed the right to impose imprisonment, as well as fines, for violations of regulations issued to control and regulate the passage of ships through the "territorial waters of Malta", without also recognizing the duty of the coastal State not to impede the innocent passage of foreign ships through its territorial sea. The State Department's note read, in part, as follows:

... refers to Act XXVIII of 1981, approved July 24 by the Parliament of Malta, which amends the Territorial Waters and Contiguous Zone Act of 1971. Section 3 of the Act adds a new Section 5 to the Territorial Waters and Contiguous Zone Act. Section 5 provides that the Prime Minister of Malta may make and enforce regulations to control the passage of ships through the territorial sea of Malta. The regulations may relate to the arrest, detention and seizure of ships "and such other power as may be necessary" to ensure compliance with "any law, rule, regulation or order" and the imposition of punishments, including imprisonment, for the violation of any regulation issued under the Section.

...

The United States Government also wishes to express its concern that Section 5 of the Territorial Waters and Contiguous Zone Act makes no reference to the internationally recognized right of innocent passage. Pursuant to Articles 14 and 15 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, the Government of Malta is obligated to recognize that all ships of all States enjoy the right of innocent passage through the territorial sea and is prohibited from impeding innocent passage. The United States Government wishes to express its expectation that the Government of Malta will apply Section 5 in a manner consistent with its obligation not to impede innocent passage.⁹⁰

Limitation on Number of Warships

A few states have claimed the right to limit the number of warships that may be present at any one time in their territorial sea. The United States has protested these unlawful restrictions on the right of innocent passage by **Denmark**,⁹¹ **Vietnam**⁹² and by the former **Yugoslavia**.⁹³

Nuclear Powered Warships

While nuclear powered warships and conventionally powered warships enjoy identical international legal status,⁹⁴ several states require nuclear powered warships to give prior notice to, or obtain prior permission of the coastal State before exercising the right of innocent passage through the territorial sea. The United States has protested these claims.

In 1977, the **People's Democratic Republic of Yemen (Aden)** enacted a domestic statute which claimed that "foreign nuclear-powered ships or ships carrying nuclear substances or any other radio-active substances or materials shall give the competent authorities in the Republic prior notification of their entry into and passage through the territorial sea."⁹⁵ The United States protested, stating:

that the internationally recognized legal right of innocent passage through the territorial sea may be exercised by all ships, regardless of type of cargo, and may not in any case be subjected to a requirement of obtaining prior authorization from or giving notice to the coastal State. . . .⁹⁶

Similar legislation by **Pakistan** provided that: "foreign super-tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may enter or pass through the territorial waters after giving prior notice to the Federal Government." This requirement was protested by the United States on June 8, 1982.⁹⁷

Djibouti's 1979 claim that "foreign vessels with nuclear propulsion or transportation of nuclear materials or other radioactive substances must inform

Djibouti beforehand about entering and crossing of Djibouti territorial waters” was protested by the United States on May 22, 1989.⁹⁸

When it signed the 1982 Law of the Sea Convention in December 1982, the **Yemen Arab Republic** (which merged with Yemen-Aden on May 22, 1990), made an accompanying declaration which stated in part that “nuclear powered craft, as well as warships and warplanes in general, must obtain the prior agreement of the Yemen Arab Republic before passing through its territorial waters, in accordance with the established norms of general international law relating to national sovereignty.” The United States Government, in a note dated October 6, 1986, protested as follows:

The United States considers the statement to be without legal foundation because it attempts to subject the passage of foreign warships as well as nuclear powered ships to the requirements of prior authorization in order to transit the Yemeni territorial sea. The 1982 Law of the Sea Convention, which represents customary international law in this regard, permits no such restriction. Indeed, it provides in article 19 a comprehensive list of activities which shall be considered to be inconsistent with the exercise of the right of innocent passage. This exhaustive list of proscribed activities does not expressly or implicitly permit the exercise of that right to be preconditioned upon prior authorization or even notification. Further, it cannot legally be maintained that the lack of authorization or notification has any bearing on passage within the meaning of Convention article 19(2)(l). Nor is the competency claimed by the Government of the Yemen Arab Republic justified under article 21(1).

The United States wishes to point out that there is no justification whatever for distinguishing, for these purposes, between warships or nuclear-powered ships and other ships, as the statement of the Government of the Yemen Arab Republic seeks to do. Convention articles 17-32, concerning innocent passage, apply to all ships, and they do not in any way distinguish between warships or nuclear-powered ships and other ships with respect to prior notification or permission as a condition of innocent passage.

...

For the above reasons, the United States cannot accept the claim of authority by the Government of the Yemen Arab Republic to condition the exercise of the right of innocent passage by warships or nuclear-powered ships . . . upon prior authorization. Accordingly the United States reserves its rights and those of its nationals in this regard.⁹⁹

The United States protested a similar declaration made by the Government of **Egypt** upon deposit of its instrument of ratification of the 1982 LOS Convention on August 26, 1983, by diplomatic note delivered February 26, 1985, by the American Embassy at Cairo.

The Egyptian declaration reads:

Pursuant to the provisions of the Convention relating to the right of the coastal State to regulate the passage of ships through its territorial sea, and whereas the passage of foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous and noxious substances poses a number of hazards,

Whereas article 23 of the Convention stipulated that the ships in question shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements,

The Government of the Arab Republic of Egypt declares that it will require the aforementioned ships to obtain authorization before entering the territorial sea of Egypt, until such international agreements are concluded and Egypt becomes a party to them.

One talking point provided by the Department of State to the U.S. Embassy for use in conjunction with delivery of the note said:

In consonance with prior law and practice, the Law of the Sea Convention provides that all ships enjoy the right of innocent passage in the territorial sea. Neither warships nor any other type of ship, regardless of means of propulsion or materials carried may be required to give notice to, or obtain the permission of, the coastal State before exercising this right.¹⁰⁰

In depositing its instrument of ratification of the LOS Convention on August 17, 1989, **Oman** "guaranteed" to foreign nuclear-powered ships and ships carrying nuclear or other substances that are inherently dangerous or harmful to health or the environment, whether or not warships, the right of innocent passage "subject to prior permission". On August 13, 1991, the United States protested this requirement.¹⁰¹

The 1989 U.S.-U.S.S.R. Uniform Interpretation of the Rules of International Law Governing Innocent Passage states in part: "[a]ll ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required."¹⁰²

Claims Rolled Back

The **Soviet Union** modified its legislation on September 20, 1989. The **Bulgarian** requirement for prior permission was replaced in its July 8, 1987 Act with a limitation of innocent passage to designated sea lanes.¹⁰³

In response to the promulgation by **Turkey** on February 20, 1979, of Decree 7/17114, requiring foreign warships to provide prior notice before transiting the Turkish territorial sea, the United States protested in part as follows:

The Government of the United States recognizes the right of a State consistent with international law to establish requirements for notification and other conditions of entry for visits to its ports as well as the specific rights of notification of transit of the Turkish Straits accorded to Turkey by the Montreux Convention.

The Government of the United States notes with concern, however, that the regulations purport to extend the requirements of the Montreux Convention and port visit conditions to establish similar conditions and requirements for notification and other limitations of transit of the Turkish territorial sea outside the straits. This is contrary to international law, as reflected in international practice and codified in the 1958 Convention on the Territorial Sea and Contiguous Zone. Specifically, these regulations constitute a restraint on the right of innocent passage through the territorial sea which exists for all ships, whether military or commercial, regardless of their characteristics.

Consequently, the Government of the United States does not recognize the validity or effectiveness of the regulations in question to the extent that provisions thereof are inconsistent with accepted principles of international law, and reserves its rights and those of its vessels and nationals with regard to such provisions in the regulations.¹⁰⁴

On May 2, 1985, the Counselor at the Turkish Embassy in Washington informed the Department's Geographer that:

the provision of the Decree 7/17114 which states that the foreign warships must provide notice prior to transiting territorial sea, has been cancelled by the Directive dated November 24, 1983, No. 83/7467. [From] then on foreign warships transiting territorial seas of Turkey are subject to the general provisions of the International Law.¹⁰⁵

Hazardous Waste

In 1988, Haiti prohibited the entry into its territorial waters and exclusive economic zone, as well as into its ports, of "any vessel transporting wastes, refuse, residues or any other materials likely to endanger the health of the country's population and to pollute the marine, air and land environment."¹⁰⁶ The United States protested this action in a 1989 note which recalled "that customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, does not recognize the right of a coastal State to prohibit the passage of ships transporting hazardous waste through a coastal State's territorial sea or exclusive economic zone without intending to enter the internal waters or ports of the coastal State."¹⁰⁷

The 1989 **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**,¹⁰⁸ establishes a notice and consent system in which any export, including any export by ship, of hazardous waste requires the prior approval of, *inter alia*, any "transit state." That

term is defined in article 2(12) of the Basel Convention, as any State "through which" wastes are transported on their way from an exporting State for disposal in another State. As noted in the Secretary of State's letter of submittal, "the United States has consistently maintained that, under international law, notification to or authorization of coastal states is not required for passage through territorial seas . . ." ¹⁰⁹ This is reflected in Article 4(12) of the Basel Convention, which provides that the Convention does not affect "the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments." However, Article 4(12) also provides that nothing in the Basel Convention "shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law . . ."

This compromise formula prompted Portugal to declare that it required the notification of all transboundary movements of such wastes across its waters, and several Latin American countries, including Columbia, Ecuador, Mexico, Uruguay and Venezuela, to declare that, under the Basel Convention, their rights as coastal States were adequately protected. Germany, Italy, Japan and the United Kingdom on the other hand, declared that nothing in the Convention requires any notice to, or consent of, the coastal State for vessels exercising the right of innocent passage. ¹¹⁰

In granting its advice and consent to ratification of the Basel Convention, the U.S. Senate stated the understanding of the United States of America that "a State is a 'transit State' within the meaning of the convention only if wastes are moved, or are planned to be moved, through its inland waterways, inland waters, or land territory." ¹¹¹

Notes

1. It is unclear whether Judge Oda, dissenting in *El Salvador v. Honduras*, 1992 I.C.J. Rep. 745, para. 23, in writing that the right of innocent passage is "granted to foreign commercial vessels in the territorial sea," would extend that right to warships.

2. The I.C.J. stated that Article 18(1)(b) "does no more than codify customary international law". *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Merits, Judgment, 1986 I.C.J. Rep. 14, at 111 para 214.

3. Presidential Proclamation No. 5928, Dec. 27, 1988, 54 Fed. Reg. 777 (January 9, 1989); 24 Weekly Comp. Pres. Doc. 1661 (Jan. 2, 1989), Appendix 3.

4. DEP'T ST. BULL., Nov. 1989, at 26; 28 I.L.M., 1444-47 (1989); 84 Am. J. Int'l L. 239-42 (1990); U.N. LOS BULL., No. 14, Dec. 1989, at 12-13.

5. The Territorial Sea Convention contained no comparable listing of activities deemed to be innocent. See Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: the 1975 Geneva Session*, 69 Am. J. Int'l L. 763, 771-72 (1975); Froman, *Uncharted Waters: Non-innocent Passage of Warships in the Territorial Sea*, 21 San Diego L. Rev. 625, 659 (1984); Grammig, *The Yoron Jima Submarine Incident of August 1980: A Soviet Violation of the Law of the Sea*, 22 Harv. Int'l L.J. 331, 340 (1981).

However, since the activities must occur "in the territorial sea" (LOS Convention, article 19(2)), any determination of non-innocence of passage by a transiting ship must be made on the basis of acts committed while in the territorial sea. Thus cargo, destination, or purpose of the voyage can not be used as a criterion in determining that the passage is not innocent. Professor H.B. Robertson testimony, *before the House Merchant Marine & Fisheries Comm., 97th Cong., Hearing on the Status of the Law of the Sea Treaty Negotiations*, July 27,

1982, Ser. 97-29, at 413-14. *Atcord, Oxman, The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 Va. J. Int'l L. 813, 853 (1984) (possession of passive characteristics, such as the innate combat capabilities of a warship, do not constitute "activity" within the meaning of this enumerated list).

On the other hand, since coastal States are competent to regulate fishing in their territorial sea, passage of foreign fishing vessels engaged in activities that are in violation of those laws or regulations is not innocent. Territorial Sea Convention, article 14(5); 1982 LOS Convention, article 21(1)(e).

In February 1993, Thailand issued a Circular Note in Bangkok in which the Ministry of Foreign Affairs announced the position of the Royal Thai Government regarding laws and regulations of several States "the effect of which is to restrict the rights of passage and freedom of navigation of foreign ships in their maritime zones." The note stated:

1. According to the well-established rules of customary international law and state practice as recognized and codified by the 1982 United Nations Convention on the Law of the Sea, ships of all states have the right of innocent passage in the territorial sea, the right of transit passage in straits used for international navigation, and the freedom of navigation in the exclusive economic zone of another state.
2. All foreign ships, including warships, merchant ships and fishing vessels, can exercise such rights and freedoms without having to give prior notification to, or obtain prior permission, approval or consent from the coastal State concerned regarding their intended passage.
3. Therefore, any laws and regulations which tend to restrict the aforesaid rights and freedom are contrary to the rules of customary international law and are, moreover, incompatible with the obligations assumed by the states concerned when they signed the 1982 Convention.
4. For these reasons, the Royal Thai Government feels obliged to declare that Thailand does not consider herself bound by the laws and regulations in question. In the meantime, it is hoped that states which have enacted such laws and regulations will not actually carry out any measure to impede or interfere in any way with the legitimate exercise by foreign ships of the right of innocent passage in their territorial seas, the right of transit passage in their straits used for international navigation or the freedom of navigation in their exclusive economic zones.

Letter dated Feb. 18, 1993, from the Permanent Representative of Thailand to the United Nations, U.N. GA Doc. A/48/90, Feb. 22, 1993; U.N. LOS BULL., No. 23, June 1993 at 108.

The seizure by Cambodian forces of the SS *Mayaguez* on May 12, 1975, was justified by Cambodia on the ground that her passage was not innocent. However, the location of the seizure was outside Cambodian territorial seas. Thus, the seizure was unlawful. 1975 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 423-26 [hereinafter DIGEST]; *Note, The Mayaguez: The Right of Innocent Passage and the Legality of Repprisal*, 13 San Diego L. Rev. 765 (1976). More importantly, even if a ship enters territorial waters and engages in non-innocent activity, the appropriate remedy, consistent with customary international law, is first to inform the vessel of the reasons why the coastal State questions the innocence of the passage, and to provide the vessel a reasonable opportunity to clarify its intentions or to correct its conduct in a reasonably short period of time. In the case of a warship engaging in conduct which renders its passage not innocent, and which does not take corrective action upon request, the coastal State may require the ship to leave the territorial sea, as set forth in article 30 of the 1982 LOS Convention, in which case the warship shall do so immediately. Customary international law requires that the coastal State normally take steps short of force to prevent non-innocent passage.

An informal survey of coastal State maritime legislation conducted by the State Department Office of the Legal Adviser revealed that the following nations had specific domestic legislation recognizing the right of innocent passage.

Antigua and Barbuda	Federal Republic of Germany (warships)
Brazil	Guatemala (warships)
Cape Verde	Indonesia
Colombia	Iraq
Comoros	Ireland
Costa Rica	Italy (warships)
Dominica (warships)	Kiribati
Equatorial Guinea	Mauritania
Fiji	Mexico
France (warships)	Nicaragua (merchant ships)

Nigeria (warships)	Trinidad and Tobago
Oman	Tuvalu
Saint Kitts and Nevis	United Kingdom (warships)
Saint Vincent and the Grenadines	United States (warships)
Senegal	USSR (warships)
Solomon Islands	Uruguay
Thailand (warships)	Vanuatu

Reference to "warships" in this listing signifies that the legislation specifically recognizes the right of innocent passage for warships. Nicaragua's legislation is specific only with respect to merchant shipping. The United Kingdom has publicly stated that "under international law all ships enjoy the right of innocent passage in the territorial sea of the United Kingdom". 55 Brit. Y.B. Int'l L. 1984, at 549 (1985). See also 58 Brit. Y.B. Int'l L. 1987, at 599 (1988).

6. LOS Convention, article 24(1).

7. LOS Convention, article 21.

8. LOS Convention, article 22(2).

9. Territorial Sea Convention, article 15; LOS Convention, article 24. The United States has adopted special Inland Rules applicable to navigation in U.S. waters landward of the demarcation line established by U.S. law for that purpose. See U.S. Coast Guard publication CG 169, 33 C.F.R. part 80, and 33 U.S.C. §§ 2001 to 2073. The 1972 COLREGS apply seaward of the demarcation line in U.S. national waters, in the U.S. Contiguous Zone and Exclusive Economic Zone, and on the high seas.

10. Territorial Sea Convention, article 16(3); LOS Convention, article 25(3). Authorization to suspend innocent passage in the U.S. territorial sea during a national emergency is given to the President in 50 U.S.C. § 191. See also 33 C.F.R. part 127. "Security" includes suspending innocent passage for weapons testing and exercises.

11. MCDUGAL & BURKE, THE PUBLIC ORDER OF THE OCEANS 592-93.

12. Articles 22(2) & 23.

13. Diplomatic Note No. 137 dated Sept. 12, 1986, from American Embassy Colombo. State Department telegram 246211, Aug. 6, 1986; American Embassy Colombo telegram 06963, Sept. 13, 1986.

A talking point provided to the Embassy stated in part that:

Sri Lanka's restrictions contained in Notice to Mariners No. 1 of 1986 do not appear warranted, because they are not limited in duration and because they are broader than they must be to protect the state's security in that they interfere with maritime traffic which could not be a threat. . . . [T]he Notice to Mariners . . . amounts to an indefinite suspension of the right of innocent passage in a great part of the territorial sea.

State Department telegram 246211, Aug. 6, 1986.

14. Sri Lanka Ministry of Foreign Affairs Diplomatic Note no. L/POL/22 dated Dec. 9, 1986, to American Embassy Colombo, Department of State File No. P92 0098-0745. For other instances in which nations have sought to suspend innocent passage, see 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 379-86 (1965) [hereinafter WHITEMAN].

15. U.S.U.N. note dated July 10, 1985, circulated to the permanent missions of the States members of the U.N. by U.N. Doc. NV/85/11, July 10, 1985, and reproduced in U.N. LOS BULL., No. 6, Oct. 1985 at 40. Regulation 7 of the Libyan Notice to Mariners stated:

7. All types of commercial ships may pass in innocent passage within the Libyan territorial waters during the day time only (from sun rise to sun set) provided informing the Libyan authorities at least 12 hours prior to entry, and to give the following information:

- point of entering defined by latitude and longitude.
- duration of stay within the territorial waters and course of sailing and speed.
- point of leaving the territorial waters defining the latitude and longitude.

The Federal Republic of Germany also protested this claim in August 1985.

16. Finnish decree number 656/80, of January 1, 1981, amending decree number 185, of April 18, 1963, which prohibited, in the first paragraph of article 9, innocent passage through fortified areas or other areas of the Finnish territorial sea declared to be of military importance, and prohibited in article 21, arrival in such areas except between sunrise and sunset. This decree does not appear to have been published in English.

17. Note verbale No. 92 of June 6, 1989, from American Embassy Helsinki reported in American Embassy Helsinki telegram 4302, June 2, 1989.

18. State Department telegram 174994, June 2, 1989. Finland replied by MFA Note No. 14570, dated July 10, 1989, in part as follows:

According to the Geneva Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958 to which Finland is a party, it is within the sovereign right of a state to regulate internally the exercise of innocent passage of warships. It is to be deduced from the *travaux préparatoires* of article 22 of the Convention that no agreement was reached in the deliberations on the question regarding the application of the regime on warships and on non-commercial government vessels. There was, however, hardly any intention to establish detailed regulations on non-commercial government vessels in this respect.

Therefore, it is the understanding of the Government of Finland that it is within the sovereign right of the coastal state to give internal regulations on the exercise of innocent passage of these two categories of vessels, these regulations being fully compatible with international law as well as the 1982 Convention on the Law of the Sea. The internal regulations referred to in the Embassy's *note verbale* do not imply that restriction will be imposed on the right of innocent passage itself.

It is the intention of the Government of Finland to continue to apply the present regime on the innocent passage through the Finnish territorial sea. The regime will be reconsidered if in the future changes will emerge in the international regime on innocent passage in the territorial sea.

American Embassy Helsinki telegram 05235, July 14, 1989.

19. Article 10 of Finland's decree number 656/80, of Jan. 1, 1981, *supra* n. 16, amending decree number 185, of Apr. 18, 1963.

20. State Department telegram 174994, *supra* n. 18.

21. Diplomatic Note dated Apr. 5, 1985, from American Embassy Rome. American Embassy Rome telegram 08736, Apr. 5, 1985; State Department telegram 102199, Apr. 4, 1985. Compulsory pilotage was first imposed, for the period Apr. 3 to May 18, 1985, on *all ships* greater than 10,000 tons and for *all ships* greater than 5,000 tons carrying oil or other pollutants. Hydrolant 653/85(53), DMAHTC Washington DC message 021618Z Apr. 1985. The following day that requirement was limited to all *merchant* ships over 10,000 tons, and to *all ships* between 5,000 and 10,000 tons carrying oil or other pollutants. Hydrolant 660/85(53), DMAHTC Washington DC message 031919Z Apr. 1985. Two days later the requirement was again modified to apply only to *merchant* ships. Hydrolant 669/85(53), DMAHTC Washington DC message 051505Z Apr. 1985. This requirement for *merchant ships only* to carry a pilot was continued for merchant ships of 15,000 tons DW and above, and for merchant ships 6,000 tons DW and above carrying pollutants, transiting the Strait of Messina from May 18, 1985 (Hydrolant 948/85(53), DMAHTC Washington DC message 161424Z May 1985), pursuant to Minister of Merchant Marine decree on the Straits of Messina dated May 8, 1985 (published in the *Gazzetta Ufficiale* No. 110 of May 11, 1985), an English translation of which may be found in American Embassy Rome telegram 12263, May 15, 1985. On May 16, 1985, the Italian Government replied noting that these provisional measures were designed to decrease the risk of maritime accidents "while waiting for the construction and putting into operation of technical installations to aid navigation in the Straits." American Embassy Rome telegram 12571, May 17, 1985. Such a system went into effect June 1, 1987 (American Embassy Rome telegram 12611, May 26, 1987).

22. Article 20 of Finland's decree number 656/80, of Jan. 1, 1981, *supra* n. 16, amending decree number 185, of Apr. 18, 1963.

23. Diplomatic Note *supra* n. 18.

24. Article 13 of the Law of the Union of Soviet Socialist Republics on the State Frontier of the USSR, Nov. 24, 1982, provided:

Innocent passage through the territorial waters (territorial sea) of the USSR shall be permitted for the purpose of traversing those waters without entering the internal waters of the USSR or for the purpose of proceeding to the internal waters and ports of the USSR or leaving them for the high seas.

Foreign non-military vessels shall enjoy the right of innocent passage through the territorial waters (territorial sea) of the USSR in accordance with the legislation of the USSR and with international treaties concluded by the USSR.

Foreign non-military vessels exercising the right of innocent passage shall follow the customary navigational route or the route recommended by the competent Soviet organs, as well as the sea lanes and traffic separation schemes.

The master of a foreign non-military vessel which has violated the rules of innocent passage shall be held liable in accordance with Soviet legislation.

Foreign warships and underwater vehicles shall enjoy the right of innocent passage through the territorial waters (territorial sea) of the USSR in accordance with the procedure to be established by the Council of Ministers of the USSR. However, submarines and other underwater vehicles are required to navigate on the surface and show their flag.

U.N., Current Developments in State Practice 99-100; 22 I.L.M. 1059-60 (1983).

25. Article 12 of the Rules for Navigation and Sojourn of Foreign Warships in the Territorial and Internal Waters and Ports of the USSR, ratified by the Council of Ministers decree no. 384 of Apr. 25, 1983, regarding routes and traffic separation schemes, provided:

1. The innocent passage of foreign warships through the territorial waters (territorial sea) of the USSR for the purpose of traversing the territorial waters (territorial sea) of the USSR without entering internal waters and ports of the USSR shall be permitted along routes ordinarily used for international navigation:

in the Baltic Sea: according to the traffic separation systems in the area of the Kypu Peninsula (Hiiumaa Island) and in the area of the Porkkala Lighthouse;

in the Sea of Okhotsk: according to the traffic separation schemes in the areas of Cape Aniva (Sakhalin Island) and the Fourth Kurile Strait (Paramushir and Makanushi Islands);

in the Sea of Japan: according to the traffic separation system in the area of Cape Kril' on (Sakhalin Island).

24 I.L.M. 1717 (1985).

26. USDAO Moscow telegram 04279, Mar. 13, 1986.

27. American Embassy Moscow telegram 04479, Mar. 17, 1986.

28. State Department telegram 144943, May 8, 1986; American Embassy Moscow telegram 07984, May 12, 1986. Compare the account of this incident, based primarily on news accounts, by Aceves, *Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea*, Nav. War Coll. Rev., at 65-67 (Spring 1993).

29. Rubin, *Innocent Passage in the Black Sea?* Christian Sci. Mon., Mar. 1, 1988, at 14; Carroll, *Murky Mission in the Black Sea*, Wash. Post Nat'l Weekly Ed., March 14-20, 1988, at 25; Carroll, *Black Day on the Black Sea*, Arms Control Today, May 1988, at 14; Arkin, *Spying in the Black Sea*, Bull. of Atomic Scientists, May 1988, at 5.

30. Memorandum to the Assistant Secretary for Public Affairs from Principal Deputy Legal Adviser, May V. Mochary, Apr. 26, 1988, State Department File No. P89 0140-0428. Authoritative public responses include Armitage, *Asserting U.S. Rights On the Black Sea*, Arms Control Today, June 1988, at 13; Schachte, *The Black Sea Challenge*, U.S. Nav. Inst. Proc., at 62 (June 1988); and Grunawalt, *Innocent Passage Rights*, Christian Sci. Mon., Mar. 18, 1988, at 15. See also, Note, *Oceans Law and Superpower Relations: The Bumping of the Yorktown and the Caron in the Black Sea*, 29 Va. J. Int'l L. 713 (1989); Franckx, *Innocent Passage of Warships*, Marine Policy, at 484-90 (Nov. 1990); and Rolph, *Freedom of Navigation and the Black Sea Bumping Incident: How "Innocent" Must Innocent Passage Be?* 135 Mil. L. Rev. 137 (1992).

31. FBIS-SOV-88-030, Feb. 16, 1988, at 5; American Embassy Moscow telegram 03078, Feb. 14, 1988.

32. Diplomatic Note from the American Embassy Moscow to the Soviet Foreign Ministry, delivered Mar. 2, 1988, reported in American Embassy Moscow telegram 05222, Mar. 3, 1988, pursuant to instructions contained in State Department telegram 061663, Feb. 27, 1988. See also the account of this incident in Aceves, *supra* n. 28, at 59 & 67-70.

33. See *supra* text accompanying n. 4 and Appendix 3; Note and Rolph, *supra* n. 30. See also Aceves, *supra* n. 28, at 73-75.

34. Clingan, *Freedom of Navigation in a Post-UNCLOS III Environment*, 46 Law & Contemp. Probs. 107, at 112 & nn.23-27 (1983). Professor Clingan was Vice-Chairman of the U.S. Law of the Sea Delegation. This article was based on a speech he gave on October 30, 1982, at a symposium on the law of the sea at the Duke University School of Law.

35. U.N. Doc. A/CONF.62/L.97.

36. 16 Official Records of the Third U.N. Conference on the Law of the Sea 131, para. 3, U.N. Doc. A/CONF.62/L.85 [hereinafter Official Records].

37. *Id.* at 132, para. 1.

38. *Id.* at 155, para. 35.

39. *Id.* at 148, para. 43.
40. *Id.* at 162, para. 122.
41. *Id.*, vol. 17, at 106, para. 70.
42. *Id.* at 123, para. 92.
43. *Id.* at 124, para. 106.
44. *Id.*, vol. 16, at 163, para. 144.
45. *Id.*, at 100, para. 1.
46. *Id.* at 101, para. 20.
47. *Id.*, vol. 17, at 79, para. 200. The United Kingdom continues not to recognize any such requirement for prior notification or authorization. See, e.g., 59 Brit. Y.B. Int'l L. 1988, at 522 (1989); 60 *id.* 1989, at 666 (1990); and 61 *id.* 1990, at 576 (1991).
48. 17 Official Records, at 240, Mar. 9, 1983.
49. *Id.* at 241, May 12, 1983.
50. U.N. Multilateral Treaties Deposited with the Secretary-General, Status as of December 31, 1992, U.N. Doc. ST/LEG/SER.E11, at 770.
51. Quoted in Oxman, *The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 Va. J. Int'l L. 809, at 854 n.159 (1984). Clingan, *An Overview of Second Committee Negotiations in the Law of the Sea Conference*, 63 Ore. L. Rev. 53, at 64-65 (1984) is to the same effect. During the 1988 annual meeting of the American Society of International Law, Ambassador Koh confirmed that point stating that "both the Soviets and their American counterparts insisted at the conference that warships be given equal rights of innocent passage." 82 Proc. Am. Soc. Int'l L. 239-40 (1988).
52. U.N. Doc. A/CONF.62/WS/37, 17 Official Records 243-44. The amendments referred to included documents A/CONF.62/L.97, April 13, 1982 (to amend article 21(1) by inserting a new (b) "navigation of warships including the right to require prior authorization and notification for passage through the territorial sea"), 16 *id.* 217; and A/CONF.62/L.117, April 13, 1982 (to amend article 21, paragraph 1(h) by adding "security" after "immigration"), *id.* at 225.
53. *Supra* n. 4.
54. *Aide memoire* dated December 4, 1984, from American Embassy Stockholm, reported in American Embassy Stockholm telegram 08539, December 10, 1984, pursuant to instructions contained in State Department telegram 355149, December 1, 1984.
55. Of its declaration made in conjunction with deposit of its instrument of ratification of the 1982 Law of the Sea Convention, which may be found in U.N. LOS BULL. Special Issue I, March 1987, at 3, by Diplomatic Note delivered February 26, 1985 by American Embassy Cairo, pursuant to instructions contained in State Department telegram 364687, Dec. 12, 1984. American Embassy Cairo telegram 05527, Feb. 27, 1985.
56. Of article 15 of Decree 185 of April 18, 1963 as amended by Decree Amendment 656/80 of Jan. 1, 1981, by *Note verbale* No. 92 of June 6, 1989 from American Embassy Helsinki, *supra* n. 17.
57. Of section 6(3) of the Maritime Boundaries Act of 1977, which may be found in U.N. Legislative Series, U.N. Doc. ST/LEG/SER. B/19, at 33, by Diplomatic Note dated July 20, 1982 from American Embassy Georgetown, pursuant to instructions contained in State Department telegram 194561, July 14, 1982. American Embassy Georgetown telegram 3242, July 23, 1982.
58. Of section 4(2) of the Territorial Waters Act of 1976, which may be found in U.N. Legislative Series B/19, at 48, by Diplomatic Notes No. 102 dated March 15, 1976 (State Department File No. P77 0009-0012; State Department telegram 058188, 10 March 1976), and Note delivered May 13, 1983, by American Embassy New Delhi, pursuant to instructions contained in State Department telegram 128220, May 9, 1983. American Embassy New Delhi telegram 09947, May 16, 1983.
59. *Supra* n. 15. The Federal Republic of Germany also protested this claim in August 1985.
60. Department of State note dated October 16, 1981, to the Embassy of Malta at Washington, reported in State Department telegrams 335752, Dec. 19, 1981, and 090860, March 28, 1984. The declaration accompanying Malta's deposit of its instrument of ratification of the LOS Convention on May 20, 1993 asserted:

The exercise of the right of innocent passage of warships through the territorial sea of other States should also be perceived to be a peaceful one. Effective and speedy means of communication are easily available, and make the prior notification of the exercise of the right of innocent passage of warships, reasonable and not incompatible with the Convention. Such notification is already required by some States. Malta reserves the right to legislate on this point.

U.N. LOS BULL., No. 23, June 1993, at 6.

61. Of section 4(2) of the Maritime Zones Act of 1977, which may be found in SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS 288 [hereinafter SMITH, EEZ CLAIMS], by Diplomatic Note No. 83, dated July

27, 1982 from American Embassy Port Louis, pursuant to instructions contained in State Department telegram 204808, July 23, 1982. American Embassy Port Louis telegram 02502, July 28, 1982.

62. Of section 4(2) of the Maritime Zones Act of 1977, which may be found in U.N. Legislative Series B/19, at 103, by Diplomatic Note No. 37, dated July 8, 1982 from American Embassy Victoria, pursuant to instructions contained in State Department telegram 156775, June 8, 1982. American Embassy Victoria telegram 01170, July 14, 1982.

63. Of article 7(a) of Act 45 of 1977, which may be found in U.N. Legislative Series B/19, at 23, by Diplomatic Note, dated Aug. 2, 1982, from the United States Mission to the United Nations at New York City to PDRY Mission to the United Nations, pursuant to instructions contained in State Department telegram 208006, July 27, 1982.

64. Of its declaration made in conjunction with deposit of its instrument of ratification of the 1982 Law of the Sea Convention, which may be found in U.N. LOS BULL. Special Issue I, at 8, Mar. 1987, by Diplomatic Note No. 062 dated Apr. 22, 1986 (State Department telegram 264932, 22 Aug. 1986, American Embassy Belgrade 07850, Aug. 28, 1986), Note No. 3 dated Jan. 5, 1988 (State Department telegram 007901, Jan. 12, 1988, American Embassy Belgrade telegram 00411, Jan. 14, 1988); and note from American Embassy Belgrade (State Department telegram 292953, Aug. 30, 1990).

65. Of Decree No. 5384 of Feb. 23, 1976, by diplomatic note delivered July 21, 1989 on behalf of the United States by the French Embassy in Tirane, pursuant to instructions contained in State Department telegram 193134 (to Paris), June 17, 1989.

66. Of Decree No. 63-403 of October 12, 1963, which may be found in U.N. LOS BULL., No. 2, Dec. 1983, at 1, by American Embassy Algiers Note 72 of Mar. 11, 1964 (enclosure 1 to American Embassy Algiers Airgram A-425), and by *démarche* made Nov. 27, 1982 by American Embassy Tunis (State Department telegram 331958, Nov. 27, 1982; American Embassy Tunis telegram 4743, Nov. 27, 1982).

67. Of article 14(2) of the Territorial Waters Act, 1972, which may be found in SMITH, EEZ CLAIMS at 63, and U.N. LOS: Practice of Archipelagic States 6, by diplomatic note delivered in April 1987, by the United States Embassy Antigua. State Department telegram 129882, April 30, 1987.

68. Of section 3(7) of the Territorial Waters and Maritime Zones Act of 1974, which may be found in U.N. Legislative Series B/19, at 5, by Diplomatic Note delivered Sept. 7, 1982, by American Embassy Dacca, pursuant to instructions contained in State Department telegram 208007, July 22, 1982. American Embassy Dacca telegram 5783, Sept. 10, 1982. Also protested by the Federal Republic of Germany in April 1986.

69. Of section 6(2) of the Territorial Waters Act, 1977-26, which may be found in Supplement to Official Gazette, June 30, 1977, at 1, by Diplomatic Note No. 152, dated June 14, 1982, from American Embassy Bridgetown, pursuant to instructions contained in State Department telegram 116140, June 11, 1982. American Embassy Bridgetown telegram 02993, June 15, 1982.

70. Of its reservation to article 23 on ratification of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which may be found in U.N., Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, Sales No. E.93.V.11 (1993) at 744, by Diplomatic Notes from American Embassy Sofia, dated July 19, 1984 (State Department telegram 211190, July 18, 1984; American Embassy Sofia telegram 2765, July 20, 1984), Dec. 21, 1984 (State Department telegram 369308, 12 Dec. 1984; American Embassy Sofia telegram 4817, Dec. 24, 1984), May 13, 1985 (State Department telegram 140388, May 8, 1985; American Embassy Sofia telegram 1840, May 14, 1985), July 19, 1985 (State Department telegram 218859, July 17, 1985; American Embassy Sofia telegram 4665, Dec. 3, 1985), February 6, 1986 (State Department telegram 380983, Dec. 14, 1985; American Embassy Sofia telegram 544, Feb. 7, 1986), May 9, 1986 (State Department telegram 144703, May 8, 1986; American Embassy Sofia telegram 3109, July 18, 1986), and March 31, 1987 (American Embassy Sofia telegram 1005, May 6, 1987; State Department telegram 80048, March 18, 1987; American Embassy Sofia telegram 1437, April 2, 1987).

Bulgaria asserted that because the Government of the United States did not object to this "so-called" reservation, the Government of the United States is bound by it, and that, in accordance with Bulgaria's statement concerning article 23 of the 1958 Territorial Sea Convention, it claims the authority to grant or deny foreign warships the right to engage in innocent passage through the Bulgarian territorial sea. In response the United States said:

Insofar as that statement constitutes such a claim of authority, it cannot be considered a proper reservation to the 1958 Territorial Sea Convention. Article 14 of that Convention recognizes the right of ships of all states to innocent passage in the territorial sea, and article 15 forbids coastal states to hamper innocent passage. No provision in that convention recognizes any authority of a coastal state to grant or deny innocent passage to a foreign warship. Article 23 merely recognizes the coastal state's authority to require the departure of such a warship in the event that it refuses to comply with coastal state passage regulations that conform with international law.

In customary international law, a "reservation" is a statement made by a state upon, *inter alia*, ratification of a treaty, which "purports to exclude or modify the effect of certain provisions of the treaty in their application to that state." To the extent that the Government of Bulgaria's statement concerning article 23 constitutes a claim of authority to permit or deny foreign warships the right of innocent passage, that statement does not exclude or modify the legal effect of article 23 or other convention provisions. Rather, that statement asserts a wholly new claim of authority and would, if effective, create a new substantive provision to the convention, concerning a right not previously recognized under customary international law. The First United Nations Conference on the Law of the Sea specifically rejected proposed articles that would have allowed coastal states to condition warship innocent passage on prior permission or even prior notification.

The statement of the Government of Bulgaria is not truly a reservation as understood in customary international law. Because it is not a true reservation, it in no way affects the respective rights and duties of the United States and Bulgaria as convention parties, regardless of whether the Government of the United States has or has not objected to it. (As to the need for an objection, the reliance of the Government of Bulgaria on paragraph 1 of article 21 of the 1969 Vienna Convention on the Law of Treaties is misplaced. That convention provides, in article 4, that it does not apply to treaties concluded before its entry into force — for example, the 1958 Territorial Sea Convention and the 1962 statement of Bulgaria regarding that convention.)

Even if the statement concerning article 23 could be considered a reservation as understood in customary international law, it would not be a permissible reservation. To the extent that it claims the right to grant or deny foreign warships the right of innocent passage, the statement of the Government of Bulgaria clearly conflicts with the express terms, object and purpose of the Territorial Sea Convention, which allocated the rights and duties of coastal and non-coastal states in the territorial sea, including guarantee of the right of innocent passage for vessels of all states.

State Department telegram 140388, May 8, 1985. See text accompanying n. 102 *infra* for Bulgaria's withdrawal of this claim.

71. Of section 9(a) of the Territorial Sea and Maritime Zones Act of 1977, which may be found in U.N. Legislative Series B/19, at 9, by Diplomatic Note delivered Aug. 6, 1982, from American Embassy Rangoon, pursuant to instructions contained in State Department telegram 196007, July 15, 1982. American Embassy Rangoon telegram 32243, Aug. 9, 1982. Also protested by the United Kingdom in 1993.

72. Of article 5 of Decree Law 126/77, which may be found in U.N. Baselines: National Legislation 99, and SMITH, EEZ CLAIMS, at 96, by Diplomatic Notes 95 and 147 dated July 21, 1989. State Department telegram 193415, June 18, 1989; American Embassy Praia telegram 02186, Aug. 27, 1990.

73. Of article 6 of the Law on the Territorial Sea and the Contiguous Zone of Feb. 25, 1992, which may be found in U.N. LOS BULL., No. 21, Aug. 1992, at 25, by an oral *demarche* delivered Aug. 26, 1992 in Beijing.

74. Of Ordinance 49/77 of Dec. 20, 1977, by Diplomatic Note No. 191 delivered Dec. 15, 1987, from American Embassy Brazzaville, pursuant to instructions contained in State Department telegram 382072, Dec. 10, 1987. American Embassy Brazzaville telegram 0520, Feb. 26, 1988.

75. Of article 38(3) of the Regulation of June 15, 1982, which may be found in U.N. Legislative Series, U.N. Doc. ST/LEG/SER.B/18, at 20, by *note verbale* delivered Nov. 3, 1986. State Department telegram 311721, Oct. 3, 1986; State Department telegram 345715, Nov. 4, 1986. Following German unification on October 3, 1990, Germany has not maintained this claim.

76. Of article 6(2) of the Territorial Waters Act No. 17 of 1978, which may be found in 7 NEW DIRECTIONS IN THE LAW OF THE SEA 33 (1980), by Diplomatic Note No. 004, dated July 21, 1982, from American Embassy Bridgetown (pursuant to instructions contained in State Department telegram 200855, July 20, 1982; American Embassy Bridgetown telegram 03658, July 23, 1982), and by American Embassy Bridgetown *demarche* on Feb. 24, 1986 (reported in American Embassy Bridgetown telegram 00522, Feb. 25, 1986, pursuant to instruction contained in State Department telegram 03681, Jan. 30, 1986).

77. Of its statement on signature of the 1982 Law of the Sea Convention, which may be found in Office of the Special Representative of the Secretary-General for the Law of the Sea: The Law of the Sea: Status of the United Nations Convention on the Law of the Sea 18 (U.N. Sales No. E.84.V.5, 1985), by the United States Statement in Right of Reply of Mar. 8, 1983, 17 Official Records 244, U.N. Doc. A/CONF.62/WS/37; by State Department diplomatic note to the Algerian Embassy in Washington, dated Aug. 17, 1987, State Department File No. P87 0098-1262; and by the United States Mission to the United Nations Diplomatic Note 3503/437, Jan. 11, 1994, to the Secretary-General of the United Nations, Limit in the Seas No. 114 (1994).

78. Of section 1 of Act 32/76, which may be found in U.N. Legislative Series B/19, at 135, by Diplomatic Note delivered Aug. 2, 1982, by American Embassy Colombo Consular Agent in Male, pursuant to instructions contained in State Department telegram 150666, June 2, 1982. American Embassy Colombo telegram 4672, Aug. 6, 1982.

79. Of Oman's Notice of June 1, 1982, which may be found in U.N. Current Developments I, at 80-81, by American Embassy Muscat Note No. 0606 of Aug. 12, 1991. State Department telegram 187028, June 9, 1990; American Embassy Muscat telegram 03528 of Aug. 13, 1991.

80. Of section 3(2) of the Territorial Waters and Maritime Zones Act of 1976, which may be found in U.N. Legislative Series B/19, at 86, by Diplomatic Note No. 694 dated June 8, 1982, from American Embassy Islamabad, pursuant to instructions contained in State Department telegram 155385, June 7, 1982. American Embassy Islamabad telegram 09069, June 14, 1982.

81. Of Press Release No. 7 of Sept. 23, 1968, by Diplomatic Note 169, dated Mar. 10, 1969, from American Embassy Manila, State Department File No. POL 33-4 PHIL.

82. Of Ministry of Defense Order dated Mar. 29, 1957, Polish Journal of Law No. 19 of 1957, Item 96, by inquiries in May and June 1989 by American Embassy Warsaw. State Department telegram 174663, June 2, 1989; American Embassy Warsaw telegram 8369, June 21, 1989.

83. Of its declaration made in conjunction with its signature of the 1982 Law of the Sea Convention, which may be found in U.N. LOS BULL., No. 1, Sept. 1983, at 18, and of Decree No. 39 of Jan. 21, 1956, which may be found in French in U.N. Legislative Series, U.N. Doc. ST/LEG/Ser.B/6, at 239, by Diplomatic Note No. 262 dated Aug. 1, 1989 from American Embassy Bucharest. State Department telegram 218441, July 11, 1989; American Embassy Sofia telegram 06294, Aug. 3, 1989. Romania replied:

The right to adopt such measures is in full agreement with articles 19 and 25 of the Convention, as is stipulated in the declaration of the President of the UN Conference on the Law of the Sea, presented in the plenary meeting of the Conference on April 26, 1982.

The amendment referring to article 21 of the Convention presented at the Conference by Romania and other countries was aimed, as it is shown in the declaration of the President, to clarify the text of the Draft Convention. The countries which co-authored the amendment expressing their agreement not to insist on asking for its being put to a vote, reasserted, at the same time, that "their decision does not touch the rights of littoral states to adopt measures to safeguard their security interests, in accordance with articles 19 and 25 of the Draft Convention."

This agreement was included in the above-mentioned President's declaration.

Consequently, the declaration made by the Socialist Republic of Romania on December 10, 1982, on the occasion of signing the UN Convention on the Law of the Sea is in accordance with the final agreement and which was included in the declaration of the Conference President of April 26, 1982, and it is perfectly valid in international law. That is why the objections raised by the Government of the United States on the content of this declaration are unacceptable.

American Embassy Bucharest telegram 07689, Sept. 18, 1989.

84. Of article 10 of the Territorial Sea and Ports Law No. 37 of Sept. 10, 1972, which may be found in 7 NEW DIRECTIONS IN THE LAW OF THE SEA 59 (1980), by Diplomatic Note delivered Aug. 28, 1982, by American Embassy Mogadishu. State Department telegram 231502, Aug. 18, 1982; American Embassy Mogadishu telegram 6215, Aug. 29, 1982.

85. Protest directed at section 3(1) of the Maritime Zones Law No. 22 of 1976, which may be found in U.N. Legislative Series B/19, at 120, by Diplomatic Note No. 317 dated Sept. 12, 1986, from American Embassy Colombo, *supra* n. 13. The Ministry of Foreign Affairs replied:

The provisions of the Maritime Zones Law relating to the requirement of prior consent of the Government for passage of warships in Sri Lanka's territorial waters, is consistent with the present state of international law on this question. The 1982 Convention on the Law of the Sea recognizes that special rules are applicable to foreign warships as distinct from other ships and warships are treated separately in the Convention. The provisions of the Convention also specifically require the conformity of warships with the laws and regulations of the coastal state.

Sri Lanka MFA Note No. L/POL/22 dated Dec. 9, 1986, *supra* n. 14. This requirement was also protested by the EC in May 1987.

86. Of article 8(3) of the Territorial Waters and Continental Shelf Act of 1970, which may be found in U.N., Legislative Series B/16, at 33, by Diplomatic Note delivered June 6, 1989, by American Embassy

Khartoum. State Department telegram 174664, June 2, 1989; American Embassy Khartoum telegram 06535, June 7, 1989.

87. Of article 12 of Legal Decree No. 304, Dec. 28, 1963, which may be found in *Limits in the Seas* No. 53, Syria: *Straight Baselines* (1973), by Diplomatic Note delivered Nov. 21, 1989, by American Embassy Damascus. State Department telegram 337081, Oct. 20, 1989; American Embassy Damascus telegram 03212, Aug. 23, 1990.

88. Of Decree issued Mar. 17, 1980 on the regulations for foreign ships operating in the maritime zones of the Socialist Republic of Vietnam, which may be found in IV FBIS Asia & Pacific, March 19, 1980, at K2, by *aide memoire* dated Aug. 24, 1982, from the United States Mission to the United Nations at New York City to SRV Mission to the United Nations, pursuant to instructions contained in State Department telegram 232901, Aug. 19, 1982. U.S. Mission to the United Nations, New York telegram 03590, Nov. 23, 1982. Also protested by the Federal Republic of Germany in October 1985.

89. Of its declaration made in conjunction with its signature of the 1982 Law of the Sea Convention, which may be found in U.N. LOS BULL., No. 1, September 1983, at 18, by Diplomatic Note No. 449 dated Oct. 6, 1986, from American Embassy Sanaa. State Department telegram 312052, Oct. 3, 1986; American Embassy Sanaa telegram 06770, Oct. 6, 1986.

90. Department of State note dated Oct. 16, 1981, to the Embassy of Malta at Washington, reported in State Department telegrams 335752, Dec. 19, 1981, and 090860, Mar. 28, 1984. In a March 20, 1984, telegram to the Department (84 Valetta 00596), American Embassy Valetta reported that no implementing regulations had been promulgated. The Maltese Act No. XXVIII of 1981 may be found in U.N. Doc. LE 113 (3-3), November 16, 1981. The Declaration accompanying Malta's instrument of ratification of the LOS Convention included the statement that "Legislation and regulations concerning the passage of ships through Malta's territorial sea are compatible with the provisions of the Convention. At the same time, the right is reserved to develop further this legislation in conformity with the Convention as may be required." U.N. LOS BULL., No. 23, June 1993, at 7.

Articles 14 and 15 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, concerning enforcement and penalties for violating coastal State regulations, are developed in articles 17-20 and 24 of the 1982 LOS Convention. The LOS Convention also provides, in article 27(5), that "except as provided in Part XII [marine pollution, see article 230] or with respect to violations of laws and regulations adopted in accordance with Part V [EEZ, see article 73], the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters." Article 230(2) of the LOS Convention provides that "monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea."

91. American Embassy Copenhagen Diplomatic Note No. 061, July 12, 1991, delivered pursuant to instructions contained in State Department telegram 223707, July 9, 1991; American Embassy Copenhagen telegram 04829, July 17, 1991, protesting section 3(4) of Ordinance no. 73 of 27 Feb. 1976, which may be found in U.N. Legislative Series B/19, at 143, requiring advance permission for simultaneous passage of more than three warships through the Danish territorial sea, except prior notice is required for passage through the Great Belt, Sansoe Belt or the Sound. On Oct. 3, 1991 the Danish Ministry of Foreign Affairs replied by *note verbale* JT.2, File No. 119.N.2/3/f/1, which stated that:

The rules contained in that ordinance are not contrary to customary international law or international convention binding upon Denmark.

The conditions for exercising innocent passage in the territorial sea for foreign warships have never been laid down authoritatively in international law. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone does not in its relevant provisions specifically address this question.

The same applies to the 1982 U.N. Convention on the Law of the Sea which in its relevant provision on innocent passage in the territorial sea, states that "ships of all States" enjoy the right of innocent passage using the same wording as the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

Furthermore all Diplomatic Missions accredited to Denmark were officially notified about the Ordinance by Circular Note of 4 March 1976. Before this NATO Allies were informed about the contents of the Ordinance in the NATO Council at its meeting of 25 February 1976. It must be pointed out that neither the notification nor the NATO briefing gave rise to a reaction by the United States.

American Embassy Copenhagen telegram 07435, Oct. 24, 1991.

92. *Aide memoire* from the United States Mission to the United Nations at New York to the Socialist Republic of Vietnam Mission dated Aug. 24, 1982, State Department telegram 232902, Aug. 19, 1982, U.S. Mission to the United Nations telegram 03590, Nov. 23, 1982. The Federal Republic of Germany also protested this claim in October 1985.

93. American Embassy Belgrade Diplomatic Note No. 062 dated Aug. 22, 1986 (State Department telegram 264932, Aug. 22, 1986; American Embassy Belgrade telegram 7850, Aug. 28, 1986) protesting Yugoslavia's statement deposited with its instrument of ratification of the 1982 LOS Convention dated Mar. 6, 1986; and by American Embassy Belgrade Note no. 003 of Jan. 5, 1988 (State Department telegram 007901, Jan. 12, 1988; American Embassy Belgrade telegram 00411, Jan. 14, 1988), protesting article 20(1) of the Law of the Coastal Sea and Continental Shelf of the Socialist Federal Republic of Yugoslavia, published July 25, 1987, and reprinted in U.N. LOSBULL., No. 18, at 18. The same limitation was contained in article 14 of the Law of the Coastal Sea, the Contiguous Zone and the Continental Shelf of the Socialist Federal Republic of Yugoslavia, published May 12, 1965, and reproduced in U.N. Legislative Series B/15, at 189, and in 1 NEW DIRECTIONS IN THE LAW OF THE SEA 36. Yugoslavia's declaration made in conjunction with deposit of its instrument of ratification of the 1982 Law of the Sea Convention may be found in U.N. LOS BULL., Special Issue I, Mar. 1987, at 8.

94. U.S. Department of the Navy, *The Commander's Handbook on the Law of Naval Operations* (NWP 9 (Rev. A)/FMFM 1-10), para. 2.1.2.1 (1989). Compare the 1982 LOS Convention, articles 21(1), 22(2) & 23. Under article 23 of the 1982 LOS Convention, foreign nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances exercising the right of innocent passage must "carry documents and observe special precautionary measures established for such ships by international agreements," such as chapter VIII of the 1974 International Convention for the Safety of Life at Sea, 32 U.S.T. 275-77, 287-91, T.I.A.S. No. 9700 (nuclear passenger ship and nuclear cargo ship safety certificates). These provisions of the 1974 SOLAS are specifically *not* applicable to warships.

United States Public Law 93-513, establishes the following policy regarding claims arising out of the operation of U.S. nuclear powered warships:

It is the policy of the United States that it will pay claims or judgments for bodily injury, death, or damage to or loss of real or personal property proven to have resulted from a nuclear incident involving the nuclear reactor of a United States warship: *Provided*, That the injury, death, damage, or loss was not caused by the act of an armed force engaged in combat or as a result of civil insurrection. The President may authorize, under such terms and conditions as he may direct, the payment of such claims or judgments from any contingency funds available to the Government or may certify such claims or judgments to the Congress for appropriation of the necessary funds.

88 Stat. 1611, codified in 42 U.S.C. §2211.

The safety record of United States nuclear powered warships is outstanding. There has never been a nuclear accident in the 40 year history of the program. This program currently includes 107 operating nuclear powered warships and 151 operating reactors, significantly larger than the U.S. commercial nuclear program. Since 1955, U.S. Navy nuclear powered warships have steamed over 96 million miles and amassed over 4300 reactor-years of operating experience. These ships have visited more than 150 ports in over 50 foreign countries and dependencies. Department of the Navy White Paper "The Safety of Operations of U.S. Nuclear-Powered Warships" (Oct. 1993).

Australia's policy on access of foreign nuclear powered and nuclear weapons capable warships, based in part on the foregoing, appears in 77 Aust. Y.B. Int'l L. 243-47 (1991).

95. Article 8 of Act No. 45 of 1977 concerning the territorial sea, exclusive economic zone, continental shelf and other marine areas, a translation of which may be found in U.N. Legislative Series B/19, at 21-26.

96. Diplomatic Note, dated August 2, 1982, from the United States Mission to the United Nations at New York to PDRY Mission to the United Nations, *supra* n. 63.

97. Article 3(3) of Pakistan's Territorial Waters and Maritime Zones Act, 1976, which may be found in U.N. Legislative Series B/19, at 86, protested by Diplomatic Note No. 694 dated June 8, 1982, delivered by American Embassy Islamabad, *supra* n. 80.

A similar declaration accompanying Malta's deposit of its instrument of ratification of the LOS Convention on May 20, 1993 states that "Malta is also of the view that such a notification requirement is needed in respect

of nuclear-powered ships or ships carrying nuclear or other inherently dangerous or noxious substances." U.N. LOS BULL., No. 23, June 1993, at 7.

98. Article VII of Law No. 52/AN/78 of January 9, 1979, which may be found in SMITH, EEZ CLAIMS, at 112, was protested by Diplomatic Note dated May 22, 1989, from American Embassy Djibouti. State Department telegram 100762, Mar. 31, 1989; American Embassy Djibouti telegram 1481, June 1, 1989.

99. The Yemeni declaration, which may be found in Office of the Special Representative of the Secretary-General for the Law of the Sea, The Law of the Sea: Status of the United Nations Convention on the Law of the Sea, U.N. Sales No. E.85.V.5, at 29 (1985), was protested by Diplomatic Note No. 449 dated October 6, 1986, from American Embassy Sanaa, *supra* n. 89.

100. State Department telegram 364687, Dec. 12, 1984, para. 11; American Embassy Cairo telegram 05527, Feb. 27, 1985. The Egyptian declaration may be found in Office of the Special Representative of the Secretary-General for the Law of the Sea, The Law of the Sea: Status of the United Nations Convention on the Law of the Sea, at 35.

101. Diplomatic Note No. 0606 dated Aug. 12, 1991 and delivered Aug. 13, 1991 by American Embassy Muscat, pursuant to instructions contained in State Department telegram 187028, June 9, 1990. American Embassy Muscat telegram 03528, Aug. 13, 1991. Oman's declarations made upon deposit of its instrument of ratification may be found in U.N. LOS BULL., No. 14, Dec. 1989, at 8-9.

102. DEP'T ST. BULL., Nov. 1989, at 26; 84 Am. J. Int'l L. 239-42 (1990); Appendix 4.

103. U.N. Current Developments in State Practice No. II, at 7.

104. Diplomatic Note delivered Dec. 4, 1979, by American Embassy Ankara. American Embassy Ankara telegram 08743, Dec. 4, 1979; State Department telegram 287083, Nov. 2, 1979. The United Kingdom had made a similar protest by its note no. 67 of October 1, 1979. American Embassy Ankara telegram 7818, Oct. 22, 1979; American Embassy Ankara telegram 8008, Oct. 26, 1979.

105. Turkish Embassy letter 780-144 dated May 2, 1985, State Department File No. P92 0098-0747.

106. *Note verbale* dated Feb. 18, 1988, from the Haitian Ministry of the Interior, Decentralization, the General Police Force and the Civil Service, communicated to the United Nations by letter dated Feb. 29, 1988, and reproduced in U.N. LOS BULL., No. 11, July 1988, at 13.

107. American Embassy Port au Prince diplomatic note delivered Aug. 1, 1989, pursuant to instructions contained in State Department telegram 229980, July 20, 1989. American Embassy Port au Prince telegram 05277, Aug. 7, 1989.

108. 28 I.L.M. 649 (1989), entered into force May 5, 1992. The States party as of Dec. 28, 1992 are listed in 32 I.L.M. 276 (1993).

109. Sen. Treaty Doc. 102-5, 102d Cong., 1st Sess. (1991), at VI.

110. U.N. Doc. ST/LEG/SER.E/11, Multilateral Treaties Deposited with the Secretary-General as of Dec. 31, 1992, at 832-33 (U.N. Sales No. E.93.V.77, 1993).

111. Cong. Rec. S12292, Aug. 11, 1992. The Administration had sought such an understanding (Letter of Submittal, *supra* n. 109, at VI), and the Senate Foreign Relations Committee concurred. Sen. Exec. Rep. 102-36, 102d Cong., 2d Sess., May 22, 1992, at 17. Deposit of the United States instrument of ratification, which was signed on Oct. 17, 1992, awaits enactment of the necessary implementing legislation. See Sen. Exec. Rep. 102-36, at 15-16.

Chapter XI

International Straits

Legal Regime

Part III of the LOS Convention addresses five different kinds of straits used for international navigation, each with a distinct legal regime:

1. Straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ (Article 37, governed by transit passage).

2. Straits connecting a part of the high seas/EEZ and the territorial sea of a foreign nation (Article 45(1)(b), regulated by nonsuspendable innocent passage).

3. Straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a State bordering the strait and its mainland, if there exists seaward of the island a route through the high seas/EEZ of similar convenience with regard to navigation and hydrographic characteristics (Article 38(1), regulated by nonsuspendable innocent passage).

4. Straits regulated in whole or in part by international conventions (Article 35(c)). The LOS Convention does not alter the legal regime in straits regulated by long-standing international conventions in force specifically relating to such straits.

5. Straits through archipelagic waters governed by archipelagic sea lanes passage (Article 54).

There are a number of straits connecting the high seas/EEZ with claimed historic waters. The validity of those claims is, at best, uncertain.

Transit Passage

Straits used for international navigation through the territorial sea between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone are subject to the legal regime of transit passage.¹ Under international law, the ships and aircraft of all nations, including warships and military aircraft, enjoy the right of unimpeded transit passage through such straits. The great majority of strategically important straits, *e.g.*, Gibraltar, Bab el Mandeb, Hormuz, and Malacca, fall into this category. The transit passage regime also applies to those straits less than six miles wide previously subject to the regime of nonsuspendable innocent passage under the Territorial Sea Convention, *e.g.*, Singapore and Sunda. Transit passage also applies in those straits where the high seas or exclusive economic zone corridor is not of similar convenience with respect to navigational and hydrographical characteristics.²

Transit passage is defined as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit in the

normal modes of operation utilized by ships and aircraft for such passage.³ This means that submarines are free to transit international straits submerged, since that is their normal mode of operation, and that surface warships may transit in a manner consistent with sound navigational practices and the security of the force, including formation steaming and the launching and recovery of aircraft.⁴ All transiting ships and aircraft must proceed without delay; must refrain from the threat or the use of force against the sovereignty, territorial integrity, or political independence of States bordering the strait; and must otherwise refrain from any activities other than those incidental to their normal modes of continuous and expeditious transit.⁵

Transit passage through international straits cannot be suspended by the coastal State for any purpose.⁶ This principle of international law also applies to transiting ships (including warships) of nations at peace with the bordering coastal or island nation but involved in armed conflict with another nation. Warships and other targetable vessels of nations in armed conflict with the bordering coastal or island nation may be attacked within that portion of the international strait overlapped by the territorial sea of the belligerent coastal or island nation, as in all high seas areas of the strait.⁷

States bordering international straits overlapped by territorial seas may designate sea lanes and prescribe traffic separation schemes to promote navigational safety. However, such sea lanes and separation schemes must be approved by the competent international organization in accordance with generally accepted international standards. Ships in transit must respect properly designated sea lanes and traffic separation schemes.⁸

The position of the United States on transit passage is well known. For example, in the Proclamation extending the territorial sea of the United States, President Reagan stated:

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, . . . the ships and aircraft of all countries enjoy the right of transit passage through international straits.⁹

The Department of State summarized the development of the regime of transit passage in a 1985 telegram to American Embassy Madrid, Spain:

[The following is provided to aid in an understanding of the regime of transit passage through territorial seas forming certain straits used for international navigation. The crucial nature of the right of passage through straits has led to the development, reflected in Part III of the 1982 LOS Convention, of the concept of so-called transit passage through straits used for international navigation that link a part of the high seas or an EEZ with another part of the high seas or an EEZ. (Frequently, such straits—of which Gibraltar is one of the prime examples—are referred to as “international straits,” although there are other types of

international straits that do not link high seas or EEZ on either end. For convenience, the term will be used here.) In international straits, the balancing of coastal and non-coastal state interests has resulted in a regime of transit passage—a regime that is more liberal to flag states than that of innocent passage, the usual regime in a territorial sea. For example, vessels in transit passage are subject to fewer coastal state laws than they would be while in innocent passage, and aircraft may overfly such straits and submarines may navigate them while submerged—neither of which is true for innocent passage. At UNCLOS III, Spain tried, during the last substantive sessions, to amend portions of the Convention provisions that bore upon coastal state rights and duties regarding vessels and aircraft exercising the right of transit passage. None of those proposals was adopted, but the Spanish declarations upon signing revive the principles espoused in the proposals.]¹⁰

In a December 1984 *aide memoire* delivered to Sweden, the United States described the legal regime followed by U.S. warships navigating through international straits:

. . . [W]arships of the United States navigate through territorial seas in straits used for international navigation in accordance with international law as reflected in Part III of the 1982 Convention on the Law of the Sea. As is true of innocent passage in non-straits waters, exercise of the appropriate navigational regime in straits poses no threat to the security of the coastal State and constitutes no violation of its territorial integrity.¹¹

It is the position of the United States that transit passage also applies in the approaches to international straits. In a telegram to American Embassy Santiago, Chile, the State Department discussed the rights of navigation through the **Strait of Magellan and Beagle Channel**:

The fact that a vessel navigating through [an international strait] (or an aircraft overflying it) would have to traverse an area of Argentine territorial sea is a matter of no legal consequence. It is an extremely rare occurrence for a strait to be so configured that a vessel can enter it without traversing some extent of territorial sea before reaching the headlands. It is, nevertheless, the firm position of the USG that the regime of transit passage applies not only to the territorial seas actually within the strait, but also to those in the approaches to it. The presence of Argentine territorial sea outside the eastern end of the strait no more “blocks” it than does the presence of Chilean territorial sea outside the western end.¹²

The same position was taken in 1988 with regard to the approaches to the **Strait of Hormuz** in a U.S. Navy telegram, which had been coordinated with the Department of State to reflect official U.S. policy:

The geographics of straits vary. The areas of overlapping territorial seas in many cases do not encompass the entire area of the strait in which the transit passage regime applies. The regime applies not only in or over the waters overlapped by territorial seas but also throughout the strait and in its approaches, including areas

of the territorial sea that are not overlapped. The Strait of Hormuz provides a case in point: although the area of overlap of the territorial seas of Iran and Oman is relatively small, the regime of transit passage applies throughout the strait as well as in its approaches including areas of the Omani and Iranian territorial seas not overlapped by the other.¹³

Other states have recognized the right of transit passage. For example, the right of transit passage was fully recognized in Article 4 of the Treaty of Delimitation between Venezuela and the Netherlands, March 21, 1978;¹⁴ Article VI of the Agreement on the Delimitation of Marine and Submarine Areas, April 18, 1990, between Trinidad and Tobago and Venezuela;¹⁵ and Article 7(6) of the 1978 treaty between Australia and Papua New Guinea concerning the Torres Strait.¹⁶ The right of transit passage of straits is also recognized in Article 5(2) of the 1985 multilateral Treaty of Rarotonga concerning Nuclear Free Zones in the South Pacific,¹⁷ and Article 5(2)(c) of the 1990 Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region.¹⁸ Antigua and Barbuda has also recognized the right of transit passage in article 15A of the Maritime Areas Act, 1982.¹⁹

Although the term "transit passage" was not used in the statement in connection with extension of the United Kingdom's territorial sea to 12 miles,²⁰ the "transit passage" regime was applied in a Declaration issued by France and the United Kingdom setting out the governing regime of navigation in the Dover Straits at the time an Agreement was signed on November 2, 1988, establishing a territorial sea boundary in the Straits of Dover.²¹ In a speech delivered to the thirteenth annual seminar of the Center for Oceans Law and Policy, Washington, D.C., April 1, 1989, David H. Anderson, Deputy Legal Adviser to the British Foreign Office, commented on the right of transit passage and the **Straits of Dover**.²² He said that:

The Declaration represents a significant example of practice by the two coastal states on the Straits of Dover which are also maritime states with worldwide connections. The terms of the Declaration were clearly inspired by Part III of the Convention of 1982. It was issued in the context of a boundary agreement made necessary by extension of the breadth of the territorial sea by both coastal states to 12 miles. In this and other respects the Convention of 1982 is influencing the practice of States in regard to the limits of national jurisdiction. There are now 105 States [119 by July 1994] which have a territorial sea of 12 n. miles - a significant increase since 1982 and including all five Permanent Members of the Security Council. The Convention is also influencing State practice in the matters of innocent passage through the territorial sea and transit passage through straits used for international navigation. Several experiences since 1982 have shown the importance of those rights, e.g. in regard to straits such as Hormuz, Gibraltar, Bab El Mandeb, Sunda and others.

There are several examples of Declarations about the regime of transit through particular straits used for international navigation, for example the Anglo-French Declaration of 1904 about the Straits of Gibraltar and the statement circulated to the Third UN Conference on the Law of the Sea by Malaysia, Indonesia and Singapore about the Straits of Malacca and the Straits of Singapore. The Anglo-French Declaration of 1988 may be regarded as adding to the body of State practice on the subject of transit passage through straits, taking full account of the outcome of the Third Conference's negotiations on the related issues of the limits of the territorial sea and straits. The Declaration strengthens the position under international law on a world-wide basis. It may serve as a precedent for States bordering other major straits used for international navigation.²³

In 1992, the UN Secretary-General concluded that the "regime of transit passage has been widely accepted in general terms by the international community and has become part of the practice of States, both of States bordering straits as well as of shipping States."²⁴

In February 1993, the Ministry of Foreign Affairs of Thailand stated the position of the Royal Thai Government that "according to well-established rules of customary international law and State practice as recognized and codified by the 1982 United Nations Convention on the Law of the Sea, ships of all States have . . . the right of transit passage in the straits used for international navigation."²⁵

Innocent Passage

The regime of innocent passage, rather than transit passage, applies in straits used for international navigation that connect a part of the high seas or an exclusive economic zone with the territorial sea of a coastal State. There may be no suspension of innocent passage through such straits.²⁶ These so-called "dead-end" straits include Head Harbour Passage leading through the Canadian territorial sea to the United States' Passamaquoddy Bay and the Bahrain-Saudi Arabia Passage.²⁷

The regime of non-suspendable innocent passage also applies in those straits such as Messina, between the Italian mainland and Sicily, formed by an island of a State bordering the strait and its mainland, where there exists seaward of the island a route through the high seas or EEZ of similar convenience with regard to navigational and hydrographical convenience.²⁸

The United States protested the claim by the former Yugoslavia that it had the right to determine by its laws and regulations which of the straits used for international navigation in its territorial sea will retain the regime of innocent passage "on the basis of article 38, paragraph 1, and article 45, paragraph 1(a), of the [LOS] Convention."²⁹ The United States noted that the right of Yugoslavia to designate which of the straits in its territorial sea constitute straits within the meaning of Article 38(1):

is not unqualified and that there must in fact exist, seaward of the island in question, a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

The United States accordingly reserved its rights and those of its nationals in this regard.³⁰

International Straits Not Completely Overlapped by Territorial Seas

Ships and aircraft transiting through or above straits used for international navigation which are not completely overlapped by territorial seas and through which there is a high seas or exclusive economic zone corridor suitable for such navigation, enjoy the high seas freedoms of navigation and overflight while operating in and over such a corridor. Accordingly, so long as they remain beyond the territorial sea, all ships and aircraft of all States have the unencumbered right to navigate through and over such waters subject only to due regard for the right of others to do so as well.³¹

“Straits Used for International Navigation”

The International Court of Justice has held that the decisive criterion in identifying international straits is not the volume of traffic flowing through the strait or its relative importance to international navigation, but rather its geographic situation connecting, for example, the parts of the high seas, and the fact of its being “used for international navigation.”³² This geographical approach is reflected in both the Territorial Sea Convention³³ and the 1982 LOS Convention.³⁴ The United States holds that all straits susceptible of use for international navigation are included within that definition.³⁵ The geographical definition appears to contemplate a natural and not an artificially constructed canal, such as the Suez Canal. Efforts to define “used for international navigation” with greater specificity have failed.³⁶

Navigational Regimes of Particular Straits

The U.S. position on navigation through international straits and its response to excessive claims can best be illustrated by looking at particular international straits. The following examples, however, do not include all straits the United States considers subject to the transit passage or nonsuspendable innocent passage regimes:

Aland

When it signed the 1982 Law of the Sea Convention, Finland declared in part that:

It is the understanding of the Government of Finland that the exception from the transit passage regime in straits provided for in article 35(c) of the Convention is applicable to the strait between Finland (the Aland islands) and Sweden. Since in

that strait the passage is regulated in part by a longstanding international convention in force, the present legal regime in that strait will remain unchanged after the entry into force of the Convention.³⁷

Sweden made a similar claim when signing the LOS Convention.³⁸

In claiming Aland's Hav, the 16 mile wide entrance to the Gulf of Bothnia,³⁹ as an exception to the transit passage regime, Sweden and Finland relied on the fact that passage in that strait is regulated in part by the Convention relating to the Non-fortification and Neutralization of the Aland Islands.⁴⁰ It should be noted that under Article 4.II of this Convention, the territorial sea of the Aland Islands extends only "three marine miles" from the low water line and in no case extends beyond the outer limits of the straight line segments set out in Article 4.I of the Convention. The Convention is therefore not applicable to the remaining waters that form the international strait. The United States, which is not a party to this Convention, has never recognized this strait as falling within Article 35(c) of the Law of the Sea Convention.

Bab el Mandeb

This strategically important strait links the Red Sea and the Suez Canal with the Gulf of Aden and the Arabian Sea (see Map 24). It is about 14.5 miles wide at its narrowest part of the passage.⁴¹ When it signed the Law of the Sea Convention, the Yemen Arab Republic declared that warships and warplanes must obtain the prior agreement of the Yemen Arab Republic before passing through or over its "territorial waters," including international straits. The United States Government protested as follows:

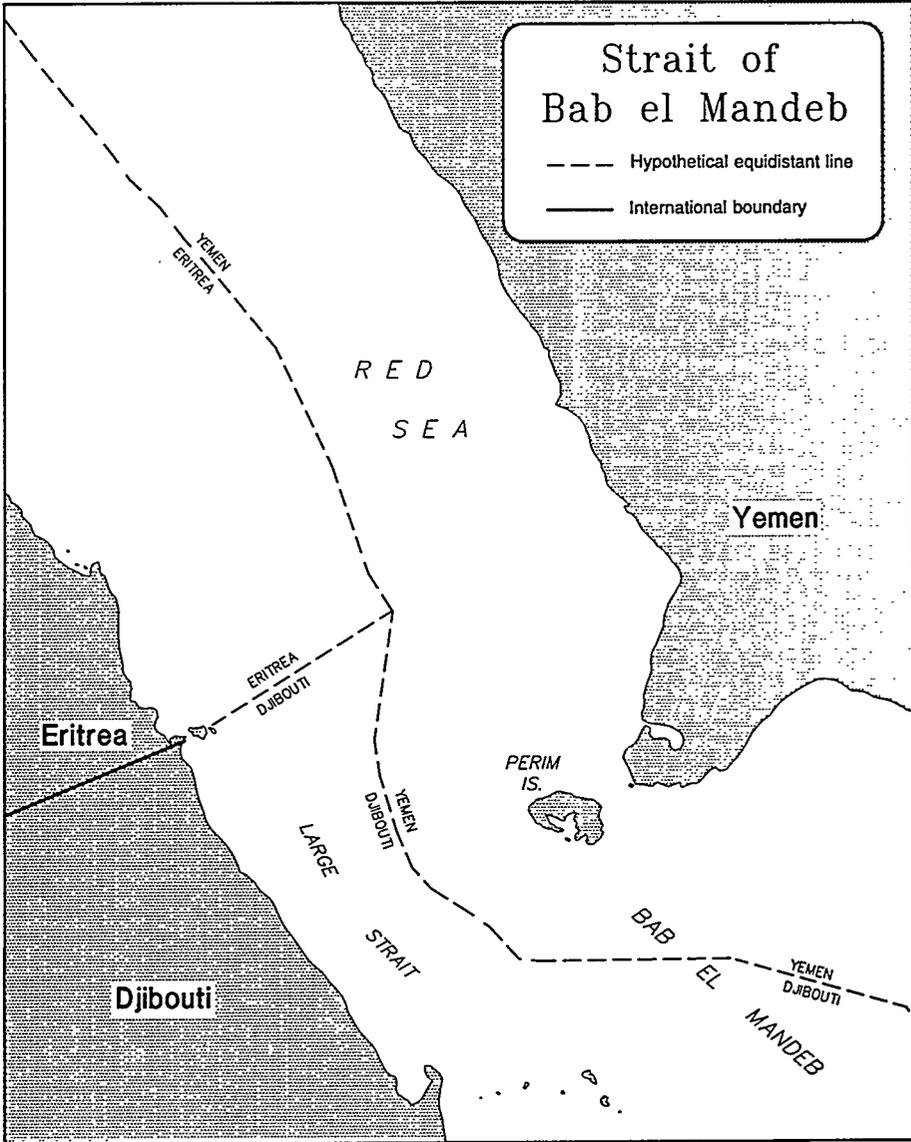
. . . the Government of the Yemen Arab Republic may not legally condition the exercise of the right of transit passage through or over an international strait, such as Bab-el-Mandeb, upon obtaining prior permission. Transit passage is a right that may be exercised by ships of all nations, regardless of type or means of propulsion, as well as by aircraft, both state and civil. While warplanes and other state aircraft normally require prior authorization before overflying another State's territory, authorization is not required for the exercise of the right of straits transit passage under customary law as reflected in article 32 of the Convention.

For the above reasons, the United States cannot accept the claim of authority by the Government of the Yemen Arab Republic to condition the exercise of the right of innocent passage by warships or nuclear-powered ships or to condition the exercise of the right of transit passage by any ships or warplanes upon prior authorization. Accordingly, the United States reserves its rights and those of its nationals in this regard.⁴²

Bosporus and Dardanelles

These straits, also known as the Turkish Straits, connect the Aegean Sea and the Black Sea via the Sea of Marmara. The Bosporus connects the Black Sea

Map 24



Names and boundary representation are not necessarily authoritative

with the Sea of Marmara, while the Dardanelles connects the Aegean Sea with the Sea of Marmara. The Bosphorus is about 17 miles long and varies in width between one-third and 2 miles. The Dardanelles is about 35 miles long, its width decreases from 4 miles at the Aegean to about 0.7 miles at its narrowest, and its depth varies from 160 to 320 feet. The Sea of Marmara is about 140 miles long.⁴³

The Turkish Straits are governed by the Montreux Convention of July 20, 1936,⁴⁴ and therefore fall under the Article 35(c) exception of the LOS Convention which states that the legal regime of straits regulated in whole or in part by a long-standing international convention in force is not altered by the LOS Convention. Under the Montreux Convention, merchant vessels, whatever their cargo or flag, enjoy complete freedom of transit, day or night. Pilotage and towage are optional. The passage of warships of Black Sea and non-Black Sea States is restricted in different ways depending on the type of warship and whether or not Turkey is a belligerent. There is no right of international overflight of the Turkish Straits.

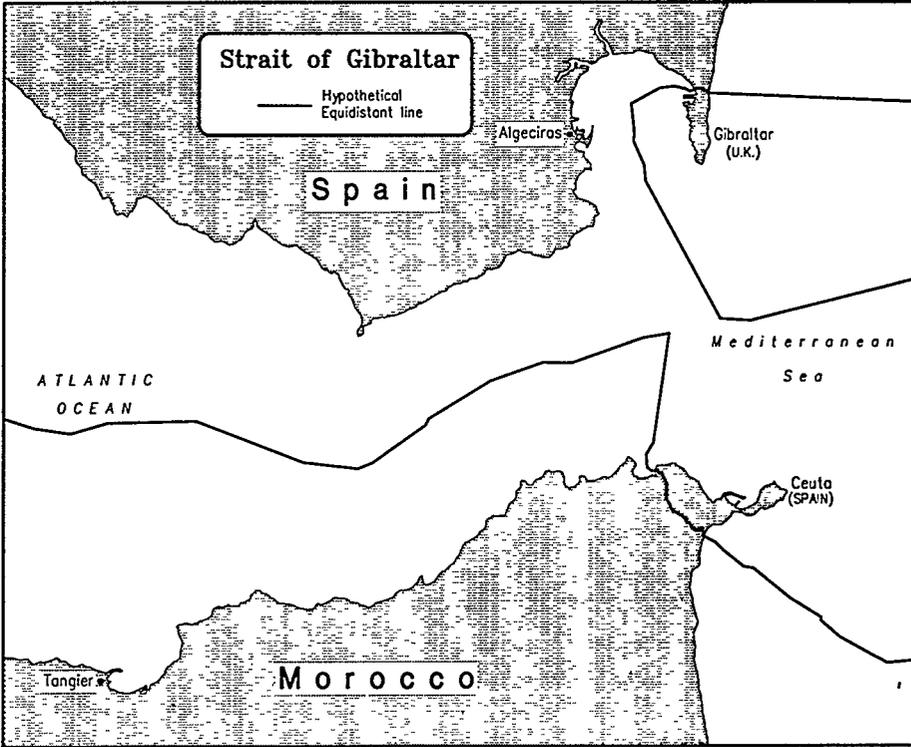
Gibraltar

This strait connects the Atlantic Ocean to the Mediterranean (*see* Map 25). It is 36 miles long and narrows to less than 8 miles wide at its narrowest point.⁴⁵ Upon signing the LOS Convention in 1984, Spain made several claims of coastal State authority over aircraft exercising the right of transit passage over straits used for international navigation and of coastal State pollution control authority over vessels exercising the right of transit passage in straits used for international navigation.⁴⁶ The United States protested in 1985 as follows:

The Government of the United States notes the declaration by the Government of Spain claiming the right of a coastal State to apply to aircraft exercising the right of transit passage coastal state air regulations so long as they do not impede transit passage. The Government of the United States wishes to state its view that this declaration is inconsistent with customary international law as reflected in the 1982 Convention. Civil aircraft exercising the right of transit passage shall observe the rules of the air established by the International Civil Aviation Organization. Those matters as to which a coastal State may properly adopt laws and regulations regarding transit passage do not include air regulations.

The Government of the United States also notes the declaration of the Government of Spain that, with regard to article 39, paragraph 3, the word "normally" is understood to mean "except in cases of *force majeure* or distress." The Government of the United States wishes to point out that state aircraft are not subject to the provisions of the Chicago Convention nor to any rules, including rules of the air, issued under the Convention or by the International Civil Aviation Organization. The Chicago Convention requires only that state aircraft operate at all times with due regard for the safety of navigation of civil aircraft. Article 39, paragraph 3 of the 1982 Law of the Sea Convention is consistent with this principle and leaves to each State the discretion to determine

Map 25



Names and boundary representations are not necessarily authoritative

the circumstances under which its state aircraft will comply with International Civil Aviation Organization rules of the air, when exercising the right of transit passage. Although a state aircraft would not be obliged to comply with such rules in cases of *force majeure* or distress, these are not the only circumstances in which a state aircraft would not be obliged to comply with such rules. In this respect, therefore, the declaration of the Government of Spain is not consonant with the well-established international law reflected in the 1982 Law of the Sea Convention.

The Government of the United States further notes the declaration of the Government of Spain that it considers article 42, paragraph 1 of the 1982 Law of the Sea Convention not to prevent the coastal State from applying to foreign-flag vessels in transit passage coastal State laws and regulations giving effect to generally accepted international regulations for the prevention, reduction and control of pollution. In this regard, the Government of the United States wishes to point out that the coastal State may not apply to vessels exercising the right of transit passage its laws and regulations, except such types of laws and regulations as are enumerated in the 1982 Law of the Sea Convention. The only laws and regulations with respect to the prevention, reduction and control of pollution that may be applied to vessels exercising the right of transit passage are those giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait.

In addition, the Government of the United States notes that the Government of Spain considers article 221 of the 1982 Law of the Sea Convention not to deprive the coastal State of a strait used for international navigation of its powers, recognized in international law, in the case of casualties referred to in that article. The Government of the United States agrees that, in the event of maritime casualties, a coastal State of a strait used for international navigation may, within its territorial sea, take reasonable actions in response to pollution or a threat of pollution that may reasonably be expected to result in major harmful consequences. In this regard however the Government of the United States wishes to point out that such rights of the coastal State do not extend to the impeding or suspending of the right of transit passage through a strait used for international navigation.

...

The Government of the United States wishes to inform the Government of Spain that it reserves its rights and those of its nationals with respect to all the matters discussed in this communication. In light of our common interests in maritime issues, the Government of the United States would welcome the opportunity to meet with the Government of Spain in technical discussions on these and related matters.⁴⁷

The referenced Spanish declarations stated:

...

2. It is the Spanish Government's interpretation that the regime established in Part III of the Convention is compatible with the right of the coastal State to issue and apply its own air regulations in the air space of the straits used for international navigation so long as this does not impede the transit passage of aircraft.

3. With regard to article 39, paragraph 3, it takes the word "normally" to mean "except in cases of *force majeure* or distress."

4. With regard to article 42, it considers that the provisions of paragraph 1(b) do not prevent it from issuing, in accordance with international law, laws and regulations giving effect to generally accepted international regulations.

...

6. It interprets the provisions of article 221 as not depriving the coastal state of a strait used for international navigation of its powers, recognized by international law, to intervene in the case of the casualties referred to in that article.⁴⁸

In conveying the need for this protest, the State Department explained to American Embassy Madrid:

Declarations 2 and 3 are objectionable, because they attempt to impose upon aircraft in general, and state aircraft (military, customs and police aircraft) in particular, obligations that the customary law reflected in the Convention neither imposes nor permits. Declaration number 2 claims the right to require aircraft of other countries exercising the right of transit passage to comply with Spanish regulations so long as such regulations do not have the effect of impeding transit passage. While the coastal State does have an obligation not to impede transit passage, it is also limited in the types of regulations it may impose on such aircraft, whether or not the regulations actually impede transit passage. Declaration number 2 phrases the coastal State's right in this regard too broadly. Declaration number 3 is even more clearly objectionable, because it effectively claims that state aircraft—which are not subject to rules of the air promulgated by the International Civil Aviation Organization (ICAO)—must comply with such rules while engaging in transit passage, unless they are prevented from doing so because they are in distress. This assertion is not only contrary to the language of the 1982 LOS Convention, but also to over 40 years of ICAO practice under the Chicago Convention. Article 39, para. 3 of the 1982 LOS Convention states that state aircraft shall "normally" comply with ICAO rules of the air, preserving the discretion of the aircraft's state of registry. At UNCLOS III, Spain failed in an attempt to have the word "normally" deleted; in consequence, declaration number 3 attempts to do the next best thing.

Declarations 4 and 6 involve coastal State rights regarding pollution control regulation and activities in international straits. Article 42 of the LOS Convention permits coastal States to impose upon vessels exercising the right of transit passage pollution control legislation that gives effect to "applicable international regulations" regarding certain substances, including oil. Spain's declaration number 4

declares that article 42 does not preclude it from also applying to such vessels legislation that gives effect to “generally accepted international regulations.” The difference, of course, is that regulations that are “generally accepted” because a number of States are parties to the relevant conventions may not be “applicable” to a particular vessel because its flag State is not a party. The distinction is a real one that appears elsewhere in the Convention, and the fact that article 42 speaks only of the coastal State giving effect to the more limited category of “applicable” international regulations implies rather clearly that the coastal State does not have the right to require transiting vessels to comply with the broader category of “generally accepted international regulations.” Declaration number 6 is not, per se, inaccurate, but its implications are such that an observation, if not an objection, must be made. Simply stated, declaration number 6 seeks to clarify the rights of a coastal State to take, within territorial seas forming an international strait, the same sort of pollution prevention and clean-up actions respecting a foreign-flag vessel that it could take even on the high seas, if there were a grave and imminent danger of pollution damage to the coastal State. The United States accepts this position in principle, but must make sure that Spain does not interpret its rights in this regard as extending to the suspension of the right of transit passage for other vessels nor to any right on the part of Spain to require transiting foreign-flag vessels to participate in clean-up operations.⁴⁹

Hormuz

The Strait of Hormuz provides the sole entrance and exit of the Persian Gulf (see Map 26). Iran and Oman are the riparian States to the strait.⁵⁰ When signing the LOS Convention in 1982, Iran made a declaration stating:

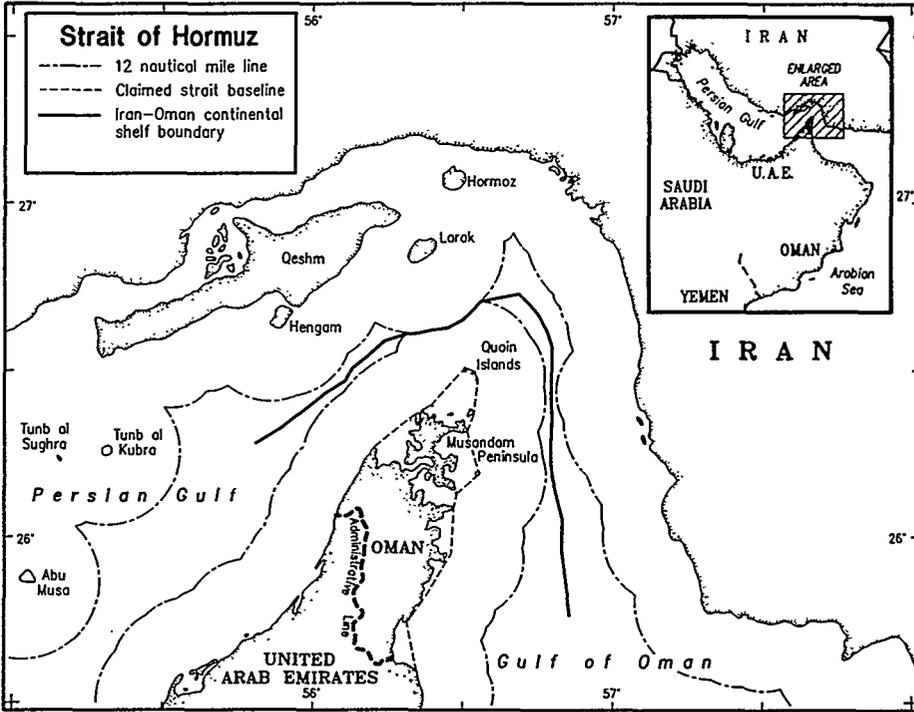
it seems natural . . . that only States parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following: The right of transit passage through straits used for international navigation.⁵¹

In response, the United States commented upon the legal status of the right of transit passage of international straits stating:

A small number of speakers [e.g., Iran, 17 Official Records 106, at para. 69] asserted that . . . transit passage is a “new” right reflected in the Convention adopted by the Conference. To the contrary, long-standing international practice bears out the right of all States to transit straits used for international navigation . . . Moreover, these rights are well established in international law. Continued exercise of these freedoms of navigation and overflight cannot be denied a State without its consent.⁵²

The policy of freedom of navigation through the Strait of Hormuz was reiterated by President Reagan on several occasions. At a news conference on February 22, 1984, the following exchange occurred:

Map 26



Q. The war between Iraq and Iran is heating up in a rather perilous way, and I'd like to ask what the depth of your concerns are about the possibility that this war would lead to the closing of the Strait of Hormuz and cut off the supply of oil to Japan, Western Europe, and ourselves, and to what lengths you're prepared to go to keep the strait open.

A. What you have just suggested—Iran, itself, had voiced that threat some time ago, that if Iraq did certain things, they would close the Strait of Hormuz. And I took a stand then and made a statement that there was no way that we—and I'm sure this is true of our allies—could stand by and see that sealane denied to shipping, and particularly, the tankers that are essential to Japan, to our Western allies in Europe, and, to a lesser extent, ourselves. We're not importing as much as they require. But there's no way that we could allow that channel to be closed.

And we've had a naval force for a long time, virtually permanently stationed in the Arabian Sea, and so have some of our allies. But we'll keep that open to shipping.⁵³

On April 30, 1987, Iran (via the Algerian Embassy in Washington) delivered a Diplomatic Note concerning the right of transit passage through the Strait of Hormuz in the context of an alleged violation of claimed Iranian territorial waters. On August 17, 1987, the United States asked Algeria to pass the following reply to the Iranian Ministry of Foreign Affairs:

the United States . . . particularly rejects the assertions that the . . . right of transit passage through straits used for international navigation, as articulated in the [1982 Law of the Sea] Convention, are contractual rights and not codifications of existing customs or established usage. The regimes of . . . transit passage, as reflected in the Convention, are clearly based on customary practice of long standing and reflect the balance of rights and interests among all States, regardless of whether they have signed or ratified the Convention.

. . . . The United States rejects, as well, any claim by Iran of a right to interfere with any vessel's lawful exercise of the right of transit passage in a strait used for international navigation.⁵⁴

Kuril Straits

Etorofu Strait. In response to a Soviet protest of the November 30, 1984, transit by USS *Sterett* and USS *John Young* of the Etorofu Strait separating the Hamemais islands (occupied by the Soviet Union—now Russia—and claimed by Japan), the United States replied in a diplomatic note which read as follows:

The Embassy of the United States of America refers the USSR Ministry of Foreign Affairs to Ministry of Foreign Affairs Note Number 81/USA of

December 3, 1984 concerning the transit of the Etorofu Strait by vessels of the United States Navy.

The Embassy wishes to state that on November 30, 1984, the USS *Sterett* and the USS *John Young* were, when navigating through the Etorofu Strait, exercising the right of transit passage in accordance with international law. Note 81/USA of December 3, 1984 implies that the right of passage of foreign warships through straits such as Etorofu Strait is limited to innocent passage. The United States Government rejects this implication, since Etorofu Strait is one used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone; the strait is therefore subject to the regime of transit passage.

Moreover, the United States Government rejects the claim of the Soviet Union that it may lawfully restrict transit passage of foreign warships through straits of this type, or innocent passage of foreign warships through the Soviet territorial sea in other coastal areas, to a few specified locations. The regulations referred to in Note 81/USA have the effect of hampering both transit passage and innocent passage and therefore contravene international law.

As regards the claim of the USSR that the waters in question are territorial waters of the USSR, the Ministry of Foreign Affairs is referred to the diplomatic note of the United States Government dated May 23, 1957. In sum, the allegations contained in Note 81/USA of December 3, 1984 are unacceptable, since they have no legal foundation.⁵⁵

Golovnina Strait. In response to a Soviet protest of the June 8, 1986 transit by USS *Francis Hammond* of Golovnina Strait separating two other southern Kuril islands (also occupied by the Soviet Union—now Russia—and claimed by Japan), the United States replied in a diplomatic note which read as follows:

During the incident in question, the USS *Francis Hammond* was exercising the right of transit passage through a strait used for international navigation in accordance with customary international law as reflected in Part III of the 1982 United Nations Convention on the Law of the Sea. The strait involved in this incident — Golovnina Strait — constitutes a strait used for international navigation and is subject to the regime of transit passage. The transit of the USS *Francis Hammond* through the strait was fully consistent with the regime of transit passage, and did not threaten the sovereignty, territorial integrity, or political independence of the Soviet Union. The United States notes the inference in the Ministry's statement [of June 11, 1986] that the innocent passage of foreign warships in the Soviet territorial sea may only be exercised along routes commonly used for international navigation and that, in the vicinity of the Kuril Islands, the only route is that through the fourth Kuril strait. The United States rejects the Ministry's suggestion. The applicable right of passage through straits such as these is the right of transit passage, not the right of innocent passage.

The United States further notes that all states may exercise the right of innocent passage through the territorial sea of other states if such passage is consistent with the definition of that passage, i.e. continuous and expeditious transit for the purpose of traversing the territorial sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters on a call at such roadstead or port facility. In any case, the incident in question occurred in the Golovkina Strait, an international strait in which the right of straits transit passage, and not innocent passage, applies. Although an international strait must by definition consist wholly or partly of territorial waters, it is the right of transit passage, and not innocent passage, which applies in those waters unless the exceptions contained in the Law of the Sea Convention articles 38(1) or 45 apply, in which case non-suspendable innocent passage applies.

The United States has at no time acquiesced in the proposition that the fourth Kuril strait constitutes the only route which may be used for international navigation in the vicinity of the Kuriles.

As the Golovkina Strait constitutes an international strait as defined in article 37 of the Law of the Sea Convention, the principal justification for not applying the right of transit passage to it would be that there exists a strait of similar convenience in accordance with the Law of the Sea Convention article 38(1). As article 38(1) provides, that justification can only be invoked if the strait to which transit passage is not to be applied is formed by an island of a state bordering the strait and its mainland. It is the view of the United States that the Golovkina Strait does not constitute such a strait, in that it does not fall between the mainland and an island adjacent thereto. The USSR therefore has no legal basis on which to insist that international navigation pass only through the fourth Kuril strait. Nor does the Golovkina Strait constitute an article 45(1)(b) strait, i.e. a strait between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign state.

The United States further wishes to underscore that a strait used for international navigation derives that status not from coastal state legislation which designates it as such, but rather as a direct result of international maritime patterns which establish state practice. If this were not the case, the very purpose of the customary international legal regime of straits transit passage, providing for automatic, predictable and impartial exercise of international navigation freedoms, would be vitiated. For these reasons the United States does not recognize the validity of the USSR's designation of the fourth Kuril strait as the only Kuril strait for international navigation.

For the above reasons, the United States rejects the June 11 protest of the Soviet Union regarding the transit of USS *Hammond* through the Golovkina Strait and maintains that the transit was a lawful exercise of the customary law right of straits transit passage. Accordingly, it reserves its rights and those of its nationals to continue to exercise that right in the Golovkina Strait, and in all straits used for international navigation.

In rejecting this protest, the USG notes the fact that notwithstanding the signature by the USSR of the 1982 United Nations Convention on the Law of the Sea and the recognition by the United States that the navigation articles of that Convention are generally reflective of customary international law, the USSR and the U.S. continue to display significant unresolved differences in their interpretation of the law of the sea, particularly the right of innocent passage and straits transit passage. The U.S. Government invites the Government of the USSR to provide a more comprehensive analysis of the legal basis for its assertion of the right to deny transit passage in the international straits between the Kuril islands.⁵⁶

Magellan

The 310 mile long Strait of Magellan connects the Atlantic and Pacific Oceans at the southern tip of South America.⁵⁷ Navigation through the Strait of Magellan is governed by article V of the 1881 Boundary Treaty between Argentina and Chile,⁵⁸ which states that the Straits are neutralized forever, and free navigation is assured to the flags of all nations. Article 10 of the 1984 Treaty of Peace and Friendship between Argentina and Chile⁵⁹ reaffirms that status: “. . . The delimitation agreed upon herein, in no way effects the provisions of the Boundary Treaty of 1881, according to which the Straits of Magellan are perpetually neutralized and freedom of navigation is assured to ships of all flags . . .” In concluding that the Strait of Magellan therefore falls under the Article 35(c) exception of the LOS Convention, the Department of State advised American Embassy Santiago, Chile, that:

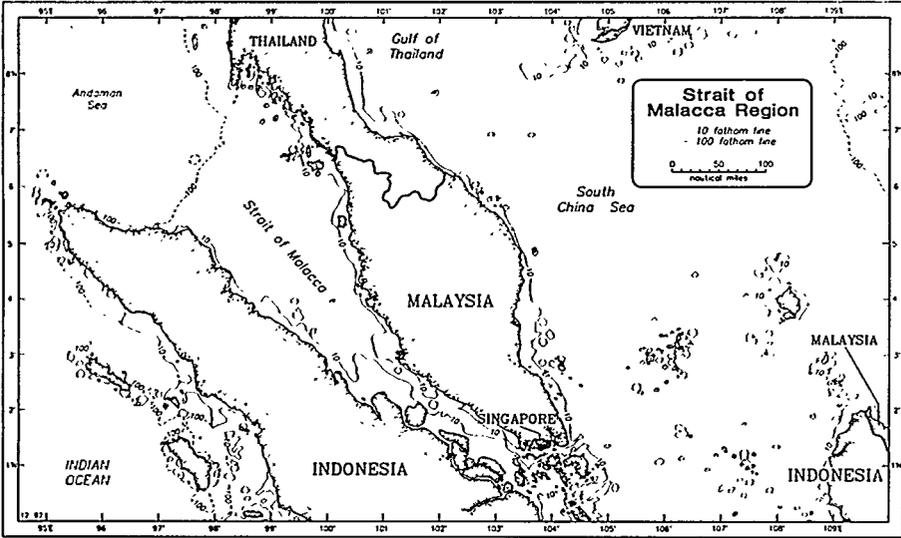
This long-standing guarantee of free navigation for all vessels [in the 1881 Treaty] has been amply reinforced by practice, including practice recognizing the right of aircraft to overfly. . . . Essentially, the USG position would be that the 1881 Treaty and over a century of practice have imbued the Strait of Magellan with a unique regime of free navigation, including a right of overflight. That regime has been specifically recognized and reaffirmed by both Argentina and Chile in the Beagle Channel Treaty. Hence, the United States and other States may continue to exercise navigational and overflight rights and freedoms in accordance with this long-standing practice.⁶⁰

Malacca and Singapore

The Straits of Malacca and Singapore extend for approximately 600 miles (*see* Map 27). The Strait of Malacca is located between the east coast of the Indonesian island of Sumatra and the west coast of peninsular, or west, Malaysia. The Singapore Strait is located south of the island of Singapore and the southeastern tip of peninsular Malaysia, and north of the Indonesian Rian Islands. The straits provide the shortest sea route between the Indian Ocean (via the Andaman Sea) and the Pacific Ocean (via the South China Sea).

At the broad western entrance to the Strait of Malacca, the littoral coasts of Indonesia and Malaysia are separated by about 200 miles. The strait, however, begins to funnel in a southeasterly direction. At 3°N and south of One Fathom

Map 27



Bank, the territorial seas of Indonesia and Malaysia overlap. The narrowest part of the Strait of Malacca is at the southwestern tip of the Malay Peninsula—8.4 miles wide, and, given the shallow depths, is much narrower for deep draught vessels.

The narrowest breadth of the Singapore Strait is only 3.2 miles and throughout its length is constantly less than 15 miles wide (the combined territorial seas claimed by Indonesia (12 miles) and Singapore (3 miles)). At its eastern outlet into the South China Sea, where it is bounded solely by Malaysia and Indonesia, the sea passage is approximately 11.1 miles wide.

The governing depth of the Strait of Malacca is less than 75 feet, with a tidal range between 4.6 feet at the eastern outlet of the Singapore Strait and 12.5 feet at the western entrance to the Strait of Malacca.⁶¹

On April 29, 1982, Ambassador James L. Malone, United States Representative to the Third United Nations Conference on the Law of the Sea, submitted a letter to the President of the Conference “confirm[ing] the contents” of a letter dated April 28, 1982, from the Chairman of the Malaysian delegation on behalf of the delegations of Indonesia, Malaysia and Singapore, regarding their statement concerning the purpose and meaning of Article 233 of the LOS Convention in its application to the Straits of Malacca and Singapore. The Malaysian statement reads:

Following consultations held among the delegations of States concerned, a common understanding regarding the purpose and meaning of article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore has been confirmed. This understanding, which takes cognizance of the peculiar geographic and traffic conditions in the Straits, and which recognizes the need to promote safety of navigation and to protect and preserve the marine environment in the Straits, is as follows:

1. Laws and regulations enacted by States bordering the Straits under article 41, paragraph 1(a) of the convention, refer to laws and regulations relating to traffic separation schemes, including the determination of under keel clearance for the Straits provided in article 41.

2. Accordingly, a violation of the provisions of resolution A.375(X), by the Inter-Governmental Maritime Consultative Organization adopted on 14 November 1977, whereby the vessels referred to therein shall allow for an under keel clearance of at least 3.5 metres during passage through the Straits of Malacca and Singapore, shall be deemed, in view of the particular geographic and traffic conditions of the Straits, to be a violation within the meaning of article 233. The States bordering the Straits may take appropriate enforcement measures, as provided for in article 233. Such measures may include preventing a vessel violating the required under keel clearance from proceeding. Such action shall not constitute denying, hampering, impairing or suspending the right of transit passage in breach of articles 42, paragraph 2, or 44 of the draft convention.

3. States bordering the Straits may take appropriate enforcement measures in accordance with article 233, against vessels violating the laws and regulations referred to in article 42, paragraph 1(a) and (b) causing or threatening major damage to the marine environment of the Straits.

4. States bordering the Straits shall, in taking the enforcement measures, observe the provision on safeguards in Section 7, Part XII of the draft convention.

5. Articles 42 and 233 do not affect the rights and obligations of States bordering the Straits regarding appropriate enforcement measures with respect to vessels in the Straits not in transit passage.

6. Nothing in the above understanding is intended to impair:

(a) the sovereign immunity of ships and the provisions of article 236 as well as the international responsibility of the flag State in accordance with paragraph 5 of article 42;

(b) the duty of the flag State to take appropriate measures to ensure that its ships comply with article 39, without prejudice to the rights of States bordering the Straits under Parts III and XII of the draft convention and the provisions of paragraphs 1, 2, 3 and 4 of this statement.⁶²

The International Maritime Organization has established other rules for vessels navigating the Straits of Malacca and Singapore, including traffic separation schemes at One Fathom Bank and in the Singapore Strait and deep water routes forming part of the eastbound traffic lane of the traffic separation scheme in the Singapore Strait.⁶³

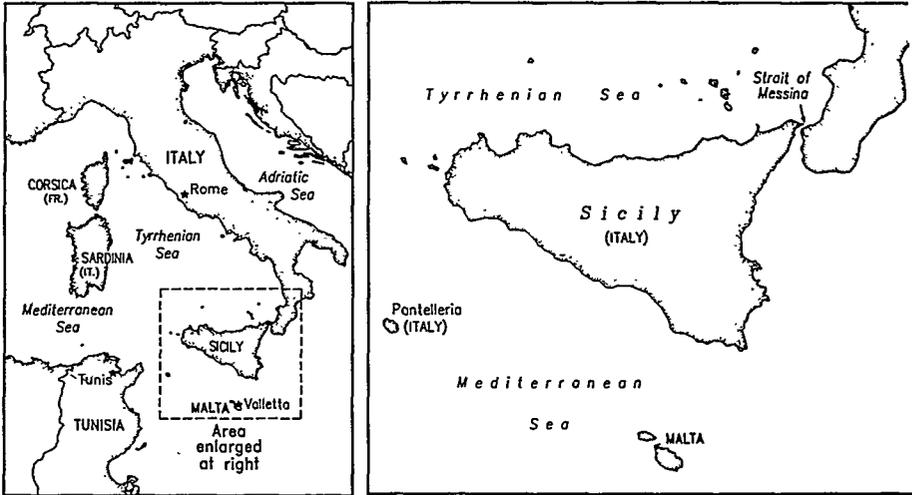
Messina

The Strait of Messina separates the Italian island of Sicily from Italy's mainland (see Map 28). This strait is considered an Article 38(1) strait under the terms of the LOS Convention which provides an exemption from the transit passage regime for those straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a State bordering the strait and its mainland and there exists seaward of the island a route through the high seas or EEZ of similar convenience with respect to navigational and hydrographical characteristics.⁶⁴

Effective April 3, 1985, the Government of Italy closed the strait to vessels 10,000 tons and over carrying oil and other pollutants.⁶⁵ This action was taken following a collision at sea resulting in an oil spill in the area. The United States submitted a diplomatic note to Italy on April 5, 1985, making the following observations:

Map 28

Strait of Messina



As the Government of the United States understands it, this decree is not intended to apply to warships or other governmental ships on non-commercial service exercising the right of innocent passage.

It is the understanding of the Government of the United States that this prohibition on navigation through the Strait of Messina by specified vessels . . . is intended to give the Government of Italy time in which to formulate proposals for the regulation of maritime traffic in the strait.

The Government of the United States wishes to make clear that the Strait of Messina is a strait used for international navigation, to which, in accordance with customary international law as reflected of the 1982 United Nations Convention on the Law of the Sea, the regime of non-suspendable innocent passage applies. The regime of innocent passage is one that may be exercised by vessels of all States, regardless of type or cargo. By purporting to prohibit navigation through the Strait of Messina by vessels of specified size carrying specified cargo, the Government of Italy appears to be attempting to suspend the right of innocent passage for such vessels, in contravention of long-settled customary and conventional international law. The Government of the United States therefore reserves its rights and those of its nationals in this regard. . . .

The Government of the United States recognizes that, in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the coastal state has certain authority to prescribe sea lanes and traffic separation schemes that must be used by vessels exercising the right of innocent passage, especially tankers and other ships carrying dangerous substances. The coastal state does not, of course, have authority respecting areas of the high seas. To the extent that a coastal state has such authority in its territorial sea the Government of the United States notes the important role to be played by the International Maritime Organization in the designation of such sea lanes and the prescription of traffic separation schemes. The Government of the United States notes that the decree announced by the Government of Italy refers to regulation 8 of chapter V of the annex to the International Convention for the Safety of Life at Sea, 1974, which reiterates the importance of the International Maritime Organization in this process.

The Government of the United States trusts that, in considering what traffic regulations might be appropriate in the Strait of Messina, the Government of Italy will give due weight to all relevant factors, including the acknowledged pre-eminence of the International Maritime Organization. The Government of the United States would be pleased to discuss with the Government of Italy appropriate measures that might be adopted to lessen the risk of environmental damage in the Strait of Messina. The Government of the United States must, however, protest the recently announced decree, which has the unlawful effect of suspending innocent passage for certain types of vessels in a strait through which innocent passage may not be suspended.⁶⁶

Additional information provided to American Embassy Rome for use in delivering the foregoing note included the following:

The USG [United States Government] understands that the GOI [Government of Italy] has prohibited navigation, for at least 45 days beginning 3 April 1985, through the Strait of Messina by oil tankers and other vessels carrying hazardous substances, if they are over 10,000 tons.

The USG understands that this action may be related to a recent maritime collision and oil spill in the area.

The USG recognizes that some inconvenience to navigation by certain vessels may be an unavoidable result of the presence of oil spilled during this unfortunate incident and the efforts to clean up such oil.

The prohibition appears to be at least a temporary restriction on passage by certain types of vessels until the GOI can reach conclusions regarding long-term controls over navigation by such vessels in the Strait of Messina.

The USG wishes to note that the Strait of Messina is subject to the regime of non-suspendable innocent passage under international law as reflected in both the 1982 LOS Convention and the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

The USG is of the opinion that this prohibition of passage through the Strait of Messina by the GOI is not an appropriate exercise of the GOI's right to impose upon vessels in innocent passage laws relating to the preservation of the environment and the prevention, control and reduction of pollution. Accordingly, the USG considers that such a prohibition constitutes a suspension of the right of innocent passage by such vessels, in contravention of customary and conventional international law. . . .

The USG recognizes that the GOI may need to protect significant environmental interests from possible pollution damage caused by vessels transiting the Strait of Messina.

The USG strongly urges that, if the GOI considers it necessary to take further steps to regulate tanker traffic through the strait in order to avoid the danger of pollution damage, the GOI should do so in an appropriate multilateral forum, rather than by unlawfully attempting to suspend or interfere with the right of innocent passage.⁶⁷

Northeast Passage

The Northeast Passage is situated in the Arctic Ocean, north of Russia and includes the **Dmitry, Laptev and Sannikov Straits**.⁶⁸ The United States conducted oceanographic surveys of the area during the summers of 1963 and 1964. During the 1963 survey, USCGC *Northwind* (WAGB-382) collected data in the Laptev Sea; during the following summer, USS *Burton Island* (AGB-1) surveyed in the East Siberian Sea. On July 21, 1964, the Soviet Ministry of

Foreign Affairs presented to American Embassy Moscow the following *aide memoire* regarding the *Burton Island* voyage:

The Chief Administration of the Hydro Meteorological Service of the Council of Ministers, USSR received a communication from the Embassy of the USA on the forthcoming Arctic sailing of the US military ice-breaker *Burton Island* and the request to transmit to the ship information on hydrometeorological conditions.

Precise information on the *Burton Island's* route has not been received from the Embassy. In the event that this ship intends to go by the northern seaway route, then it is necessary it take into consideration the following:

The Northern seaway route is situated near the Arctic coast of the USSR. This route, quite distant from international seaways, has been used and is used only by ships belonging to the Soviet Union or chartered in the name of the Northern Seaways, the opening up, equipping, and servicing of which the Soviet side for a period of decades has spent significant funds, and it is considered an important national line of communication of the USSR. It should be noted that the seas, through which the northern seaway route passes, are noted for quite difficult ice and navigational conditions. Mishaps of foreign ships in this line of communications could create for the USSR as well as for a bordering state, a series of complicated problems. Therefore the Soviet Union is especially interested in all that deals with the functioning of the given route.

It should also be kept in mind that the northern seaway route at some points goes through Soviet territorial and internal waters. Specifically, this concerns all straits running west and east in the Karsky Sea, inasmuch as they are overlapped two-fold by Soviet territorial waters, as well as by the Dmitry, Laptev and Sannikov Straits, which unite the Laptev and Eastern Siberian Seas and belong historically to the Soviet Union. Not one of these stated straits, as is known, serves for international navigation. Thus over the waters of these straits the statute for the protection of the state borders of the USSR fully applies, in accordance with which foreign military ships will pass through territorial and enter internal sea waters of the USSR after advance permission of the Government of the USSR, in accordance with stipulated regulations for visiting by Foreign Military ships of territorial and internal sea waters of the USSR published in "Navigation Notifications" (*Izvesticheniyakh Moreplavatelyan*). In accordance with these regulations the agreement for entry of foreign military vessels is requested through the Ministry of Foreign Affairs USSR not later than 30 days before the proposed entry.

Although the notification of the proposed sailing of the American ice-breaker *Burton Island* was not received in the fixed period, the Soviet side in this specific case, is ready, as an exception, to give permission for the passing of the vessel *Burton Island* through the territorial and internal waters of the USSR in the aforementioned Arctic Straits. In this regard it should not be forgotten that the American vessel will fulfill requirements, called for by the regulations for foreign military ships, visiting territorial and internal maritime waters of the USSR and specifically article 16 of the cited regulations. At the same time the need is

emphasized for the strict observance in the future of all instructions of regulations for foreign military vessels visiting territorial and internal maritime waters of the USSR.

Regarding the inquiries of the Embassy on passing to the vessel *Burton Island* information on the hydrometeorological conditions during its Arctic sailing, the competent Soviet organizations are willing to fulfill this request and transmit the available information. For this, the American side must provide exact data of the schedule and route of the *Burton Island*, as well as data, necessary for the establishment of radio contacts with it.⁶⁹

On June 22, 1965, the United States replied in writing stating in part:

While the United States is sympathetic with efforts which have been made by the Soviet Union in developing the Northern Seaway Route and appreciates the importance of this waterway to Soviet interests, nevertheless, it cannot admit that these factors have the effect of changing the status of the waters of the route under international law. With respect to the straits of the Karsky Sea described as overlapped by Soviet territorial waters it must be pointed out that there is a right of innocent passage of all ships through straits used for international navigation between two parts of the high seas and that this right cannot be suspended. This is clear from the provisions of the Convention on the Territorial Sea and the Contiguous Zone adopted at Geneva in 1958 to which both the United States and the Soviet Union are parties. In the case of straits comprising high seas as well as territorial waters there is of course an unlimited right of navigation in the high seas areas. . . .

For the reasons indicated the United States must reaffirm its reservation of its rights and those of its nationals in the waters in question whose status it regards as dependent on the principles of international law and not decrees of the coastal state.⁷⁰

Thereafter, *Northwind* conducted its transit during July to September of 1965. On October 27, 1965, the Soviet Union protested in a note which read as follows:

According to information of competent Soviet authorities, U.S. Coast Guard icebreaker, *Northwind*, during its voyage in the Kara Sea in July-September of this year, conducted there explorations of sea bottom and suboceanic area. This was also reported in the American press.

As is well known, bottom and suboceanic area of the Kara Sea, being in geological respect the direct continuation of the continental part of the USSR, constitutes continental shelf which, pursuant to the 1958 Geneva Convention on the Continental Shelf, is subject to the sovereign rights of the USSR. Said Convention, to which both the USSR and the USA are parties, provides in article 5, paragraph 8, that agreement of the littoral State is required for exploration of the continental shelf.

Conduct of the above-mentioned explorations of the USSR continental shelf in the Kara Sea, without agreement thereto having been obtained from competent USSR authorities, constituted a violation of the 1958 Continental Shelf Convention.

The Ministry protests against the unlawful conduct by the American ice-breaker of exploration of the Soviet continental shelf in the Kara Sea and expects that the Government of the United States will take the necessary steps to prevent similar actions.⁷¹

The United States replied in a note, as follows:

The Ministry's note referring to the voyage of the United States Coast Guard [ice-breaker] *Northwind* in the Kara Sea during July to September of this year charges that the vessel carried on explorations of the seabed of the continental shelf without obtaining the permission required by paragraph 8, Article 5 of the Convention on the Continental Shelf adopted at Geneva in 1958 to which both the United States and the Union of Soviet Socialist Republics are parties.

The Ministry is misinformed. During its voyage of oceanographic exploration in the area the *Northwind* did take a number of core samplings of the seabed. A few of these samplings were taken in the deep which parallels Novaya Zemlya on the east and a more extensive sampling of the sea bottom was done in the deep water north of Novaya Zemlya and east of Zemlya Frantsa Iosifa and also in the deep water west of Severnaya Zemlya. The data collected during this operation will be made available to the Union of Soviet Socialist Republics through the World Data Center System. There was no exploration of the continental shelf in the Kara Sea.

In view of the foregoing the Ministry's protest is rejected as without foundation in fact.⁷²

In 1967, the United States planned an Arctic circumnavigation by the U.S. Coast Guard icebreakers *Edisto* and *East Wind*, from August 10 to September 21, 1967. The United States advised the Soviet government of the planned route in a note dated August 14, 1967:

The Department of State wishes to advise the Embassy of the Union of Soviet Socialist Republics that two United States oceanographic icebreakers will, as in previous years, undertake regular survey operations in the Arctic Ocean in the summer of 1967.

The US Coast Guard icebreakers *Edisto* and *East Wind* will conduct oceanographic research surveys from approximately August 10 to September 21. From a point south of Greenland, the ships will proceed eastward on a track running north of Novaya Zemlya and Severnaya Zemlya into the Laptov Sea, the East

Siberian Sea and through the Canadian Archipelago before returning to the United States.

As in previous oceanographic surveys of this sort the operations will be conducted entirely in international waters.⁷³

The Soviet Union replied on August 25, 1967, with the following note:

By its *aide-memoire* of August 16, 1967, US Department of State informed the USSR Embassy in Washington of Arctic circumnavigation by US Coast Guard icebreakers "Edisto" and "East Wind," stating that they would proceed eastward along [a] route north of Navaya Zemlya and Severnaya Zemlya.

However, according to information of competent Soviet authorities, above mentioned American icebreakers have entered the Karsky Sea and are proceeding in direction of Vilkitsky Straits, which are territorial waters of the USSR.

In this connection, the Ministry recalls to the Embassy that navigation by any foreign naval vessel through the Straits of Karsky Sea, as well as through Dmitry Leptev and Sannikov Straits, is subject to the Statute on the Protection of the USSR Borders, under which foreign naval vessels shall pass through territorial and internal sea waters of the USSR with prior permission by the Government of the USSR to be requested 30 days in advance of passage contemplated. The position of the Soviet Government on this question was set forth in detail in USSR MFA's *aide-memoirs* of July 2, 1964 and July 26, 1965.⁷⁴

Earlier that day, the American Embassy in Moscow had sent Note No. 340 notifying the Ministry of Foreign Affairs that the icebreakers had been blocked by ice in passing north of Severnaya Zemlya and, to continue circumnavigation, it would be necessary for *Eastwind* and *Edisto* to transit Vilkitsky Straits. On August 28, 1967, the Chief of the American Section Soviet Ministry of Foreign Affairs made an oral *demarche* on the American Deputy Chief of Mission, as reported in a cable to the Department of State:

Soviet Maritime Fleet had today received communication from U.S. Coast Guard icebreaker "Edisto" in which the Commanding Officer informed Soviet authorities that "Edisto" and "Eastwind" had encountered ice preventing passage to north of Severnaya Zemlya and therefore proposed to effect innocent passage through Vilkitsky straits on or about August 31. Communication from U.S. Coast Guard icebreaker also stated that Soviet Ministry of Foreign Affairs had been advised of proposed transit of straits.

Kornienko said that he felt it necessary to remove any misunderstanding which might exist in this matter. He said that Ministry of Foreign Affairs had not been advised of proposed passage of U.S. icebreakers through straits since notification thirty days in advance of attempted passage through Soviet territorial waters, as is required by pertinent Soviet regulations, had not been received.⁷⁵

The United States responded in a note delivered 7:30 pm local time, August 30, 1967 to the Soviet Ministry of Foreign Affairs, Moscow:

The Embassy of the United States of America refers to the *aide-memoire* of August 24 of the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics and to the statement by the Ministry's authorized representative on August 28, and, on instructions, strongly protests the position taken by the Soviet Government with regard to the peaceful circumnavigation of the Arctic by the United States Coast Guard icebreakers "Edisto" and "Eastwind."

As the Ministry is aware, the circumnavigation by the "Edisto" and "Eastwind" was undertaken as a part of regular scientific research operations in the Arctic Ocean. The Department of State, as a matter of courtesy, informed the Soviet Government of these operations. Owing to unusually severe ice conditions the icebreakers failed in their efforts to pass north of Severnaya Zemlya and, accordingly, on August 24 Embassy informed the Ministry by note that the vessels would find it necessary to pass through Vilkitsky Straits in order to continue their voyage. Rather than facilitating the accomplishment of this peaceful voyage, the Ministry in its *aide-memoire* of August 24 and particularly in the oral statement of its authorized representative on August 28 has taken the unwarranted position that the proposed passage of the "Edisto" and "Eastwind" would be in violation of Soviet regulations, raising the possibility of action by the Soviet Government to detain the vessels or otherwise interfere with their movement.

These statements and actions of the Soviet Government have created a situation which has left the United States Government with no other feasible course but to cancel the planned circumnavigation. In doing so, however, the United States Government wishes to point out that the Soviet Government bears full responsibility for denying to United States vessels their rights under international law, for frustrating this scientific endeavor and for depriving the international scientific community of research data of considerable significance.

...

Furthermore, the Statute on Protection of the USSR State Borders, cited in the Ministry's *aide-memoire* of August 24, cannot have the effect of changing the status of waters under international law and the rights of foreign ships with respect to them. These rights are set forth clearly in the Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, to which the Soviet Union is a party. The United States Government wishes to remind the Soviet Government, as it has on previous occasions, that there is a right of innocent passage for all ships, warships included, through straits used for international navigation between two parts of the high seas, whether or not, as in the case of the Vilkitsky Straits, they are described by the Soviet Government as being overlapped by territorial waters, and that there is an unlimited right of navigation in the high seas areas of straits comprising both high seas and territorial seas.

Moreover, since the Ministry in its *aide-memoire* of August 24 has referred to the Dmitry Laptev and Sannikov Straits, although they are not involved in the present case, the United States Government wishes to reiterate its position, stated most recently in its *aide-memoire* of June 22, 1965, that it is not aware of any basis for the Soviet claims to these waters.

The United States Government wishes to emphasize that it regards the conduct of the Soviet Government in frustrating this scientific expedition as contrary both to international law and to the spirit of international scientific cooperation to which the Soviet Government has frequently professed its support. Actions such as these cannot help but hinder the cause of developing international understanding and the improvement of relations between our two countries.⁷⁶

On August 31, 1967, the State Department spokesman summarized the situation, as follows:

On August 16 the U.S. Coast Guard announced that the 269-foot Coast Guard ice-breakers *Edisto* and *Eastwind* planned an 8,000 mile circumnavigation of the Arctic Ocean conducting scientific research en route. Their itinerary called for them to travel north of the Soviet islands of Novaya Zemlya, Severnaya Zemlya, and the New Siberian Islands.

The planned course was entirely on the high seas and, therefore, the voyage did not require any previous clearance with Soviet authorities. Nevertheless, the Soviet Government was officially informed of these plans just prior to the public announcement.

However, heavy ice conditions made it impossible for the vessels to proceed north of Severnaya Zemlya. On August 24 our Embassy in Moscow notified the Soviet Ministry of Foreign Affairs of this situation and stated it would be necessary for the two vessels to pass through Vilkitsky Straits south of Severnaya Zemlya in order to complete their journey.

In response the Soviet Ministry of Foreign Affairs made a statement to our Embassy that the straits constituted Soviet territorial waters.

On August 28, as a result of a routine message from the icebreakers to the Soviet Ministry of the Maritime Fleet, the Soviet Ministry of Foreign Affairs reaffirmed its declaration of August 24 and made it clear that the Soviet Government would claim that passage of the ships through the Vilkitsky Straits would be a violation of Soviet frontiers.

Under these circumstances the United States considered it advisable to cancel the proposed circumnavigation. The *Edisto* has now been ordered to proceed directly to Baffin Bay, and the *Eastwind* was ordered to remain in the area of the Kara and Barents Seas for about a month to conduct further oceanographic research.

On August 30 our Embassy in Moscow sent a note strongly protesting the Soviet position. The note pointed out that Soviet law cannot have the effect of changing the status of international waters and the rights of foreign ships with respect to them. These rights are set forth clearly in the Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, to which the Soviet Union is a party.

There is a right of innocent passage for all ships, through straits used for international navigation between two parts of the high seas, whether or not, as in the case of the Vilkitsky Straits, they are described by the Soviet Union as being overlapped by territorial waters, and there is an unlimited right of navigation in the high seas of straits comprising both high seas and territorial waters. Clearly, the Soviet Government, by denying to U.S. vessels their rights under international law, has acted to frustrate a useful scientific endeavor and thus to deprive the international scientific community of research data of considerable significance.⁷⁷

Northwest Passage

The United States and Canada have a long-standing dispute over the legal status of the waters of the Northwest Passage between Davis Strait/Baffin Bay and the Beaufort Sea (*see* Map 29). The United States considers the passage a strait used for international navigation subject to the transit passage regime under existing international law. Canada considers these waters to be Canadian and that special coastal State controls can be applied to the passage, including requirements for prior authorization of the transit of all non-Canadian vessels and for compliance by such vessels with detailed Canadian regulations.⁷⁸

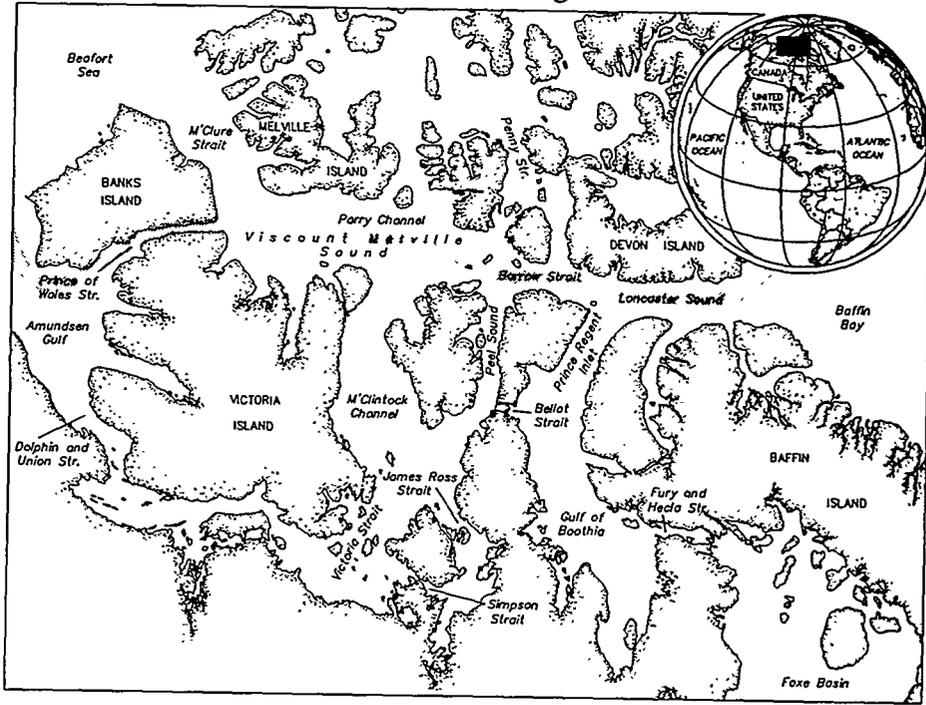
U.S. Coast Guard Cutters transited the Northwest Passage in 1952 and 1957. In 1969, the SS *Manhattan*, accompanied by the U.S. Coast Guard icebreakers *North Wind* and *Staten Island*, transited this Passage without having received prior Canadian authorization. Following the SS *Manhattan* transit, in 1970, Canada enacted its Arctic Waters Pollution Prevention Act to address the fragile Arctic environment and to prevent potential damage by vessel-source pollution. In the same year, the United States protested the validity of the law, because of its unlawful interference with navigational rights and freedoms.⁷⁹

Transit by USCG Icebreaker Polar Sea, August 1985. In 1985, several diplomatic notes were exchanged regarding an upcoming transit of the Northwest Passage by the U.S. Coast Guard icebreaker *Polar Sea*. On May 21, 1985 American Embassy Ottawa informed the Canadian Department of External Affairs of the planned transit of the United States Coast Guard Cutter *Polar Sea* in a *demarche* using guidance provided by the Department of State. Extracts of this guidance follow:

The United States Coast Guard is preparing its summer schedule for icebreaker operations in Arctic waters.

Map 29

The Northwest Passage



Operational requirements are such that a west coast based icebreaker, the *Polar Sea*, will transit the Panama Canal in order to reach the US east coast and thereafter perform icebreaking duties in the vicinity of Thule, Greenland.

Upon completion of its duties in the Thule area, the *Polar Sea* will need to return to the US west coast, both to be able to participate in testing pursuant to the Volpe-Jamieson Agreement and, subsequently, to conduct operations in Antarctic waters.

The limited time available requires the movement from the Thule area to the US west coast to be made by navigating through the Northwest Passage. That voyage will occur in August of this year.

So that the Canadian government can share in the benefits of this transit, the US Coast Guard will issue to the Canadian Coast Guard an invitation to provide on-board participants.

The United States considers that this transit by the icebreaker *Polar Sea* will be an exercise of navigational rights and freedoms not requiring prior notification. The United States appreciates that Canada may not share this position.

The United States believes that it is in the mutual interests of Canada and the United States that this unique opportunity for cooperation not be lost because of possible disagreements over the relevant juridical regime.

The United States believes that the two countries should agree to disagree on the legal issues and concentrate on practical matters.

The United States desires to raise this matter with the Government of Canada now, so that we can each begin to make arrangements for Canadian participation in the transit.

The United States considers that this discussion with the Government of Canada in the forthcoming invitation to participate in the transit is not inconsistent with its juridical position regarding the Northwest Passage and believes that the Government of Canada would consider its participation in the transit not to be inconsistent with its juridical position.

...

The United States looks forward to the opportunity to have the Canadian Coast Guard participate in a voyage that will have significant benefits for both our countries.⁸⁰

On June 11, 1985, Canada replied in a diplomatic note restating its position that the waters of the Northwest Passage were Canadian internal waters, as follows:

... refer to the notification of the proposed transit of the Northwest Passage by the United States Coast Guard icebreaker *Polar Sea* in August of this year, as conveyed to the Department of External Affairs by the United States Embassy in Ottawa on May 21, 1985.

The Government of Canada welcomes the United States offer to proceed with this project on a cooperative basis and to provide the opportunity for Canadian participation in the voyage.

The waters of the Arctic Archipelago, including the Northwest Passage, are internal waters of Canada and fall within Canadian sovereignty. Canada, of course, is committed to facilitating navigation through these waters and is prepared to work toward this objective in the spirit of cooperation that has long characterized the relationship between the Canadian and United States Coast Guards. This is the spirit that also underlies the Volpe-Jamieson Agreement, and the Government of Canada welcomes the United States reference to this accord as a factor to be taken into account in considering the United States proposal.

The Canadian authorities are prepared to consider any form of cooperation with the United States authorities regarding the proposed voyage, including on-board participation by Canadian representatives. The United States authorities will understand, however, the Canadian Government's concern to ensure that the Arctic waters adjacent to the mainland and islands of the Canadian Arctic are navigated in a manner that takes cognizance of Canada's responsibility for the interests of the Inuit and other inhabitants of the Canadian Arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian Arctic.

Given the unique geographical and ecological features of the area, the impact of any voyage, particularly any adverse environmental consequences, will affect the territory of Canada and of no other country. Such voyages are by their very nature extraordinary occurrences and must be carefully planned and coordinated to ensure protection of the environment and other related vital interests. Even a voyage that is free from incidents causing environmental damage can have other negative effects on the Arctic ecology and on the interest of the inhabitants of the area.

...

The Government of Canada looks forward to receiving from the United States authorities more information with respect of the timing and routing of the proposed voyage, as well as the specifications of the *Polar Sea*. Canada would welcome an early opportunity to consult with the United States on all matters related to the voyage.⁸¹

The United States replied as follows:

The United States notes the Canadian statement that the waters of the Arctic archipelago, including the Northwest Passage, are internal waters of Canada and

fall within Canadian sovereignty. As the Government of Canada is aware, the United States does not share this view. For this reason, although the United States is pleased to invite Canadian participation in the transit, it has not sought the permission of the Government of Canada, nor has it given Canada notification of the fact of the transit.

The United States shares the desire of the Government of Canada that the transit be facilitated in the spirit of cooperation that has long characterized the relationship between our two Coast Guards. The United States is therefore pleased at the positive response of the Government of Canada to the Embassy's advice of May 21, 1985, that an invitation would be issued for Canadian participation in the transit. As part of that invitation, the United States Coast Guard has already informed the Canadian Coast Guard regarding the timing and routing of the transit.

The Government of Canada can be assured that the transit will be conducted in a manner that will pose no danger to the environment or ecology in the vicinity of the Northwest Passage. The Canadian Coast Guard is fully aware of the capabilities, including the specifications, of the icebreaker *Polar Sea*.

...

The United States considers that this transit, and the preparations for it, in no way prejudices the juridical position of either side regarding the Northwest Passage, and it understands that the Government of Canada shares that view.⁸²

On July 31, 1985, Canada responded in a note, as follows:

The Government of Canada has noted with deep regret that the United States remains unwilling, as it has been for many years, to accept that the waters of the Arctic archipelago, including the Northwest Passage, are internal waters of Canada and fall within Canadian sovereignty. The Government of Canada must accordingly reaffirm its determination to maintain the status of these waters as an integral part of Canadian territory, which has never been and never can be assimilated to the regime of high seas or the regime of international straits. Canadian sovereignty in respect to Canada's Arctic waters has been and remains well established in fact and law, and the voyage of the *Polar Sea* can in no way affect that situation. In this regard, the Government of Canada indeed shares the view of the United States, communicated in the State Department's Note No. 222 of June 24, 1985 that "the transit, and the preparations for it, in no way prejudice the juridical position of either side regarding the Northwest Passage."

The Government of Canada has also noted the cooperative approach proposed by the United States regarding the voyage of the *Polar Sea* and is prepared to follow such an approach on the basis of a clear understanding as to the non-prejudicial nature of the voyage. In particular, the Government of Canada has welcomed the consultations held both at the diplomatic level and between the United States Coast Guard and the Canadian Coast Guard, and the information and assurances

provided in relation to the *Polar Sea* itself and the arrangements for its voyage, always without prejudice to the legal position of either government.

This information and these assurances have satisfied the Government of Canada that appropriate measures have been taken by or under the authority of the Government of the United States to ensure that the *Polar Sea* substantially complies with required standards for navigation in the waters of the Arctic archipelago and that in all other respects reasonable precautions have been taken to reduce the danger of pollution arising from this voyage. Accordingly, the Embassy is now in a position to notify the United States that, in the exercise of Canadian sovereignty over the Northwest Passage, the Government of Canada is pleased to consent of the proposed transit, and that, on the basis of the information and assurances provided, and in conformity with subsection 12(2) of the Arctic Waters Pollution Prevention Act, it is also pleased to issue an order exempting the *Polar Sea* from the application of Canadian regulations under subsection 12(1) of the said Act. The relevant Order-in-Council will be issued on Thursday, August 1, 1985.

The Government of Canada is also pleased to accept the United States invitation to participate in the voyage of the *Polar Sea*. Arrangements for such participation will be made between the Canadian Coast Guard and the United States Coast Guard. In addition, the Government of Canada wishes to inform the United States that Canadian agencies will be monitoring the progress of the voyage and will be prepared to render appropriate assistance as required.⁸³

The *Polar Sea* departed Thule, Greenland on August 1 enroute Lancaster Sound. Canadian guests embarked at Resolute, Northwest Territories, near the eastern end of the Northwest Passage and debarked at Tuktoyaktuk, near the western end. The ship transited through Lancaster Sound, Barrow Strait, Viscount Melville Sound and exited the Northwest Passage through Prince of Wales Strait and Amundson Gulf. The transit of the Passage was completed on August 11, 1985. No operational difficulties were encountered during the transit.⁸⁴

Agreement on Arctic Cooperation. On January 11, 1988, an Agreement on Arctic Cooperation was signed in Ottawa by Secretary of State George P. Shultz and Canadian Secretary of State for External Affairs Joe Clark. This agreement sets forth the terms for cooperation by the United States and Canadian Governments in coordinating research in the Arctic marine environment during icebreaker voyages and in facilitating safe, effective icebreaker navigation off their Arctic coasts. The agreement, which does not affect the rights of passage by other warships or by commercial vessels, reads as follows:

1. The Government of the United States of America and the Government of Canada recognize the particular interests and responsibilities of their two countries as neighbouring states in the Arctic.

2. The Government of Canada and the Government of the United States also recognize that it is desirable to cooperate in order to advance their shared interests in Arctic development and security. They affirm that navigation and resource development in the Arctic must not adversely affect the unique environment of the region and the well-being of its inhabitants.

3. In recognition of the close and friendly relations between their two countries, the uniqueness of ice-covered maritime areas, the opportunity to increase their knowledge of the marine environment of the Arctic through research conducted during icebreaker voyages, and their shared interest in safe, effective icebreaker navigation off their Arctic coasts:

- The Government of the United States and the Government of Canada undertake to facilitate navigation by their icebreakers in their respective Arctic waters and to develop cooperative procedures for this purpose;
- The Government of Canada and the Government of the United States agree to take advantage of their icebreaker navigation to develop and share research information, in accordance with generally accepted principles of international law, in order to advance their understanding of the marine environment of the area;
- The Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada.

4. Nothing in this agreement of cooperative endeavour between Arctic neighbors and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties.

5. This Agreement shall enter into force upon signature. It may be terminated at any time by three months' written notice given by one Government to the other.⁸⁵

During a joint press conference following the signing of this agreement, Secretary Shultz said that he agreed with Secretary Clark's answer to a reporter's question whether the agreement puts the sovereignty question "in limbo for all time." Secretary Clark had said:

This agreement is a particular, practical step that leaves the differing views of Canada and the United States on the question of sovereignty intact. The United States has its view, we have a different view. They have not accepted ours. We have not accepted theirs. But we have come to a pragmatic agreement by which the United States will undertake to seek Canadian permission before any voyage of an icebreaker goes through these waters.

In response to a question asking under what circumstances Canada would deny permission to an American icebreaker to go through Arctic waters, Secretary Clark said in part:

I can't answer a hypothetical question of that kind, . . . but the point is we have the power, if we decide, not to agree to a request to transit. . . . We have the Arctic Waters Pollution Prevention Act, which covers a lot of the problems that might arise. There are agreements within NATO that cover a lot of other problems that could arise. There was a hole in the arrangements and we think we have found a pragmatic way to respond to that particular problem. . . .

In response to a question asking whether the United States would be prepared to recognize Canada's claim to the Arctic waters, "if U.S. military vessels and submarines were given free access to these waters in times of crises," Secretary Shultz said "the answer to your question is no."⁸⁶

Transit of the USCG Icebreaker Polar Star, October 1988. The first request by the United States under the 1988 Agreement was made in October 1988 in a note which read as follows:

As provided by the terms of that Agreement, the Government of the United States hereby requests the consent of the Government of Canada for the United States Coast Guard Cutter "Polar Star", a polar class icebreaker, to navigate within waters covered by the Agreement, and to conduct marine scientific research during such navigation. Any information developed would be shared with the Government of Canada, as envisioned by the Agreement on Arctic Cooperation.

On September 28, while immediately north of Point Barrow, the "Polar Star" responded to a call from the master of the Canadian Coast Guard icebreaker "Martha L. Black," to assist the Canadian icebreaker "Pierre Radisson" and "Martha L. Black," in accord with the spirit of cooperation embodied in the Agreement on Arctic Cooperation. The "Polar Star," which was then enroute from Point Barrow, Alaska, to Seattle, Washington, rendezvoused with the nearby Canadian icebreakers to assist them in their transit to Victoria, British Columbia. Unusually heavy ice caused the "Pierre Radisson" and the "Martha L. Black" to abandon their operational plan and to proceed east toward Saint John's, Newfoundland, via the Northwest Passage.

After having rendered assistance to the Canadian icebreakers through October 1, which required it to change its own operational plans, the "Polar Star" now finds itself compelled by heavy ice conditions, adverse winds and engineering casualties to proceed east through the waters of the Northwest Passage in order to exit the Arctic, as did the Canadian icebreakers.

The Government of the United States would welcome the presence of a Canadian scientist and an officer of the Canadian Coast Guard on board the "Polar Star" and would also be pleased if a Canadian Coast Guard vessel were to choose

to accompany the "Polar Star" during its navigation and conduct of marine scientific research in the Northwest Passage.

"Polar Star" will operate in a manner consistent with the pollution control standards and other standards of the Arctic Waters Pollution Prevention Act and other relevant Canadian laws and regulations. Costs incurred as a result of a discharge from the vessel, including containment, clean-up and disposal costs incurred by the United States or Canada and any damage that is an actual result, will be the responsibility of the United States Government, in accordance with international law.

In view of the necessity for prompt action by the "Polar Star" due to deteriorating weather conditions, the Government of the United States requests a prompt reply to its request for the consent of the Government to the "Polar Star's" navigation of waters covered by the Agreement on Arctic Cooperation.⁸⁷

The Canadian reply, received the same day, read in part:

The Department [of External Affairs] notes the assurance provided by the Embassy that the "Polar Star" will operate in a manner consistent with the pollution control standards and other provisions of the Arctic Waters Pollution Prevention Act and other relevant Canadian laws and regulations and that costs incurred as a result of a discharge from the vessel, including containment, clean-up and disposal costs incurred by the United States or Canada and any damage that is an actual result will be the responsibility of the United States Government in accordance with international law.

The Department has the honour to inform the Embassy that the Government of Canada consents to the "Polar Star's" navigation within waters covered by the Agreement.

The Department has the further honour to inform the Embassy that the Government of Canada also consents to the conduct of marine scientific research during such navigation. The Department notes that the information obtained in such research will be shared as envisioned in the Arctic Cooperation Agreement.

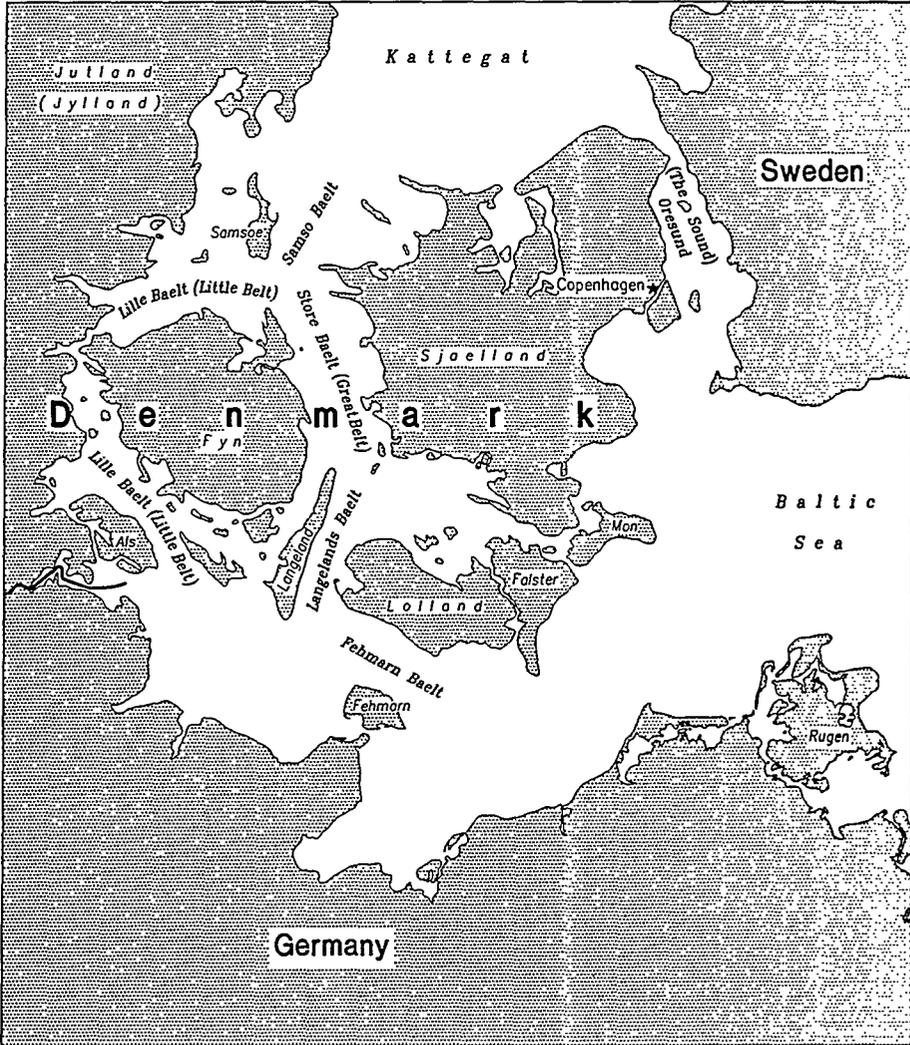
The Department is pleased to inform the Embassy that the Canadian Government has scheduled the Canadian Coast Guard icebreaker "John A. MacDonald" to accompany the "Polar Star" during its navigation in the Northwest Passage. Canadian authorities will also be pleased to make available an officer of the Canadian Coast Guard to be on board the "Polar Star" during this journey.⁸⁸

The Oresund and the Belts

The Baltic Straits include the Little Belt, the Great Belt and the Sound (Oresund) (see Map 30). The Sound is the shortest passage between the Baltic Sea and the Kattegat and the North Sea. It is 2.2 miles wide at its narrowest

Map 30

Danish Straits



Names and boundary representations are not necessarily authoritative

point, but its depth is insufficient for deep draught vessels. The sole deep water channel runs through the 10 mile-wide Great Belt.⁸⁹ These straits are governed in part by two treaties, the Treaty for the Redemption of the Sound Dues, Copenhagen, of March 14, 1857,⁹⁰ granting free passage of the Sound and Belts for all flags on April 1, 1857, and the U.S.-Danish Convention on Discontinuance of Sound Dues, April 11, 1857,⁹¹ guaranteeing forever “the free and unencumbered navigation of American vessels through the Sound and the Belts”.

When it signed the LOS Convention, Sweden declared in part that:

It is the understanding of the Government of Sweden that the exception from the transit regime in straits provided for in Article 35(c) of the Convention is applicable to the strait between Sweden and Denmark (Oresund) . . . Since in [this strait] the passage is regulated in whole or in part by a long-standing international convention in force, the present legal regime in [this strait] will remain unchanged after the entry into force of the Convention.⁹²

Warships were never subject to payment of the so-called “Sound Dues,” and thus it can be argued that no part of these “long-standing international conventions” are applicable to them.⁹³ The U.S. view is that warships and state aircraft traverse the Oresund and the Belts based either under the customary right of transit passage or under the conventional right of “free and unencumbered navigation,” since transit passage is a more restrictive regime than freedom of navigation guaranteed in the 1857 Conventions.⁹⁴ The result is the same: an international right of transit independent of coastal State interference. Both Denmark and Sweden (Oresund), however, maintain that warships and state aircraft that transit the Baltic Straits are subject to coastal State restrictions. They argue that the “longstanding international conventions” apply, as “modified” by longstanding domestic legislation.⁹⁵ The United States does not agree that LOS Convention Article 35(c) navigation regimes may be unilaterally restricted.

In 1991, Finland instituted proceedings in the International Court of Justice against Denmark in respect of a dispute concerning passage through the Great Belt. The dispute arose from Denmark’s intention to construct a 65 meter high fixed bridge across the sole deep water route between the Baltic and the North Sea (Route T in the Great Belt), thereby preventing the passage of oil drilling rigs constructed by Finland in its shipyards from being towed in their vertical position under the bridge en route to the North Sea, contrary to international law. Interim measures were denied.⁹⁶ Shortly before arguments on the merits were scheduled to be heard, the two governments reached a settlement of the dispute, in which Denmark was to pay approximately \$16 million to Finland and Finland was to withdraw its case from the Court.⁹⁷

In a speech presented to the 26th Law of the Sea Institute Annual Conference in Genoa, Italy on June 22, 1992, the Department of Defense Representative

for Ocean Policy Affairs, RADM William L. Schachte, Jr., JAGC, USN, stated the view of the United States that “the transit passage articles [of the LOS Convention] would clearly prohibit the unfettered, unilateral construction of a bridge across a strait used for international navigation”. He stated that the United States “does not believe that customary international law permits a State unilaterally and without prior international approval to construct a fixed bridge over an international strait which in many instances is the sole practical deep water route available.” To unify state practice, RADM Schachte, on behalf of the United States, proposed that “all future construction plans for bridges over international straits be submitted to the International Maritime Organization” after providing actual notice of the proposal well in advance to the IMO. States would then be given the opportunity to communicate their views to the proposing straits State which would be obliged to seek to accommodate such views. Finally, the straits State could only proceed with actual construction upon determination by the IMO that the proposal conforms to the established IMO guidelines and standards (which are yet to be developed and adopted by the IMO). The United States, however, would not apply this prospective procedure to the proposed bridge over the Great Belt.⁹⁸

Sunda and Lombok

Sunda Strait, located between the Indonesian islands of Sumatra and Java, provides the major sea link between the Indian Ocean and the Java Sea (*see* Map 20). It is approximately 50 miles long, and at its narrowest point is 13.8 miles wide. Sangian Island separates the 2.4 mile wide western channel and the 3.7 mile wide eastern channel. Sunda’s governing depth is about 100 feet but is not considered suitable for submerged passage given the hydrographic characteristics of its northern exit and the extent of its commercial use.

Lombok Strait is located between the islands of Bali and Lombok. It is the main alternate route for ships travelling between the Indian Ocean and the East Asian Sea. Its navigational width is 11 miles; the length of the passage from the entrance to the Lombok Strait to the exit of the Strait of Malacca is 620 miles. Its depth provides the most suitable alternate route for deep draught vessels to the Malacca and Singapore Straits.⁹⁹

In 1988, Indonesia reportedly closed these straits for a period of time. The U.S. reaction was described in a letter to a lecturer at the Faculty of Law, University of Sydney, Australia, in part as follows:

The United States was not notified by Indonesia of the closure of the Straits of Lombok and Sunda but, on learning that Indonesia may have ordered its Navy to close those straits for naval exercises and might be conducting naval exercises in a manner that hampered international transit rights, expressed its concern to the appropriate Indonesian governmental officials.

The United States is of the view that interference with the right of straits transit passage or archipelagic sea lanes passage would violate international law as reflected in the 1982 Law of the Sea Convention and the commitments Indonesia made that its practice regarding the archipelagic claim was now fully consistent therewith, on which basis the United States was able in 1986 to be the first maritime nation to recognize Indonesia's archipelagic claim.

Indonesian archipelagic sea lanes and air routes have not been proposed by Indonesia, acted upon by the competent international organizations or designated by Indonesia in accordance with procedures described in article 53 of the LOS Convention. All normal international passage routes through the archipelago are subject to the regime of archipelagic sea lanes passage in any event. The fundamental rules for archipelagic sea lanes passage and transit passage are the same. No nation may, consistent with international law, prohibit passage of foreign vessels or aircraft or act in a manner that interferes with straits transit or archipelagic sea lanes passage. See articles 44 and 54 of the 1982 Law of the Sea Convention which reflect the customary international law on point.

Applying the objective criteria set forth in Parts III and IV of the LOS Convention, it is clear that Lombok, Sunda and Malacca are unquestionably "straits used for international navigation" and, therefore, are subject to the straits transit regime, while Lombok and Sunda also qualify as "normal passage routes used for international navigation or overflight" and thus are subject to the regime of archipelagic sea lanes passage.

The United States cannot accept either express closure of the straits or conduct that has the effect of denying navigation and overflight rights. While it is perfectly reasonable for an archipelagic state to conduct naval exercises in its straits, it may not carry out those exercises in a way that closes the straits, either expressly or constructively, that creates a threat to the safety of users of the straits, or that hampers the right of navigation and overflight through the straits or archipelagic sea lanes.¹⁰⁰

Tiran

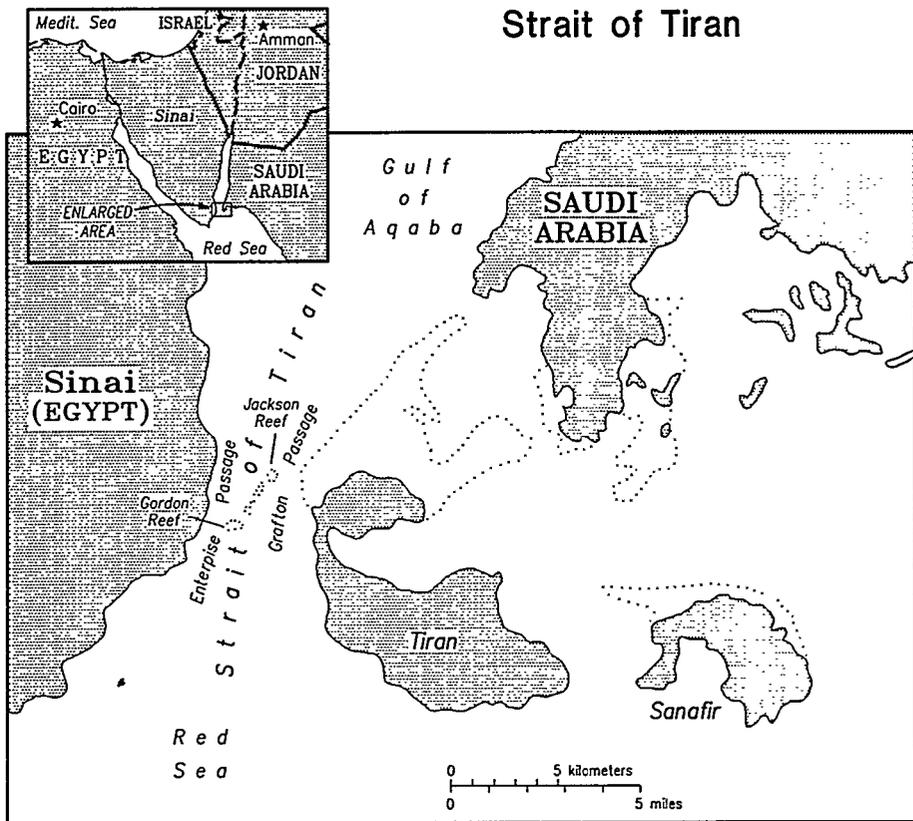
The three mile wide Strait of Tiran connects the 98 mile long Gulf of Aqaba with the Red Sea (*see* Map 31).¹⁰¹ Article V(2) of the Treaty of Peace between Egypt and Israel provides:

The Parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight. The Parties will respect each other's right to navigation and overflight for access to either country through the Strait of Tiran and the Gulf of Aqaba.¹⁰²

When asked about the effect of the proposed LOS Convention on the regime of navigation and overflight in this strait and the Gulf of Aqaba, a U.S. official replied:

Map 31

Strait of Tiran



The U.S. fully supports the continuing applicability and force of freedom of navigation and overflight for the Strait of Tiran and the Gulf of Aqaba as set out in the peace treaty between Egypt and Israel. In the U.S. view, the treaty of peace is fully compatible with the LOS Convention and will continue to prevail. The conclusion of the LOS Convention will not affect these provisions in any way.¹⁰³

On August 23, 1983, Egypt declared upon ratification of the 1982 LOS Convention:

The provisions of the 1979 Peace Treaty between Egypt and Israel concerning passage through the Strait of Tiran and the Gulf of Aqaba come within the framework of the general regime of waters forming straits referred to in Part III of the Convention, wherein it is stipulated that the general regime shall not affect the legal status of waters forming straits and shall include certain obligations with regard to security and the maintenance of order in the State bordering the strait.¹⁰⁴

On December 11, 1984, Israel submitted a statement to the U.N. Secretary-General which stated:

The concerns of the Government of Israel, with regard to the law of the sea, relate principally to ensuring maximum freedom of navigation and overflight everywhere and particularly through straits used for international navigation.

In this regard, the Government of Israel states that the regime of navigation and overflight, confirmed by the 1979 Treaty of Peace between Israel and Egypt, in which the Strait of Tiran and the Gulf of Aqaba are considered by the Parties to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight, is applicable to the said areas. Moreover, being fully compatible with the United Nations Convention on the Law of the Sea, the regime of the Peace Treaty will continue to prevail and to be applicable to the said areas.

It is the understanding of the Government of Israel that the declaration of the Arab Republic of Egypt in this regard, upon its ratification of the [said] Convention, is consonant with the above declaration.¹⁰⁵

United Kingdom Straits

The United Kingdom has asserted the legal regimes applicable in some of the international straits in its waters. The transit passage regime is considered to be applicable in the **Strait of Dover**, the **North Channel** between Scotland and Northern Ireland, and the **Fair Isle Gap** between the Shetlands and Orkneys.¹⁰⁶ The "transit passage" regime was used in a Declaration issued by France and Great Britain setting out the governing regime of navigation in the Dover Straits in conjunction with the signature on November 2, 1988 of an Agreement

establishing a territorial sea boundary in the Straits of Dover.¹⁰⁷ In 1987, the United Kingdom recognized the right of foreign aircraft to exercise the right of transit passage over the Straits of Dover, the North Channel and the Fair Isle Channel between the Shetland and Orkney Islands.¹⁰⁸

The regime of (non-suspendable) innocent passage is said to apply in other United Kingdom straits used for international navigation, such as the **Pentland Firth** south of Orkney and the passage between the Scilly Isles and the mainland of Cornwall.¹⁰⁹

Notes

1. LOS Convention, article 37.
2. See LOS Convention, article 36.
3. LOS Convention, articles 38(2) & 39(1)(c); Moore, *The Regime of Straits and The Third United Nations Conference on the Law of the Sea*, 74 Am. J. Int'l L. 77, 95-102 (1980); 1 O'CONNELL, THE INTERNATIONAL LAW OF THE SEA 331-37 (1982). Compare article 53(3) which defines the parallel concept of archipelagic sea lanes passage as "the exercise . . . of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone." The emphasized words do not appear in article 38(2), but rather in the plural in article 39(1)(c); article 39 also applies *mutatis mutandis* to archipelagic sea lanes passage.
4. U.S. Department of the Navy, *The Commander's Handbook on the Law of Naval Operations*, NWP 9 (Rev. A.)/FMFM 1-10 (1989) [hereinafter NWP 9 (Rev. A)], para. 2.3.3.1.
5. LOS Convention, article 39(1).
6. LOS Convention, article 44.
7. U.S. Department of the Navy, *Annotated Supplement to The Commander's Handbook on the Law of Naval Operations*, NWP 9 (Rev. A.)/FMFM 1-10 (1989) [hereinafter NWP 9 (Rev. A) ANN. SUPP.], para. 2.3.3.1 & n.42.
8. LOS Convention, articles 41(1) & 41(3). The International Maritime Organization is the proper international organization.
9. Presidential Proclamation No. 5928, Dec. 27, 1988, Appendix 3.
10. State Department telegram 202135, July 2, 1985. The Spanish declarations are discussed below, this Chapter, beginning at text accompanying n. 46. Under the 1958 Territorial Sea Convention, international straits overlapped by territorial seas were subject to a regime providing only nonsuspendable innocent surface passage. Territorial Sea Convention, articles 14 & 16(4).
11. *Aide memoire* delivered Dec. 4, 1984, from American Embassy Stockholm. State Department telegram 355149, Dec. 1, 1984; American Embassy Stockholm telegram 08539, Dec. 10, 1984.
12. State Department telegram 375513, Dec. 21, 1984, para. 5.
13. Navy JAG, Alexandria VA, naval message 061630Z June 1988.
14. An English translation of this treaty is set out in Annex 2 to Limits in the Seas No. 105, Colombia - Dominican Republic & Netherlands (Netherlands Antilles) - Venezuela: Maritime Boundaries.
15. U.N. LOS BULL., No. 19, Oct. 1991, at 24; U.N. LOS: Practice of Archipelagic States 247.
16. Treaty Between the Independent State of Papua New Guinea and Australia concerning Sovereignty and Maritime Boundaries in the areas between the two countries, including the area known as Torres Strait, and related matters, signed at Sydney, Dec. 18, 1978, 18 I.L.M. 291 (1979); U.N. LOS: Practice of Archipelagic States 185.
17. South Pacific Nuclear Free Zone Treaty, 24 I.L.M. 1442 (1985).
18. Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1990. S. Treaty Doc. 103-5, at 8.
19. U.N. LOS: Practice of Archipelagic States 161.
20. Reportedly to preclude any implication of incorporation by reference of the entire straits regime, 37 Int'l & Comp. L.Q. 415 (1988).
21. UK White Paper, France No. 1, Cm. 557 (1989); FCO Press Release No. 100, Nov. 2, 1988; reprinted in 59 Brit. Y. B. Int'l L. 524-25 (1988); U.N. LOS BULL., No. 14, Dec. 1989, at 14; U.N., Current Developments No. II, at 263; and Nandan & Anderson, *Straits Used For International Navigation: A Commentary*

on Part III of the United Nations Convention on the Law of the Sea 1982, 60 Brit. Y. B. Int'l L. 159, 170 n. 34 (1989). See also n. 107 *infra*.

22. See CYUYVERS, *THE STRAITS OF DOVER* (1986).

23. Footnotes omitted. The Malaysia-Indonesia-Singapore statements and addenda may be found in U.N. Doc. A/CONF.62/L.145, 16 Official Records of the Third U.N. Conference on the Law of the Sea 250-53 [hereinafter Official Records]. On the 1904 Anglo-French Declaration, see n. 46 *infra*.

24. U.N. Doc. A/47/512, Nov. 5, 1992, para. 23, at 8.

25. U.N. GA Doc. A/48/90, Feb. 22, 1993, reprinted in U.N. LOS BULL., No. 23, June 1993, at 108.

26. LOS Convention, article 45.

27. 1975 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 432 [hereinafter DIGEST] ("the view of the United States Government is that vessels proceeding to or departing from United States ports through the waters of Head Harbour Passage enjoy the right of innocent passage under international law. This right is not subject to unreasonable or arbitrary interference or suspension."); Moore, *The Regime of Straits and the Third United Nations Conference on the Law of the Sea*, 74 Am. J. Int'l L. 77, 112 (1980).

28. LOS Convention, article 38(1). For a list of such straits, see OFFSHORE CONSULTANTS, INC., *NAVIGATIONAL RESTRICTIONS WITHIN THE NEW LOS CONTEXT: GEOGRAPHICAL IMPLICATIONS FOR THE UNITED STATES* Table 8, following page 161 (L.M. Alexander, ed. Final Report under Defense Supply Service Contract 903-84-C-0276, Dec. 1986) [hereinafter ALEXANDER, *NAVIGATIONAL RESTRICTIONS*]. The United Kingdom claims the regime of nonsuspendable innocent passage applies to the Pentland Firth south of Orkney and the passage between the Scilly Isles and the mainland of Cornwall. 484 H.L. Hansard, col. 382, Feb. 5, 1987.

29. U.N. Current Developments No. II, at 94.

30. American Embassy Belgrade Diplomatic Note No. 062 dated Aug. 22, 1986, State Department telegram 264932, Aug. 22, 1986; American Embassy Belgrade telegram 00674, Jan. 23, 1987. The Yugoslavian Foreign Ministry reply, in its Note no. 194 dated Jan. 23, 1987, read as follows:

Transit passage through straits used for international navigation is a new navigation regime agreed upon for the first time at the Third United Nations Conference on the Law of the Sea and introduced in the United Nations Convention on the Law of the Sea. The transformation of the provisions that form that regime into customary international law will be a complex and gradual process which will, like in other fields of international law, take place in accordance with the principles most precisely determined by the International Court of Justice in the case of the Delimitation of the Continental Shelf in the North Sea in 1969.

The purpose of the regime of transit passage is to enable foreign ships passing through straits used for international navigation between a part of the high seas or exclusive economic zone and another part of the high seas or exclusive economic zone not to navigate under the more strict and restrictive regime of innocent passage.

Yugoslavia's statement concerning the rules of the United Nations Convention on the Law of the Sea in transit passage is not designed to prevent the exercise of the right of transit passage. It relates only to situations when there are more than one strait with the same navigational conditions.

Yugoslavia is not the only country which made the statement on transit passage.

31. LOS Convention, article 36.

32. *Corsica Channel Case*, 1949 I.C.J. Rep. 4, 28.

33. Article 16(4).

34. Articles 34(1), 36 & 45.

35. Grunawalt, *United States Policy on International Straits*, 18 Ocean Dev. & Int'l L. J. 445, 456 (1987).

36. ALEXANDER, *NAVIGATIONAL RESTRICTIONS* 153-54.

37. Office of the Special Representative of the Secretary-General for the Law of the Sea, *The Law of the Sea: Status of the United Nations Convention on the Law of the Sea*, U.N. Sales No. E.85.V.5, at 14 (1985).

38. *Id.* at 26.

39. See ALEXANDERSSON, *THE BALTIC STRAITS* 69 (1982).

40. Geneva, Oct. 20, 1921, 9 L.N.T.S. 211. Article 5 of the Convention provides "The prohibition to send warships into [the waters of the Aland Islands] or to station them there shall not prejudice the freedom of innocent passage through the territorial waters. Such passage shall continue to be governed by the international rules and usage in force." The parties to this Convention include Denmark, Estonia, Finland,

Germany, Italy, Latvia, Poland, Sweden, and the United Kingdom. The Oresund and the Belts are discussed below, this chapter.

41. See LAPIDOTH, *THE RED SEA AND THE GULF OF ADEN* 130-49 (1982).

42. Diplomatic Note No. 449 dated Oct. 6, 1986, delivered by American Embassy Sanaa, pursuant to instructions contained in State Department telegram 312052, Oct. 3, 1986. American Embassy Sanaa telegram 06770, Oct. 6, 1986. The Yemeni declaration of Dec. 10, 1982, may be found in U.N., *Status of the United Nations Convention on the Law of the Sea* 29. See also 1979 DIGEST 1724.

43. See 2 BRUEL, *INTERNATIONAL STRAITS* 252-55 (1947); ROZAKIS, *THE TURKISH STRAITS* (1987); and Note by Turkey; Navigational and Environmental Safety in the Turkish Straits, I.M.O. doc. MSC/62/INF.10, Mar. 26, 1993.

44. 173 L.N.T.S. 213, 31 Am. J. Int'l L. Supp. 4. See BRUEL, *INTERNATIONAL STRAITS* 252-426.

45. See TRUVER, *THE STRAIT OF GIBRALTAR AND THE MEDITERRANEAN* (1980) and 2 BRUEL, *INTERNATIONAL STRAITS* 116-99.

46. While it may be noted that free passage of the Straits of Gibraltar was agreed to in a series of agreements between France, Spain and Great Britain in the early 20th Century, neither Spain nor Morocco have asserted the Article 35(c) exception applies. Article VII of the Declaration between the United Kingdom and France respecting Egypt and Morocco, London, Apr. 8, 1904, 195 Parry's T.S. 198, acceded to by Spain in the Declaration of Paris, Oct. 3, 1904, 196 Parry's T.S. 353; Declarations on Entente on Mediterranean Affairs, Paris, May 16, 1907, 204 Parry's T.S. 176 (France and Spain) and London, May 16, 1907, 204 Parry's T.S. 179 (United Kingdom and Spain); and article 6 of the France-Spain Convention concerning Morocco, Madrid, Nov. 27, 1912, 217 Parry's T.S. 288.

47. Diplomatic Note No. 806 dated Aug. 14, 1985, delivered by American Embassy Madrid, State Department telegram 202135, July 2, 1985; American Embassy Madrid telegram 05509, Apr. 28, 1989.

48. The Spanish declaration of Apr. 12, 1984, may be found in U.N., *Status of the United Nations Convention on the Law of the Sea* 25, U.N. Sales No. E85.V.5 (1985) and U.N. Multilateral Treaties Deposited with the Secretary-General, *Status as of Dec. 31, 1992*, at 772-73.

49. State Department telegram 202135, *supra* n. 47, paras. 6 & 7.

50. See RAMAZANI, *THE PERSIAN GULF AND THE STRAIT OF HORMUZ* (1979).

51. The statement of Iran accompanying its signature of the Law of the Sea Convention on Dec. 10, 1982, may be found in U.N., *Status of the United Nations Convention on the Law of the Sea* 18.

52. U.N. Doc. A/CONF.62/WS/37, 17 Official Records 244. The statement of Iran accompanying its signature of the Law of the Sea Convention on Dec. 10, 1982, was also protested in a Diplomatic Note to the Embassy of Algeria dated Aug. 17, 1987, State Department File No. P87-0098-1262.

53. I Public Papers of the Presidents: Ronald Reagan 1984, at 251. President Reagan expressed essentially the same commitment on a number of occasions thereafter, in an address before the Center for Strategic and International Studies, Apr. 6, 1984, (*id.*, at 481), in a radio address to the nation, Sept. 21, 1985 (*id.*, 1985 Bk. II, at 1125), and in statements on Jan. 23, Feb. 25, and May 30, 1987 (*id.* 1987 Bk. I, at 46, 181, 581-82). See further 1980 DIGEST 625-26.

54. Diplomatic Note to the Embassy of the Democratic and Popular Republic of Algeria dated Aug. 17, 1987, State Department File No. P87 0098-1261; Algerian Embassy at Washington Diplomatic Note No. D.E/4.87, dated Apr. 30, 1987, State Department File No. P87 0063-0052.

55. Diplomatic Note No. 1, dated Jan. 2, 1985, delivered by American Embassy Moscow, State Department telegram 381259, Dec. 29, 1984. The Soviet Note MFA No. 81/USA read as follows:

On November 30, 1984, vessels of the U.S. Navy—the cruiser "Sterett" and the destroyer "J. Young"—violated the state boundary of the USSR in the Strait of Friza (Kuril Islands). The vessels in question crossed the boundaries of the territorial waters of the USSR at 07:15 (Moscow time) at a point with coordinates Lat. 45 degrees 26.9 minutes N, Long. 149 degrees 14.6 minutes E and departed them at 08:07 at a point Lat. 45 degrees 30 minutes N. Long. 149 degrees 4.2 minutes E.

The American side knows well that peaceful passage of foreign military vessels through the territorial waters of the USSR for the purpose of traversing them without incursion into inner waters and ports is permitted in accordance with the Rules of Navigation and Passage Through the Territorial Waters (Territorial Sea), Inner Waters and Ports of the USSR by Foreign Military Vessels, which is published every year in the Notice to Mariners Edition No. 1, on the routes commonly used by international shipping. In the area of the Kuril Islands there is such a route passing through the fourth Kuril Strait.

Therefore, it is completely obvious that the actions of the U.S. Navy vessels bore a premeditated and provocative character.

This is not the first instance of such violations in the recent past to be brought to the attention of the American side.

The MFA of the USSR protests the new violation by American military vessels of the state boundaries of the USSR and insists that the American side take effective measures to exclude repetition of such incidents in the future.

Diplomatic Note No. 81/USA from the Ministry of Foreign Affairs, Moscow, Dec. 3, 1984, American Embassy Moscow telegram 15281, Dec. 3, 1984. In rejecting the U.S. note of Jan. 2, 1985 in Note No. 11/USA delivered Mar. 14, 1985, the Ministry of Foreign Affairs stood by its Note No. 81/USA of Dec. 3, 1984, American Embassy Moscow telegram 03262, Mar. 15, 1985.

The U.S. Note dated May 23, 1957, referred to in the U.S. Note of Jan. 2, 1985 rejects the Soviet claim of right to possession of the Kuril islands and may be found in 3 WHITEMAN, DIGEST OF INTERNATIONAL LAW 581-83. The State Department's instructions to the Embassy noted that:

The term "Friza Strait" is an objectionable term to the USG. "Etorofu Strait" is our preferred formulation. For the record also, the USG refers to the islands immediately to the southwest of the Etorofu Strait by their given names, i.e. Etorofu, Kunashiri, Shikotan, and the Hamomais (vice Little Kuriles or Southern Kuriles).

The instructions also stated that "the principles expressed [in this note] regarding innocent passage of warships are applicable to the November 23 [1984] exercise of innocent passage in the Black Sea by the USS *Spruance* and *Coontz*." State Department telegram 381250, Dec. 29, 1984, para. 5.

The Soviet legislation may be found in translation in 24 I.L.M. 1717 (1985). See Butler, *Innocent Passage and the 1982 Convention: The Influence of Soviet Law and Policy*, 81 Am. J. Int'l L. 331 (1987), and Neubauer, *The Right of Innocent Passage for Warships in the Territorial Sea: A Response to the Soviet Union*, Nav. War Coll. Rev., Spring 1988, at 49.

56. Diplomatic note delivered July 18, 1986, by the American Embassy Moscow, State Department telegram 220023, July 14, 1986; American Embassy Moscow telegram 12330, July 18, 1986. The Soviet statement of June 11, 1986 read as follows:

On June 8 of this year at 0555 Moscow time the USN frigate "Hammond" violated the state border of the USSR in the region of the Kuril islands, passing from the Sea of Okhotsk to the Pacific Ocean through Soviet territorial waters between the islands Raykoke and Matua (the Golovnina strait). At this time the frigate demonstratively disregarded the warning signals from the Soviet cruiser *Minsk* concerning the violation of the borders.

The American side has already repeatedly asserted that peaceful passage by foreign military vessels through the territorial waters of the USSR with the aim of their intersection is permitted along routes used commonly for international navigation. There is such a route in the region of the Kuril Islands, passing through the fourth Kuril strait.

Therefore, it is completely obvious that the action of the frigate *Hammond* takes on a premeditated and provocational character.

The USSR MFA protests on the occasion of the violation by a vessel of the USN of the USSR state border and demands that the American side adopt, at last, appropriate measures to prevent similar occurrences at odds with the demands of the laws and regulations of the USSR, relating to the regime of Soviet territorial waters.

It should be clear that continuing violation of the Soviet state border by American military vessels can have the most serious consequences, responsibility for which would lie entirely and completely with the U.S.

Note verbale from the Ministry of Foreign Affairs, Moscow, June 11, 1986, American Embassy Moscow telegram 09922, June 11, 1986. For the results of the negotiations which followed this incident, and another in the Black Sea in February 1988, see Chapter X, n. 4 and accompanying text. The 1983 Soviet Rules were amended effective Sept. 23, 1989, to eliminate the attempt to restrict innocent passage of warships to five named "routes ordinarily used for international navigation."

57. See 2 BRUEL, INTERNATIONAL STRAITS 200-51 and MORRIS, THE STRAIT OF MAGELLAN (1989).

58. Signed Jul. 23, 1881, 82 Brit. Foreign & State Papers 1103, 159 Parry's T.S. 45.
59. Signed Nov. 29, 1984, 24 I.L.M., 11, 13 (1985).
60. State Department telegram 375513, Dec. 21, 1984, paras. 4 & 5.
61. LEIFER, MALACCA, SINGAPORE AND INDONESIAN STRAITS 52-56 (1978). Navigational difficulties are described at 56-62. See also the Report of the I.M.O. Working Group on the Malacca Strait Area, I.M.O. doc. MSC/62/INF.3, at 6-8 (1993).
62. U.N. Doc. A.CONF.62/L.145/Add.5, 16 Official Records 251. Add. 1 - 8, *id.* at 251-53, contain the confirmations of Indonesia, Singapore, France, the United Kingdom, the United States, Japan, Australia and the Federal Republic of Germany, respectively.
63. See I.M.O., Ships' Routing Part B Section V (traffic separation schemes), Section III (deep water routes), and Part F (associated rules) (6th ed. 1991).
64. LOS Convention, article 38(1).
65. Italian Minister of Merchant Marine decree, Temporary Prohibition in the Straits of Messina for a Category of Ships, dated Mar. 27, 1985 (published in Gazzetta Ufficiale No. 76, Mar. 29, 1985, p. 2408), an English translation of which may be found in American Embassy Rome telegram 08480, Apr. 3, 1985.
66. Diplomatic Note delivered Apr. 5, 1985, from American Embassy Rome, State Department telegram 102199, Apr. 4, 1985; American Embassy Rome telegram 08736, Apr. 5, 1985.
67. *Id.* para. 4. See also *supra* Chapter X for other U.S. objections to requirements for compulsory pilotage of warships. This 45-day prohibition was revised by Article 6 of Minister of Merchant Marine decree dated May 8, 1985 (published in the Gazzetta Ufficiale no. 110, May 11, 1985, an English translation of which may be found in American Embassy Rome telegram 12263, May 15, 1985), effective May 15, 1985, to apply to vessels 50,000 tons and above carrying oil products or other substances hazardous to the environment. On May 15, 1985, the Italian Ministry of Foreign Affairs replied in a *note verbale* in relevant part, as follows:

As may be noted from the text of the May 8, 1985 decree . . . , the measures decided with the intent of decreasing the risk of maritime accidents are designated as "provisional" while waiting for the construction and putting into operation of technical installations to aid navigation in the Straits.

The provisional measures established with the decree in question appeared indispensable to save the marine environment and to guarantee the safety of the coasts of the zone of interest and of the inhabitants of the shore. Therefore, these measures cannot be regarded as directed toward the limitation of the right of innocent passage through the straits, as defined by the rules of international law in force, but rather as the temporary regulation of it with the aim of achieving goals of safeguarding the environment and the safety of the coasts as provided by other instruments of international law and especially by the IMO Convention quoted in the Preamble of the Decree.

It must be also noted that for this specific case there is an alternate route of similar suitability (through the Sicily Channel) and that some oil companies (especially AGIP and ESSO) have limited themselves by excluding from passage through the Messina Straits their own oil tankers over 50,000 tons.

From the reading of the May 8, 1985, decree it can be concluded that the decree itself concerns solely merchant ships and it is therefore clear that it is not to be applied to warships, and according to art. 3 of the November 2, 1973 London Convention for the Prevention of Pollution from Ships, is not to be applied to auxiliary warships or other ships belonging to a state or operated by such state on non-commercial service.

Informal English translation set out in American Embassy Rome telegram 12571, May 17, 1985. A new automated control system for navigation in the Strait of Messina went into effect June 1, 1987. American Embassy Rome telegram 12611, May 26, 1987.

68. See BUTLER, NORTHEAST ARCTIC PASSAGE (1978).
69. *Aide memoire* from the Soviet Ministry of Foreign Affairs to American Embassy Moscow, dated July 21, 1964, American Embassy Moscow telegram 17002, July 21, 1964.
70. American Embassy, Moscow *aide memoire* dated June 22, 1965, State Department File No. POL 33 R. The Soviet side, in an *aide memoire* to American Embassy Moscow on July 26, 1965, confirmed its position contained in its *aide memoire* of July 21, 1964, American Embassy Moscow telegram 18098, July 26, 1964.
71. Soviet Ministry of Foreign Affairs Note 45/USA dated Oct. 27, 1965, to American Embassy Moscow, American Embassy Moscow telegram 23048, Oct. 28, 1965.
72. American Embassy Moscow Note delivered in Nov. 1965 pursuant to State telegram 14083, Nov. 26, 1965, File POL 33-6 US-USSR.

73. Department of State Note dated Aug. 14, 1967 to the Soviet Embassy in Washington, State Department File No. SCI 31 US.
74. Soviet Ministry of Foreign Affairs *aide memoire* to American Embassy Moscow dated Aug. 24, 1967, American Embassy Moscow telegram 754, Aug. 25, 1967.
75. American Embassy Moscow telegram 811, Aug. 28, 1967, State Department File SCI 31 US.
76. State Department telegram 029187, Aug. 30, 1967, State Department File SCI 31 US; American Embassy Moscow telegram 841, Aug. 30, 1967.
77. DEP'T ST. BULL., No. 1473, Sept. 18, 1967, at 362. See further, Franckz, *Non-Soviet Shipping in the Northeast Passage, and the Legal Status of Proliv Vil'kitskogo*, Polar Record, vol. 24, no. 151, pp. 269-76 (1988); Butler, *Soviet Concepts of Innocent Passage*, 7 Harv. Int'l L. J. 113-14 (1965); BUTLER, *NORTHEAST ARCTIC PASSAGE* 86 (1978); Ackley, *The Soviet Navy's Role in Foreign Policy*, Nav. War Coll. Rev., at 53-55 (May 1972); Pharand, *Soviet Union Warns United States Against Use of Northeast Passage*, 62 Am. J. Int'l L. 927-35 (1968); and Pharand, *Innocent Passage in the Arctic*, 1968 Can. Y.B. Int'l L. 3, 15-41.
78. See Rothwell, *The Canadian-U.S. Northwest Passage: A Reassessment*, 26 Cornell Int'l L.J. 331 (1993), Pharand, *Canada's Sovereignty over the North West Passage*, 10 Mich J. Int'l L. 653 (1989) and PHARAND, *THE NORTHWEST PASSAGE ARCTIC STRAITS* (1984). The Canadian claim is also discussed in Pullen, *What Price Canadian Sovereignty?*, U.S. Nav. Inst. Proc. 66 (Sept. 1987) wherein Captain Pullen, Canadian Navy (retired), establishes that the Northwest Passage is the sea route that links the Atlantic and Pacific Oceans north of America, and lists the 36 transits of the Passage from 1906 to 1987. The United Kingdom has stated that it does not recognize Canadian sovereignty over all of the waters of the Canadian Arctic archipelago. 58 Brit. Y.B. Int'l L. 1987, at 586 (1988).
79. In 1970, the United Kingdom reserved its rights in connection with the 1970 Canadian Act. 55 Brit. Y.B. Int'l L. 1984, at 553 (1985). The United States continues to object to the application of the law in so far as it purports to apply to sovereign immune vessels. The United States believes that internationally agreed standards should be developed to replace many of its unilateral provisions. However, the United States considers that U.S. commercial vessels are subject to the law. The United States has agreed to consult with Canada in the development of standards and operational procedures to facilitate commercial navigation in the Arctic.
- The Arctic Waters Pollution Prevention Control Act preceded the Third U.N. Conference on the Law of the Sea (UNCLOS III) and the LOS Convention's non-seabed articles which the United States considers to be reflective of customary international law. During UNCLOS III, collaboration among the United States, Canada and the USSR resulted in the so-called "ice-covered areas Article," article 234, developed primarily to address satisfactorily the Canadian Arctic environmental concerns. Article 234 recognizes more extensive coastal State rights with respect to prescriptive and enforcement competence in vessel-source pollution prevention and control in areas of the EEZ that are usually ice-covered than may be exerted in other areas of the EEZ. Article 234, however, does not specifically deal with straits; thus it leaves open the issue whether or not the Northwest Passage constitutes a strait used for international navigation. Furthermore, article 234 does not apply to sovereign immune vessels. See also Chapter XV, text accompanying nn. 38-40 *infra*.
- Over the years, Canada has argued that the waters of the Canadian Arctic are internal waters, territorial waters, or a mixture thereof. See, for example., Canadian External Affairs Legal Bureau briefing of May 21, 1987, in 1987 Can. Y.B. Int'l L. 406, and Legal Bureau paper dated Mar. 29, 1988, in 1988 *id.* 314. The Canadian public clearly regards the area as integral with and indistinguishable from the sovereign continental mainland areas of Canada. On the other hand, the United States has firmly taken the position that the Northwest Passage waters are not internal and that they are subject to the non-suspendable navigational regime of transit passage. The United States believes they form a strait used for international navigation between one area of the high seas and another.
80. State Department telegram 151842, May 17, 1985; American Embassy Ottawa telegram 03785, May 21, 1985. See also Canadian Secretary of State for External Affairs Joe Clark's letter to the editor of *Macleans*, Apr. 28, 1986, at 4. The "Volpe-Jamieson Agreement" of June 18, 1970, a memorandum of understanding between the U.S. Department of Transportation and the Canadian Ministry of Transport concerning research and development cooperation in transportation, is not printed.
81. Canadian Embassy Washington DC Note No. 331, dated June 11, 1985, to the State Department, Department of State File No. P85 0118 0711/0714. See also Pharand, *Canada's Sovereignty over the Newly Enclosed Arctic Waters*, 1987 Can. Y.B. Int'l L. 325, at 326.
82. American Embassy Ottawa Note No. 222 of June 24, 1985, Department of State File No. P85 0118 0711/0714. See also Pharand, *supra* n. 81, at 326.
83. Canadian Embassy, Washington, DC, Note No. 433, dated July 31, 1985, Department of State File No. P85 0118-0711. See also the Statement of Canadian Secretary of State For External Affairs, Joe Clark, in the Canadian *House of Commons Debates*, Sept. 10, 1985, at 6462, *Statement Series 85/49*, excerpted in 1986 Can. Y.B. Int'l L. 417 and 24 I.L.M., 1724 (1985).

84. See *supra* Chapter IV regarding the Canadian Order-in-Council of September 10, 1985, establishing straight baselines around the outer perimeter of the Canadian arctic islands, effective January 1, 1986, which followed the public reaction in Canada to the transit of the *Polar Sea*.

85. T.I.A.S. No. 11565, 28 I.L.M. 142 (1989), summarized in 82 Am. J. Int'l L. 340-41 (1988).

86. Joint Press Conference, Jan. 11, 1988, Department of State Press Release No. 3, Jan. 14, 1988. See also Canadian House of Commons Debates, Jan. 18, 1988, pp. 11998-99, *excepted* in 1988 Can. Y.B. Int'l L. 350, and Canadian External Affairs Legal Bureau paper dated Mar. 29, 1988, in 1988 Can. Y.B. Int'l L. 315. Negotiation of this agreement is discussed in Howson, *Breaking the Ice: The Canadian-American Dispute over the Arctic's Northwest Passage*, 26 Colum. J. Transnat'l L. 337 (1988).

87. American Embassy Ottawa Note No. 425, dated Oct. 10, 1988, Department of State File No. P88 0129-0576, 28 Int'l Legal Mat'ls 144, 83 Am. J. Int'l L. 64 (1989).

88. Department of State File No. P88 0129-0576, 28 I.L.M. 145. The *Polar Star* completed its transit of the Passage on October 20, 1988, accompanied by the Canadian cutter *John A. MacDonald* as far as Baffin Bay. The *Polar Star* transited the Northwest Passage from east to west in August 1989; the *Polar Sea* transited from east to west in September 1990. Both transits occurred pursuant to virtually identical notes exchanged in accordance with this agreement.

89. See ALEXANDERSSON, THE BALTIC STRAITS 63-69 (1982) and 2. BRUEL, INTERNATIONAL STRAITS: A TREATISE ON INTERNATIONAL LAW, 11-115 (1947).

90. 116 Perry's T.S. 357, 47 Brit. Foreign & State Papers 24.

91. 11 Stat. 719, T.S. 67, 7 Miller 519, 7 Bevans 11, Articles I and III.

92. Office of the Special Representative of the Secretary-General for the Law of the Sea, The Law of the Sea: Status of the United Nations Convention on the Law of the Sea, U.N. Sales No. E.85.V.5, at 26 (1985).

93. 7 Miller 524-86; 2 BRUEL, *supra* n. 89, at 41 & 84 (the 1857 Conventions apply only to merchant ships).

94. Compare the view of Bruel that the 1857 treaties only abolish extraordinary rights leaving the straits to be governed in the future by the general rules of international law. 2 BRUEL, *supra* n. 89, at 45 & 95.

95. ALEXANDERSSON, *supra* n. 89, at 82-86 & 89.

96. 1991 I.C.J. Rep. 12.

97. 1992 I.C.J. Rep. 348 (order removing case from the general list). See also 32 I.L.M. 101 (1993).

98. Schachte, *International Straits and Navigational Freedoms*, 23 Ocean Dev. & Int'l L. 179, at 193-94 (1993).

99. LEIFER, *supra* n. 61, at 76-81.

100. David H. Small, Assistant Legal Adviser for Oceans and International Environmental and Scientific Affairs, letter dated Apr. 4, 1989, Department of State File No. P89 0049-2112, *quoted* in 83 Am. J. Int'l L. 559-61 (1989). The closure was also protested by Japan, Spain (for the EC), and the Federal Republic of Germany in 1989, and by Australia on October 10, 1988. 12 Aust. Y.B. Int'l L. 382-83 (1992); Treves, 223 Recueil des Cours 134 (1990-4). See Rothwell, *The Indonesian Straits Incident: Transit or ASLP?*, Marine Policy at 491-506 (Nov. 1990) and Lowry, *Why Indonesia Closed the Strait in September 1988*, 16 Studies in Conflict and Terrorism 171 (1993).

101. See LAPIDOTH, THE RED SEA AND THE GULF OF ADEN 119-27 & 172-83 (1982).

102. Mar. 26, 1979, 1979 DIGEST 1691, 18 I.L.M. 362 (1979). For an earlier analysis of access to the ports in the Gulf of Aqaba by the Department's Special Adviser on Geography (Boggs), see 5 Department of State, FOREIGN RELATIONS OF THE UNITED STATES 1951, *The Near East and Africa* 585-88 (1982).

103. Assistant Secretary of State James L. Malone, Special Representative of the President to the Law of the Sea Conference, at a January 29, 1982 press conference at the State Department, *reprinted* in 128 Cong. Rec. S4089, Apr. 27, 1982. This statement was quoted in full by Ambassador Shabti Rosenne as part of the Israeli delegation's statement at the final session of UNCLOS III in December 1982, 17 Official Records 84, para. 20. See also 1980 DIGEST 624.

104. U.N. Law of the Sea Bulletin, No. 3, Mar. 1984, at 14. Compare Lapidoth, *The Strait of Tiran, the Gulf of Aqaba, and the 1979 Treaty of Peace Between Egypt and Israel*, 77 Am. J. Int'l L. 84 (1983) with el Baradei, *The Egyptian-Israeli Peace Treaty and Access to the Gulf of Aqaba: A New Legal Regime*, 76 Am. J. Int'l L. 532 (1982). See also 1980 DIGEST 623-25.

105. U.N. Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 776 (1993).

106. 484 H.L. Hansard (6th ser.), col. 382, Feb. 5, 1987; 58 Brit. Y.B. Int'l L. 1987, at 600 (1988); *aide memoire* from the British Embassy, Washington, DC, May 26, 1987, Department of State File No. P87 0069-0487.

107. UK White Paper, France No. 1, Cm. 557 (1989); FCO Press Release No. 100, Nov. 2, 1988, 59 Brit. Y.B. Int'l L. 1988, at 525 (1989); U.N. LOS BULL., No. 14, Dec. 1989, at 14:

The existence of a specific régime of navigation in straits is generally accepted in the current state of international law. The need for such a régime is particularly clear in straits, such as the Straits of Dover, used for international navigation and linking two parts of the high seas or economic zones in the absence of any other route of similar convenience with respect to navigation.

In consequence, the two Governments recognize rights of unimpeded transit passage for merchant vessels, state vessels and, in particular, warships following their normal mode of navigation, as well as the right of overflight for aircraft, in the Straits of Dover. It is understood that, in accordance with the principles governing this régime under the rules of international law, such passage will be exercised in a continuous and expeditious manner.

The two Governments will continue to co-operate closely, both bilaterally and through the International Maritime organization, in the interests of ensuring the safety of navigation in the Straits of Dover, as well as on the southern North Sea and the Channel. In particular, the traffic separation scheme in the Straits of Dover will not be affected by the entry into force of the Agreement.

With due regard to the interests of the coastal States the two Governments will also take, in accordance with international agreements in force and generally accepted rules and regulations, measures necessary in order to prevent, reduce and control pollution of the marine environment by vessels.

108. 60 Brit. Y.B. Int'l L. 1989, at 668-69 (1990).

109. 484 H.L. Hansard (6th ser.), col. 382, Feb. 5, 1987.

Chapter XII

Overflight Restrictions

The United States has protested the claims of several countries claiming jurisdiction to control overflight of ocean areas not subject to such jurisdiction. In most cases, these claims correspond with illegal territorial sea claims that exceed the 12 mile limit.

In 1986, Cuba complained to the United States that U.S. military aircraft were operating within the Cuban Flight Information Region (FIR) without Cuban permission. The United States responded on August 20, 1986, as follows:

The Department of State refers to the note of the Ministry of Foreign Affairs of Cuba dated May 15, 1986, concerning the interception of an unarmed United States Coast Guard HU-25A Falcon by two Cuban MIG-21 aircraft on December 23, 1985, which was the subject of its note dated December 27, 1985.

While the Government of the United States welcomes the statement in the Ministry's note that Cuba seeks to avoid any incident in air navigation, the Government of the United States does not accept the description of the interception contained in that note and stands by the description of the interception and the protest contained in its note of December 27, 1985.

Furthermore, the Government of the United States rejects the implicit assertion in the note of 16 May, 1986, that state aircraft of the United States are required to notify and obtain authorization from Cuban authorities before entering Flight Information Regions (FIR) administered by Cuba. There is no authority for the imposition of such a requirement. It is therefore meaningless for the note to speak of this incident as a "violation" of the Cuban FIR. There can be no justification for the Cuban attempt to interfere with the flight of the U.S. Coast Guard aircraft in international airspace, thereby endangering the lives of the Coast Guard crew.

The Government of the United States accordingly reiterates its strong protest of the actions of the Government of the Republic of Cuba.¹

In August 1986, Ecuador interfered with the flight of a U.S. Air Force aircraft flying over the high seas more than 175 miles from the Ecuadorian coast. The United States had protested Ecuador's claim to a 200-mile territorial sea in 1967.² The State Department instructed American Embassy Quito to protest, drawing on the following points:

1. Airway Upper Lima 308 comes no closer than 175 nautical miles (nm) to the Ecuador coast, and customary law as reflected in the 1982 Law of the Sea Convention (which neither the U.S. nor Ecuador has signed, but for different reasons) permits a territorial sea claim over the sea and adjacent airspace (i.e.

sovereignty) of no more than 12 nm from the coast. Ecuador claims a 200 nm territorial sea, which the U.S. does not recognize and which we protested in 1967. Except as might be required under the Convention on International Civil Aviation (Chicago Convention), the U.S. would oppose any attempt by Ecuador to require aircraft to give prior notice or seek prior permission in order to overfly areas beyond 12 nm from the coast.

2. Under Annex 2 to the Chicago Convention civil aircraft which expect to transit a Flight Information Region (FIR) must file a flight plan, either at least 30 minutes prior to take off or at least 10 minutes prior to entering a particular FIR, so to that extent civil aircraft are subject to a prior notification requirement. Civil aircraft must also abide by local flight regulations and instructions while in that FIR. While Annex 2 envisions variations from the 30/10 minute filing rule, the U.S. is generally opposed to efforts by any country to impose more burdensome requirements in the absence of compelling circumstances.

3. The Embassy can approach appropriate GOE officials to reiterate our concern that such an incident not happen again, that the U.S. does not recognize Ecuadorian territorial sea/airspace claims beyond 12 nautical miles from the coast, and our hope that any new Ecuadorian regulations will be in full conformity with international aviation standards. Should the Ecuadorans seek advice or consultations on drafting their regulations, we would, of course, be happy to assist.³

The United States protested **Libya's** establishment in 1973 of a "restricted area" of airspace within a 100 mile radius of Tripoli.⁴

In 1986, **Peru** complained that a USAF C-141 aircraft did not receive permission to fly into Peruvian claimed airspace. The United States responded as follows:

The USG makes reference to an incident which occurred on August 8, 1986, in which Peruvian authorities claimed the right to require a flight clearance request/approval for a US Air Force C-141 aircraft, tail number 50250, flying no closer than 80 miles off the Peruvian coast enroute from Santiago to Panama. Customary international law permits a state to claim a territorial sea and a corresponding territorial airspace up to twelve miles in breadth. Beyond this limit, military or other state aircraft operate in international airspace and are not subject to the jurisdiction and control of air traffic control authorities of other countries. Accordingly, no clearance or approval is required for flights of U.S. military aircraft in international airspace. The USG wishes to call the attention of the GOP to this incident and reiterates that there was no justification under international law for such interference with the freedom of overflight by US Air Force aircraft.⁵

Information provided to the Embassy by the Department of State for use in connection with delivery of this note included the following:

International law does not support the Peruvian claim to a 200nm territorial sea. USG respects Peruvian claim only out to a distance of 12nm, beyond which the high seas freedoms of navigation and overflight exist.

Although under the Chicago Convention, civil aircraft operating in international airspace are subject to certain International Civil Aviation Organization (ICAO) procedures when passing through a Flight Information Region (FIR) of another country, the military aircraft operating in international airspace are not subject to these procedures. State aircraft are not bound to comply with instructions of another nation's Air Traffic Control authorities while operating in international airspace.

As a matter of policy, US military aircraft operating in international airspace normally comply with ICAO procedures except when compliance would not be in the best interests of the US because of military contingencies, classification of missions, political necessity or mission accomplishment. Aircraft then fly under "due regard" for safety of other aircraft.⁶

Following several similar incidents with Peru in 1987 and 1988, the United States protested as follows:

. . . to refer to an incident occurring on 10 January 1988. On that date, a C-135 aircraft of the United States Air Force was flying over the Pacific Ocean off the coast of Peru, its closest point of approach to the Peruvian coast having been approximately 80 nautical miles. While the aircraft was thus operating in international airspace, it was challenged by Peruvian authorities on the grounds that it was operating in claimed Peruvian airspace without authorization.

This is the fourth such incident to have occurred since August 1986. During one such incident, which occurred on 5 August 1987, not only did Peruvian authorities unjustifiably challenge the right of the U.S. Air Force aircraft to transit off the Peruvian coast, but an intercepting aircraft of the Peruvian air force operated in a manner that unnecessarily and intentionally endangered the safety of the transiting U.S. Air Force aircraft and its crew. The Government of the United States vigorously protests all of these incidents.

Customary and conventional international law, including that reflected in the 1982 United Nations Convention on the Law of the Sea, permits a state to claim a territorial sea and corresponding territorial airspace up to twelve nautical miles in breadth. Beyond this limit military or other state aircraft operate in international airspace exercising the internationally recognized freedoms of navigation and overflight and are not subject to the jurisdiction or control of the coastal state. No coastal state clearance or approval is required to exercise such freedoms of navigation and overflight.

The United States, therefore, vigorously protests the actions of the Government of Peru and reaffirms the right to continue to exercise the internationally recognized freedom of overflight in the international airspace more than twelve nautical miles from the baselines from which Peru may measure its territorial sea.

The United States shall continue to exercise such overflight freedoms without prior notification to, or permission from, Peru or any other coastal State.⁷

Talking points provided the Embassy included the following:

I understand that the Peruvian military is primarily concerned with identifying the nationality of aircraft off its coast. While the United States Government can accept no Government of Peru right to restrict our freedom in international airspace, there are two simple and unobjectionable ways for the Government of Peru to identify such aircraft.

The first and simplest method is to instruct military controllers to consult the ICAO flight plans routinely filed by [these] U.S. aircraft. This would enable the Government of Peru to reliably identify [these] aircraft off its coast.

The second method would involve visual identification of transiting aircraft by Government of Peru aircraft. So long as such identifications are made in conformance with internationally recognized safe procedures, the United States Government would offer no objection.

While I recognize that our Governments will not agree on this issue, I trust that we understand one another, and that the Government of Peru will consider one of these potential solutions.⁸

Notes

1. Department of State Diplomatic Note dated Aug. 20, 1986, to the Cuban Interests Section of the Czechoslovakian Embassy, File No. P92 0100-0954. The Department's Note of Dec. 27, 1985 may be found in State Department telegram 392892 of Dec. 28, 1985 and File No. P93-0002-1166; the Cuban Note of May 15, 1986 is reported in U.N. Interests Section Havana telegram 2068 of May 19, 1986.

2. See *supra* Chapter V, n. 5.

3. State Department telegram 262333, Aug. 20, 1986.

4. 1973 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 302-03 and U.N. Security Council Doc. S/10956, June 20, 1973, 1975 *id.* 451-52 and 1977 *id.* 636.

5. American Embassy Lima Note delivered August 15, 1986, American Embassy Lima telegram 9602 August 19, 1986.

6. State Department telegram 255297, Aug. 14, 1986.

7. Embassy Note delivered March 16, 1988 by American Embassy Lima, American Embassy Lima telegram 03574, Mar. 17, 1988, pursuant to instructions contained in State Department telegram 061624, Feb. 27 1988.

8. State Department telegram 061624, Feb. 27, 1988, para. 4. A similar protest was delivered by American Embassy Lima on July 7, 1992 (American Embassy Lima telegram 09328, July 4, 1992, pursuant to instruction contained in State Department telegram 204139, June 22, 1992), following Peruvian diversion of a USAI KC-135 on a routine flight June 8, 1992 from Panama to Argentina 100 miles west off the Peruvian coast Wash Post., June 23, 1992, p.A-14.

Chapter XIII

Archipelagic Sea Lanes Passage

Criteria

Most of the essential elements of the transit passage regime in non-archipelagic international straits apply in straits forming part of an archipelagic sea lane.¹ This right exists regardless of whether the strait connects high seas/EEZ with archipelagic waters (e.g., Lombok Strait) or connects two areas of archipelagic waters with one another (e.g., Wetar Strait).² All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under, or over the waters of archipelagos and adjacent territorial seas via archipelagic sea lanes.³ Archipelagic sea lanes include all routes normally used for international navigation and overflight, whether or not designated by the archipelagic nation.⁴ An archipelagic State may designate sea lanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters.⁵ Archipelagic sea lanes "shall include all normal passage routes . . . and all normal navigational channels . . ."⁶ Each sea lane is defined by a continuous line from the point of entry into the archipelago to the point of exit.⁷ Archipelagic sea lanes must conform to generally accepted international regulations,⁸ and shall be referred to the International Maritime Organization (IMO) as the "competent international organization with a view to their adoption."⁹ None have yet been submitted to the IMO. When sea lanes have been designated, ships and aircraft in archipelagic sea lanes passage are required to remain within 25 miles to either side of the axis line and must approach no closer to the coastline than 10 percent of the distance between the nearest islands.¹⁰

Archipelagic sea lanes passage is defined under international law as the exercise of the freedom of navigation and overflight for the sole purpose of continuous and expeditious transit through archipelagic waters, in the normal modes of operation, by the ships and aircraft involved.¹¹ This means that submarines may transit while submerged, and that surface warships may carry out those activities normally undertaken during passage through such waters, including activities necessary to their security, such as formation steaming and the launching and recovery of aircraft.¹² The right of archipelagic sea lanes passage cannot be impeded, or suspended by the archipelagic nation for any reason.¹³ The right of archipelagic sea lanes passage is recognized in the legislation of less than half the States that have claimed archipelagic status: Antigua and Barbuda, Fiji, Kiribati, St. Vincent and the Grenadines, Solomon Islands and Tuvalu,¹⁴ but not by the other states claiming archipelagic status: Cape Verde, Comoros, Indonesia,

Marshall Islands, Papua New Guinea, Philippines, Sao Tome and Principe, Trinidad and Tobago, and Vanuatu.

Innocent passage applies in other archipelagic waters seaward of the internal waters of the islands of the archipelago.¹⁵

If a State meets all the criteria but has not claimed archipelagic status, then high seas freedoms exist in all maritime areas outside the territorial seas of the individual islands; transit passage applies in straits used for international navigation; and innocent passage applies in other areas of the territorial sea.

Excessive Claims

In response to statements made during the December 1982 plenary meetings of the Third UN Conference on the Law of the Sea (UNCLOS III) asserting that the right of archipelagic sea lanes passage is a new right and that it may be exercised only in designated lanes, on March 8, 1983, the United States exercised its right of reply stating:

A small number of speakers [*e.g.*, **Iran**, 17 Official Records 106, at para. 69] asserted that archipelagic sea lanes passage . . . is a "new" right reflected in the Convention adopted by the Conference. To the contrary, long-standing international practice bears out the right of all States to transit . . . waters which may be eligible for archipelagic status. Moreover, these rights are well established in international law. Continued exercise of these freedoms of navigation and overflight cannot be denied a State without its consent.

One speaker [**Philippines**, 17 Official Records 69, at para. 52] also asserted that archipelagic sea lanes passage may be exercised only in sea lanes designated and established by the archipelagic State. This assertion fails to account for circumstances in which all normal sea lanes and air routes have not been designated by the archipelagic state in accordance with Part IV, including articles 53 and 54. In such circumstances, archipelagic sea lanes passage may be exercised through all sea lanes and air routes normally used for international navigation. The United States regards these rights as essential components of the archipelagic regime if it is to find acceptance in international law.¹⁶

In conjunction with the deposit of its instrument of ratification of the 1982 LOS Convention on May 8, 1984, the Government of the Philippines asserted certain rights over archipelagic straits inconsistent with international law. The Philippines stated its understanding that:

The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.¹⁷

The United States protested as follows:

The Government of the United States wishes to observe that, as generally understood in international law, including that reflected in the 1982 Law of the Sea Convention, the concept of internal waters differs significantly from the concept of archipelagic waters. Archipelagic waters are only those enclosed by properly drawn archipelagic baselines and are subject to the regimes of innocent passage and archipelagic sea lanes passage. The Government of the United States further wishes to point out that straits linking the high seas or exclusive economic zone with archipelagic waters, as well as straits within archipelagic waters, are, if parts of normal passage routes used for international navigation or overflight through or over archipelagic waters, subject to the regime of archipelagic sea lanes passage.

...

The Government of the United States notes also the statement of the Government of the Republic of the Philippines respecting the sovereignty of the Philippines over sea lanes subject to the regime of archipelagic sea lanes passage. A coastal State properly claiming archipelagic waters may lawfully exercise sovereignty over archipelagic sea lanes through such waters, if such sea lanes encompassing all normal passage routes for international navigation are designated in accordance with international law, and if the regime of archipelagic sea lanes passage is applied. The Government of the United States wishes to point out, however, that customary international law, as reflected in the 1982 Law of the Sea Convention, only permits such a coastal State to apply to vessels and aircraft engaged in archipelagic sea lanes passage specified types of legislation concerning navigational safety and maritime traffic regulation, pollution prevention and control, prevention of unauthorized fishing, and prevention of certain acts in contravention of customs, fiscal, immigration or sanitary legislation. Furthermore, such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of archipelagic sea lanes passage.¹⁸

Several other nations also protested the Philippine declaration, including Australia, Bulgaria, Byelorussia, the former Czechoslovakia, the Ukraine and the former USSR. Thereafter, on October 26, 1988, the Secretary-General received, from the Government of the Philippines, a declaration concerning the Australian objection which reads in part:

The Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention.

The necessary steps are being taken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.

The Philippine Government, therefore, wishes to assure the Australian Government and the States Parties to the Convention that the Philippines will abide by the provisions of said Convention.¹⁹

In 1987, the United States sought from the Government of **Trinidad and Tobago** clarification of certain portions of its Archipelagic Waters and Exclusive Economic Zone Act, 1986, in relevant part as follows:

First, although sections 10–13 of Act Number 24 are generally in accord with Part IV of the 1982 Law of the Sea Convention, and recognize the right of innocent passage in claimed archipelagic waters, the legislation does not expressly recognize the right of archipelagic sea lanes passage as provided in customary international law and reflected in article 53 of the Law of the Sea Convention. The United States notes that Section 32 of the legislation enables the President to make regulations, “for the designation of archipelagic sea-lanes [passage].” . . . The United States further notes that the right of archipelagic sea lanes passage, as reflected in article 53 of the 1982 Convention on the Law of the Sea, is enjoyed by all States, in normal passage routes for international navigation and overflight, through and over archipelagic waters and the adjacent territorial sea. Because the right of archipelagic sea lanes passage is an indispensable one which is a necessary concomitant to an archipelagic State juridical regime, the United States would look forward to a clarification by the Government of Trinidad and Tobago that the legislation in question clearly provides for the right of archipelagic sea lanes passage.²⁰

On July 9, 1987, the Ministry of External Affairs of Trinidad and Tobago replied, in part:

With respect to the clarification sought by the Embassy that the legislation in question clearly provides for the right of archipelagic sea lanes passage, it is advised that paragraphs 1, 2 and 12 of Article 53 of the Convention provide that an archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea; that all ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes; and that if an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

The foregoing provisions are therefore explicit in that the right of archipelagic sea lanes passage is conditioned by certain actions either being taken or not being taken by the archipelagic State. In this respect, no action has been taken so far by the Government of the Republic of Trinidad and Tobago to designate any such sea lanes and air routes. It is intended that regulations made in this regard under section 32(5) of the Act will take into account article 53 of the 1982 United Nations Convention on the Law of the Sea to which Trinidad and Tobago is a contracting State.²¹

Notes

1. LOS Convention, article 54, applying *mutatis mutandis* articles 39 (duties of ships and aircraft during their passage), 40 (research and survey activities), and 42 and 44 (laws, regulations and duties of the bordering State relating to passage).

2. OFFSHORE CONSULTANTS, INC., NAVIGATIONAL RESTRICTIONS WITHIN THE NEW LOS CONTEXT: GEOGRAPHICAL IMPLICATIONS FOR THE UNITED STATES (L.M. Alexander, ed. Final Report under Defense Supply Service Contract 903-84-C-0276, Dec. 1986) at 155-56.

3. LOS Convention, article 53.

4. *Id.*, article 53(12).

5. *Id.*, article 53(1).

6. *Id.*, article 53(4).

7. *Id.*, articles 53(4), 53(5) & 53(12).

8. *Id.*, article 53(8).

9. *Id.*, article 53(9).

10. *Id.*, article 53(5).

11. *Id.*, article 53(3).

12. U.S. Department of the Navy, *Annotated Supplement to The Commander's Handbook on the Law of Naval Operations*, NWP 9 (Rev. A)/FMFM 1-10 (1989) [hereinafter NWP 9 (Rev. A) ANN. SUPP.], para. 2.3.4.1.

13. LOS Convention, articles 54 & 44.

14. See U.N. LOS: Practice of Archipelagic States 8 (Antigua and Barbuda), 38 (Fiji), 59 (Kiribati), 89 (St. Vincent and the Grenadines), 103 (Solomon Islands), and 129 (Tuvalu). Australia has stated that it accepts the archipelagic regime set forth in Part IV of the LOS Convention. 11 Aust. Y.B. Int'l L. 238 (1991) (letter from Foreign Minister Hayden to the Australian Financial Review, Dec. 24, 1985).

15. LOS Convention, article 52(1). Consequently, "submarines must remain on the surface and fly their national flag. Any threat or use of force directed against the sovereignty, territorial integrity, or political independence of the archipelagic nation is prohibited. Launching and recovery of aircraft are not allowed, nor may weapons exercises be conducted. The archipelagic nation may promulgate and enforce reasonable restrictions on the right of innocent passage through its archipelagic waters for reasons of customs, fiscal, immigration, fishing, pollution, and sanitary purposes. [1982 LOS Convention, articles 52(1), 19(2), 20 & 21.] Innocent passage may be suspended temporarily by the archipelagic nation in specified areas of its archipelagic waters when essential for the protection of its security, but it must first promulgate notice of its intentions to do so and must apply the suspension in a nondiscriminating manner. [1982 LOS Convention, article 52(2).] There is no right of overflight through airspace over archipelagic waters outside of archipelagic sea lanes." NWP 9A (Rev. A) ANN. SUPP. at para. 2.3.4.2.

16. U.N. Doc. A/CONF.62/WS/37, 17 Official Records of the Third U.N. Conference on the Law of the Sea 244 (citations added).

17. The declaration made by the Government of the Philippines upon deposit of its instrument of ratification on May 8, 1984, may be found in U.N., Status of the United Nations Convention on the Law of the Sea 37. See also Chapter IX, text following n. 17. The text of the Philippine declaration referred to but not quoted above is as follows:

1. The signing of the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines

...

4. Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereignty, such as the Kalayaan Islands, and the waters appurtenant thereto

...

6. The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence, and security.

18. Diplomatic Note delivered January 29, 1986, from American Embassy Manila, pursuant to instructions in State Department telegram 115912, Apr. 17, 1985. American Embassy Manila telegram 03261, Jan. 29, 1986.

19. U.N. Current Developments in State Practice No. II, at 98; 12 Aust. Y.B. Int'l L. 385 (1992).

20. Diplomatic Note No. 34 delivered in March 1987, from American Embassy Port of Spain, pursuant to instructions contained in State Department telegram 075631, Mar. 14, 1987. American Embassy Port of Spain telegram 00822, Mar. 23, 1987.

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21. Diplomatic Note No. 743 dated July 9, 1987, from the Ministry of External Affairs of Trinidad and Tobago, reported in American Embassy Port of Spain telegram 01973, July 14, 1987. Trinidad's Archipelagic Waters and Exclusive Economic Zone Act, 1986, may be found in U.N. Current Developments in State Practice No. II, at 36-47; and U.N. LOS: Practice of Archipelagic States 112-23.

Chapter XIV

Navigation in Exclusive Economic Zones

Criteria

In the exclusive economic zone (EEZ), all States enjoy, subject to the relevant provisions of the LOS Convention, the freedoms of navigation (referred to in Article 87) of navigation and overflight on and over the high seas and of the laying of submarine cables and pipelines, and of the internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of the LOS Convention. Articles 88-115 and other pertinent rules of international law apply to the EEZ insofar as they are not incompatible with the LOS Convention.

In exercising their rights, and in performing their duties, under the LOS Convention in the EEZ, States shall have due regard to the rights and duties of the coastal State in accordance with the provisions of the LOS Convention and other rules of international law in so far as they are not incompatible with Part IV (EEZ) of the LOS Convention.

Regarding the rights of other States in the exclusive economic zone, the Restatement (Third) Foreign Relations Law of the United States provides that:

All states enjoy, as on the high seas, the freedoms of navigation and overflight, freedom to lay submarine cables and pipelines, and the right to engage in other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships or aircraft.¹

The comments to this section describe these rights as “both qualitatively and quantitatively the same as the rights recognized by international law for all States on the high seas.”² Consequently, warships and military aircraft are entitled to exercise these rights.³

Excessive Claims

On December 7, 1982, the representative of **Brazil** made the following statement at the closing plenary session of the Third UN Conference on the Law of the Sea:

. . . the Convention on the Law of the Sea is much less explicit concerning the security interests of the coastal State in the area between 12 and 200 miles. It was impossible to overcome the intransigence of the major naval Powers. As a result of the basic rule of consensus adopted by this Conference, gaps and ambiguities

can be solved by resorting to the option defined in article 310 of the Convention, which allows formal declarations at the time of signature, ratification or adherence, “with a view, *inter alia*, to the harmonization of [national] laws and regulations with the provisions of this Convention.”

. . . [I]t is our understanding the provisions of article 301, which prohibit the threat or use of force on the sea against the territorial integrity or independence of any State, apply particularly to the maritime areas under the sovereignty or jurisdiction of the coastal State. In other words, we understand that the navigation facilities accorded third world countries within the exclusive economic zone cannot in any way be utilized for activities that imply the threat or use of force against the coastal State. More specifically, it is Brazil’s understanding that the provisions of the Convention do not authorize other States to carry out military exercises or manoeuvres within the exclusive economic zone, particularly when these activities involve the use of weapons or explosives. . . .⁴

On March 8, 1983, the United States exercised its right of reply, stating:

Some speakers described the concept of the exclusive economic zone in a manner inconsistent with the text of the relevant provisions of the Convention adopted by the Conference.

. . .

This concept, as set forth in the Convention, recognizes the interest of the coastal State in the resources of the zone and authorizes it to assert jurisdiction over resource-related activities therein. At the same time, all States continue to enjoy in the zone traditional high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, which remain qualitatively and quantitatively the same as those freedoms when exercised seaward of the zone. Military operations, exercises and activities have always been regarded as internationally lawful uses of the sea. The right to conduct such activities will continue to be enjoyed by all States in the exclusive economic zone. This is the import of article 58 of the Convention. Moreover, Parts XII [Protection and Preservation of the Marine Environment] and XIII [Marine Scientific Research] of the Convention have no bearing on such activities.⁵

Article 17, paragraph 11 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded at Vienna on December 20, 1988, reads, in the context of enforcement at sea, as follows:

Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations of and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.⁶

The report of the U.S. Delegation to the Diplomatic Conference stated:

At the plenipotentiary conference, the U.S. delegation stated for the record its understanding that, consistent with the international law of the sea, with regard to illicit trafficking by sea, Article 17, paragraph 11 refers to the limited set of situations in which a coastal State has rights beyond the outer limit of the territorial sea, i.e., those involving hot pursuit in the exclusive economic zone and on the high seas and competent exercises of contiguous zone jurisdiction. The paragraph does not imply endorsement of any broader coastal State claims regarding illicit traffic interdiction in the exclusive economic zone. The United States delegation views this paragraph as a straightforward non-derogation clause intended to preserve, and not to affect in any way, existing rights and obligations under international law. As noted above, coastal State consent is not necessary under the international law of the sea for foreign flag law enforcement against vessels not flying the flag of that coastal State beyond the coastal State's territorial sea. The attempt to secure a broader coastal State right or claim to sovereignty in the exclusive economic zone failed during negotiations on the 1982 Law of the Sea Convention, and that result has not been altered here.⁷

On December 20, 1988, Brazil signed this Convention with the following declaration:

It is the understanding of the Brazilian Government that paragraph 11 of article 17 does not prevent a coastal State from requiring prior authorization for any action under this article by other States in its Exclusive Economic Zone.⁸

On December 27, 1989, the twelve States members of the European Community deposited identical objections to the Brazilian statement on signature, as follows:

. . . , Member State of the European Community, attached to the principle of freedom of navigation, notably in the exclusive economic zone, considers that the declaration of Brazil concerning paragraph 11 of Article 17, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 20 December 1988, goes further than the rights accorded to coastal states by international law.⁹

On May 10, 1988, Brazil deposited its instrument of ratification of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof.¹⁰ A note from the Brazilian Embassy containing an understanding read as follows:

. . . . It is the understanding of the Brazilian Government that the word "observation" in Article III, Paragraph 1 of the Treaty refers only to observation that is incidental to the normal course of navigation, in accordance with international law.¹¹

The United States Department of State responded to the Brazilian Embassy, on March 16, 1989, as follows:

The Government of the United States of America draws the attention of the Government of Brazil to the provisions of Article III of the Seabed Treaty that address verification and inspection rights of State Parties. The United States expects all States Parties to exercise their rights and fulfill their obligations in accordance with the Seabed Treaty.

Article III provides that all States Parties may “verify through observation the activities of other States Parties to the Treaty” beyond the 12-mile seabed zone, so long as such observation does not interfere with the activities of other States Parties and is conducted with due regard for rights recognized under international law. It is the view of the Government of the United States of America that, under customary international law and Article III of the Treaty, these observations may be undertaken whether or not they are incidental to a so-called “normal course of navigation,” and that such activity is not subject to unilateral coastal State restriction.¹²

In 1978, **Costa Rica** enacted a law requiring fishing vessels wishing to transit the Costa Rican EEZ but not intending to fish to notify Costa Rican authorities upon entering and leaving those waters and to transit within 48 hours.¹³ In 1979, the United States protested this claim as follows:

It is the position of the United States that there is no basis in international law for a coastal state to require notification of entry and departure from fishing vessels transiting the waters within 200 miles of such state or to limit the time of transit.¹⁴

Relying in part on this law, in 1991, Costa Rica issued a decree requiring that every foreign flag fishing vessel navigating through Costa Rican waters “must, prior to entry, apply for a permit for passage or navigation” through Costa Rican waters.¹⁵ On August 14, 1992, four U.S. fishing vessels transiting the Costa Rican EEZ en route to Hawaii via the Panama Canal were intercepted by the Costa Rican Coast Guard 97 miles offshore and detained. The vessels were neither fishing nor outfitted for fishing. The vessels were subsequently fined for transiting the Costa Rican EEZ without the permit required for fishing vessels.¹⁶ On August 18, 1992 the United States protested the detention of these vessels, in part, as follows:

The seizure of the four U.S. vessels, and the decree upon which the seizure was based, directly contravene the freedom of navigation recognized under international law, as reflected in the 1982 United Nations Convention on the Law of the Sea (the Convention).

Under Article 56 of the Convention, a coastal State such as Costa Rica may exercise exclusive jurisdiction over fishing activities within its exclusive economic

zone (EEZ), which may extend up to 200 miles from shore. Under article 58 of the Convention, however, the vessels of all states, including fishing vessels, enjoy the freedom of navigation referred to in article 87 of the Convention while such vessels are within the EEZ of a coastal State.

The four U.S. vessels in question were not engaged in fishing activity, but were instead exercising their freedom of navigation through the Costa Rican EEZ. The four vessels have no fishing gear on board, and were merely in transit from Florida to California. Moreover, as subsequent inspection of the vessels by Costa Rican authorities revealed they were not engaged in the transport of any contraband or in any other illegal activity.

The United States Government cannot accept this clear and serious violation of the right of these vessels to freedom of navigation through the Costa Rican EEZ, a right which the Government of Costa Rica is bound to respect under international law. The United States Government accordingly protests the seizure of these vessels and insists upon their immediate release without fine or other penalty.¹⁷

The Government of Costa Rica replied, in a note delivered August 28, 1992, that its action and these decrees were consistent with Articles 73(1) and 58(3) of the LOS Convention.¹⁸ Nevertheless, on September 4, 1992, a majority of the Superior Court of Liberia, Costa Rica, stayed the criminal proceedings on the grounds that these vessels were not "adversely affecting the ichthyological riches for which protection is sought." The Court noted, without ruling on the lawfulness of the challenged decree, that the law established a presumption that a fishing vessel with no transit permit is engaged in fishing activities in contravention of Costa Rican law.¹⁹ The Court thereupon dismissed the charges against the vessels, masters and crew, and ordered their release from detention. On October 21, 1992, the United States delivered a *demarche*, which read in part:

We are disappointed, however, that the court dismissed the charges in a manner that leaves standing the requirement that foreign fishing vessels must obtain a permit to transit the Costa Rican EEZ.

. . . [F]oreign fishing vessels have the right under international law to freedom of navigation through Costa Rica's EEZ without being required to notify or to seek permission from Costa Rican authorities for such passage. The Government of the United States remains very concerned that the permit requirement in question remains a part of Costa Rican law. This requirement, if invoked again, could result in another serious incident like the one we recently experienced.

The Government of the United States understands that since the dismissal of the recent case by the Superior Court, the Government of Costa Rica has been reviewing the executive decree (Decree 20404-MOPT) that established the permit requirement. In light of this, and in light of Costa Rica's long-standing commitment to international law, the Government of the United States urges that

steps be taken to ensure that Costa Rican law is made compatible with the right to freedom of navigation guaranteed under international law.²⁰

In February 1993, the Government of **Thailand** issued a circular note emphasizing the right of all vessels, including fishing vessels, to freedom of navigation in other States' EEZs, as well as to transit passage in international straits, and to innocent passage in foreign territorial seas.²¹

In giving its advice and consent to ratification of the **1989 Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific**,²² the United States Senate attached its understanding that:

Article 3 provides for measures consistent with international law to restrict driftnet fishing activities by vessels within areas under a party's fisheries jurisdiction. It is the United States understanding that the measures in Article 3 will only be applied when consistent with navigation and other international transit rights under customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea.²³

The **1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**²⁴ establishes a notice and consent system in which any export, including any export by ship, of hazardous waste requires the prior approval of, inter alia, any transit State. That term is defined in Article 2(12) as any State "through which" wastes are transported on their way from an exporting State for disposal in another State. As noted in the Secretary of State's letter of submittal, "the United States has consistently maintained that, under international law, notification to or authorization of coastal States is not required for passage through . . . exclusive economic zones."²⁵ This is reflected in Article 4(12) of the Convention, which provides that the Convention does not affect "the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments." However, Article 4(12) also provides that nothing in the Convention "shall affect in any way . . . the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law."

This compromise formula prompted Portugal to declare that it required the notification of all transboundary movements of such wastes across its waters, and several Latin American countries, including Colombia, Ecuador, Mexico, Uruguay and Venezuela, to declare that, under the Basel Convention, their rights as coastal States were adequately protected. Germany, Italy and the United Kingdom, on the other hand, declared that nothing in the Convention requires any notice to or consent of the coastal State for vessels exercising freedom of navigation through the EEZ.²⁶

In granting its advice and consent to ratification of the Basel Convention, the U.S. Senate stated the understanding of the United States of America that “a State is a ‘transit State’ within the meaning of the convention only if wastes are moved, or are planned to be moved, through its inland waterways, inland waters, or land territory.”²⁷

Survey Activities in the Exclusive Economic Zone

A few States have questioned the activities of military survey and hydrographic vessels in their EEZs. The United States has explained along the following lines why such survey activities are not subject to coastal State regulation.²⁸

International law, as reflected in the LOS Convention, authorizes coastal States to claim limited rights and jurisdiction in an EEZ. As noted above, the jurisdictional rights relate primarily to the exploration, exploitation, and conservation of natural resources, marine scientific research (MSR), and the marine environment. Beyond the territorial sea (in which the coastal State enjoys full sovereignty), all States enjoy the freedoms of navigation and overflight and other related uses of the sea within the EEZ, provided that such freedoms are exercised with due regard to the rights of the coastal State and other States.²⁹

Survey Activities vs. Marine Scientific Research

The rights all States enjoy include the right to conduct survey activities within the EEZ. Survey activities are not MSR. The LOS Convention distinguishes clearly between the concepts of “research” and “MSR” on the one hand, and “hydrographic surveys” and “survey activities” on the other hand. Article 19(2)(j) of the LOS Convention includes “research or survey activities” among those activities identified as being inconsistent with innocent passage in the territorial sea. Article 21(1)(g) authorizes the coastal State to adopt laws and regulations, in conformity with the provisions of the Convention and other rules of international law, relating to innocent passage through the territorial sea in respect of “marine scientific research and hydrographic surveys”. Article 40, entitled “research and survey activities,” provides that in transit passage through straits used for international navigation, foreign ships, including “marine scientific research and hydrographic survey ships”, may not carry out “any research or survey activities” without the prior authorization of the States bordering straits. The same rule applies to ships engaged in archipelagic sea lanes passage (article 54).

On the other hand, Part XIII of the LOS Convention fully regulates marine scientific research; it does not refer to survey activities at all. Article 246 of the LOS Convention provides that coastal States, in the exercise of their jurisdiction within the EEZ, have the right to regulate, authorize and conduct MSR in accordance with the relevant provisions of the Convention. It specifies that MSR in the EEZ shall be conducted with the consent of the coastal State.³⁰

And while the Convention, by its terms, limits survey activities during passage in the territorial sea, international straits and archipelagic sea lanes, it does not limit the activities of survey ships in the EEZ. Rather, the conduct of surveys in the EEZ is an exercise of the freedoms of navigation and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operations of ships, which article 58 of the LOS Convention guarantees to all States.

This conclusion, that MSR is distinct from survey activities, is supported by other respected publications on this subject.³¹

Definitions

The LOS Convention does not define the terms “marine scientific research”, “survey activities”, “hydrographic survey,” or “military survey”. However, the concepts are distinct.

The United States accepts that “marine scientific research” is the general term most often used to describe those activities undertaken in the ocean and coastal waters to expand scientific knowledge of the marine environment. MSR includes oceanography, marine biology, fisheries research, scientific ocean drilling and coring, geological/geophysical scientific surveying as well as other activities with a scientific purpose.

The generally accepted modern international interpretation of “hydrographic survey”, which is shared by the United States, is to obtain information for the making of navigational charts and safety of navigation. It includes determination of one or more of several classes of data in coastal or relatively shallow areas—depth of water, configuration and nature of the natural bottom, directions and force of currents, heights and times of tides and water stages, and hazards for navigation—for the production of nautical charts and similar products to support safety of navigation.

The United States considers that military surveys refer to activities undertaken in the ocean and coastal waters involving marine data collection (whether or not classified) for military purposes. Military surveys can include oceanographic, marine geological, geophysical, chemical, biological and acoustic data. Equipment used can include fathometers, swath bottom mappers, side scan sonars, bottom grab and coring systems, current meters and profilers. While the means of data collection used in military surveys may sometimes be the same as that used in MSR, information from such activities, regardless of security classification, is intended not for use by the general scientific community, but by the military.

Military surveys are not specifically addressed in the LOS Convention and there is no language stating or implying that military surveys may be regulated in any manner by coastal States outside their territorial sea or archipelagic waters. The United States therefore considers it to be fully consistent with the LOS

Convention that such surveys are a high seas freedom and the United States reserves the right to engage in military surveys anywhere outside foreign territorial seas and archipelagic waters. To provide prior notice or request permission would create an adverse precedent for restrictions on mobility and flexibility of military survey operations.

These definitions clearly distinguish between MSR, which the coastal State can regulate, and hydrographic survey and military survey activities, which are freedoms the coastal State cannot regulate outside its territorial sea.

Military Activities

In the view of the United States, the LOS Convention recognizes that all States have the right to conduct military activities within the EEZ, provided that they do so with due regard to the rights of the coastal State and other States. Appropriate activities include launching and landing of aircraft, operating military devices, intelligence collection, weapons exercises, and military surveys.³² There is no general competence of the coastal State over military activities in the EEZ. It follows that military survey activities conducted outside foreign territorial seas are not subject to coastal State regulation.³³

Notes

1. 2 RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES § 514(2) [hereinafter RESTATEMENT (THIRD)]. The Court of Arbitration for the Delimitation of Maritime Areas between Canada and France, in its decision in the Case Concerning Delimitation of Maritime Areas (St. Pierre and Miquelon), June 10, 1992, 31 I.L.M. 1145 (1992), noted that:

In the written and oral proceedings both Parties have underscored the importance they attach to the principle of freedom of navigation through the 200 mile zone guaranteed by Article 58 of the 1982 Convention, a provision that undoubtedly represents customary international law as much as the institution of the 200 mile zone itself.

2. 2 RESTATEMENT (THIRD) § 514 comment d, at 58.

3. The various incidents at sea agreements entered into by the Soviet Union with Canada, France, the Federal Republic of Germany, Italy, and the United Kingdom all relate to activities by their military ships and aircraft "outside territorial waters". See UKTS No. 5 (1987), 37 Int'l & Comp. L.Q. 420 (1988), U.N. LOS BULL., No. 10, Nov. 1987, at 97 (UK, Jul. 15, 1986); No. 14, Dec. 1989, at 15 (FRG, Oct. 25, 1988); No. 16, Dec. 1990, at 23 (France, July 4, 1989); No. 16, at 35 (Italy, Nov. 30, 1989); No. 18, June 1991, at 25 (Canada, Nov. 20, 1989). The USSR has similar INCSEA agreements with Greece, the Netherlands, Norway, and Spain. FBIS-SOV-92-161, Aug. 19, 1992, at 18.

4. 17 Official Records of the Third U.N. Conference on the Law of the Sea 40, paras. 26 & 28. Brazil's declarations on ratification of the Convention were substantially similar to the above; they may be found in U.N. Current Developments in State Practice No. II, at 88. Brazil's implementing legislation, Law 8,617 of January 4, 1993, article 9, continues to assert these views which are inconsistent with the relevant provisions of the LOS Convention. U.N. LOS BULL., No. 23, June 1993, at 19. Uruguay made a similar declaration on signature and ratification of the Convention:

In the exclusive economic zone, enjoyment of the freedom of international communication in accordance with the way it is defined and in accordance with other relevant provisions of the Convention excludes any non-peaceful use without the consent of the coastal State, for instance, military exercises or other activities which may affect the rights or interests of that State . . .

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U.N., Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 774 (1993).

5. U.N. Doc. A/CONF.62/WS/37, 17 Official Records of the Third U.N. Conference on the Law of the Sea 244. On signature of the Convention Italy confirmed its written statement dated March 7, 1983 that:

according to the Convention, the Coastal State does not enjoy residual rights in the exclusive economic zone. In particular, the rights and jurisdiction of the Coastal State in such zone do not include the right to obtain notification of military exercises or maneuvers or to authorize them.

U.N., Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 770 (1993).

6. T.I.A.S. No. ___, 28 I.L.M. 519-20 (1989).

7. Sen. Exec. Rep. 101-15, 101st Cong., 1st Sess., at 97 (1989).

8. Multilateral Treaties Deposited with the Secretary-General, Status as of Dec. 31, 1992, at 268. Brazil does not appear to have maintained this understanding upon deposit of its instrument of ratification on July 17, 1991. *Id.* On signature, Tanzania stated its understanding that:

Subject to a further determination on ratification, the United Republic of Tanzania declares that the provisions of article 17 paragraph 11 shall not be construed as either restraining in any manner the rights and privileges of a coastal State as envisaged by the relevant provisions relating to the Exclusive Economic Zone of the Law of the Sea Convention, or, as according third parties rights other than those so recognized under the Convention.

Id. at 270. As of July 1994, Tanzania had not deposited its instrument of ratification.

9. *Id.* at 271; 61 Brit Y.B. Int'l L. 1990, at 588 (1991). In signing the Convention on Jan. 18, 1989, the Netherlands made the following statement:

[The Government of the Netherlands] understands the reference (in para. 3) to "a vessel exercising freedom of navigation" to mean a vessel navigating beyond the external limits of the territorial sea.

The safeguard-clause contained in para. 11 of the article aims in [its] view at safeguarding the rights and obligations of Coastal States within the contiguous zone.

To the extent that vessels navigating in the contiguous zone act in infringement of the Coastal State's customs and other regulations, the Coastal State is entitled to exercise, in conformity with the relevant rules of the international law of the sea, jurisdiction to prevent and/or punish such infringement.

Id. at 270. See also 59 Brit. Y.B. Int'l L. 1988, at 528-29 (1989).

10. Done at Washington, London and Moscow, Feb. 11, 1971, 23 U.S.T. 701, T.I.A.S. No. 7337, 955 U.N.T.S. 115.

11. Brazilian Embassy Note No. 138/88; State Department File No. P 93 0052-0811.

12. State Department File No. P 93 0052-0812. On May 18, 1989, the Embassy of the Federal Republic of Germany stated, in a note to the Department of State, as Depositary of the Seabeds Arms Control Treaty:

The right of each State party under article III para. 1 of the aforementioned treaty to verify through observation the activities of other States parties is limited only insofar as it shall not interfere with such activities or activities of other State parties and as it shall be conducted with due regard to the recognized rights under international law. The understanding of the Government of Brazil of the term "observation" does not represent, in the view of the Government of the Federal Republic of Germany, an adequate interpretation of that term.

State Department File No. P 89 0083-0238.

13. Article 7, Law 6267, Aug. 29, 1978, which does not appear to have been published in English. See also KWIATKOWSKA, THE 200 MILE EXCLUSIVE ECONOMIC ZONE IN THE NEW LAW OF THE SEA 88-89, and sources cited in nn. 181 and 182 thereto.

14. American Embassy San Jose note *verbale* dated Mar. 14, 1979, American Embassy San Jose airgram A-21, June 15, 1979, State Department File No. P 79-0091-0720, delivered pursuant to instructions contained in State Department telegram 060844, Mar. 12, 1979.

15. Executive Branch Decree No. 20404-P-MOPT, La Gaceta, Diaro Oficial, San Jose, Costa Rica, May 24, 1991, article 2; State Department translation LS No. 139243.

16. American Embassy telegram 06921, Aug. 17, 1992.
 17. American Embassy San Jose *note verbale* No. 167, dated Aug. 18, 1992, reported in the Embassy's telegram 06982, Aug. 19, 1992, pursuant to instructions contained in State Department telegram 266938, Aug. 19, 1992.
 18. American Embassy San Jose telegram 07303, Aug. 28, 1992; State Department translation LS NO. 139294.
 19. State Department translation LS No. 139571.
 20. American Embassy San Jose telegram 08756, Oct. 21, 1992, pursuant to instructions contained in State Department telegram 337417, Oct. 15, 1992. In June 1993, Costa Rica issued new regulations dropping the requirement for fishing vessels to obtain a transit permit in the Costa Rican EEZ; a transit permit is, however, still required for a fishing vessel to transit the Costa Rican territorial sea, apparently restricting such vessels' right to innocent passage. American Embassy San Jose telegram 04698, Jun. 22, 1993.
 21. Letter dated Feb. 18, 1993 from the Permanent Representative of Thailand to the U.N., annexed to U.N. Doc. A/48/90, Feb. 22, 1993, reprinted in U.N. LOS BULL., No. 23, at 108 (June 1993). See above, Chapter X, n. 5.
 22. Done at Wellington, New Zealand, Nov. 24, 1989, and Protocol I, done at Noumea, New Caledonia, Oct. 20, 1990, entered into force for the United States, Feb. 28, 1992, T.I.A.S. No. ___, 29 I.L.M. 1449 (1990).
 23. S. Exec. Report 102-20, p. 6; Cong. Rec. S 18233, Nov. 26, 1991.
 24. I.L.M. 649 (1989), entered into force May 5, 1992. The States party as of Dec. 28, 1992 are listed in 32 I.L.M. 276 (1993).
 25. Sen. Treaty Doc. 102-5, 102d Cong., 1st Sess. (1991), at VI.
 26. Multilateral Treaties Deposited with the Secretary-General as of Dec. 31, 1992, at 832-33.
 27. Cong. Rec. S12292, Aug. 11, 1992. The Administration had sought such an understanding (Letter of Submittal, *supra* n. 25, at VI) and the Senate Foreign Relations Committee concurred. Sen. Exec. Rep. 102-36, 102d Cong., 2d Sess., May 22, 1992, at 17. Deposit of the U.S. instrument of ratification, which was signed on Oct. 17, 1992, awaits enactment of the necessary implementing legislation. See Sen. Exec. Rep. 102-36, at 15-16.
 28. See State Department telegram 092114, Apr. 8, 1994, para. 6.
 29. LOS Convention, article 58.
 30. The United States does not regulate MSR within its EEZ because of its desire to encourage MSR and to avoid any unnecessary burdens. President's Ocean Policy Statement, March 10, 1983, Appendix 1.
 31. For example, U.N. Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Marine Scientific Research: A Guide to the Implementation of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, (U.N. Pub. Sales No. E.91.V.3 (1991)), notes that " 'survey activities' . . . are primarily dealt with in other parts . . . of the Convention rather than in Part XIII. This could indicate that these activities do not fall under the regime of Part XIII." (page 1)
- Professor Alfred H.A. Soons, Director of the Netherlands Institute for the Law of the Sea, in his book *MARINE SCIENTIFIC RESEARCH AND THE LAW OF THE SEA* (1982), has written: "From articles 19, 21 and 40, which use the term 'hydrographic surveying' separately from 'research', it follows that the term 'marine scientific research', for the purposes of the Draft Convention, does not cover hydrographic surveying activities." (page 125) Later in the same book, Professor Soons wrote: "With respect to hydrographic surveying (an activity which is not to be considered marine scientific research, although it is somewhat similar to it . . .), it is submitted that this activity, when it is conducted for the purpose of enhancing the safety of navigation . . ., must be regarded as an internationally lawful use of the sea associated with the operations of ships . . . in accordance with article 58, and can therefore be conducted freely in the exclusive economic zone . . ." (page 157)
32. See *supra* nn. 1-3 and accompanying text.
 33. See LOS Convention, article 56 and Oxman, *The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 VA. J. INT'L, at 847 (1984).

PART FOUR
CONCLUSIONS

Chapter XV

The Future of U.S. Ocean Policy

Implementation of U.S. Ocean Policy

A basic tenet of U.S. ocean policy has been, and continues to be, preservation of the historic principle of freedom of the seas. This policy comprehends that the navigational articles of the Law of the Sea Convention constitute a fair balance of the interests of all nations in their use of the oceans and are fully consistent with the traditional freedoms of navigation and overflight. The central consideration is how this policy can best be effectively implemented, i.e., what should the United States do domestically and internationally to both assert and preserve these vital maritime rights?

Over the past fifteen years, U.S. oceans policy has been pursued on three tiers—

- 1) A vigorous freedom of navigation program;
- 2) Promulgation of guidance to military forces; and,
- 3) Active development and support of conventional international law addressing ocean issues.

Freedom of Navigation Program: The “Lever” of U.S. Ocean Policy

The purpose of the FON program is to preserve and protect the global mobility of U.S. forces, and the navigation and overflight rights of all ocean users. Peaceful rather than provocative in intent, it impartially rejects excessive maritime claims of allied, friendly, neutral and unfriendly States alike.

The preceding chapters have detailed the operation and results of the program in specifically targeting unrecognized historic waters; improperly drawn baselines for measuring the breadth of the territorial sea; territorial sea claims greater than 12 miles; impermissible restrictions on innocent passage, transit passage through international straits and archipelagic sea lanes passage; and impermissible restrictions on navigation and overflight in the 24 mile contiguous zone and the 200 mile exclusive economic zone. The latter includes the claim to establish in peacetime so-called “security zones” beyond the territorial sea which purport to restrict high seas freedoms of navigation and overflight.

The effectiveness of the FON program as a lever to gain full coastal State compliance with the navigation and overflight provisions of the Convention has been positive. It has clearly and convincingly demonstrated to the international community that the United States will not acquiesce in excessive maritime claims. It has played a positive role in curbing non-conforming territorial sea, contiguous zone and exclusive economic zone claims and, arguably, has helped

persuade States to bring their domestic laws into conformity with the Convention.

The number of coastal States that claim territorial seas greater than 12 miles in breadth is now less than 20, and the 24 mile contiguous zone and 200 mile EEZ are virtually the international norm. On the other hand, a number of coastal States, among them friends and allies as well as potential adversaries, continue to seek to convert areas of the high seas to national jurisdiction. Typically, they do this by drawing baselines in inconsistent and unacceptable applications of Convention rules. Other attempts to unlawfully restrict navigation and overflight rights in the EEZ and contiguous zones, and in international straits and archipelagic sea lanes, include discrimination among ships and aircraft on the basis of nationality, type, propulsion, destination or cargo, all in direct contravention of the Convention.

Perhaps the most dramatic demonstration of the program's positive impact was the aftermath of the 1988 Black Sea "bumping" incident involving U.S. and U.S.S.R. naval units. Subsequent bilateral discussions led to the U.S.-U.S.S.R. Uniform Interpretation of the Rules of International Law Governing Innocent Passage, signed by the two nations and issued at Jackson Hole, Wyoming, in September 1989.¹ This agreement signalled to the international community that the two global powers view the navigation and overflight articles of the LOS Convention as reflective of customary international law. The "bumping" incident also prompted ongoing bilateral discussions on excessive baseline and historic water claims.

As the number of U.S. naval ships and aircraft decrease in the immediate post-Cold War environment, the opportunity for FON operational assertions is necessarily decreased. Hopefully, the success of the U.S. program to date will encourage other nations to join with the United States in actively promoting and protecting the freedoms of navigation and overflight reflected in the Convention by utilizing their naval and air forces to conduct similar FON operational assertions.

The question may legitimately be asked whether the requirement for the FON program, and operational assertions in particular, will continue when the LOS Convention comes into force. Certainly entry into force of the Convention would then provide a treaty base—for States party—for the navigational provisions. One would hope that State practice would then increasingly conform with the Convention. Certainly the chances for that to occur rise now that the deficiencies of Part XI (Deep Sea Bed Mining) of the Convention have been redressed so that the United States and other industrialized nations are able to join in a reformed treaty regime that commands universal acceptance.²

Promulgation of Policy Guidance for Maritime Forces

The principal test of a nation's commitment to the rule of law in this arena is the degree to which international and domestic rules are embodied in the

guidance promulgated to its military forces for compliance. As a practical matter, the process of signature and ratification of international conventions has little significance unless the rules which those agreements propound are implemented in the field, in the cockpit, and on the deckplates.

As noted in Chapter I, the President's 1983 Oceans Policy Statement³ emphasized that provisions of the Convention pertaining to navigation and overflight, and others except for Part XI, constitute a fair balance of the interests of all nations. Most importantly, the Statement directed that U.S. maritime forces operate worldwide in a manner fully consistent with that balance.

International stability and the full and fair development of the rule of law in the ocean arena require that all maritime and coastal nations promulgate guidance generally reflecting these principles. The United States, as the world's leading maritime power, seeks widespread, universal support from the international community for its policy toward the oceans. Unilateral action is not enough. In this connection, the United States has not only issued guidance to its own forces, but it had also actively worked for adoption of this policy by other nations with like interests in the oceans.

The U.S. Naval Warfare Publication (NWP) 9A/Fleet Marine Force Manual (FMFM) 1-10, entitled *The Commander's Handbook on the Law of Naval Operations*, was developed to provide definitive guidance to the operating forces and, in a broader sense, to serve as a model for use by other nations. Published in 1987 and revised in 1989, NWP 9A provides authoritative guidance to U.S. maritime forces consistent with the spirit and intent of Presidential direction. It states that the 1982 LOS Convention codifies existing and emerging customary international law pertaining to navigation and overflight and, as such, is binding upon all U.S. forces operating in the maritime environment.⁴

NWP 9A does far more than ensure compliance by U.S. military forces with U.S. ocean policy and the navigational articles of the LOS Convention. It also provides other nations an authoritative demonstration of how the United States interprets and applies those rules in its daily maritime activity worldwide. In this way, the United States has taken the lead in breathing real life into most Parts of the LOS Convention. NWP 9A has been distributed informally to virtually every nation with a navy or coast guard. It has been adopted by the Canadian Ministry of Defence as its interim manual,⁵ and translated into Spanish and Japanese.⁶ It has also been the subject at international conferences and symposia sponsored by the Department of Defense⁷ and international organizations.⁸ The success of this effort is reflected in the fact that NWP 9A is being widely cited and emulated by other maritime nations in the preparation of their own military guidance.⁹ It has emerged as a key reference on contemporary ocean law and regulation.¹⁰

Most importantly, NWP 9A is serving to influence, in a positive and constructive way, the behavior of other nations in their use of the world's

oceans—ensuring their approach to ocean policy is consistent with the balance of interests reflected in the LOS Convention.

Development of Conventional International Law

On a broader plane, in a process known as “international codification”, customary international law, in a number of important areas, has been converted over time into conventional international law. This process seeks to substitute a degree of stability for the uncertainty and risk of claim, counterclaim and acquiescence which often characterizes the development of customary international law. Since World War II, the United States has taken an active leadership role in this process. Its participation in the three UN Conferences on the Law of the Sea¹¹ are examples—particularly the Third Conference (UNCLOS III), the nine year effort which produced the 1982 LOS Convention.¹²

On a multilateral level, other examples of international codification range from matters relating to the safety of surface and air navigation (e.g., Convention on the International Regulations for Preventing Collisions at Sea¹³ and the Convention on International Civil Aviation¹⁴), through protection of the marine environment (e.g., Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter¹⁵ and the International Convention on Oil Pollution Preparedness, Response and Co-operation¹⁶), to interdiction of seaborne drug trafficking (e.g., article 17 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹⁷).

Bilateral agreements embrace virtually every aspect of U.S. ocean use and include, by way of example, the U.S.-U.S.S.R. Agreement on the Prevention of Dangerous Military Activities;¹⁸ the U.S.-Canada Agreement Concerning Pacific Salmon;¹⁹ the U.S.-New Zealand Treaty on the Delimitation of the Maritime Boundary Between Tokelau and the United States;²⁰ and the U.S.-U.K. Agreement to Facilitate the Interdiction by the United States of Vessels of the United Kingdom Suspected of Trafficking in Drugs.²¹

Whether through broadly based multilateral conventions or more narrowly focused bilateral agreements, proactive U.S. involvement in the development of conventional international law has played a major role in the implementation of U.S. ocean policy. Specifically, it has had a positive influence on international recognition of the need to preserve fundamental high seas freedoms, particularly navigation and overflight. The active involvement of the Department of Defense in the formulation of negotiating positions, and indeed in the negotiations themselves, has ensured that vital national security interests have been addressed and safeguarded as appropriate. No matter how carefully undertaken, however, this incremental process cannot stem the erosion over time of rights and freedoms that underpin U.S. security interests in the oceans. The 1982 LOS Convention, given its all-encompassing scope, has the potential to arrest or substantially slow that erosion.

U.S. strategic interests in the world's oceans would clearly be best served if the Convention were reformed to meet U.S. deep seabed requirements while preserving its already satisfactory provisions on navigation and overflight and other traditional law of the sea matters. Becoming a party to the Convention under such conditions would be fully consistent with the broad range of U.S. interests in the oceans. Moreover, as the United States is now playing a positive role in the reform process,²² it underscores and enhances the traditional leadership position the United States has taken in ocean policy matters. As importantly, it strengthens the hand of the United States in dealing with the broad range of ocean issues—from coastal State encroachment on vital high seas freedoms of navigation and overflight to those involving the environment, resources and counter-drug operations.

Emerging Ocean Policy Issues

Historically, the principal threat to the preservation of high seas freedoms of navigation and overflight has taken the form of excessive maritime claims by coastal States. While that area of concern remains, and in fact drives the Freedom of Navigation Program, equally difficult, although more subtle issues have emerged which also threaten the exercise of traditional freedoms of navigation and overflight. These include environmental protection and resource conservation, sovereign immunity, and maritime trafficking in narcotics.

Environmental Protection and Resource Conservation

Part XII of the LOS Convention is the first comprehensive approach to the protection and preservation of the marine environment. It sets forth responsibilities for both coastal States and maritime users to control all sources of marine pollution. In doing so, it requires due regard to the exercise of high seas freedoms such as navigation and overflight, resource development, and marine scientific research.²³ Part XII requires States exercising enforcement rights over pollution from vessels in their EEZs to apply "generally accepted international rules and standards established through the competent international organization or general diplomatic conference."²⁴ Thus, the Convention in that area serves not only as a mechanism to protect and preserve the ocean environment, but also as a means to curb any excessive coastal State enforcement regime.

Part XII addresses pollution of the marine environment from vessels, from land-based sources, from or through the atmosphere, by dumping, and from seabed activities subject to national jurisdiction. In addition to the Convention, there are three global treaties, to which the United States is a party, also designed to protect and preserve the marine environment. In brief:

- The Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)²⁵ regulates

discharges from the normal operations of ships. Sources include bilge water, oily or hazardous wastes, sewage, and garbage including plastics.

- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London [Dumping] Convention)²⁶ regulates the disposal of wastes in the ocean from all activities except normal ship operations. An example would be deliberate dumping of nuclear waste from a barge towed to a disposal site.
- The Convention on Oil Pollution Preparedness, Response and Co-operation²⁷ regulates international response to oil spills.

These treaties exempt warships and other vessels entitled to sovereign immunity from coastal State enforcement measures and inspections, while encouraging State parties to ensure compliance with their provisions,²⁸ and otherwise fully respect navigation and overflight freedoms.

Environmental Protection

Potential threats to navigation and other high seas freedoms are often encountered in the negotiation of regional treaties and strategies, and in other fora.

For example, the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (commonly called the Cartagena Convention)²⁹ in draft form included a protocol (Protocol Concerning Specially Protected Areas and Wildlife of the Wider Caribbean Region, or SPAW) which would have prohibited or restricted navigation through certain treaty areas. Intensive negotiations were required on the part of the United States to eliminate those unacceptable, restrictive measures. As concluded, the treaty is a regional agreement to regulate pollution from vessels, dumping, land-based sources, sea-bed activities and airborne sources. The SPAW Protocol aims to protect endangered flora and fauna of the Caribbean marine environment by allowing the parties to establish "specially protected areas" offshore, including in the EEZ.³⁰ A second protocol provides for Cooperation in Combatting Oil Spills in the Wider Caribbean Region.³¹

Throughout the negotiations leading to the conclusion of the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region³² (SPREP), and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping,³³ vigilance was maintained to ensure that traditional navigation rights were not impaired. For example, while the Parties agreed to establish "specially protected areas," the Convention specifically provided that "the establishment of such areas shall not affect the rights of other Parties or third States under international law."³⁴ SPREP is a regional seas convention covering a large portion of the South Pacific. The agreement regulates pollution from vessels, dumping, land-based sources, sea-bed activities, airborne sources, and the storage of toxic and hazardous wastes. SPREP was the

first agreement the United States signed that bans the disposal at sea of radioactive waste. The United States considered that SPREP promotes harmony in the South Pacific region, an area with unique geographic circumstances, which preliminary scientific evidence indicated, at the time of signing, was not particularly well suited for dumping low level radioactive waste. The Parties also agree to conduct environmental studies and cooperate during environmental emergencies.

On June 14, 1991, the eight circumpolar nations—Canada, Denmark, Finland, Iceland, Norway, Sweden, the United States, and the U.S.S.R.—signed a nonbinding Strategy to protect the Arctic Environment.³⁵ Signatories will cooperate in monitoring pollution caused by radioactivity, noise, oil, heavy metals, acidification and persistent organic contaminants. They will also cooperate in formulating response plans for emergencies such as oil spills. Although restrictions on navigation and overflight were not addressed, they nonetheless are potential measures States may possibly seek to use to implement the Strategy. To ensure against that possibility, the Strategy includes a provision specifying that implementation must be consistent with the LOS Convention.³⁶

On November 16, 1992, Canada deposited its instrument of accession to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). At the time of its accession, Canada deposited a declaration concerning arctic waters, as follows:

Canada made the following declarations based on Article 234 of the 1982 United Nations Convention on the Law of the Sea, signed by Canada on December 10, 1982:

(a) The Government of Canada considers that it has the right in accordance with international law to adopt and enforce special non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered waters where particularly severe climatic conditions and the presence of ice covering such waters for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

(b) Consequently, Canada considers that its accession in the Protocol of 1978, as amended, Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) is without prejudice to such Canadian laws and regulations as are now or may in the future be established in respect of arctic waters within or adjacent to Canada.³⁷

Because Canada's declarations did not follow completely the wording of Article 234,³⁸ on November 18, 1993, the United States filed with the Secretary-General of IMO, as the Depository of MARPOL, its understanding of the permissible scope of Canada's declarations:

The Government of the United States of America considers that Canada may enact and enforce only those laws and regulations in respect of foreign shipping in arctic waters that are within 200 nautical miles from the baselines used to measure the breadth of the territorial sea as determined in accordance with international law:

- that have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence in arctic waters, and
- that are otherwise consistent with international law, including articles 234 and 236 and other relevant provisions of the 1982 United Nations Convention on the Law of the Sea.³⁹

The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal⁴⁰ regulates such activity through a consent and notice regime. It required additional negotiations to safeguard navigational freedoms, through the inclusion of a provision that the Convention does not affect “the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.”⁴¹

This issue has surfaced in other regional negotiations in which the United States was not involved. An example is the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa,⁴² a regional treaty concluded by member States of the Organization of African Unity. The treaty requires parties to control all carriers of hazardous wastes in the Convention area in a manner that respects navigation and overflight rights. The Convention recognizes “the exercise by ships and aircraft of all States of navigation rights and freedoms as provided for in international law and as reflected in relevant international instruments.”⁴³

Holding the line against the erosion of vital high seas freedoms of navigation and overflight requires oversight over U.S. domestic as well as international considerations. The United States is not only the dominant global maritime power, it also has one of the world’s longest coastlines. As such, it has maritime interests which may, on occasion, be at odds with the full expression of navigational freedoms. Environmental protection in off-shore waters, conservation of fisheries beyond the EEZ (e.g., salmon and tuna), and enforcement of customs and immigration regulations seaward of the territorial sea and contiguous zone are examples.

Conservation of Living Marine Resources

Controls in this area are imposed to preserve and protect fish and marine mammal stocks not only in the high seas but also in the exclusive economic

zones, contiguous zones, and territorial seas of individual States. Agreements are bilateral as well as multilateral and are often negotiated under the auspices of a specialized international body. The International Whaling Commission⁴⁴ is an example. They generally deal with a specific species and typically specify the area, season, catch limit, and harvesting methods. An example is the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (with Protocols)⁴⁵ (commonly called the Wellington Convention). U.S. ratification includes an understanding that application of treaty “measures will only be applied when consistent with traditional high seas freedoms of navigation and overflight as reflected in” the LOS Convention.⁴⁶

On June 14, 1992, the United Nations Conference on Environment and Development (UNCED) adopted Agenda 21. Chapter 17 of that document sets forth several hundred action items for the protection of the oceans, of all kinds of seas, including enclosed and semi-enclosed seas, and of coastal areas, and the protection, rational use and development of their living resources, over the next twenty years. The introduction to Chapter 17 begins by stating that international law as reflected in the LOS Convention “sets forth rights and obligations of States and provides the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment, and its resources.”⁴⁷ The challenge will be to maintain that international basis in all the following actions called for in Agenda 21.

Sovereign Immunity of Warships and Military Aircraft

“Sovereign immunity of warships and military aircraft” traditionally refers to immunity from the exercise of enforcement jurisdiction, i.e., their immunity from arrest, attachment, or execution in the territory of any foreign State.⁴⁸ It also refers to the immunity of public vessels on the high seas from jurisdiction to prescribe by any State other than the flag State.⁴⁹ In the territorial sea, public vessels are only immune from the jurisdiction of the port or coastal State to enforce its laws against them.⁵⁰ It may also be used in those situations where the terms of a particular treaty are not going to be applied to public vessels; in those situations public vessels are typically exempted from the treaty’s application by the words “not apply” or “not be applicable”.⁵¹ Or, if public vessels are to be covered by the treaty, it will typically expressly say that it does “apply” to them.⁵² A large number of environmental protection treaties exempt public vessels and aircraft but require the flag State to “ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships and aircraft owned or operated by it, that such ships and aircraft act in a manner consistent, so far as is reasonable and practicable, with” the treaty.⁵³

The undefined term “sovereign immunity” is used in only a few maritime treaties: the 1972 Oslo Convention (article 15(6)),⁵⁴ 1992 Dumping annex to OSPAR (annex II, article 10(3)),⁵⁵ the 1972 London [Dumping] Convention

(article VII(4)),⁵⁶ and article 4(1) of the 1989 Salvage Convention.⁵⁷ The term also appears in the titles of article 236 of the LOS Convention, article XIV of the 1982 Jeddah regional convention,⁵⁸ article 12(4) of the 1986 SPREP Dumping Protocol,⁵⁹ article 11 of Annex IV to the 1991 Antarctic Environmental Protection Protocol,⁶⁰ and article IV of the 1992 Black Sea Pollution Convention.⁶¹ The term is used in the US/UK interpretative statement attached to the Final Act of the Cartagena Convention,⁶² and in the US understandings to SPREP⁶³ and Basel Conventions.⁶⁴

Reference is made to the “immunity” of public vessels in the title of the 1926 Brussels Convention,⁶⁵ and in article I of the 1934 Protocol thereto.⁶⁶ “Immunity” is also used in articles 8 and 9 of the 1958 High Seas Convention,⁶⁷ articles 32, 95 and 96 of the LOS Convention,⁶⁸ article 22(2) of the 1958 Territorial Sea Convention,⁶⁹ article X(3) of the 1962 Brussels Nuclear Ships Operators Convention,⁷⁰ and article 2(2) of the 1988 Maritime Terrorism Convention.⁷¹

Because of the very different ways in which “sovereign immunity” for public vessels/aircraft has been used in treaties and agreements, it is preferable that those documents specify the actions from which such vessels/aircraft are immune, rather than rely on the term. The following are factors to consider in drafting “sovereign immunity” clauses:

- are public vessels/aircraft to be covered by the terms of the treaty?
- is the conduct to be regulated by the treaty to include the conduct of public vessels/aircraft?
- are States other than the flag State to be empowered to prescribe as to the conduct of foreign flag public vessels/aircraft?
- are flag States to be required, or merely encouraged, to prescribe/enforce against its public vessels and aircraft?
- what enforcement authority will States other than flag States be granted against foreign flag public vessels and aircraft?
- what enforcement authority will other States have directly against the flag State for acts of its public vessels/aircraft contrary to the terms of the treaty?
- what private causes of action in the “enforcement” State will be permitted against the foreign State for the conduct of its public vessels/aircraft?

Summary. International agreements (and U.S. domestic legislation) on the protection of the ocean environment and marine resources have the potential, in their application and enforcement, to infringe on the exercise of traditional high seas freedoms of navigation and overflight. The United States has been, and must continue to be, alert to this fact and continue to successfully assert the primacy of customary international law relating to these rights, thus deterring the unravelling of hard-won provisions in the Convention essential to national security.

Maritime Counter-drug Operations

The U.S. counter-drug campaign has the highest national priority. It actively involves all the uniformed services—the Army, Navy, Air Force, Marine Corps and Coast Guard—in stemming the flow of illegal drugs and substances into the United States from overseas points.

This typically involves military operations in the international waters and airspace adjacent to coastal States from which drug trafficking is known to originate. The objective is to deter the transport of illegal drugs and substances into the United States and, if deterrence fails, to detect and intercept carriers (air and seaborne) en route to their destination, if possible, well before they arrive in the continental United States.

These surveillance and interdiction operations rely on the free and unimpeded exercise of the traditional high seas freedoms of navigation and overflight. They involve close and continuing coordination and cooperation between the United States and the coastal State. Problems have arisen where the imperatives of counter-drug operational security conflict with requests from individual coastal States to be informed in advance of operations on and over the high seas off their coasts. Such notification is inconsistent with U.S. ocean policy. These difficulties have been addressed bilaterally on a case by case basis. In each instance, the United States has taken into consideration the sensitivities involved without compromising essential freedoms of navigation and overflight.

Problems have also arisen when counter-drug operations have been conducted in waters which are the subject of excessive baseline, territorial sea or EEZ claims, wherein the coastal State purports to assert a right to control or authorize such operations. Other problems have surfaced in which coastal States have protested the consensual boarding and searching by the United States of their flag vessels. In this latter regard, a small number of States have objected, claiming that their ships' masters do not have the authority to grant such permission, and that the decision must be referred to the government of the maritime State involved. The United States does not support such restrictions on the ship master's traditional authority to consent to non-intimidating boardings/inspections, and the matter is not settled. The United States has opened bilateral talks with a number of affected States with the object of reaching a mutually satisfactory understanding on these issues.

U.S. Oceans Policy for the 21st Century

U.S. defense policy for the late 1990's and beyond is critically dependent upon traditional freedoms of navigation and overflight of the world's oceans, including unimpeded transit of international straits and archipelagic sea lanes.⁷² Each of the four major elements of the national security policy—strategic deterrence, forward presence, crisis response and force reconstitution—is premised in significant part on the preservation of those freedoms. A stable law of the sea

regime embodying traditional freedoms of navigation and overflight is thus vital to U.S. security interests. The right of the United States to navigate and overfly the world's oceans in furtherance of its national security must remain securely rooted in accepted principles of international law. To be effective, U.S. military operations and deployments must be consistent with the rule of law.

The non-deep seabed mining provisions of the 1982 LOS Convention continue to constitute a fair balance of the interests of all nations in their use of the oceans and are fully consistent with the traditional freedoms of navigation and overflight. U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 LOS Convention, and as bolstered by diplomatic representations and the assertions of right where necessary under the Freedom of Navigation Program, have served adequately so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Promulgation of policy guidance to U.S. forces operating in the maritime environment, ensuring their compliance with the navigation and overflight provisions of the LOS Convention, has effectively implemented the non-seabed provisions of the Convention for the United States. Dissemination of that guidance to other nations has gone far to foster U.S. views concerning the proper interpretation of the Convention. This is reflected in the fact that U.S. guidance in this area is being widely adopted by other maritime nations.

However, excessive maritime claims to sovereignty or jurisdiction by coastal States continue to threaten U.S. security and economic interests. Additionally, emerging maritime issues, including overly restrictive efforts to protect the marine environment and conserve ocean resources, present equally serious challenges. All seek to restrict traditional ocean freedoms, particularly navigation and overflight rights, or exact an unacceptable price for the exercise of those rights. This trend may expand and intensify in the period ahead.

The risk, cost and effort to counter these challenges will increase as U.S. military force structure, including continental United States and overseas basing, is reduced over the next decade. Nonetheless, acquiescence and accommodation to the erosion of high seas freedoms of navigation and overflight remain unacceptable policy options. Unilateral U.S. demonstrations of resolve—especially operational assertions—are sometimes viewed as antagonistic. They risk the possibility of military confrontation and of political costs that may be deemed unacceptable, with prejudice to other U.S. interests, including worldwide leadership in ocean affairs and support for use of cooperative, international solutions to mutual problems.

The long-term stability of the oceans, which U.S. security interests require, can best be met by a comprehensive and widely accepted Law of the Sea

Convention. Codification of existing and emerging rules of customary international law into a single, comprehensive convention of universal application is clearly preferable to primary reliance on the uncertainties associated with unilateral assertions of rights premised upon the process of claim and counterclaim of customary international law. This process should press coastal State practice into increasing conformity with agreed international norms. While not eliminated outright, the need to assert U.S. navigation and overflight rights in the face of excessive claims should be reduced substantially, and with it the risk and cost of unwanted turmoil and confrontation on and over the high seas.

Some of the deep seabed mining provisions of the LOS Convention, as originally constituted, were incompatible with the interests of the United States and other western industrialized powers. Beginning in 1990, there developed a growing recognition within the international community, among developed and developing nations alike, that the deep seabed mining provisions of the Convention required reform.

On balance, weighing costs and benefits, the United States had much to gain in exercising a leadership role in the United Nations effort to reform the deep seabed mining regime, removing the principal obstacle to broad international acceptance of the 1982 Law of the Sea Convention. For a positive outcome, U.S. leadership will continue to be required in defining and promoting a regime that protects overall U.S. interests and is acceptable to all parties to the Convention.

In the meantime, U.S. military and economic activities on, over and under the sea are guided by the President's 1983 Ocean Policy Statement and the U.S. Freedom of Navigation Program. In particular, U.S. naval and air forces continue to operate on, over and under the world's oceans in a manner fully consistent with the navigational articles of the LOS Convention. In addition, the United States continues vigorously to protest excessive maritime claims and exercise routinely and on a global scale, U.S. navigational, overflight and other defense-related rights and duties in accordance with the Convention. That program should be expanded to involve other maritime powers with like interests in the oceans in cooperative and individual effort.

The Department of Defense will continue to update and disseminate its ocean policy guidance not only to U.S. maritime forces, but also to nations with like interests in the oceans. Emulation of that guidance by other nations in the development and promulgation of their own ocean policy furthers international implementation of the navigational articles of the LOS Convention. To this end, the Departments of Defense and State will continue to sponsor bilateral LOS discussions, as well as symposia and conferences of military and civilian law of the sea experts to foster international understanding of, and support for, U.S. ocean policy.

To do otherwise is to permit the ocean enclosure movement to continue unabated and risk loss of the freedoms of navigation and overflight essential to worldwide economic security and peace.⁷³

Notes

1. For the full text see Appendix 4.
2. Agreement relating to the Implementation of Part XI of the UN Convention on the Law of the Sea, UNGA Doc. A/48/950, June 9, 1994 at 11-31; Anderson, *Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea*, 42 Int'l & Comp. L.Q. 654 (1993).
3. For the full text see Appendix 1.
4. U.S. Department of the Navy, *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, NWP 9 (Rev. A)/FMFM 1-10 (1989) [hereinafter NWP 9 (Rev. A) ANN. SUPP.]*, Introduction at 33-34, & para. 1.1.
5. Canadian Department of National Defence, *Handbook on the Law of Naval Operations*, MAOP-331 (Ottawa, 1991).
6. By the Argentine Naval War College and the Japanese Maritime Self Defense Force Staff College.
7. Symposium on the Law of Naval Warfare: Targeting Enemy Merchant Shipping, Naval War College, January 1990. See Grunawalt (ed.), *THE LAW OF NAVAL WARFARE: TARGETING ENEMY MERCHANT SHIPPING*, 65 U.S. Naval War College International Law Studies (1993).
8. E.g., International Institute of Humanitarian Law, San Remo, Italy, Round-Table of Experts on International Humanitarian Law Applicable to Armed Conflicts at Sea, 1987-1994. See 7 SCHRIFTEN, *THE MILITARY OBJECTIVE AND THE PRINCIPLE OF DISTINCTION IN THE LAW OF NAVAL WARFARE* (Bochum 1989, W.H. v. Heinegg ed., 1991), and 8 SCHRIFTEN, *METHODS AND MEANS OF COMBAT IN NAVAL WARFARE* (Toulon 1990, W.H. v. Heinegg, ed. 1992).
9. E.g., Federal Ministry of Defence of the Federal Republic of Germany, *Humanitarian Law in Armed Conflicts - Manual ZDv 15/2* (1992).
10. See Robertson (ed.), *THE LAW OF NAVAL OPERATIONS*, 64 U.S. Naval War College International Law Studies (1991).
11. On the 1958 Conference, see FRANKLIN, *THE LAW OF THE SEA: SOME RECENT DEVELOPMENTS*, 53 U.S. Naval War College International Law Studies 1959-1960 (1961). For a discussion of the 1960 Conference, see Dean, *The Second Geneva Conference on the Law of the Sea: The Fight For Freedom of the Seas*, 54 Am. J. Int'l L. 751-89 (1963).
12. See 1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY (Nordquist ed. 1985).
13. Done at London Oct. 20, 1972, entered into force July 15, 1977, 28 U.S.T. 3459, T.I.A.S. No. 8587.
14. Done at Chicago Dec. 7, 1944, entered into force Apr. 4, 1947, 61 Stat. 1180, T.I.A.S. No. 1591, 3 Bevans 944, 15 U.N.T.S. 295.
15. With annexes, done at Washington, London, Mexico City and Moscow Dec. 29, 1972, entered into force Aug. 30, 1975, 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120, 11 I.L.M. 1291 (1972).
16. Done at London Nov. 30, 1990, U.S. instrument of ratification deposited Mar. 9, 1992, not in force, 30 I.L.M. 735 (1991).
17. Done at Vienna Dec. 20, 1988, entered into force Nov. 11, 1990, T.I.A.S. No. ____, 28 I.L.M. 493 (1989).
18. With annexes and agreed statements, Moscow, June 12, 1989, entered into force Jan. 1, 1990, T.I.A.S. No. ____, 28 I.L.M. 877 (1989).
19. Done at Ottawa Jan. 18, 1985, entered into force Mar. 18, 1985, T.I.A.S. No. 11091.
20. Signed at Atafu Dec. 2, 1980, entered into force Sept. 3, 1983, T.I.A.S. No. 10775.
21. Exchange of notes at London Nov. 13, 1981, entered into force Nov. 13, 1981, 33 U.S.T. 4224, T.I.A.S. No. 10296, 1285 U.N.T.S. 197, 21 I.L.M. 439 (1982).
22. 10 Ocean Policy News, at 2-3 April 1993. *Id.*, Dec. 1993, at 1-4; UNGA Doc. A/48/PV.72, at 8 (Statement of U.S. representative); ASIL Newsletter, Jan.-Feb. 1994, at 14-16. See also U.N. Law of the Sea: Report of the Secretary-General, UN Doc. A/48/527, Nov. 10, 1993, at 7-8, and UNGA Resolution A/RES/48/28, Jan. 11, 1994, paras. 4-6.
23. Cf. LOS Convention, articles 58, 87 & 194(4).
24. LOS Convention, article 211(5).
25. With annexes and protocols, done at London Feb. 17, 1978, entered into force Oct. 2, 1983, T.I.A.S. No. ____.

26. *Supra* n. 15.
27. *Supra* n. 16.
28. London Convention, article VII(4); MARPOL 73, article 3; OPRRC, article 1(3). *See further* text on sovereign immunity accompanying n. 48 and following.
29. With annex, done at Cartagena Mar. 24, 1983, entered into force Oct. 11, 1986, T.I.A.S. No. 11085, 22 I.L.M. 227 (1983).
30. S. Treaty Doc. 103-5; BNA, *Int'l Env. Rep.* 21:3261.
31. Entered into force Oct. 1986, 22 I.L.M. 240; T.I.A.S. No. 11085.
32. 26 I.L.M. 38(1987); U.N. LOS BULL., No. 10 (Nov. 1987), at 59; BNA, *Int'l Env. Rep.* 21:3171; S. Treaty Doc. 101-21.
33. 26 I.L.M. 65; U.N. LOS BULL., No. 10 (Nov. 1987), at 78, BNA, *Int'l Env. Rep.* 21:3191; S. Treaty Doc. 101-21.
34. SPREP Convention, article 14.
35. 30 I.L.M. 1624 (1991).
36. *Id.*, Introduction, at 1630.
37. IMO Doc. PMP/Circ. 105 dated Dec. 7, 1992.
38. Article 234 of the LOS Convention provides:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

See generally, Joyner, *Ice-Covered Regions in International Law*, 31 *Natural Resources J.* 213 (1991). *See also* Chapter XI, n. 79 *supra*.

39. State Department telegram 349386, Nov. 18, 1993; American Embassy London telegram 20793, Nov. 18, 1993.
40. 28 I.L.M. 649 (1989); U.N. LOS BULL., No. 17, Dec. 1989, at 37; entered into force May 5, 1992.
41. *See supra* Chapter X, text accompanying nn. 104-07.
42. 30 I.L.M. 773 (1991).
43. Bamako Convention, article 5(4)(c), 30 *id.* at 784.
44. International Convention for the Regulation of Whaling with schedule of whaling regulations, signed at Washington Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 4 *Bevans* 248, 161 U.N.T.S. 72, and Protocol done at Washington Nov. 19, 1956, 10 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 366.
45. Done at Wellington, Nov. 24, 1989, and Noumea, New Caledonia, Oct. 20, 1990, 29 I.L.M., 1449 (1990), U.N. LOS BULL., No. 14 (Dec. 1989), at 31.
46. S. Exec. Rep. 102-20.
47. U.N. Doc. A/CONF.151/4 (Part II), para. 17.1, at 1 (1992).
48. AMERICAN LAW INSTITUTE, RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES, § 457, Reporter's Note 7 (1987).
49. 1958 High Seas Convention, articles 8-9; LOS Convention, articles 95-96.
50. 1958 Territorial Sea Convention, articles 22-23; LOS Convention, articles 30.
51. 1923 Statute attached to the Geneva Convention on the International Regime of Maritime Ports, 58 L.N.T.S. 286, article 13; 1926 Brussels Convention for the Unification of Certain Rules relating to the Immunity of State-owned vessels, 176 L.N.T.S. 201, 3 *Hudson* 1837, article 3(1); 1934 Protocol to the Brussels Convention, 176 L.N.T.S. 215, article I; 1972 European Convention on State Immunity, U.K.T.S. 74, II I.L.M. 470 (1972), article 30; 1954 Oil Pollution Convention, 12 U.S.T. 2989, T.I.A.S. No. 4900, U.K.T.S. No. 54 (1958), 327 U.N.T.S. 3, 9 I.L.M., 1 (1970), article II(1)(d); 1973 Protocol on Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, T.I.A.S. No. 10561, U.K.T.S. No. 27 (1983), 13 I.L.M. 605 (1974), article II(1) (cross ref. to Article I(2)); 1969 Civil Liability Convention for Oil Pollution Damage, 973 U.N.T.S. 3, U.K.T.S. No. 106 (1975), 9 I.L.M. 45 (1970), 64 *Am. J. Int'l L.* 481, article XI(1); 1910 Brussels Convention for the Purpose of Establishing Uniformity in Certain Rules regarding Collisions, 4 *Am. J. Int'l L. Supp.* 121 (1910), article 11; 1910 Brussels Convention on Assistance and Salvage at Sea, T.S. 576, article 14; 1926 Brussels Convention on Maritime Mortgages and Liens, 120 L.N.T.S. 187, 3 *Hudson* 1845, 27 *Am. J. Int'l L.* 268 (1962), article 15; 1965 Convention on Facilitation of International Maritime Traffic, 18 U.S.T. 410, T.I.A.S. No. 6251, 591 U.N.T.S. 265, article II(3); 1966 Convention on Load Lines, 18 U.S.T. 1857, T.I.A.S. No. 6331, 640 U.N.T.S. 133, article 5(1)(a); 1969 Convention on the Tonnage Measurements of Ships, T.I.A.S. No. 10490, article 4(1)(a); 1989 Convention on Salvage, article 4

(Party may decide otherwise); 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 27 I.L.M. 672 (1988), U.N. LOS BULL., No. 11 (July 1988), at 14, article 2(1).

State aircraft are exempted from the provisions of the following treaties: 1944 I.C.A.O. Convention, 61 Stat. 1180, T.I.A.S. No. 1591, 3 Bevans 944, 15 U.N.T.S. 295, article 3; 1948 Geneva Convention on the International Recognition of Rights in Aircraft, 4 U.S.T. 1830, T.I.A.S. No. 2847, 310 U.N.T.S. 151, article 13; 1953 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, 310 U.N.T.S. 181, 52 Am. J. Int'l L. 593, article 26; 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 20 U.S.T. 2941, T.I.A.S. No. 219, 12 I.L.M. 1042, article 1(4); 1970 Hague Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking), 22 U.S.T. 1641, T.I.A.S. No. 7192, 860 U.N.T.S. 105, article 3(2); 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), 24 U.S.T. 564, T.I.A.S. No. 7570, 974 U.N.T.S. 117, article 4(1).

Article 13(2) of the 1993 Convention on Maritime Liens and Mortgages, U.N. Doc. A/CONF.162/L5; article X(3) of the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships, 57 Am. J. Int'l L. 268 (1962), article I(2) of the 1969 Intervention Convention for Oil Pollution, 26 U.S.T. 765, T.I.A.S. No. 8068, U.K.T.S. No. 77 (1975), 970 U.N.T.S. 212, 9 I.L.M. 25 (1970); and article 3(1)(a) of the 1933 Rome Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft, 192 L.N.T.S. 289, 6 Hudson 327, all specifically exempt public vessels or State aircraft from enforcement jurisdiction.

52. The 1972 International Regulations for Preventing Collisions at Sea (COLREGS 1972), 28 U.S.T. 3459, T.I.A.S. No. 8587, Rule 1(a); 1974 Convention for the Safety of Life at Sea (SOLAS 1974), 32 U.S.T. 47, T.I.A.S. No. 9700, 14 I.L.M. 959 (1975), article II; 1979 US-Canada Exchange of Notes: Vessel Traffic Management System for the Juan de Fuca Region, T.I.A.S. No. 9706, 32 U.S.T. 377, Annex para. 208 (except when compliance would impair defense operations or defense operational capabilities).

A few treaties are silent on the scope of application to ships: 1981 Lima Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, and the 1985 Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region. The United Kingdom reserved the right not to apply the provisions of the 1952 International Convention relating to the Arrest of Sea-going Ships, 439 U.N.T.S. 193, 53 Am. J. Int'l L. 539 (1959) to "warships or to vessels owned by or in the service of a State."

53. 1926 Washington Draft Convention on Oil Pollution of Navigable Waters, I FOREIGN RELATIONS OF THE UNITED STATES 1926, at 238, XIX INTERNATIONAL PROTECTION OF THE ENVIRONMENT 9587 (Ruster, Simma & Bock, eds., 1979), articles III and IV; 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter (London [Dumping] Convention), 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120 U.K.T.S. No. 43 (1976), 11 I.L.M. 1302 (1972), article VII; 1973 Convention for the Prevention of Pollution by Ships (MARPOL 73), 1340 U.N.T.S. 22484, 12 I.L.M. 1319 (1973), Int'l Env. Rep. 21:2301 (MARPOL Protocol of 1978, T.I.A.S., No. ___), article 3(4); 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, with Annex (STCW), S. Exec. EE, 96th Cong., 1st Sess., S. Exec. Rep. 102-4, T.I.A.S. No. ___, article III(a); 1976 Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona), 1102 U.N.T.S. (Reg. No. 16008); U.N. Doc. ST/LEG.SER.B/19, p. 459; 15 I.L.M. 300 (1976); Int'l Env. Rep. 35:0301, article 11(2); 1978 Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (ROPME), 1140 U.N.T.S. 133, 17 I.L.M. 511 (1978), Int'l Env. Rep. 21:2721, article XIV; 1982 U.N. Convention on the Law of the Sea, 21 I.L.M. 1261 (1982), Int'l Env. Rep. 21:3191, article 12(4); 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, JEDDAH, NEW DIRECTIONS IN THE LAW OF THE SEA (New Series), v.2, Doc. J.19, article XIV; 1986 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, S. Treaty Doc. 101-21, S. Exec. Rep. 102-8, 26 I.L.M. 65 (1987); U.N. LOS BULL., Nov. 1987, at 78; Int'l Env. Rep. 21:3191, article 12(4); 1990 Protocol concerning Specially Protected Areas and Wildlife to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (SPAW Protocol), S. Treaty Doc. 103-5, Int'l Env. Rep. 21:3261, article 2(3); 1990 Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC), S. Treaty Doc. 102-11, S. Exec. Rep. 102-16, 30 I.L.M. 733 (1991), Int'l Env. Rep. 21:1801, article 1(3); 1991 Protocol on Environmental Protection to the Antarctic Treaty, S. Treaty Doc. 102-22, S. Exec. Rep. 102-54, 30 I.L.M. 1483 (1991), Int'l Env. Rep. 21:3801, article 11(1); 1992 Convention on the Protection of the Black Sea against Pollution, 32 I.L.M. 1110 (1993), U.N. LOS Bull., No. 22, Jan. 1993, at 31, article IV; 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), 13 I.L.M. 555 (1974), article 4(4); 1992 Convention on the Protection

of the Marine Environment of the Baltic Sea Area (Helsinki Convention), U.N. LOS BULL., No. 22, at 54 (Jan. 1993); Int'l Env. Rep. 35:0401, article 4(3).

Similar understandings have been made by the United Kingdom and the United States to the Cartagena Convention, and by the United States to SPREP and Basel Conventions. The United States believes this has become the norm for all marine environmental protection conventions and thus has proposed the following understanding to the Biodiversity Convention:

The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

Sen. Treaty Doc. 103-20, p. XVII. See Chandler, *The Biodiversity Convention: Selected Issues of Interest to the International Lawyer*, 4 Col. Int'l Envtl. L. & Pol'y 141, 153 (1993).

In depositing its instrument of ratification of the 1982 LOS Convention, Malta declared its view that:

the sovereign immunity contemplated in article 236 does not exonerate a State from such obligation, moral or otherwise, in accepting responsibility and liability for compensation and relief in respect of damage caused by pollution of the marine environment by any warship, naval auxiliary, other vessels or aircraft owned or operated by the State and used on government non-commercial service.

U.N. LOS BULL., No. 23, at 7 (June 1993).

54. 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 932 U.N.T.S. 3, 11 I.L.M. 262 (1972), Int'l Env. Rep. 35:0101, Cmnd 6228, 119 U.K.T.S. (1975).

55. 1992 Annex II on the Prevention and Elimination of Pollution by Dumping or Incineration to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), 32 I.L.M. 1090 (1993), Int'l Env. Rep. 35:0151.

56. 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London [Dumping] Convention), 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120, U.K.T.S. No. 43 (1976), 11 I.L.M. 1302 (1972).

57. 1989 Convention on Salvage, S. Treaty Doc. 102-12, S. Exec. Rep. 102-1, U.N. LOS BULL., No. 14, at 77 (Dec. 1989).

58. 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, JEDDAH, NEW DIRECTIONS IN THE LAW OF THE SEA (New Series), Doc. J.19.

59. 1986 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, S. Treaty Doc. 101-21; S. Exec. Rep. 102-8; 26 I.L.M. 65 (1987); U.N. LOS BULL., No. 10, at 78 (Nov. 1987); Int'l Env. Rep. 21:3191.

60. 1991 Protocol on Environmental Protection to the Antarctic Treaty, S. Treaty Doc. 102-22, S. Exec. Rep. 102-54, 30 I.L.M. 1483 (1991), Int'l Env. Rep. 21:3801.

61. 1992 Convention on the Protection of the Black Sea against Pollution, 32 I.L.M. 1110 (1993); U.N. LOS BULL., No. 22, at 31 (Jan. 1993).

62. 22 I.L.M. 226, S. Treaty Doc. 98-13, pp. 17-18, 43.

63. S. Treaty Doc. 101-21, p. 53.

64. S. Treaty Doc. 102-5, S. Exec. Rep. 102-36.

65. 176 L.N.T.S. 201, 3 Hudson 1837.

66. 176 L.N.T.S. 215.

67. 13 U.S.T. 2312, T.I.A.S. No. 5200, U.K.T.S. No. 5 (1963), 450 U.N.T.S. 82.

68. 21 I.L.M. 1261 (1982).

69. 15 U.S.T. 1601, T.I.A.S., No. 5639, U.K.T.S. No. 3 (1965), 516 U.N.T.S. 205.

70. 57 Am. J. Int'l L. 268 (1962).

71. 27 I.L.M. 672 (1988), U.N. LOS BULL., No. 11, at 14 (July 1988).

72. Schachte, *National Security Interests in the 1982 UN Convention on the Law of the Sea*, Council on Ocean Law, Special Report, Feb. 1993; Galdorisi, *Who Needs the Law of the Sea?*, U.S. Nav. Inst. Proc., at 71 (July 1993); Galdorisi, *A Narrow Window of Opportunity*, *id.*, at 60-62 (July 1994).

73. Panel on the Law of Ocean Uses, *U.S. Interests and the United Nations Convention on the Law of the Sea*, 21 Ocean Deve. & Int'l L. 373 (1990).



APPENDICES

1. President's Ocean Policy Statement, March 10, 1983

The United States has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

Last July, I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10.¹ We have taken this step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

The United States does not stand alone in these concerns. Some important allies and friends have not signed the convention.² Even some signatory states have raised concerns about these problems.

However, the convention contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all States.

Today, I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal States.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Convention. The United States will not, however, acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

Within this Zone, all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight. My proclamation does not change existing United States policies concerning the continental shelf, marine mammals, and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction.³ The United States will continue efforts to achieve international management of these species. The proclamation also reinforces this government's policy of promoting the United States fishing industry.

While international law provides for a right of jurisdiction over marine scientific research within such a zone, the proclamation does not assert this right. I have elected not to do so because of the United States interest in encouraging marine scientific research and avoiding any unnecessary burdens. The United States will nevertheless recognize the right of other coastal States to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised in a manner consistent with international law.

The Exclusive Economic Zone established today will also enable the United States to protect the marine environment. In this connection, the United States will continue to work through the International Maritime Organization and other appropriate international organizations to develop uniform international measures for the protection of the marine environment while imposing no unreasonable burdens on commercial shipping.

The policy decisions I am announcing today will not affect the application of existing United States law concerning the high seas or existing authorities of any United States Government agency.

In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for mining deep seabed minerals beyond national jurisdiction. Deep seabed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

The administration looks forward to working with the Congress on legislation to implement these new policies.

I Public Papers of the Presidents: Ronald Reagan 1983, at 378-79.

Notes

1. 2 Public Papers of the Presidents: Ronald Reagan 1982, at 911-12.
2. Germany, United Kingdom, Israel, Turkey, Ecuador, Peru, and Venezuela, among others, declined to sign the LOS Convention.
3. Effective January 1, 1992, the United States commenced exercising jurisdiction over tuna in the U.S. EEZ. 16 U.S.C. sec. 1812, *as amended by* Pub.L. 101-627.

2. Proclamation 5030, Exclusive Economic Zone of the United States of America, March 10, 1983

By the President of the United States of America A Proclamation

WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over the natural resources and related jurisdictions; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdictions in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the seas.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

/s/ Ronald Reagan

3. Proclamation 5928, Territorial Sea of the United States of America, December 27, 1988

By the President of the United States of America A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extends to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

- (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or
- (b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

/s/ Ronald Reagan

4. Joint Statement by the United States and Soviet Union, with Uniform Interpretation of Rules of International Law Governing Innocent Passage, September 23, 1989

Since 1986, representatives of the United States of America and the Union of Soviet Socialist Republics have been conducting friendly and constructive discussions of certain international legal aspects of traditional uses of the oceans, in particular, navigation.

The Governments are guided by the provisions of the 1982 United Nations Convention on the Law of the Sea, which, with respect to traditional uses of the oceans, generally constitute international law and practice and balance fairly the interests of all States. They recognize the need to encourage all States to harmonize their internal laws, regulations and practices with those provisions.

The Governments consider it useful to issue the attached Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Both Governments have agreed to take the necessary steps to conform their internal laws, regulations and practices with this understanding of the rules.

FOR THE UNITED STATES OF
AMERICA:

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

/s/ James W. Baker III

/s/ E. Shevardnadze

Jackson Hole, Wyoming

September 23, 1989

**Uniform Interpretation of the Rules of International Law
Governing Innocent Passage**

1. The relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea (Convention of 1982), particularly in Part II, Section 3 [Innocent Passage in the Territorial Sea].

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage.

4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it

questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic separation schemes have been prescribed, ships nevertheless enjoy the right of innocent passage.

6. Such laws and regulations of the coastal State may not have the practical effect of denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.

7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. In such case the warship shall do so immediately.

8. Without prejudice to the exercise of rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.

DEP'T ST. BULL., Nov. 1989, at 26; 28 I.L.M. 1444-47 (1989); 84 Am. J. Int'l L. 239-42 (1990); U.N. LOS BULL., No. 14, Dec. 1989, at 12-13.

5. Ratifications of the 1982 UN Convention on the Law of the Sea

As of 1 July 1994, the following 62 nations had deposited their instruments of ratification or accession:

<i>Coastal or Island Nations</i>	<i>Dates of Ratification</i>
Angola	5 December 1990
Antigua and Barbuda	2 February 1989
Bahamas	29 July 1983
Bahrain	30 May 1985
Barbados	12 October 1993
Belize	13 August 1983
Bosnia-Herzegovina	12 January 1994
Brazil	22 December 1988
Cameroon	19 November 1985
Cape Verde	10 August 1987
Comoros	21 June 1994
Costa Rica	21 September 1992
Cuba	15 August 1984
Cyprus	12 December 1988
Djibouti	8 October 1991
Dominica	24 October 1991
Egypt	26 August 1983
Fiji	10 December 1982
Gambia	22 May 1984
Ghana	7 June 1983
Grenada	25 April 1991
Guinea	6 September 1985
Guinea-Bissau	25 August 1986
Guyana	16 November 1993
Honduras	5 October 1993
Iceland	21 June 1985
Indonesia	3 February 1986
Iraq	30 July 1985
Ivory Coast	26 March 1984
Jamaica	21 March 1983
Kenya	2 March 1989
Kuwait	2 May 1986
Malta	20 May 1993
Marshall Islands	9 August 1991
Mexico	18 March 1983
Micronesia, Federated States of	29 April 1991

Namibia (UN Council for)	18 April 1983
Nigeria	14 August 1986
Oman	17 August 1989
Philippines	8 May 1984
Saint Lucia	27 March 1985
St. Kitts and Nevis	7 January 1993
St. Vincent and the Grenadines	1 October 1993
Sao Tome and Principe	3 November 1987
Senegal	25 October 1984
Seychelles	16 September 1991
Somalia	24 July 1989
Sudan	23 January 1985
Tanzania, United Republic of	30 September 1985
Togo	6 April 1985
Trinidad and Tobago	25 April 1986
Tunisia	24 April 1985
Uruguay	10 December 1992
Yemen	21 July 1987
Yugoslavia	5 May 1986
Zaire	17 February 1989

*Land-Locked Nations**Dates of Ratification*

Botswana	2 May 1990
Mali	16 July 1985
Paraguay	26 September 1986
Uganda	9 November 1990
Zambia	7 March 1983
Zimbabwe	24 February 1993

Source: U.N. Office for Ocean Affairs and the Law of the Sea.

6. Relevant Articles of the 1982 United Nations Convention on the Law of the Sea

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PART I

INTRODUCTION

Article 1

Use of terms and scope

1. For the purposes of this Convention:
 - (1) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
 - (2) "Authority" means the International Sea-Bed Authority;
 - (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;
 - (4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
 - (5) (a) "dumping" means:
 - (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
 - (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;
 - (b) "dumping" does not include:
 - (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
 - (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.
2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.
 - (2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

PART II

TERRITORIAL SEA AND CONTIGUOUS ZONE

SECTION 1. GENERAL PROVISIONS

Article 2

Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3

Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 4

Outer limit of the territorial sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 5

Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 6

Reefs

In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.

Article 7
Straight baselines

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 8
Internal waters

1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Article 9
Mouths of rivers

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks.

Article 10
Bays

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.

Article 11
Ports

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

Article 12
Roadsteads

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.

Article 13
Low-tide elevations

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 14
Combination of methods for determining baselines

The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions.

Article 15
Delimitation of the territorial sea between States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to

extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Article 16

Charts and lists of geographical co-ordinates

1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA

SUBSECTION A. RULES APPLICABLE TO ALL SHIPS

Article 17

Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18

Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

- (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
- (b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19

Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

- (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;
- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

Article 20
Submarines and other underwater vehicles

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21
Laws and regulations of the coastal State relating to innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic;
- (b) the protection of navigational aids and facilities and other facilities or installations;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
- (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- (g) marine scientific research and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

3. The coastal State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Article 22

*Sea lanes and traffic separation schemes
in the territorial sea*

1. The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.

2. In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.

3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account:

- (a) the recommendations of the competent international organization;
- (b) any channels customarily used for international navigation;
- (c) the special characteristics of particular ships and channels; and
- (d) the density of traffic.

4. The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given.

Article 23

*Foreign nuclear-powered ships and ships carrying nuclear or
other inherently dangerous or noxious substances*

Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Article 24

Duties of the coastal State

1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:

- (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
- (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.

2. The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

Article 25

Rights of protection of the coastal State

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary

steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

Article 26

Charges which may be levied upon foreign ships

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

SUBSECTION B. RULES APPLICABLE TO
MERCHANT SHIPS AND GOVERNMENT SHIPS
OPERATED FOR COMMERCIAL PURPOSES

Article 27

Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State;
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

*Article 28**Civil jurisdiction in relation to foreign ships*

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.
3. Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

**SUBSECTION C. RULES APPLICABLE TO
WARSHIPS AND OTHER GOVERNMENT SHIPS
OPERATED FOR NON-COMMERCIAL PURPOSES**

*Article 29**Definition of warships*

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

*Article 30**Non-compliance by warships with the laws and regulations of the coastal State*

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.

*Article 31**Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes*

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

*Article 32**Immunities of warships and other government ships operated for non-commercial purposes*

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

SECTION 4. CONTIGUOUS ZONE

Article 33 *Contiguous zone*

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
 - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
 - (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

PART III

STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL PROVISIONS

Article 34 *Legal status of waters forming straits used for international navigation*

1. The régime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.
2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35 *Scope of this Part*

Nothing in this Part affects:

- (a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) the legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36 *High seas routes or routes through exclusive economic zones through straits used for international navigation*

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive

economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

SECTION 2. TRANSIT PASSAGE

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Article 38

Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39

Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall:

- (a) proceed without delay through or over the strait;
- (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;
- (d) comply with other relevant provisions of this Part.

2. Ships in transit passage shall:

- (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

- (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
- 3. Aircraft in transit passage shall:
 - (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
 - (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40
Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits.

Article 41
Sea lanes and traffic separation schemes in straits used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall co-operate in formulating proposals in consultation with the competent international organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42
Laws and regulations of States bordering straits relating to transit passage

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;
- (b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
- (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
- (d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

3. States bordering straits shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.

5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43

Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement co-operate:

- (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
- (b) for the prevention, reduction and control of pollution from ships.

Article 44

Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

SECTION 3. INNOCENT PASSAGE

Article 45

Innocent passage

1. The régime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation:

- (a) excluded from the application of the régime of transit passage under article 38, paragraph 1; or
- (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.

2. There shall be no suspension of innocent passage through such straits.

PART IV

ARCHIPELAGIC STATES

Article 46 *Use of terms*

For the purposes of this Convention:

- (a) “archipelagic State” means a State constituted wholly by one or more archipelagos and may include other islands;
- (b) “archipelago” means a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 47 *Archipelagic baselines*

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 48
Measurement of the breadth of the territorial sea, the
contiguous zone, the exclusive economic zone and the
continental shelf

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.

Article 49
Legal status of archipelagic waters, of the air space over
archipelagic waters and of their bed and subsoil

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.

2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

3. This sovereignty is exercised subject to this Part.

4. The régime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

Article 50
Delimitation of internal waters

Within its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11.

Article 51
Existing agreements, traditional fishing rights and existing
submarine cables

1. Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.

2. An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

Article 52
Right of innocent passage

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.

2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic

waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Article 53

Right of archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.

2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.

8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.

10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Article 54

Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage

Articles 39, 40, 42 and 44 apply *mutatis mutandis* to archipelagic sea lanes passage.

PART V

EXCLUSIVE ECONOMIC ZONE

Article 55

Specific legal régime of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal régime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive 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 with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

Article 57

Breadth of the exclusive economic zone

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

Article 58
Rights and duties of other States
in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 59
Basis for the resolution of conflicts regarding the
attribution of rights and jurisdiction in the exclusive
economic zone

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive 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.

Article 60
Artificial islands, installations and structures in the
exclusive economic zone

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard

to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 61
Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participa-

tion by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62

Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:

- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught;
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) the placing of observers or trainees on board such vessels by the coastal State;
- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (i) terms and conditions relating to joint ventures or other co-operative arrangements;
- (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations.

Article 63

Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Article 64

Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

Article 65

Marine mammals

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

Article 66

Anadromous stocks

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.

2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations

with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.

3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.
 - (b) The State of origin shall co-operate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.
 - (c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.
 - (d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.
4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall co-operate with the State of origin with regard to the conservation and management of such stocks.
5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67
Catadromous species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.
2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.
3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68
Sedentary species

This Part does not apply to sedentary species as defined in article 77, paragraph 4.

Article 69
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:

- (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
- (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
- (d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70
Right of geographically disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographi-

cal circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:

- (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
- (b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (c) the extent to which other geographically disadvantaged States and landlocked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
- (d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.

5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 71

Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 72
Restrictions on transfer of rights

1. Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.

2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

Article 73
Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Article 74
Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 75
Charts and lists of geographical co-ordinates

1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where

appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

PART VI

CONTINENTAL SHELF

Article 76 *Definition of the continental shelf*

1. The continental shelf of a coastal State 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.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 77

Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 78

Legal status of the superjacent waters and air space and the rights and freedoms of other States

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

Article 79

Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention,

reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploitation of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

5. When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 80
Artificial islands, installations and structures
on the continental shelf

Article 60 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf.

Article 81
Drilling on the continental shelf

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Article 82
Payments and contributions with respect to the exploitation
of the continental shelf beyond 200 nautical miles

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.

3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.

4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

Article 83
Delimitation of the continental shelf between States with
opposite or adjacent coasts

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law,

as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article 84

Charts and lists of geographical co-ordinates

1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

Article 85

Tunnelling

This Part does not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling, irrespective of the depth of water above the subsoil.

PART VII

HIGH SEAS

SECTION 1. GENERAL PROVISIONS

Article 86

Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Con-

vention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88

Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.

Article 89

Invalidity of claims of sovereignty over the high seas

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90

Right of navigation

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91

Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92

Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 93

Ships flying the flag of the United Nations, its specialized agencies and the International Atomic Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article 94
Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

- (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
- (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
- (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95
Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96
Immunity of ships used only on
government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 97
Penal jurisdiction in matters of collision
or any other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 98
Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

- (a) to render assistance to any person found at sea in danger of being lost;
- (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 99
Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

Article 100
Duty to co-operate in the repression of piracy

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101
Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102
Piracy by a warship, government ship or government aircraft
whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103
Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104
Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105
Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106
Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 108

Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall co-operate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the co-operation of other States to suppress such traffic.

Article 109

Unauthorized broadcasting from the high seas

1. All States shall co-operate in the suppression of unauthorized broadcasting from the high seas.

2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:

- (a) the flag State of the ship;
- (b) the State of registry of the installation;
- (c) the State of which the person is a national;
- (d) any State where the transmissions can be received; or
- (e) any State where authorized radio communication is suffering interference.

4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article 110

Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
- (b) the ship is engaged in the slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is without nationality; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the

documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply *mutatis mutandis* to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Article 111 *Right of hot pursuit*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

- (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*,
- (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent

authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 112

Right to lay submarine cables and pipelines

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.

Article 113

Breaking or injury of a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114

Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115

Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

SECTION 2. CONSERVATION AND MANAGEMENT OF THE LIVING RESOURCES OF THE HIGH SEAS

Article 116

Right to fish on the high seas

All States have the right for their nationals to engage in fishing on the high seas subject to:

- (a) their treaty obligations;
- (b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and
- (c) the provisions of this section.

Article 117

Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas

All States have the duty to take, or to co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118

Co-operation of States in the conservation and management of living resources

States shall co-operate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, co-operate to establish subregional or regional fisheries organizations to this end.

Article 119

Conservation of the living resources of the high seas

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:

- (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

Article 120

Marine mammals

Article 65 also applies to the conservation and management of marine mammals in the high seas.

PART VIII

REGIME OF ISLANDS

Article 121 *Régime of islands*

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

PART IX

ENCLOSED OR SEMI-ENCLOSED SEAS

Article 122 *Definition*

For the purposes of this Convention, “enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123 *Co-operation of States bordering enclosed or semi-enclosed seas*

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.

PART X

RIGHT OF ACCESS OF LAND-LOCKED STATES TO
AND FROM THE SEA AND FREEDOM OF TRANSIT*Article 124**Use of terms*

1. For the purposes of this Convention:

- (a) "land-locked State" means a State which has no sea-coast;
- (b) "transit State" means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;
- (c) "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;
- (d) "means of transport" means:
 - (i) railway rolling stock, sea, lake and river craft and road vehicles;
 - (ii) where local conditions so require, porters and pack animals.

2. Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

*Article 125**Right of access to and from the sea and freedom of transit*

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.

3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

*Article 126**Exclusion of application of the most-favoured-nation clause*

The provisions of this Convention, as well as special agreements relating to the exercise of the right of access to and from the sea, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Article 127

Customs duties, taxes and other charges

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.

2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

Article 128

Free zones and other customs facilities

For the convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Article 129

Co-operation in the construction and improvement of means of transport

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may co-operate in constructing or improving them.

Article 130

Measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit

1. Transit States shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit.

2. Should such delays or difficulties occur, the competent authorities of the transit States and land-locked States concerned shall co-operate towards their expeditious elimination.

Article 131

Equal treatment in maritime ports

Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.

Article 132

Grant of greater transit facilities

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in this Convention and which are agreed between States Parties to this Convention or granted by a State Party. This Convention also does not preclude such grant of greater facilities in the future.

PART XI
THE AREA
SECTION 1. GENERAL PROVISIONS

"Omitted"

PART XII
PROTECTION AND PRESERVATION OF THE
MARINE ENVIRONMENT

SECTION 1. GENERAL PROVISIONS

Article 192
General obligation

States have the obligation to protect and preserve the marine environment.

Article 193
Sovereign right of States to exploit their natural resources

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

Article 194
*Measures to prevent, reduce and control pollution of the
marine environment*

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:

- (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
- (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
- (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating

the design, construction, equipment, operation and manning of such installations or devices:

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Article 195

Duty not to transfer damage or hazards or transform one type of pollution into another

In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

Article 196

Use of technologies or introduction of alien or new species

1. States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

2. This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

SECTION 2. GLOBAL AND REGIONAL CO-OPERATION

Article 197

Co-operation on a global or regional basis

States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 198

Notification of imminent or actual damage

When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

Article 199

Contingency plans against pollution

In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations

shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

Article 200

Studies, research programmes and exchange of information and data

States shall co-operate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Article 201

Scientific criteria for regulations

In the light of the information and data acquired pursuant to article 200, States shall co-operate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

SECTION 3. TECHNICAL ASSISTANCE

Article 202

Scientific and technical assistance to developing States

States shall, directly or through competent international organizations:

- (a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, *inter alia*:
 - (i) training of their scientific and technical personnel;
 - (ii) facilitating their participation in relevant international programmes;
 - (iii) supplying them with necessary equipment and facilities;
 - (iv) enhancing their capacity to manufacture such equipment;
 - (v) advice on and developing facilities for research, monitoring, educational and other programmes;
- (b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;
- (c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

Article 203

Preferential treatment for developing States

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in:

- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

SECTION 4. MONITORING AND ENVIRONMENTAL ASSESSMENT

Article 204

Monitoring of the risks or effects of pollution

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.

2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

Article 205

Publication of reports

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

Article 206

Assessment of potential effects of activities

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

SECTION 5. INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT

Article 207

Pollution from land-based sources

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

Article 208

Pollution from sea-bed activities subject to national jurisdiction

1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

Article 209

Pollution from activities in the Area

1. International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.

2. Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.

Article 210

Pollution by dumping

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.

4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

Article 211

Pollution from vessels

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such co-operative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations

for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

6. (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.
- (b) The coastal States shall publish the limits of any such particular, clearly defined area.
- (c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.

7. The international rules and standards referred to in this article should include *inter alia* those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.

Article 212

Pollution from or through the atmosphere

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

SECTION 6. ENFORCEMENT

Article 213

Enforcement with respect to pollution from land-based sources

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

Article 214

Enforcement with respect to pollution from sea-bed activities

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

Article 215

Enforcement with respect to pollution from activities in the Area

Enforcement of international rules, regulations and procedures established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area shall be governed by that Part.

Article 216

Enforcement with respect to pollution by dumping

1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:

- (a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;
- (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
- (c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.

2. No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

Article 217
Enforcement by flag States

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.

6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

Article 218
Enforcement by port States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside

the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.

2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.

3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.

4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

Article 219

Measures relating to seaworthiness of vessels to avoid pollution

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the vessel to continue immediately.

Article 220

Enforcement by coastal States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.

2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the rele-

vant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.

3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.

8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

Article 221

Measures to avoid pollution arising from maritime casualties

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

Article 222
Enforcement with respect to pollution from or
through the atmosphere

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

SECTION 7. SAFEGUARDS

Article 223
Measures to facilitate proceedings

In proceedings instituted pursuant to this Part, States shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of another State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national laws and regulations or international law.

Article 224
Exercise of powers of enforcement

The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 225
Duty to avoid adverse consequences in the exercise of the
powers of enforcement

In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.

Article 226
Investigation of foreign vessels

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

- (i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
 - (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
 - (iii) the vessel is not carrying valid certificates and records.
- (b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.
- (c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.
2. States shall co-operate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

Article 227

Non-discrimination with respect to foreign vessels

In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State.

Article 228

Suspension and restrictions on institution of proceedings

1. Proceedings to impose penalties in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.

2. Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.

3. The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

Article 229
Institution of civil proceedings

Nothing in this Convention affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

Article 230
Monetary penalties and the observance of recognized rights of the accused

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.

2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

Article 231
Notification to the flag State and other States concerned

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to section 6 against foreign vessels.

Article 232
Liability of States arising from enforcement measures

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

Article 233
Safeguards with respect to straits used for international navigation

Nothing in sections 5, 6 and 7 affects the legal régime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 has committed a violation of the laws and regulations referred to in article 42, paragraph 1(a) and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect *mutatis mutandis* the provisions of this section.

SECTION 8. ICE-COVERED AREAS

Article 234
Ice-covered areas

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

SECTION 9. RESPONSIBILITY AND LIABILITY

Article 235
Responsibility and liability

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

SECTION 10. SOVEREIGN IMMUNITY

Article 236
Sovereign immunity

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

SECTION 11. OBLIGATIONS UNDER OTHER CONVENTIONS ON THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Article 237

Obligations under other conventions on the protection and preservation of the marine environment

1. The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention.

PART XIII

MARINE SCIENTIFIC RESEARCH

SECTION 1. GENERAL PROVISIONS

Article 238

Right to conduct marine scientific research

All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention.

Article 239

Promotion of marine scientific research

States and competent international organizations shall promote and facilitate the development and conduct of marine scientific research in accordance with this Convention.

Article 240

General principles for the conduct of marine scientific research

In the conduct of marine scientific research the following principles shall apply:

- (a) marine scientific research shall be conducted exclusively for peaceful purposes;
- (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;
- (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;

- (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

Article 241

*Non-recognition of marine scientific research activities
as the legal basis for claims*

Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources.

SECTION 2. INTERNATIONAL CO-OPERATION

Article 242

Promotion of international co-operation

1. States and competent international organizations shall, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit, promote international co-operation in marine scientific research for peaceful purposes.

2. In this context, without prejudice to the rights and duties of States under this Convention, a State, in the application of this Part, shall provide, as appropriate, 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 and safety of persons and to the marine environment.

Article 243

Creation of favourable conditions

States and competent international organizations shall co-operate, through the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of marine scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

Article 244

Publication and dissemination of information and knowledge

1. States and competent international organizations shall, in accordance with this Convention, make available by publication and dissemination through appropriate channels information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research.

2. For this purpose, States, both individually and in co-operation with other States and with competent international organizations, shall actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as the strengthening of the autonomous marine scientific research capabilities of developing States through, *inter alia*, programmes to provide adequate education and training of their technical and scientific personnel.

SECTION 3. CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH

Article 245

Marine scientific research in the territorial sea

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

Article 246

Marine scientific research in the exclusive economic zone and on the continental shelf

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.

2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.

3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.

4. For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State.

5. Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project:

- (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;
- (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;
- (d) contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.

6. Notwithstanding the provisions of paragraph 5, coastal States may not exercise their discretion to withhold consent under subparagraph (a) of that paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part on the continental shelf, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, outside those specific areas which coastal States may at any time pub-

licly designate as areas in which exploitation or detailed exploratory operations focused on those areas are occurring or will occur within a reasonable period of time. Coastal States shall give reasonable notice of the designation of such areas, as well as any modifications thereto, but shall not be obliged to give details of the operations therein.

7. The provisions of paragraph 6 are without prejudice to the rights of coastal States over the continental shelf as established in article 77.

8. Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities undertaken by coastal States in the exercise of their sovereign rights and jurisdiction provided for in this Convention.

Article 247

Marine scientific research projects undertaken by or under the auspices of international organizations

A coastal State which is a member of or has a bilateral agreement with an international organization, and in whose exclusive economic zone or on whose continental shelf that organization wants to carry out a marine scientific research project, directly or under its auspices, shall be deemed to have authorized the project to be carried out in conformity with the agreed specifications if that State approved the detailed project when the decision was made by the organization for the undertaking of the project, or is willing to participate in it, and has not expressed any objection within four months of notification of the project by the organization to the coastal State.

Article 248

Duty to provide information to the coastal State

States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
- (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

Article 249

Duty to comply with certain conditions

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:

- (a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the

coastal State and without obligation to contribute towards the costs of the project;

- (b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
- (c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
- (d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
- (e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;
- (f) inform the coastal State immediately of any major change in the research programme;
- (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

2. This article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

Article 250

Communications concerning marine scientific research projects

Communications concerning the marine scientific research projects shall be made through appropriate official channels, unless otherwise agreed.

Article 251

General criteria and guidelines

States shall seek to promote through competent international organizations the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of marine scientific research.

Article 252

Implied consent

States or competent international organizations may proceed with a marine scientific research project six months after the date upon which the information required pursuant to article 248 was provided to the coastal State unless within four months of the receipt of the communication containing such information the coastal State has informed the State or organization conducting the research that:

- (a) it has withheld its consent under the provisions of article 246; or
- (b) the information given by that State or competent international organization regarding the nature or objectives of the project does not conform to the manifestly evident facts; or
- (c) it requires supplementary information relevant to conditions and the information provided for under articles 248 and 249; or

- (d) outstanding obligations exist with respect to a previous marine scientific research project carried out by that State or organization, with regard to conditions established in article 249.

Article 253

Suspension or cessation of marine scientific research activities

1. A coastal State shall have the right to require the suspension of any marine scientific research activities in progress within its exclusive economic zone or on its continental shelf if:

- (a) the research activities are not being conducted in accordance with the information communicated as provided under article 248 upon which the consent of the coastal State was based; or
- (b) the State or competent international organization conducting the research activities fails to comply with the provisions of article 249 concerning the rights of the coastal State with respect to the marine scientific research project.

2. A coastal State shall have the right to require the cessation of any marine scientific research activities in case of any non-compliance with the provisions of article 248 which amounts to a major change in the research project or the research activities.

3. A coastal State may also require cessation of marine scientific research activities if any of the situations contemplated in paragraph 1 are not rectified within a reasonable period of time.

4. Following notification by the coastal State of its decision to order suspension or cessation, States or competent international organizations authorized to conduct marine scientific research activities shall terminate the research activities that are the subject of such a notification.

5. An order of suspension under paragraph 1 shall be lifted by the coastal State and the marine scientific research activities allowed to continue once the researching State or competent international organization has complied with the conditions required under articles 248 and 249.

Article 254

Rights of neighbouring land-locked and geographically disadvantaged States

1. States and competent international organizations which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, shall give notice to the neighbouring land-locked and geographically disadvantaged States of the proposed research project, and shall notify the coastal State thereof.

2. After the consent has been given for the proposed marine scientific research project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention, States and competent international organizations undertaking such a project shall provide to the neighbouring land-locked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1 (f).

3. The neighbouring land-locked and geographically disadvantaged States referred to above shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in

accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or competent international organizations conducting the marine scientific research.

4. States and competent international organizations referred to in paragraph 1 shall provide to the above-mentioned land-locked and geographically disadvantaged States, at their request, the information and assistance specified in article 249, paragraph 1 (d), subject to the provisions of article 249, paragraph 2.

Article 255

Measures to facilitate marine scientific research and assist research vessels

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research conducted in accordance with this Convention beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their laws and regulations, access to their harbours and promote assistance for marine scientific research vessels which comply with the relevant provisions of this Part.

Article 256

Marine scientific research in the Area

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with the provisions of Part XI, to conduct marine scientific research in the Area.

Article 257

Marine scientific research in the water column beyond the exclusive economic zone

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with this Convention, to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone.

SECTION 4. SCIENTIFIC RESEARCH INSTALLATIONS OR EQUIPMENT IN THE MARINE ENVIRONMENT

Article 258

Deployment and use

The deployment and use of any type of scientific research installations or equipment in any area of the marine environment shall be subject to the same conditions as are prescribed in this Convention for the conduct of marine scientific research in any such area.

Article 259

Legal status

The installations or equipment referred to in this section do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 260
Safety zones

Safety zones of a reasonable breadth not exceeding a distance of 500 metres may be created around scientific research installations in accordance with the relevant provisions of this Convention. All States shall ensure that such safety zones are respected by their vessels.

Article 261
Non-interference with shipping routes

The deployment and use of any type of scientific research installations or equipment shall not constitute an obstacle to established international shipping routes.

Article 262
Identification markings and warning signals

Installations or equipment referred to in this section shall bear identification markings indicating the State of registry or the international organization to which they belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account rules and standards established by competent international organizations.

SECTION 5. RESPONSIBILITY AND LIABILITY

Article 263
Responsibility and liability

1. States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this Convention.
2. States and competent international organizations shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.
3. States and competent international organizations shall be responsible and liable pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

SECTION 6. SETTLEMENT OF DISPUTES AND INTERIM MEASURES

Article 264
Settlement of disputes

Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with Part XV, sections 2 and 3.

Article 265
Interim measures

Pending settlement of a dispute in accordance with Part XV, sections 2 and 3, the State or competent international organization authorized to conduct a marine scientific research project shall not allow research activities to commence or continue without the express consent of the coastal State concerned.

PART XIV
DEVELOPMENT AND TRANSFER OF
MARINE TECHNOLOGY

SECTION 1. GENERAL PROVISIONS

"Omitted"

PART XV
SETTLEMENT OF DISPUTES
SECTION 1. GENERAL PROVISIONS

"Omitted"

PART XVI
GENERAL PROVISIONS

Article 300
Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

Article 301
Peaceful uses of the seas

In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

Article 302
Disclosure of information

Without prejudice to the right of a State Party to resort to the procedures for the settlement of disputes provided for in this Convention, nothing in this Convention shall be deemed to require a State Party, in the fulfilment of its obligations under this Convention, to supply information the disclosure of which is contrary to the essential interests of its security.

Article 303
Archaeological and
historical objects found at sea

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall co-operate for this purpose.

2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the sea-bed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

Article 304
Responsibility and liability for damage

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

PART XVII

FINAL PROVISIONS

Article 305
Signature

1. This Convention shall be open for signature by:

- (a) all States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (f) international organizations, in accordance with Annex IX.

2. This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

Article 306
Ratification and formal confirmation

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph 1(b), (c), (d) and (e), and to formal confirmation, in accordance with Annex IX, by the entities referred to in article 305, paragraph 1(f). The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 307
Accession

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by the entities referred to in article 305, paragraph 1(f), shall be in accordance with Annex IX. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 308
Entry into force

1. This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.

3. The Assembly of the Authority shall meet on the date of entry into force of this Convention and shall elect the Council of the Authority. The first Council shall be constituted in a manner consistent with the purpose of article 161 if the provisions of that article cannot be strictly applied.

4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.

5. The Authority and its organs shall act in accordance with resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment and with decisions of the Preparatory Commission taken pursuant to that resolution.

Article 309
Reservations and exceptions

No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.

Article 310
Declarations and statements

Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

Article 311
Relation to other conventions and international agreements

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.

2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

4. States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.

5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.

6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

Article 312

Amendment

1. After the expiry of a period of 10 years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within 12 months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

Article 313

Amendment by simplified procedure

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention, other than an amendment relating to activities in the Area, to be adopted by the simplified procedure set forth in this article without convening a conference. The Secretary-General shall circulate the communication to all States Parties.

2. If, within a period of 12 months from the date of the circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.

3. If, 12 months from the date of the circulation of the communication, no State Party has objected to the proposed amendment or to the proposal for its adoption by the simplified procedure, the proposed amendment shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted.

Article 314

Amendments to the provisions of this Convention relating exclusively to activities in the Area

1. A State Party may, by written communication addressed to the Secretary-General of the Authority, propose an amendment to the provisions of this Convention relating exclusively to activities in the Area, including Annex VI, section 4. The Secretary-General shall circulate such communication to all States Parties. The proposed amendment shall be subject to approval by the Assembly following its approval by the Council. Representatives of States Parties in those organs shall have full powers to consider and approve the proposed amendment. The proposed amendment as approved by the Council and the Assembly shall be considered adopted.

2. Before approving any amendment under paragraph 1, the Council and the Assembly shall ensure that it does not prejudice the system of exploration for and exploitation of the resources of the Area, pending the Review Conference in accordance with article 155.

Article 315

Signature, ratification of, accession to and authentic texts of amendments

1. Once adopted, amendments to this Convention shall be open for signature by States Parties for 12 months from the date of adoption, at United Nations Headquarters in New York, unless otherwise provided in the amendment itself.

2. Articles 306, 307 and 320 apply to all amendments to this Convention.

Article 316

Entry into force of amendments

1. Amendments to this Convention, other than those referred to in paragraph 5, shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties or by 60 States Parties, whichever is greater. Such amendments shall not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

2. An amendment may provide that a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

3. For each State Party ratifying or acceding to an amendment referred to in paragraph 1 after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

4. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 1 shall, failing an expression of a different intention by that State:

- (a) be considered as a Party to this Convention as so amended; and
- (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

5. Any amendment relating exclusively to activities in the Area and any amendment to Annex VI shall enter into force for all States Parties one year following the deposit of instruments of ratification or accession by three fourths of the States Parties.

6. A State which becomes a Party to this Convention after the entry into force of amendments in accordance with paragraph 5 shall be considered as a Party to this Convention as so amended.

Article 317
Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 318
Status of Annexes

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.

Article 319
Depositary

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.

2. In addition to his functions as depositary, the Secretary-General shall:

- (a) report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention;
- (b) notify the Authority of ratifications and formal confirmations of and accessions to this Convention and amendments thereto, as well as of denunciations of this Convention;
- (c) notify States Parties of agreements in accordance with article 311, paragraph 4;
- (d) circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;
- (e) convene necessary meetings of States Parties in accordance with this Convention.

3. (a) The Secretary-General shall also transmit to the observers referred to in article 156:

- (i) reports referred to in paragraph 2(a);
- (ii) notifications referred to in paragraph 2(b) and (c); and

- (iii) texts of amendments referred to in paragraph 2(d), for their information.
- (b) The Secretary-General shall also invite those observers to participate as observers at meetings of States Parties referred to in paragraph 2(e).

Article 320
Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall, subject to article 305, paragraph 2, be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE AT MONTEGO BAY, this tenth day of December, one thousand nine hundred and eighty-two.

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