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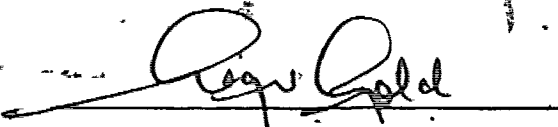
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Submitted in partial fulfilment of the requirements for
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ABSTRACT

As a member of the Grenada delegation to the Third United Nations Conference on the Law of the Sea, the author had a rare opportunity of being a participant in one of the most elaborate international conventions of all time. Nothing has had a more profound impact and influence upon international relations in the past decade than UNCLOS III. A complete history of the law of the sea would start with the Mediterranean in the days of ancient Greece and Rome, however, the regime that was traditionally accepted for the governance of the ocean space and resources was "Freedom of the Seas".

This thesis examines the development of states' claim to extended jurisdiction in the oceans by way of the Territorial Sea, Contiguous Zone, and Continental Shelf which inevitably led to a gradual erosion of the regime of the high seas and/or the concept as aforesaid "Freedom of the Seas". A brief analysis is made of the Hague Codification Convention in 1930, the Geneva Convention of 1958, and the Second Law of the Sea Conference in 1960. Having established some measure of historical continuity, the thesis takes a holistic look at UNCLOS III, and in particular, at how certain parts of the Convention, to wit, ICNT Rev.2, may affect Grenada should a treaty emerge. The thesis analyses the juridical status of the (a) Territorial Sea, (b) Contiguous Zone, (c) Exclusive Economic Zone, and (d) Continental Shelf, in Informal Composite Negotiating Text (ICNT) Rev.2 and also in the national legislation of Grenada and Venezuela.

Analysed here, too, are the effects of geography, navigation, pollution, marine scientific research, fishing and delimitation of maritime boundaries upon Grenada in light of extended coastal jurisdiction.

The discussion concludes with a debate as to possible solutions to the problems created by UNCLOS III in so far as Grenada and her neighbours are concerned. Mention is made of international organizations such as UNEP, IOC, and FAO.

ABBREVIATIONS

C.I.D.A.	Canadian International Development Agency
ECAREG	Eastern Canada Traffic Regulations
EEZ	Exclusive Economic Zone
F.A.O.	Food and Agriculture Organization of the United Nations
I.C.J.	International Court of Justice
ICNT	Informal Composite Negotiating Text
IMCO	Intergovernmental Maritime Consultative Organization
I.O.C.	Intergovernmental Oceanographic Commission
IOCARIBE	Association for the Caribbean and Adjacent Region
I.O.F.C.	Indian Ocean Fishery Commission
LOS	Law of the Sea
NATO	North Atlantic Treaty Organization
NIEO	New International Economic Order
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	The United Nations Environment Programme
UNGAOR	United Nations General Assembly Official Records
UNCTAD	United Nations Conference on Trade and Development
WECAFC	Western Central Atlantic Fisheries Commission
WHO	World Health Organization
WMO	World Meteorological Organization

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CHAPTER I

FREEDOM OF THE SEAS

Then tools for beast and lime for birds were found!
Then first men made homes.
Then landmarks limited to each his right for all,
before was common as the light.¹

Man's perception of the state of the ocean some four or five centuries ago is adequately highlighted by the above-mentioned verse. This perception found expression in two ancient theories, namely res nullius and res communis. These two concepts, actually creatures of property law of the Roman Civil Law, were used by maritime nations to lay claims to the sea. Res communis implied the common property of everyone: the air, running water, the sea and, in later law, the sea shore to the highest winter floods.² On the other hand, res nullius meant property belonging to no one; wild animals and abandoned property were the most common examples of this classification.³ In his Institutes, Justinian adopted the classical assumption invoking the authority of Celsus that the use of the sea was common to all.⁴ Classical jurists such as Marcianus,⁵ Ulpian and Paulus, as well as Celsus, alleged that the sea was not only owned by no one but, like the air, was incapable of appropriation.

It can be argued that the concept of "Freedom of the Sea", or Mare Liberum, has its genesis in the theory of res communis.

Sixteenth century lawyers endeavoured to affirm that all the seas are common to the universality of mankind.⁵ Such being the case, it was felt that every nation is free to travel to every other nation and to trade with it.⁶

SIXTEENTH CENTURY CLAIMS TO THE SEAS

All property, Grotius (1583-1645) argued, is based on possession (occupatio).⁷ What cannot be seized or enclosed -- for example, the open sea -- cannot become property and therefore remains common to all mankind.⁸ The sea can neither be bought nor sold, nor otherwise be legally acquired. It is under God's dominion alone.⁹ Property rights by prescription or custom cannot be acquired in the sea, for no one has power to grant a privilege to mankind in general,¹⁰ and mankind in general cannot be assumed to have granted a concession in the sea.¹¹

Trade assumed great importance towards the beginning of the seventeenth century. The Spanish and Portuguese laid claims to all the seas in the southern hemisphere, based on a series of Papal Bulls and the Treaty of Tordesillas of 1494.¹²

These claims to the appropriation of the sea, however, were stringently opposed by two Spanish monks. Francis Alphonso de Castro, who wrote about the middle of the sixteenth century, protested vehemently against the proprietary claims of states such as Spain and Portugal to the Pacific, the Caribbean and the Gulf of Mexico, the Indian Ocean and the South Pacific, and also Venice's claims in the Adriatic.¹³ Ferdinand Vasquez expressed the same opinions as de Castro; he held that the sea could not be appropriated but remained common to mankind since the beginning of the world. He suggested that the claim of the Portuguese, forbidding others the freedom of navigation in the East Indies, and that of the Spaniards, prohibiting others from sailing through "the spacious and immense sea" to the West Indies, were no less vain and foolish (non minus insano) than the pretensions of the Venetians and Genoese.¹⁴

Early in her reign, Queen Elizabeth I had occasion to protest against the claims of Portugal, and had a heated dispute with King Sebastian about them. Later, the daring exploits of Drake on the Spanish seas were more than a flagrant violation of Philip's pretension to mare clausum in the western Atlantic and Pacific Oceans -- a claim which Elizabeth refused to recognize.¹⁵ When Mendoza, the Spanish Ambassador, complained to her in 1580 of Drake's depredations and that English ships presumed to trade in the "Indian" seas, he was told in effect that the Spaniards, contrary to the Law of Nations, had prohibited the English from trading in those regions, and had consequently drawn the mischief upon themselves. She was unable to understand, she said, why her subjects and those of other Princes should be barred from the "Indies". She could not recognize the prerogative of the Bishop of Rome "that he should bind Princes who owe him no obedience", and her subjects would continue to navigate "that vast Ocean" since "the use of the sea and air is common to all; neither can any title to the ocean belong to any people or private man, forasmuch as neither nature nor regard of the public use permitteth any possession thereof."¹⁶

MARE LIBERUM VS MARE CLAUSUM

Grotius advanced the most compelling argument in respect to freedom of the seas; his most memorable passage reads as follows: "All property is grounded upon occupation which requires that moveables shall be seized and immoveable things shall be enclosed; whatever therefore, cannot be so seized or enclosed is incapable of being made a subject of property. The vagrant waters of the ocean are thus necessarily free. The right of occupation, again, rests upon the fact that most things

become exhausted, by promiscuous use and that appropriation consequently is the condition of their utility to human beings. But this is not the case, with the sea. It can be exhausted neither by navigation nor by fishing, that is to say, in neither of the two ways in which it can be used."¹⁷ Grotius' argument was met head on by his most formidable opponent, Selden, who wrote an exhaustive reply, in two books, to Grotius' work.

Selden disputed the arguments of Grotius in his work, and he maintained the right of appropriation by the English kings of the waters surrounding Great Britain. He admitted the principle that a state could not forbid the navigation of its waters to humanity:¹⁸ he thus attempted to reconcile the British special claim to the sea with the general claims of Freedom of Navigation.¹⁹

Sir Phillip Medons fully supports the view that, "The sea is the public property of the Crown of England", but at the same time declares that it "is common to the peaceable traders of all nations, and this is so far from being a damage to any, that it is highly beneficial to all, for as there is no man so self-sufficient as not to need the continual help of another, so neither is there any country which does not at some time or other need the growth and production of another."²⁰

Britain, by this time, had left the Dutch, French, and later the Germans to fight the battle for a mare liberum, and began to claim the seas surrounding the British Isles; thus joining the Spanish and Portuguese in fighting for a mare clausum.²¹ In the late sixteenth century, the principle of the freedom of the seas was invoked by the British to protect expanding trade activities and to justify the passage of Drake and other venturers through the seas reserved by the Pope for Spain.²²

However, after Britain achieved naval supremacy early in the eighteenth century, she could have afforded to, and indeed did, adopt a more moderate attitude toward the doctrine of Mare Clausum.

THE BREADTH OF THE TERRITORIAL SEA

As the debate concerning Mare Liberum and Mare Clausum faded away, the territorial waters became a matter of considerable debate. At various times and places in Europe, during the fifteenth through the eighteenth centuries, territorial waters were viewed as being valuable primarily for protecting nearby fisheries from foreign fishermen, and also for national security. However, there was no agreement on whether they should include all waters within sight of land, all waters which could be defended by shore-based cannon, or a breadth based on some fixed distance or other criterion. The cannon shot rule, as it was referred to, seemed to have facilitated a uniform zone of maritime belt, extending seaward from the shore along the entire coastline of states abutting the sea. It therefore did no more than place under the protection of the territorial sovereign all ships lying off the coast covered by the actual guns of actual ports or fortresses.

(a) The Cannon Shot Rule

The identification of the three-mile limit with the Cannon Shot Rule makes its appearance at least as early as the last quarter of the eighteenth century. The Italian Galiani (1782) was the earliest known writer to introduce this historical combination or confusion; a fact which certainly lends support to the perceived view that the Three Mile Rule represented an attempt to convert cannon range into terms of actual measured miles. It seems possible, however, that the two rules never

had any real historical connection; they may well have been, wholly distinct rules having their roots in different parts of Europe.²³ This rule was not adopted unanimously by all Maritime Powers; for instance, the Danish claimed that territorial waters extended to the limits of eyesight, or about four or five leagues from the island off the coast. Denmark and Norway had thus developed, from the late sixteenth to the early nineteenth century, the practice of exercising jurisdiction within adjacent maritime areas of a standard width. This development took place, it appears, without any reference whatsoever to the Cannon Shot Rule. Danish claims to jurisdiction had been based either on a dominium maris or on earlier claims to water within sight of land.²⁴ It is widely accepted that the first introduction in Denmark-Norway of a one league limit -- that is, four nautical miles -- dates from 1743 when the Governor of Finmarken, the northwestern part of Norway, permitted Russian fishermen to approach to within one league of the shore of his Province on payment of a levy.²⁵ Economic reasons were probably also responsible for the introduction in 1745 of a one-league limit to safeguard Danish neutrality.²⁶ Evidence that has been found, however, points in the direction of Maritime Powers reconciling themselves to Danish-Norwegian claims.²⁷ In the case of Sweden, the Danish example was explicitly followed. After accepting Danish claims to the exercise of jurisdiction within a continuous belt of coastal waters, a width of three miles was proposed by France.²⁸ France in 1833 was also experiencing difficulties with English fishermen. It was alleged by the British that French fishermen were engaged in dredging for oysters fifteen miles from the shores of France; of fishing for herring and mackerel within less than a mile of the British coasts, compelling the

native fishermen to shoot their nets to the seawards of them; of maliciously destroying fishing gear; and of recklessly extirpating the spawn and brood of fish in the shallow waters along the English coast.²⁹ In 1837 a mixed commission was appointed by the British and French governments in connection with these complaints, and especially to ascertain and define the limits within which the subjects of the two countries respectively should be at liberty to fish for oysters between Jersey and neighbouring coasts of France.³⁰ The articles defining the general fishery limits on the coasts of the two countries were as follows:

"Article IX, The subjects of Her Britannic Majesty shall enjoy the exclusive right of fishing within the distance of three miles from low-water mark, along the whole extent of the coasts of the British Islands; and the subjects of the King of the French shall enjoy the exclusive right of fishing within the distance of three miles from low-water mark, along the whole extent of the coasts of France, it being understood that upon that part of the coast of France which lies between Cape Carteret and Point Meinga, French subjects shall enjoy the exclusive right of all kinds of fishing within the limits assigned in Article I of the convention, for the French Oyster Fishery.

It is equally agreed, that the distance of three miles fixed as the general limit of the exclusive right of fishing upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."³¹

By the first half of the nineteenth century, the Three Mile Rule gained substantial ground over the Cannon Shot Rule and also over the more extensive Scandinavian claims. The reason for the gradual abandonment of the Cannon Shot Rule by states in favour of the Three Mile Rule has been described lucidly in the following words:

"The truth seems to be that the value of Bynkershoek's maxim, "Imperium terrae finiri ubi finitur armorum potestas" lay in the fact that it denied the ancient theory that the sea is incapable of appropriation without countenancing the excessively wide claim which had led to the famous Grotius-Selden controversy. The Nations were unwilling to say that the free and common seas touched their very shores, and on the other hand they found it impracticable to claim dominion over vast oceans. Bynkershoek supplied the happy medium on a theoretical basis which adopted and accepted for nearly a century before Jefferson stated the fashion of using three miles, or a Marine league as the alternative. It was then approximately an exact equivalent (sic) and to this its introduction was no doubt due, but once introduced it remained because the nations found it a convenient compromise between conflicting interests; when it ceases to be generally convenient it will probably be changed by general convention.³²

EXPANSION OF TERRITORIAL SEA CLAIMS

Expansion of the territorial sea claims continued into the twentieth century; for example, in 1945 as many as ten states had asserted claims to a six-mile territorial sea (Bulgaria, Greece, Haiti, Iran, Portugal, including its colonies of Cape Verde, Mozambique and Sao Tome (and Principe), Romania, and Spain (including its colony of Equatorial Guinea)), Turkey and Yugoslavia. Moreover, the Soviet Union and Ukraine claimed a twelve-mile territorial sea.³³ New claims had been made by the end of 1950-55.³⁴ Four of these settled on twelve-mile limits (Bulgaria, Ecuador, Ethiopia and Romania). Egypt assumed a six-mile claim, and Cambodia and Albania assumed five-and-ten-mile claims respectively. In 1955, two more Latin American states had joined Peru in creating a 200-mile territorial sea -- Honduras, which previously claimed three-mile limits, and El Salvador.³⁵ The South

Korean proclamation of 18th January, 1952 assumed a non-uniform claim to areas varying from 20 miles to 200 miles from the shore. Professors Johnston and Gold, in their paper on Extended Jurisdiction, point out that during the period 1955-60, a clearer picture emerges with respect to new claimants to an extended territorial sea. It is alleged that less than nine countries settled for twelve-mile limits, with the exception of India and Thailand, both of which claimed from three to six miles.³⁶ For instance, Benin (Dahomey), Cyprus, Western Samoa, Trinidad and Tobago, Jamaica, Sierra Leone, Zaire and Nigeria maintained their three-mile limits; however, Cameroon, Mauretania, Senegal and Tunisia, former French colonies, moved from three to six miles. Therefore, by 1965 some fifty-six states had claimed a territorial sea exceeding the three-or four-mile limits. Among these fifty-six, it is alleged that almost one-half (27) had settled on twelve miles.³⁷ Since the great majority of the states had opted to adopt a twelve-mile territorial sea limit, it became almost a certainty that the majority of delegates to the Law of the Sea Conference, UNCLOS III, would reach agreement on a uniform twelve-mile territorial sea.

HAGUE CODIFICATION CONFERENCE, 1930

At the Hague Codification Conference in 1930, an attempt was made by the League of Nations to draw up an International Convention on the codification of the Law of Territorial Waters, through its Committee for the Codification of International Law. After a detailed examination of many topics, the Committee came to the conclusion that the Laws of Territorial Waters, amongst two other subjects, were ripe for codification.

Forty-five states sent delegates to this conference; however, the conference failed to accomplish its purpose, to wit, to agree upon a convention upon Territorial Waters. If one examines carefully the basis for discussion and the conference's draft on the legal status of the territorial sea, it no doubt serves as a theoretical foundation for a better understanding of future conferences on the Law of the Sea.

(See Appendix A).

Hence the first international conference on the territorial sea collapsed; however, some general agreement was reached on the fact that the territorial sea forms part of the actual territory of the Nation State with all other ocean areas considered "free".³⁸ More precisely, it stated, "the territory of a state includes a belt of sea described in this convention as the territorial sea."³⁹ Secondly, the conference found common ground with respect to the high seas. It was generally accepted that "the high seas included all areas of the sea beyond the territorial waters of states." The right of hot pursuit, begun within the territorial sea of a state for violations of coastal laws and regulations in that zone, may continue on the high seas if uninterrupted, but ceases upon entering the territorial waters of a third state. In 1956, the International Law Commission advised that international law does not permit an extension of the territorial sea beyond twelve miles.⁴⁰ This opinion helped set the ground work for the 1958 and 1960 conferences held in Geneva, Switzerland (86 nations attended). Again, no agreement was reached as to the breadth of the zone. There was only agreement that "the sovereignty of a state extends to a belt of sea adjacent to its coast, beyond its land territory and internal waters, described as

the territorial sea. The sovereignty includes the air space above, its sea bed and subsoil. The normal baseline for measurement of breadth shall be the low water line as marked on recognized charts".⁴¹ Again, no agreement was reached as to the breadth of the zone. The convention clearly recognized that a nation state has territorial rights in the sea bed under the territorial sea.⁴²

TRUMAN PRESIDENTIAL PROCLAMATIONS OF 1945, AND
THEIR EFFECTS ON FUTURE LAW OF THE SEA DEVELOPMENTS

The first signal of the movement towards a new ocean order came when on or about September 28, 1945, United States President Harry S. Truman issued two proclamations, one involving mineral resources of the Continental Shelf and the other affecting coastal fisheries rights in certain areas of the high seas.⁴³ The Truman Proclamations should be viewed as the culmination of a long history of coastal state claims to offshore jurisdiction beyond the traditional three-mile limit. In the western hemisphere a number of resource-oriented claims had been advanced prior to the U.S. proclamations. For example, Argentina in 1907 declared a ten-mile fishing zone,⁴⁴ and Columbia in 1923 claimed a twelve-mile territorial sea to protect hydrocarbons and fishing.⁴⁵ Similarly, in Europe, the Soviet Union in 1923 laid claims to a twelve-mile territorial sea.⁴⁶ It must be noted, however, that the aforesaid claims were insignificant when compared with the Truman Proclamations. The proclamation on the Shelf provided, inter alia, for the exercise of the jurisdiction and control of the government of the United States over the natural resources of the subsoil and sea bed of the Continental Shelf

beneath the high seas, but contiguous to the coast of the United States.⁴⁷ The proclamation on fisheries established conservation zones in areas of the high seas contiguous to the coast of the United States.⁴⁸

Fenwick,⁴⁹ speaking about both proclamations of President Truman, says, "it is clear that both proclamations contemplate encroachments upon traditional rights to the use of the high seas, and that in consequence, international agreement must be reached upon the new claims before they can be said to constitute a rule of international law." A great many countries did not wait for international agreement on this matter before stating their claim to the ocean bordering their coasts. For instance, on October 29, 1945,⁵⁰ Mexico pronounced its Presidential Declaration. The relevant passage follows an explanation of the Continental Shelf theory and statements concerning mineral resources.

"In the years before the war the Western Hemisphere was obliged to watch permanent fishing fleets of extra-continental countries engage in the immoderate and exhaustive exploitation of this immense wealth, which although certainly it must contribute to the welfare of the world, must obviously belong in the first instance to the country which possesses it and to the continent of which that country forms a part. By reason of the very nature of this wealth, it is indispensable that this protection should be exercised by extending the control and supervision of the state to the places or zones indicated by Science for the development of breeding-grounds of the high seas, irrespective of the distance separating them from the coast. For these reasons, the Government of the Republic claims the whole Continental Shelf adjacent to its coasts and all and every one of the natural riches known or still to be discovered, which are found in it, and will proceed to supervise, utilise, and control the lines of fishing protection which are necessary for the conservation of this source of well-being."

It is clear from this Declaration that the government of Mexico was seeking to conserve its resources for the welfare of the nation. As was

exclaimed by one United States diplomat, in response to the Truman Proclamations, "... we came to the provisional conclusion that the value of unilateral acts is an initiative impulse to a new development in international law, and at the same time, from a national point of view an act of economic self-defense, a sort of conservatory seizure or attachment to prevent other states from exploiting the resources of the Shelf.⁵¹ A great many other states in Latin and South America were to share similar views to those expressed by Yepes, in that a great many of those states claimed sovereignty not only over the Continental Shelf but also over the waters above the Continental Shelf -- the so-called Epicontinental Sea.⁵² The preamble of the Argentina Declaration of October 9, 1946,⁵³ proclaiming sovereignty over the Epicontinental Sea and the Continental Shelf, reads as follows:

"Whereas ... the waters covering the Submarine Platform constitute the Epicontinental Sea, characterised by extraordinary biological activity, owing to the influence of the sunlight, where plant life as exemplified in algae, mosses and the life of innumerable species of animals, both susceptible of industrial utilization....

Article 1. It is hereby declared that the Argentine Epicontinental Sea and Continental Shelf are subject to the sovereign power of the nation.

Article 2. For purposes of free navigation, the character of the waters situated in the Argentine Epicontinental Sea and above the Argentine Continental Shelf, remains unaffected by the present Declaration."

The Chilean Presidential Declaration of June 25, 1947,⁵⁴ contains a similar assertion as to the claims of sovereignty as found in the United States and Mexican instruments and the Argentine Declaration. The preamble reads, in part as follows:

"... that particularly in the case of the Republic of Chile there is a manifest advantage in issuing an analogous Proclamation of Sovereignty because owing to its topography and lack of Mediterranean extension, the country life is bound up with the sea and with all the present and future riches contained in the sea, to a greater degree than in the case of any nation."⁵⁵

The preamble of Peru's Presidential Decree of August 1, 1947,⁵⁶ after having stressed the necessity for conservation of fishing resources, goes on to say "... that the Fertilizing Wealth deposited by Guano birds on the islands of the Peruvian coast also requires for its safeguard, the protection, conservation and regulation of the use of the fishing resources which serve to nourish the said birds" Then follows a similar reference to the Epicontinental waters as found in the Chilean Decree.

The national sovereignty and jurisdiction are exercised as well over the sea adjacent to the coasts of the national territory, whatsoever its depth, to the extent necessary to reserve, protect, conserve and utilize the national resources and wealth of all types which are found in or under the said sea.⁵⁷ Costa Rica proclaimed this national sovereignty by Decree-Law of July 27, 1948,⁵⁸ and El Salvador under Article 7 of its constitution of 1950. More famous than these unilateral initiatives was the tri-lateral decision in 1952 of Chile, Ecuador and Peru (CEP) to establish a 'maritime zone' which was declared to extend not less than 200 miles from their shores.⁵⁹ It can be seen that the Latin American claims to extended maritime jurisdiction vary somewhat from one another. In contemporary language they could be said to be early proposals for a multi-purpose, multi-functional zone within which the coastal state would exercise sovereignty or sovereign rights

for designated purposes, but allegedly without prejudice to existing rights of navigation and associated rights under the regime of the high seas.⁶⁰ The overriding version that appears to have motivated the above-listed countries to extended claims was basically economic in nature. To what extent could such claims be labeled as economic "self-defense" was demonstrated in the 1952 Santiago Declaration⁶¹ on the 'Maritime Zone'. It is submitted that the economic and social considerations underlying the claim to the 200-mile maritime zone are outlined in the preamble to the aforementioned Declaration, according to which,

"Governments are under an obligation to secure the necessary conditions of subsistence for their peoples and to provide them with the means for their economic development. Consequently, it is their duty to provide for the conservation and protection of their natural resources and to regulate the exploitation of their respective countries it is therefore also their duty to prevent exploitation of the said resources outside their jurisdiction from jeopardizing the existence, integrity and conservation of this wealth to the detriment of nations which, owing to their geographical positions possess in their seas irreplaceable sources of subsistence and vital economic resources."⁶²

The preamble makes it quite clear that these claims were made in order to accomplish the economic goals of development and economic self-sufficiency. Chile, Ecuador and Peru ratified the maritime zone concept, which was later acceded to by Costa Rica. The parties agreed that:

- 1.) Governments are bound to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy.

2.) It is therefore the duty of each government to ensure the conservation and protection of its natural resources and to regulate the use thereof to the greatest possible advantage of the country.

3.) Hence, it is the duty of each government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential food and economic materials.⁶³

It is argued that the Declaration could be seen as a claim for compensation since, for the most part, the parties to the Declaration do not have a continental shelf of worthwhile significance; consequently, they feel themselves entitled to other rights over specific areas of sea contiguous to their territories. It is interesting to note that during the deliberations of the third meeting of the Inter-American Council of Jurists, the Representative of Peru, Professor Alberto Ulloa, expressed the view that the joint declaration of the three American Republics of the South Pacific Seaboard constituted a just claim in that it represents compensation to those countries which have no Continental Shelf.⁶⁴

"There can be no reason in justice, and in the final analysis every reason in justice is a moral reason; there can, I repeat, be no reason in justice why many countries should have a broad submarine zone as a result of prehistoric geological upheavals while others should have none." The idea of compensation is not the sole basis for the Santiago Declaration, but it is one of the most solid bases vis-à-vis other states and one that cannot be ignored.⁶⁵ This same theme as aforesaid was developed more elaborately by a Representative of Ecuador at the specialized conference of Ciudad Trujillo. He states:

"We take the fair, human and absolutely just view that were nations to take the limit of their continental or insular terraces, as the case may be, as the limit of their territorial sea, many such nations would find themselves in a position of inferiority by comparison to others, since the submarine terrace alone is not sufficient to create that equality conducive to well-being. The important thing is not the contour of the submarine area but the maritime resources that will produce the well-being. We know full well that the stocks of fish in the submarine areas, to confine ourselves to them for the moment, may be abundant, but may also be scanty, despite the scientific view that the Epicontinental Sea is the richest in fish... but we must also admit that there may be abundant stock of fish where no submarine terrace exists and scanty stocks on extensive and well-defined terraces.... In the case of countries to the west coast of South America, we know that these countries have a narrow Continental Shelf but that at the same time, a broad current running parallel to their coast creates one of the most prodigious sources of fish in the world."⁶⁶

It is worthwhile noting, however, that the Declaration implies no disregard for the necessary limitations on the exercise of sovereignty and jurisdiction imposed by international law in favour of innocent and inoffensive passage by ships of all nations through the specified line.⁶⁷

The Declaration clearly indicates that the competence given to the coastal state extends over the resources and waters of the sea belonging to it; thus the coastal state is endowed with the authority to take all necessary steps to ensure both conservation and exploitation of marine resources, and the use of same in the interest of its Nationals. Some two years following the Santiago Declaration, August 18, 1952, Chile, Ecuador and Peru agreed at the second conference on the exploitation and conservation of the maritime resources of the South Pacific; Lima, December 4, 1954,⁶⁸ to establish the maritime zone which had been the subject of the aforementioned Declaration for the purpose, in particular,

of regulating and protecting hunting and fisheries within their general maritime lines.⁶⁹ The substance of the agreement reads as follows:

"Chile, Ecuador and Peru have proclaimed their sovereignty over the sea adjacent to the coasts of their respective countries to a distance of not less than 200 nautical miles from the said coasts, the sea-bed and the subsoil of this maritime zone being included. The Governments of Chile, Ecuador and Peru, at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held at Santiago de Chile in 1952, expressed their intention of entering into agreements or conventions relating to the application of the principles governing that sovereignty, for the purpose in particular of regulating and protecting hunting and fisheries within their several maritime zones."

The Truman Proclamation did not only have consequences in Central and South America; actually, its consequences were much more far reaching. Iceland, by the Law of 1948, claimed the right to establish conservation zones within limits of the Continental Shelf, wherein all fisheries shall be subject to Icelandic rules and control. Iceland has also extended its territorial sea to four miles.⁷⁰ Also in this category belongs the proclamation of the President of South Korea of 1952 and the establishment of the so-called "Syngman Rhee Line". South Korea proclaims that it holds and exercises national sovereignty over the seas adjacent to Korea to protect, preserve and utilize national resources.⁷¹ It is also worthwhile noting the proclamation of the Governor General of Australia of September 10, 1953.⁷² Protests against Iceland's action were made by the United Kingdom in 1950, by Belgium and the Netherlands in 1951; Japan protested against the South Korean Proclamation in 1952.⁷³ These unilateral actions were responsible for tremendous tension and conflict between countries that were affected or stood a reasonable

likelihood of being affected. For instance, there was tremendous tension between Japan and Australia,⁷⁴ and between Japanese fishing vessels violating the arbitrarily set Rhee Line.⁷⁵ The Truman Proclamation had almost thrown coastal states into a Continental Shelf and fishing war. On March 27, 1955, Ecuador⁷⁶ seized two American vessels, the Arctic Maid and the Santa Ana, some 14 - 25 miles west of the island of Santa Clara off the Ecuadorean coast. In the course of seizure, one American seaman was seriously wounded by gunfire from Ecuadorean patrol vessels. This situation led the United States Congress to enact a Statute⁷⁷ on August 27, 1954, stipulating or spelling out clearly that whenever an American flag vessel is seized by a foreign country on the basis of claims to territorial waters not recognized by the United States, and a fine must be paid in order to procure the release of the ship and crew, the owners shall be reimbursed by the Treasury Department upon certification by the Secretary of State.

The most significant incident, however, that resulted from the United States initiative on the Shelf was the Onassis affair.⁷⁸ In November, 1954, Peruvian war vessels and airplanes seized five whaling vessels owned by A. S. Onassis and flying the Panamanian flag. Two of the vessels were captured about 126 miles off the Peruvian coast; two others were attacked with bombs and machine-gun fire by Peruvian air and naval units while 300 miles off the coast; later the factory ship was attacked by a Peruvian plane 364 miles off the coast. The vessels were all subsequently taken into the Peruvian port and the Masters tried and ordered to pay \$3 million within five days. The ships were to remain in custody until the payment of the fine and to be released only upon

payment in full.⁷⁹ The court made it clear that hunting and fishing in territorial waters is permitted only to Peruvian Nationals. It must be remembered that at that time Peru had established a 200-mile territorial sea limit; foreign vessels were not permitted to fish in territorial waters.

As has been noted above, it would lead to a manifest absurdity to give the right of exploring and exploiting the mineral resources of the Continental Shelf to states which have no Continental Shelf. It is indeed a similar concept of compensation that the landlocked and geographically disadvantaged states are currently advancing, at UNCLOS III.

Yepes argued that the conventions had no less judicial value than the proclamation of President Truman, ~~that~~ "[that] which President Truman could do alone, certainly three states can do".⁸⁰ He observes that the Truman Proclamations do not, as the International Law Commission has emphasized, constitute by themselves a new rule of international law; that the Truman Proclamations have an essentially different content which does not infringe upon the role of the freedom of the high seas; and that it should be noted that CEP Proclamations recognize the right of 'innocent and inoffensive passage' through the enormous zone claimed as territorial sea.

The major maritime powers viewed the CEP Proclamations as presenting problems with respect to freedom of navigation and maritime warfare and neutrality. The countries involved profess that the real reason for claiming extravagant limits for their territorial sea is

primarily to extend fishing rights. Under international law, the coastal state not only has the right to regulate fishing and hunting in the waters of the territorial sea, but also to reserve a monopoly of fishing to its own citizens.⁸¹ The fish stocks around the coast of the respective countries no doubt motivated their claims to extension of the territorial sea. As Shigeru Oda says,

"The maritime states provided with economic ability and improved technique are ensured sufficient interest through free exploitation of the resources on the high seas⁸² whereas the other states without enough power to compete with others in the exploitation are inclined to demand the reservation of resources for themselves."⁸³

Oda observes that the obstruction to the unified codification of the territorial sea consists principally, if not solely, in the economic rights which the coastal state is supposed to have within its territorial sea.⁸⁴

As we have seen up to this point, there is a distinct absence of any universally recognized rule with respect to the breadth of the Territorial Sea, Contiguous Zone or Continental Shelf. The next move was taken by the General Assembly of the United Nations by its Resolution 1105(XI) adopted on February 21, 1957 calling for a conference of its members to examine the Law of the Sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the program and to embody the results of its work in one or more international conventions or such other instrument as it may deem appropriate.⁸⁵

Four conventions emerged from the conference after much discussion and negotiation.⁸⁶ However, in the eyes of most nations attending, the cardinal problem appeared to be the determination of the legal limits of the Territorial Sea appertaining to a coastal state.⁸⁷ The issue of the Territorial Sea went unresolved at yet another international conference. The U.S.S.R. block was insisting on a 12-mile or greater Territorial Sea, a breadth which hitherto was not recognised in international law.⁸⁸ Also, there was the Arab-Israel feud over the problem of Israel's right to passage through the straits connecting international bodies of water in the Gulf of Aqaba. A few Arab states, Saudi Arabia and the United Arab Republic, had announced unilaterally their assumption of a 12-mile Territorial Sea at the very beginning of the conference.⁸⁹ This conference was somewhat different from its predecessor in 1930 (Hague) in that there were several newly-created independent states, thereby swelling the number of participants to 86. Many of these new states attended the conference with a sense of resentment towards their former colonial masters and, as a consequence, sought to exercise their sovereignty and make their own decisions with respect to the rights of older nations to fish off their coasts.

The United States was not looked upon kindly by the majority of Latin Americans who were, at this time, faced with severe economic problems as a consequence of the fall-off in the exportation of coffee due to increased production from Africa.⁹⁰ The United States also had antagonized Venezuela and Canada by imposing importation restrictions on oil from these countries. As was mentioned elsewhere, Chile, Ecuador and Peru's claim to a 200-mile Territorial Sea drastically affected the American tuna fleet operating in these waters. Also, Argentina

had recently stated its claim to sovereignty over the Epicontinental Sea (the water above the Shelf) which would extend for hundreds of miles in many areas of the Atlantic coast.⁹¹

The United States insisted on maintaining as narrow a Territorial Sea as possible; she argued on military grounds that any extension of the width of the nation's Territorial Sea or of its internal waters cuts down the freedom of all other nations to sail on, fly over, or lay cables in what was formerly the high seas. As a consequence, the United States, Great Britain, Japan, Holland, Belgium, Greece, France, West Germany and other European nations sought to preserve the traditional three-mile limit. The conference ended without being able to resolve the most difficult controversy -- notably, the breadth of the Territorial Sea and the establishment of exclusive fishing zones. Much of the traditional Law of the Sea was codified, however, as well as the Continental Shelf concept and a few other relatively new matters.

Moreover, the treaties adopted left some ambiguity concerning the methods for drawing straight baselines from which the Territorial Sea could be measured. They further included an open-ended and quite ambiguous definition of the Continental Shelf and left a few minor questions unanswered.

THE SECOND UNITED NATIONS LAW OF THE SEA CONFERENCE, 1960

Since the 1958 Geneva Conference failed to reach any agreement on the breadth of the Territorial Sea and the establishment of contiguous fishing zones, the General Assembly, in convening the Second Conference by Resolution 1307 (XIII),⁹³ limited the scope of this Conference to two specific questions, namely:

- (a) The breadth of the territorial sea, and
- (b) Fishing limits.

This Conference was convened in Geneva from March 17 to April 26, 1960 and was attended by 88 States. Unlike the 1958 Conference, the organizational structure of the Geneva Conference was somewhat simplified in that it worked in two stages: the first in Committee of the Whole, and the second in Plenary. The salient difference in the two stages was that for the adoption of a proposal in the Committee of the Whole, a simple majority was required; whereas in Plenary, a two-thirds majority was required.⁹⁴

Several delegations opposed a wide territorial sea limit on the grounds that it would be economically injurious in its impact upon navigation and trade. The United States pointed out that most of the system of navigational aids (lighthouses, buoys, etc.) were geared to marine limits and would be of no use to vessels at a range of 12 miles.⁹⁵ The conclusion was, therefore, that a wide limit would impose an economic burden of re-equipment on coastal states.

Other delegations regarded this view as underestimating the capacity of modern navigational techniques, of which radar is the best example, and questioned why ships had to navigate outside the limit of territorial waters since they had right of innocent passage within these waters.⁹⁶

A grave threat to a successful outcome allegedly was presented by virtue of what was termed the "18 Power Vote", proposed on April 11, 1960 and sponsored by Mexico, Indonesia, the Philippines, Ethiopia, Ghana, Guinea, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Tunisia, the U.A.R., Venezuela and Yemen. For a flexible

Territorial Sea of 3 - 12 miles and exclusive fishing zones of 12 miles. This proposal provided that any state which has fixed the breadth of its Territorial Sea or contiguous fishing zone to less than 12 nautical miles was entitled vis-à-vis any other state with a wider delimitation, therefore, to exercise the same sovereignty or right (in respect of fishing and exploitation of the living resources of the sea or as its Territorial Sea) up to a limit equally fixed by the other state.⁹⁷

The most important proposal, however, seems to have been submitted jointly by the United States and Canada. It advocated a 6-mile Territorial Sea plus a 6-mile contiguous fishing zone. This proposal was defeated by one vote. However, it should be noted that the 6-plus-6, as it is often referred to, had the support of nine more states (54 in favour in 1960) than the 45 states which had supported the similar 6-plus-6 United States proposal in 1958.⁹⁸ By way of contrast, in 1960 the "ten power" proposal for permitting wider territorial sea claims received only 32 votes, or less than even a simple majority, and seven votes less than the 39 votes for the 12-mile limit proposal supported by the Soviet Union in 1958.⁹⁹ The Conference ended in a total failure with no agreement on any of the subjects. Nevertheless, it became apparent that some recognition would have to be given to the claims of coastal states for protection of the fisheries off their coasts.¹⁰⁰ Many states pronounced, however, that in the absence of agreement they would revert to their previous position on what constituted international law. It is clear that up to 1960 there were no clear rules of international law to determine the breadth of the Territorial Sea. Neither the Conference for the Codification of International Law, held at the Hague in 1930, nor the United Nations Conferences on the Law of

the Sea held in Geneva in 1958-1960 have solved the problem. In fact, it appeared that the onus was placed on the coastal states to indicate the breadth of the sea falling within their sovereignty and jurisdictions. As was alluded earlier, the developing states possessing a coastline became aware that the resources with which nature had endowed them were precisely those which were located in the sea adjacent to their coasts but which were exploited by countries possessing large fishing fleets capable of using methods that could lead to the complete extinction of many species of fish. The seas and their resources were seen as the answer by a great many countries to the problem of population explosion and rampant poverty as experienced by the countries of the Third World. It was this thinking that led to an insistence of a 200-mile wide belt by Ecuador, Chile and Peru, and this was subsequently confirmed by the declarations of Montevideo and Lima.

THE SEABED AND SUBSOIL AS A COMMON HERITAGE OF MANKIND

It was in that state of affairs -- namely, the widening economic gap between rich and poor nations -- that Arvid Pardo, then Permanent Representative (Ambassador) of Malta to the United Nations, proposed to the Secretary General on August 17, 1967 the inclusion in the agenda of the Twenty-Second Session of the General Assembly an item entitled "Declaration and Treaty concerning the preservation exclusively for peaceful purposes of the sea-bed and of the ocean floor, underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind." An accompanying memorandum suggested that the sea-bed and ocean floor be declared a "Common Heritage of Mankind", and proposed the creation of an international

agency to assume jurisdiction over this area "as a trustee for all countries", and to control all activities therein.

It is submitted that Pardo's proposal has set off a chain of events that are having a most profound influence on international maritime law. The General Assembly in December, 1967 established an ad hoc committee on the peaceful uses of the seabed and ocean floor beyond the limits of national jurisdiction, commonly referred to as the Seabed Committee. These proposals were met by some measure of apprehension in that a number of delegates expressed a variety of opinions with respect to the legal principles applicable to the deep ocean floor.

The Soviet Union regarded as premature the declaration of any legal principle. Canada and Italy were also of the same opinion. The majority of delegates agreed, however, that claims to ~~sovereignty~~ sovereignty should be suspended, although the idea that the resources of the deep ocean floor should be exploited for the benefit of developing countries was naturally supported by Asians and Africans.

A working group of 27 nations, informally set up in accordance with the request of Malta, prepared a draft resolution (A/C.1/L410) which was afterwards introduced by Belgium.¹⁰¹ The number of co-sponsoring states, which increased finally to 43, included those of the Western and Eastern blocks and the developed and developing countries. The membership of the ad hoc committee referred to in this proposal was left open, but the Chairman of the First Committee suggested the names of 30 countries. This proposal was agreed upon but, at the request of some states, the Chairman suggested the addition of five more members. Thus, a resolution which recommended the establishment of an ad hoc Seabed

Committee, established pursuant to General Assembly Resolution 2340 (XXII), was approved on December 8 by the First Committee by a vote of 93 to 0, with one abstention.¹⁰² The first session was convened at the United Nations Headquarters in New York on March 18 through 27, 1968. Secretary-General U Thant, in his opening address, emphasized the importance of the Ad Hoc Committee and stated that the deep ocean floor was the common heritage of all mankind. He asserted that due to the rapid pace of progress in the development of science and technology, the area could now be exploited for scientific, economic, military and other purposes.¹⁰³ It is worth noting, at this point, the alleged characteristics of the concept of the 'common heritage of mankind'. Arvid Pardo states that the concept of the Common Heritage of Mankind has five basic characteristics: first, non-appropriation. The common heritage of mankind cannot be the object of national sovereignty or jurisdiction; it can be used but not owned. The second characteristic is management in which all users share. The third is active sharing of benefits, not only financially but also those benefits derived from shared management and transfer of technology. This sharing changes traditional concepts of development aid and the structural relationship between rich and poor countries. The fourth characteristic is the reservation for peaceful purposes (disarmament implications), and the fifth one is the preservation of the marine environment for future generations.¹⁰⁴

THE NOTION OF UNCTAD AND THE NEW ECONOMIC ORDER
IN THE LAW OF THE SEA: LINKING THE ISSUES

"The Common Heritage of Mankind" ushered in a signal of hope for the developing world (Third World), most of whom had become independent

some few years ago, mostly within the 1960's. These newly independent countries were all, without exception, faced with considerable economic problems despite the foreign aid efforts on the part of some of the developed countries. The economic gulf separating rich and poor appeared wider and wider with each passing year. It was precisely for this reason that the United Nations General Assembly decided to convene the United Nations Conference on Trade and Development (UNCTAD I) at Geneva in 1964.¹⁰⁵ It was at this Conference that the economic difficulties, inequalities and living disparities of many of these new nations were first set against the economic superiority, trade monopolies and living affluence of the developed countries. UNCTAD II took place in New Delhi in 1968.¹⁰⁶ This Conference ended in disappointment to the developing world and, in the course of proceedings, it degenerated somewhat into a confrontation between rich and poor. The Conference indicated that the economic disparity between the two camps had widened even more. In addition, by 1968 the ranks of the developing Afro-Asian countries particularly had been swelled by a number of hitherto colonial countries joining the ranks of the independent countries. The international economic order at this time looked precarious at best. The developed world began directing their energies and resources towards the human environment as a consequence of widespread concerns on the part of their own populations. These concerns also found their way into the United Nations, resulting in the United Nations Conference on the Human Environment, which was convened in Stockholm in 1972.¹⁰⁷ The United Nations Assembly, however, realized after fierce representations by the developing countries that the question of the environment must,

at the same time, encompass the quality of life in the developing world, and thereby the economic environment of the developing nations.

UNCTAD III

UNCTAD III took place in Santiago, Chile.¹⁰⁸ Once again, the economic picture was one of pessimism for the developing countries. Economic progress for many of the poorest countries had been slow, and the economic outlook for most of the developing countries was far from bright. Once again, as at UNCTAD I and II, the developing world indicated a willingness to get their economies moving,¹⁰⁹ providing a proper arrangement could be worked out with respect to trade and aid between the developed and developing worlds. The opportunity and/or vehicle seen as a last hope for correcting the imbalance between rich and poor nations lay in a general determination to establish some kind of international regime for the management of the mineral resources of the deep seabed. To this end, the developing nations came together under the umbrella of the Group of 77 to use the law of the sea as one more device for helping to achieve a new international economic order.

THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE

A. THE CONFERENCE

The United Nations on December 17, 1970 decided that a Third United Nations Conference on the Law of the Sea would be held in 1973. In Resolution 2750 adopted at the United Nations General Assembly's Twenty-fifth Session in 1970, it was agreed that among the subjects to be included on the agenda of the Third Conference were the following:

"... the establishment of an equitable international regime -- including an international machinery for the area and the resources of the seabed and the ocean floor, and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal states, the preservation of the marine environment (including inter alia the prevention of pollution) and scientific research."¹¹⁰

The Conference was organized into three "Main Committees" to deal with most of the substantive questions. The First Committee, chaired by Paul Bamele Eñgo of the United Republic of Cameroon, dealt with the Conference's most difficult problem concerned with the establishment of an international regime for the seabed and ocean floor beyond the limits of national jurisdiction, and the machinery to implement the aims of the Declaration of Principles.

The Second Committee, chaired by Andrés Aguilar of Venezuela, dealt with a multitude of traditional law of the sea matters, such as the regimes of the territorial sea and the continental shelf.

The Third Committee, chaired by Ambassador Alexander Yankor of Bulgaria, dealt with the rules for the protection of the Marine Environment, the conduct of scientific research and the transfer of marine technology from the rich developed countries to the poor "developing" countries.

The three Main Committees, therefore, continued to deal with the subjects covered by the three sub-committees established by the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction. They continue to do so today.

In addition, informal Plenary meetings of the Conference function as a Main Committee under the presidency of Mr. Amerasinghe, dealing with settlement of disputes and final clauses.

There are seven negotiating groups, each on a different "hard-core" issue, established by the Conference in 1978. Each is open to all countries participating in the Conference. They meet in private. The groups are:

Negotiating Group 1, on the system of exploration and exploitation and the resources policy for the international sea-bed area.

Chairman Frank X. Njenga (Kenya). Last met March, 1980. Its Chairman co-ordinates work in the Group of 21 pertaining to the Negotiating Group's mandate.

Negotiating Group 2, on financial arrangements for sea-bed mining.

Chairman Tommy T. B. Koh (Singapore). Its Chairman co-ordinates work in the Group of 21 pertaining to the Negotiating Group's mandate.

Negotiating Group 3, on the organs of the Proposed International Sea-bed Authority, their composition, powers and functions.

Chairman Mr. Engo (United Republic of Cameroon). Its Chairman co-ordinates work in the Group of 21 pertaining to the Negotiating Group's mandate.

Negotiating Group 4, on the right of access of land-locked states and states with special geographical characteristics to the living resources of the Exclusive Economic Zone. Chairman Satya N.

Nandan (Fiji):

Negotiating Group 5, on settlement of disputes relating to the exercise of the sovereign rights of coastal states in the Exclusive Economic Zone. Chairman Constantine Stavropoulos (Greece). Last met in 1978, when its Chairman reported a compromise formula that was later included in the 1979 revisions.

Negotiating Group 6, on definition of the outer limits of the Continental Shelf and revenue sharing in the area beyond 200 miles. Chairman Ambassador Aguilar (Venezuela). Last met in March, 1980.

Negotiating Group 7, on delimitation of maritime boundaries between adjacent and opposite states and settlement of disputes thereon. Chairman Judge Manner (Finland). Last met, March, 1980, with session.

Two working groups of restricted membership and two groups of legal experts were established last year (1979). They met in private and are expected to continue in 1980. They are:

Working Group of 21 on First Committee Matters, established by the Conference in April, 1979 to deal with sea-bed issues as a whole. It is composed of roughly equal numbers of representatives from developing and industrialized countries, with each group entitled to appoint alternates for specific items. Mr. Engo chairs its meetings as Principal Co-ordinator, and the Chairmen of Negotiating Groups 1, 2 and 3 co-ordinate the work in respect of the mandates of their respective groups.

Group of 38, established by Negotiating Group 6 in August, 1979 to seek a solution on issues pertaining to the Continental Shelf.

Chairman, Ambassador Aguilar.

Group of Legal Experts on the Settlement of Disputes Relating to Part XI (International Sea-bed area). Established by the President and the First Committee Chairman in April, 1979. Chairman, Harry Wuensche (German Democratic Republic).

Group of Legal Experts on Final Clauses. Established by the informal plenary in July, 1979. Chairman, Jens Evensen (Norway).

There are also three committees of restricted membership: the General (Steering) Committee, the Drafting Committee, and the Credentials Committee, composed as follows: ¹¹¹

General Committee - composed of the countries where representatives hold an office in one of the Main Committees, the 31 states which are Vice-Presidents of the Conference, and the President and Rapporteur-General of the Conference. The 46 states represented on the General Committee are: Algeria, Australia, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cyprus, Czechoslovakia, Dominican Republic, Egypt, Fiji, France, German Democratic Republic, Federal Republic of Germany, Iceland, Indonesia, Iran, Iraq, Japan, Kenya, Kuwait, Liberia, Madagascar, Nepal, Nigeria, Norway, Pakistan, Peru, Poland, Singapore, Sudan, Trinidad and Tobago, Tunisia, Turkey, Uganda, U.S.S.R., United Kingdom, United Republic of Cameroon, United States, Venezuela, Yugoslavia, Zaire and Zambia. The President is H. Shirley Amerasinghe, the Rapporteur-General is Kenneth O. Rattray (Jamaica) with a total of 48 members.

Drafting Committee - Chairman J. Alan Beesley (Canada). Other members are: Afghanistan, Argentina, Ecuador, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, Thailand, U.S.S.R., United Republic of Tanzania and the United States, with a total of 23 members.

Credentials Committee - Chairman Karl Wolf (Austria). Other members are: Chad, China, Costa Rica, Hungary, Ireland, Ivory Coast, Japan and Uruguay, with a total of 9 members.

The Third United Nations Conference on the Law of the Sea is the largest, longest and, indeed, the most complex international conference in history, and by far one of the most important. The intricacies of conference diplomacy need not concern us here, but it is useful to mention some of its main features. The Hague Conference had been dominated by the so-called great Maritime Powers, and attended by some 44 delegates; the Geneva Conference had been dominated by the "Cold War". However, the conflict or dialogue between rich and poor countries has been the main theme at UNCLOS III -- a conflict which is even more pronounced in the First Committee. Unlike the three previous conferences, no single country or group or interest dominates the conference. Unlike the Hague and Geneva Conference, at UNCLOS III the participants have increased dramatically: in 1930 there were some 44 participants, in 1958 some 86 participants, and at the beginning of UNCLOS III (1973) there were some 155 participants.

The Conference participants are organized in a wide range of groups, sub-groups, working groups, and consulting groups. The basic

units are regional groups. These regional groups, for the most part, function outside the framework of the Committees, and indeed are instrumental in bringing about consensus on a number of difficult subjects. The regional groups are (a) Latin American group, (b) African group, (c) Asian group, (d) East European group, (e) group of Arab states, (f) West European group and others, (g) the Group of 77. In addition, there are the interest-oriented groups, such as the group of land-locked ~~and~~ geographically disadvantaged states, and the group of archipelagic states. The former group was organized at Caracas and has been actively attempting to deter further creeping of coastal state jurisdiction beyond the territorial sea. These groups have made a significant contribution to the work of the Conference and, in fact, have played a significant role as an essential component of the negotiating mechanism of the Conference.

WORK OF THE SEA-BED COMMITTEE

The Committee on the Peaceful Uses of the Sea-bed entertained a number of proposals for a sea-bed mining enterprise, which was to be the operational arm of the Authority and which would have a monopoly on sea-bed mining. The first proposal sprang from the Latin American group and was inspired by the experience of the nationalization of the copper mines in Peru. It was incorporated in a working paper on the regime for the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction.¹¹² Article 23 of this proposal provided that, "The Enterprise is the organ of Authority empowered to undertake all technical, industrial or commercial activities relating to the exploration of the area and exploitation of its resources (by itself or in

joint ventures with juridical persons duly sponsored by states)."

Article 34 further proposed that, "The Enterprise shall have an independent legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purpose."

The Latin American proposal gained widespread support from all so-called Third World countries; these Third World countries agreed unanimously that resources which are the common heritage of mankind have to be managed by an international authority, of which the Enterprise would be the operational arm. The industrialized countries found this proposal troubling or, at best, unacceptable. Common heritage to them meant, if anything, a sharing of financial benefits, not joint management, and an authority which left the economic structures, including the consortia, intact and unchanged. There has been profound disagreement between the developed industrialized countries and the developing, or so-called Third World, countries as to the purpose of the authority. The industrialized countries seek to limit or curtail the powers of the authority, whereas the developing countries want these powers to be as wide as possible. One must appreciate the root causes of problems in the "Sea-bed Committee". It is alleged that one of the main reasons that pushed the industrialized countries to develop their costly and sophisticated deep-sea mining technologies was that they wanted to decrease their dependency on some developing Third World countries, considered politically unstable, especially for strategic metals such as cobalt and manganese besides copper and nickel. While attempting, however, to gain independence from these countries, they found themselves slipping under the control of an International Sea-bed Authority, dominated by those

very same countries they had contemplated avoiding. A second reason, and one of critical importance, is the fact that the developing countries realised -- or rather discovered -- that sea-bed mining was to be a source of competition vis-à-vis land-based mining, and that far from benefiting them, it was going to decrease their export earnings.¹¹¹ (Zambia, a land-base producer and exporter of copper, is a case in point.) It is estimated that total losses over a 20-year period, as calculated by UNCTAD,¹¹² might run as high as \$4 billion. The powers with which they wanted to see the Authority endowed, therefore, were to include, above all, the power to control and limit sea-bed production.¹¹³ However, negotiations at the Conference indicate that a joint-venture system would come closest to providing an acceptable solution to the ongoing debate. Under such a system, the consortia would provide half of the investment and operating capital, and the individual Sea-bed Authority the other half. The Authority would appoint half of the Board of Directors governing the joint venture, and the consortia would appoint the other half, in proportion to their investments. Profits would be shared in the same proportion. The joint venture might comprise one or all phases of an integrated operation, from exploration to exploitation, processing and marketing. The Board members appointed by the Authority could all come from developing countries without sea-bed mining capacity of their own. It was believed that this arrangement would, in fact, evidence a new form of economic cooperation and, thereby, facilitate the transfer of technology and the financing of the international Authority. It is conceivable that the multi-nationals would, in some measure, be subject to international control. It would be at this juncture that one could envisage the Sea-

bed Authority making a significant contribution to the building of a new international economic order.¹¹⁴

The author submits that the expectations which the "Common Heritage" concept has created in the perception of most nations was adequately pronounced by the Chairman of the First Committee, Paul Engo, in his report to the Plenary at the Seventh Session:¹¹⁵

"We cannot have a viable convention if many nations participating at this conference must find at the end that they have gained nothing from it.... Ambassador Arvid Pardo's words must guide us because he was inspired by the common good. The Common Heritage demands a common endeavour to ensure sustenance for the common good. While we seek protection of interest, let us not lose sight of the truth and the scope of the varied interests involved here.

"In the ocean space, and especially in its sea-bed there is room enough and wealth enough to ensure prosperity for all."¹¹⁶

COMMITTEE II AND EXTENDED COASTAL STATE JURISDICTION

The main motivating force at the Conference has been the movement towards increased coastal state jurisdiction. The extended claims of a majority of coastal states have been generally accepted by a majority of delegations. The concept of the 200-mile Exclusive Economic Zone¹¹⁷ appears to have received legitimacy at UNCLOS III. Whether or not the concept will be finally approved in treaty form is anyone's guess. This is particularly so when one looks at the national legislations of a great many countries, most of which have claimed a 200-mile limit in one form or another¹¹⁸ and thereby have relegated the practice to one of customary international law. The principle of the Exclusive Economic Zone gives to the coastal state the right to establish an "Exclusive" Economic Zone extending 200 nautical miles from the baseline from which the breadth of

the territorial sea is measured.¹¹⁹ Within the Economic Zone the coastal state has the sovereign right to explore and exploit the natural resources -- both living and non-living -- and to conserve and manage these resources. The concept of the Economic Zone is in principle, at the same time, a fishing zone and a zone covering the Continental Shelf or a part of the Economic Zone. Furthermore, it gives the coastal state exclusive rights to construct and authorize and regulate the construction of (1) artificial islands, (2) installations and structures for purposes otherwise subject to its jurisdiction, and for other economic purposes and, (3) the right to establish necessary safety zones of specific breadth around such artificial islands, installations and structures.¹²⁰

In the Informal Composite Negotiating Text (ICNT) there is, furthermore, an obligation to promote "the objective of optimum utilization".

"The Coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. If however, the Coastal State finds that it does not possess the capacity to harvest the entire allowable catch, it is obliged to give other states access to the surplus."¹²¹

Another significant cornerstone of the Economic Zone concept is that all states, in principle, enjoy the freedom of navigation, overflight and of the laying of submarine cables and pipelines in an economic zone.¹²² As previously stated, there is an overwhelming majority at the Conference in favour of the Economic Zone principle. National legislation to date clearly substantiates this point; the Third World is strongly in favour, and the two super-powers -- although somewhat hesitant at the outset -- are now supporting the concept since they have been the

main beneficiaries of extended jurisdiction. It must be emphasized, however, that full agreement has not yet been reached on certain political issues, in particular some with strategic implications. There are outstanding questions pertaining to the rights in the economic zones of "Landlocked Countries", viz. countries without a coastline, and also geographically disadvantaged countries. The group of landlocked and geographically disadvantaged countries, together with the few other countries that reject the notion of the Exclusive Economic Zone, constitute roughly one-third of the participants in the Conference. Since a two-thirds majority is required for the final adoption of a convention, there is some possibility that this group may be able to block the adoption of the Convention unless satisfactory accommodations are found for landlocked and geographically disadvantaged states.¹²³ Furthermore, a satisfactory compromise solution to the problem as to the breadth of the Continental Shelf would have to be found at the session beginning March 3, 1980 if international conflict is to be avoided.

The question as to whether or not a coastal state has the right to claim a continental shelf exceeding the 200-mile limit where the shelf has a natural prolongation beyond this limit is a question that has plagued the Conference. Coastal states with broad margins are not willing to give up what they describe as their jurisdiction over the resources of these areas.

THE MARINE ENVIRONMENT

Part XII of the ICNT established the general principle that "states have an obligation to protect and preserve all the marine environment."¹²⁴

General agreement has emerged on the monitoring and assessment of land-based pollution, as well as on provisions about ocean dumping and continental shelf pollution; however, it appears that ship-generated pollution has been the major obstacle to general agreement.

As regards land-based pollution, the ICNT stipulates that states shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment.¹²⁵ With respect to ship-generated pollution, the ICNT further provides that,

"... states, acting through competent international organisations or general diplomatic conferences, shall establish international rules and standards for the prevention, reduction and control of 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 related interests of coastal states. Such means and standards shall, in the same manner, be re-examined from time to time as necessary."¹²⁶

It appears almost certain that the Inter-Governmental Maritime Consultative Organization (IMCO) will be the principal organ in this connection.

The effective enforcement of rules and standards for prevention of pollution is entrusted to the flag state. The port state and the coastal state are also accorded a right of enforcement, however, as regards ships voluntarily within their ports or territorial waters. The coastal state may inspect and arrest vessels for violations committed within the territorial sea and take judicial action if the flag state fails to commence legal proceedings for the offence. Shipping interests are concerned, however, lest anti-pollution enforcement provisions be applied in ways to impede navigation. The fact that provisions to protect the marine environment will probably remain general in any treaty likely to

emerge, leaving the details of regulation and enforcement to coastal states, may result in a diversity of separate regulations to which shippers will have to conform.¹²⁷

MARINE SCIENTIFIC RESEARCH

Like pollution, this subject has been of little interest to the developing world since, for the most part, they lack the knowledge and expertise and technology that is vital in conducting marine scientific research. Furthermore, a number of states just emerging from colonial domination and exploitation resent strange-looking foreign vessels skulking about their coasts doing mysterious things with strange-looking equipment. The concerns over scientific research were not of any consequence until 1958, when a requirement for coastal state consent for "any research concerning the continental shelf"¹²⁸ was written into the Continental Shelf Convention, and "Freedom of Research" was omitted from the list of freedoms preserved in the two High Seas Conventions. The dispute at UNCLOS III has chiefly revolved around the issue of coastal state consent to scientific research within the Exclusive Economic Zone. Marine scientists and geologists fear that the requirement for prior consent may unduly impede important scientific works in a period in which new evidence on the structure and internal motion of the Earth is being drawn increasingly from beneath the sea.¹²⁹

Coastal states, particularly developing states, insist that consent is a necessary adjunct to their control over resources, since research will often generate knowledge on the availability of exploitable resources. There has been a demand for close surveillance of research activity and access to the results.

States are obliged to promote the development and transfer of marine science and technology. The most important measure which the ICNT provides in this connection is the establishment of regional marine scientific and technological centers in co-operation with the International Sea-Bed Authority.¹³⁰ It is further provided that,

"States, through competent international organisations, and the Authority shall individually or jointly, promote the establishment specifically in developing coastal states, of national marine scientific and technological research centers and strengthening of the existing national centers, in order to stimulate and advance the conduct of marine scientific research by developing coastal states and for strengthening their national capabilities to utilize and preserve their marine resources for their economic benefit.¹³¹

CONCLUSION

The outcome of the Third United Nations Conference on the Law of the Sea will have a major impact on the international setting within which developing nations operate in the coming decades. The overwhelming concern of UNCLOS III is with ocean resources, and the most notable result of the Conference is likely to be the enclosure within national jurisdiction of the great bulk of the resources now exploitable. Furthermore, it is felt in some circles that the solution to some of the problems posed by the number of "marine situations" will increasingly be sought on a regional or sub-regional level,¹³² since it becomes extremely difficult to implement rules of global application to unique and special cases. For instance, Article 202 of the ICNT states that: "States shall directly or through competent international or regional organisations global or regional. (a) promote programmes of scientific,

educational, technical and other assistance to developing states for the protection and preservation of the marine environment."¹³³ Similarly, landlocked states are endowed with the right to participate on an equitable basis in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of the coastal states of the same region or sub-region.¹³⁴ The ICNT has, no doubt, attempted to incorporate certain functions of regionalism that, to a great measure, already represent the practice of states and international organizations, thereby facilitating general acceptance by states.¹³⁵

The problem of boundary disputes as a consequence of the extended claims by coastal states would have to be settled either on a regional or sub-regional basis, as was done with the South Pacific Regional Fishery Agency to protect their resources.

The perspective of industrialized countries towards the use and management of the ocean's resources is influenced by a variety of factors: geographical situation, dependency on ocean resources, alternative land-based sources of supply, historical orientation to the oceans, domestic interest groups, political relations with neighbouring states, and the like. These different perspectives influence the policies pursued with regard to main topics under consideration at UNCLOS III, namely jurisdiction over off-shore zones (including fishing), deep sea mining, navigation, and ship-generated pollution.¹³⁶ For these and other obvious reasons, the Conference finds itself along a collision course -- that is to say, a constant struggle between developed countries versus developing countries. For instance, the prospect of a new international economic order appears to drive an intransigent Group of

77 to demand nothing short of unconditional acceptance of their unassailably just position by the developed states. The Group of 77 seems intent on compelling the developed nations to accept the concept of a New International Economic Order as part of the International Sea-Bed Authority, and it therefore cannot be a matter for compromise but, rather, a matter of principle.¹³⁷ In the Spring 1978 meeting in Geneva, Alvaro de Soto of Peru stated:

"There is a very different line of approach taken by the developed and the developing states toward seabed mining.... the main difference lies in an attitude, which has inspired the developing countries in all international negotiations in the last few years -- the desire for a new International Economic Order. It is impossible to separate the negotiations on the seabed from those on the New International Economic Order as a whole. The actions of developing countries have been influenced by the thought that the model created in an International Sea-Bed Authority should be the first such model in a New International Economic Order. It should thus be directed toward the ideal of transfer of resources, of technology, and also, ideally, of power from the developed to the developing countries.¹³⁸

In case of the unlikely event that the Law of the Sea Conference does not succeed, the consequences may be catastrophic. An obvious catastrophe will be that coastal states, in their disappointment and frustration, will take far-reaching measures in extending their coastal jurisdictions -- perhaps even by rejecting the concepts of the Exclusive Economic Zone in favour of more adamant claims to a 200-mile Territorial Sea.¹³⁹ The reactions of the international fishing and shipping nations may, naturally enough, be one of confrontation, thus polarizing the inherent conflicts of irreconcilable pretensions. Another catastrophe may well be that the hopes of the world to be able to establish an inter-

national resource management plan for the mineral resources of the deep ocean floor outside national jurisdictions may be shattered and, along with it, the hopes of implementing a more equitable economic world order through the mechanism of UNCLOS III.

FOOTNOTES - CHAPTER I

¹Hugo Grotius, The Freedom of the Seas (New York: Arno Press, 1972), p. 26.

²N. W. Buckland, A Text Book of Roman Law from Augustus to Justinian (Cambridge: University Press, 1921), p. 184.

³Douglas M. Johnston, The International Law of Fisheries: A Framework for Policy-Oriented Inquiries (New Haven and London: Yale University Press, 1965), p. 303.

⁴Ibid.

⁵Buckland, Roman Law, p. 184. Communes were the air, running, water, the sea and, in later law, the seashore to the highest water flood. Access to the shore was open to all, but no one might erect buildings on it since it was not iuris gentium like the sea itself. But its use was, and therefore one might build shelters and the like under license from the authorities, presumably for purposes connected with the use of the sea.

⁶Grotius, Freedom of the Seas, p. ix.

⁷Ibid., p. 8.

⁸Martin Ira Glassner, "Focus, the Law of the Sea: Looking Toward the 21st Century from Past to Present, the Emerging Pattern, the Plight of the Land-locked States," American Geographical Soc. 101 XXVIII No. 4, March-April 1978), p. 4.

⁹Grotius, Freedom of the Seas, p. 25.

¹⁰Francisco de Vitoria, "Relectio de Indis," The Classic of International Law 7: 152-53. Quoted in Johnston, International Law of Fisheries, p. 386.

¹¹Johnston, International Law of Fisheries, p. 303. Cited in Garcia Amador and F. U. Rodriguez, The Exploitation and Conservation of the Resources of the Sea: A Study of Contemporary International Law (London: Leyden, 1959), p. 14. It is asserted that Gains described the sea as res nullius, claiming that it belonged to the first occupant, but no reference is given.

¹²C. John Columbus, The International Law of the Sea, 6th ed. (London: Longman Group Ltd., 1967), pp. 62-63.

¹³Mare Liberum was written in 1604 and published in 1609. It forms the twelfth chapter of Grotius' work before Præfæ, which was only published in 1868.

¹⁴Columbus, International Law of the Sea, p. 63.

¹⁵ Ibid., p. 63.

¹⁶ Ibid., p. 64.

¹⁷ Glassner, Focus, p. 5.

¹⁸ When Mendoza, the Spanish Ambassador in London, made his protest, Queen Elizabeth refused to admit "...that Spain had any right to debar British Subjects from trade or from freely sailing that vast ocean. Seeing that the use of the sea and air is common to all, neither can any title to the ocean belong to any people and private man for as much as neither nature nor regard of public use permitted any possession thereof." Camden, Annales (1635), p. 225. Cited in Colombos, International Law of the Sea, pp. 47-48.

¹⁹ Wyndham L. Walker, British Year Book of International Law (London: Oxford, 1945), p. 210.

²⁰ Ibid., p. 213.

²¹ H. S. K. Kent, "The Historical Origins of the Three Mile Limit," 48 Am. J. Int. Law (1954): 537 at 552.

²² T. O. Boeck, "Oversight over litteratur," Nova Forordningar (Christiania, 1866), p. 12.

²³ Kent, Historical Origins, p. 544. See H. A. Smith, The Law and Custom of the Sea, 3rd ed. (Stevens & Sons Ltd., 1959), p. 45.

²⁴ Thomas W. Fulton, The Sovereignty of the Sea (Edinburg and London: William Blackwood and Sons, 1911), p. 594.

²⁵ Kent, Historical Origins, p. 538.

²⁶ Fulton, Sovereignty, p. 611.

²⁷ Ibid., p. 612.

²⁸ Ibid. Convention between Her Majesty and the King of the French, defining and regulating the limits of the Exclusive Right of the Oyster and other fishery on the coast of Great Britain and of France. Signed at Paris, August 2, 1839. (Fulton, p. 611).

²⁹ Ibid.

³⁰ Ibid., p. 612.

³¹ Ibid.

³² Ibid.

³³ Edgar Gold and Douglas M. Johnston, "Extended Jurisdiction: The Impact of UNCLOS III on Coastal-State Practice," presented at the 13th Annual Conference of the Law of the Sea Institute, Mexico City, Mexico, October 20, 1979, pp. 6-7.

³⁴ Ibid., p. 7.

³⁵ Ibid., p. 8.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Jesse S. Reeves, "The Codification of the Law of Territorial Waters," 24 Am. J. Int. Law (1930): 490. See League of Nations Document C.74 M.39, 1929, vol. II p. 22..

³⁹ The American Society of International Law, Supplement to the American Journal of International Law: Official Documents, vol. 24 (1930), p. 245.

⁴⁰ International Law Commission, 1956 Yearbook, vol. 2, Article 3, Par. 2, p. 265.

⁴¹ United Nations, The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, A/CONF.13/L52, Articles 1 and 6.

⁴² Interest in economic development of the territorial sea was increasing. A particular early stimulus was the Truman Presidential Proclamation of 1945 which laid claims to the natural resources of the Continental Shelf contiguous to the United States. See also, Major Issues in the Law of the Sea (University of New Hampshire: Marine Programme, 1976), p. 28.

⁴³ Presidential Proclamation No. 2667, 28 Sept. 1945, 10 Federal Register 12303 reproduced in 40 Am. J. Int. Law Supp. (1946): 45-48. Also see B. Maechasney, Recent Developments in the Law of the Sea: International Law Situation and Documents (1956), p. 140.

⁴⁴ S. H. Lay, R. Churchill, and M. Nordquist (eds.), New Directions in the Law of the Sea, vol. 1 (Dobbs Ferry, N.Y.: Oceana Publications Inc., 1973), pp. 95-106.

⁴⁵ A Presidential Decree Concerning Fishing and Hunting of 18 Sept. 1907 (U.N. Secretariat Trans.) reprinted in 1 Laws and Regulations on the Regime of the High Seas, U.N. Doc. ST/Leg/SER.B/1 (1951).

⁴⁶ Law No. 14 of 31 January 1923 Amending the Law Concerning Deposits of Hydrocarbons, reprinted in National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas, and to Fishery and Conservation of the Living Resources of the Sea 59, U.N. Doc ST/LEG/SER.B/15 (1970).

47 Regulation of 15 June 1927 for the Defence of the State Frontiers of the U.S.S.R. (U.N. Secretariat trans.), reprinted in Laws and Regulations on the Regime of the Territorial Sea, p. 225. U.N. Doc. ST/LEG/SER.B/15 (1970).

48 L. D. M. Nelson, "The Patrimonial Sea," 22 International and Comparative Law Quarterly (1973), p. 669.

49 Ibid.

50 Charles G. Fenwick, International Law, 3rd ed. (New York, 1948), p. 423.

51 Naval War College International Law Documents, 1948-1949, Navpers 15031, vol. XLVI, U.S. Gov. Printing Office, Washington.

52 M. W. Mouton, The Continental Shelf, photomechanical reprint 1969, pp. 274-276.

53 Nelson, "Patrimonial Sea," p. 669.

54 Amador and Rodriguez, Exploitation and Conservation, pp. 71, 98.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Nelson, "Patrimonial Sea," p. 48. Costa Rica has not ratified its adherence to this Declaration. In fact, the Costa Rican Minister of Foreign Affairs stated in 1968 that Costa Rica legislation was not to be interpreted as a claim to exclusive jurisdiction with respect to fisheries, but as expressing the country's interest in the conservation of resources. It is also worthy to note that Costa Rican Sala de Casaeius in *Jones Boden v. Hon Deniels* (1950) held that the Breadth of Costa Rica's territorial sea was three miles.

60 Agreement between Chile, Ecuador and Peru, signed at the First Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific, Santiago, 18 August 1952. Reproduced in Lay, Churchill and Nordquist, New Directions, p. 23.

61 Douglas Johnston and Edgar Gold, "The Economic Zone in the Law of the Sea: Survey, Analysis and Appraisal of Current Trends," Occasional Paper Series, Law of the Sea Institute, University of Rhode Island, June 1973, p. 1.

⁶²Lay, Churchill and Nordquist, New Directions, p. 231. U.N. AC.138/SR.4618, Declaration of the Maritime Zone (hereinafter called U.N. Declaration).

⁶³Amador and Rodriguez, Exploitation and Conservation, p. 73.

⁶⁴U.N. Declaration, Sections 1-3.

⁶⁵Amador, Exploitation and Conservation, p. 74. See, Records and Documents on the Third Meeting of the Inter-American Council of Jurists, provisional edition, Pan-American Union, Washington, D.C., 1950, p. 30.

⁶⁶Amador, *ibid.*, p. 75.

⁶⁷*Ibid.*, p. 76.

⁶⁸Agreements between Chili, Ecuador and Peru, signed at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Lima, 4 December 1954. Reproduced in Lay, Churchill and Nordquist, New Directions, p. 233.

⁶⁹*Ibid.*, p. 223.

⁷⁰Josef L. Kunz, "Continental Shelf and International Law: Confusion and Abuse," 50 Amer. J. of Int. Law (1956): 883.

⁷¹*Ibid.*

⁷²*Ibid.*

⁷³Kunz, "Continental Shelf," p. 833.

⁷⁴M. W. Mouton, The Continental Shelf (The Hague, 1952), pp. 443-449; L. F. E. Goldie, "Australia's Continental Shelf," 3 International and Comparative Law Quarterly (October, 1954): 529-575; D. P. O'Connell, "Sedentary Fisheries and Australia's Continental Shelf," 49 Amer. J. Int. Law (1953): 185-209.

⁷⁵The New York Times, 20 November 1955, p. 14..

⁷⁶Kunz, "Continental Shelf," p. 837.

⁷⁷68 Stat. 883.

⁷⁸Herman Phileger, "Recent Developments Affecting the Régime of the High Seas," 32 Dept. of State Bulletin (June 6, 1955): 934-940.

⁷⁹Oliver J. Lissitzyn, "Judicial Decisions," 49 Amer. J. Int. Law (1955): 575-577.

⁸⁰Kunz, "Continental Shelf," p. 844.

⁸¹Ibid.

⁸²Shigeru Oda, "The Territorial Sea and Natural Resources," 4 International and comparative Law Quarterly (July, 1955): 424.

⁸³Ibid.

⁸⁴U.N. General Assembly, 11th Session, Official Records Supp. No. 17 (A/3572). The states in attendance at the conference were: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Lebanon, Libya, Liberia, Luxembourg, Federation of Malta, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Rumania, San Marino, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian, S.S.R. Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yemen, Yugoslavia.

⁸⁵Convention on the Territorial Sea and Contiguous Zone, U.N. Doc. A/CONF 13/L52; Convention on the High Seas, U.N. Doc. CONF.13/L53; Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N. Doc. A/CONF 13/L54; Convention on the Continental Shelf, U.N. Doc. A/CONF 13/L55. In addition, an optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, U.N. Doc. A/CONF 13/L57, emerged from the Conference. The Protocol provides that disputes between Parties to the Protocol and to any one or more of the Conventions on the Law of the Sea arising out of the interpretation or application of any such Convention, except certain provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, shall lie within the compulsory jurisdiction of the International Court of Justice.

⁸⁶Arthur H. Dean, "The Geneva Conference on the Law of the Sea: What was Accomplished," 52 Amer. J. Int. Law (1958): 608.

⁸⁷See, The Law of Nations, 5th ed. (1955), pp. 176-178.

⁸⁸New York Times, 14 March 1958, col. 7, p. 50; New York Times, 20 March 1958, col. 4, p. 58.

- ⁸⁹Dean, "Geneva conference," p. 609.
- ⁹⁰Argentina Decree No. 14 (Oct. 11, 1948), p. 708. The Argentina Decree of 1946 includes a statement that the navigation on the epicon-
tinenta] sea would not be affected; the net effect, therefore, appears
to be a claim to an exclusive fisheries and contiguous zone.
- ⁹¹Convention on the High Seas, U.N. Doc. A/CONF 13/L53, Article 2.
- ⁹²Dean, "Geneva Conference," p. 609.
- ⁹³General Assembly Official Records, 13th Session, Supp. No. 18,
A/4090, pp. 54-55.
- ⁹⁴Arthur H. Dean. "The Second Geneva Conference on The Law of the
Seas." 54 Am. J. Int'l L. (1960), p. 751.
- ⁹⁵A/CONF 19/LI/SR 4, p. 5.
- ⁹⁶Dean, "Second Geneva Conference," p. 753.
- ⁹⁷U.N. Doc. No. A/CONF 19/SR 13 (1960), p. 10. In 1958 an 8-power
proposal, U.N. Doc. No. A/CONF 13/L34 (1958), supported by the U.S.S.R.,
2 Official Records, p. 38, U.N. Doc. A/CONF 13/38 (1958), had received
39 votes in favour, with 38 against and 8 absentees.
- ⁹⁸U.N. Doc. A/CONF 13/38, p. 139.
- ⁹⁹U.N. Doc. A/AC 138/34, at 28: Declaration of Principles Govern-
ing the Sea-bed and the Ocean Floor and the Subsoil Thereof, beyond the
Limits of National Jurisdiction (General Assembly Resolution 2749).
- ¹⁰⁰A/PV.1583. A/C.1/PV.1515, 1516.
- ¹⁰¹Shigeru Oda, The Law of the Sea in Our Time: II, The U.N. Sea-
bed Committee (Sijthoff-Leyden, 1977).
- ¹⁰²See, Ad Hoc Seabed Committee Resolution 2340 (XXII). Africa (7);
Kenya, Liberia, Libya, Senegal, Somalia, Tanzania, United Arab Republic,
Asia (5); Ceylon, India, Japan, Pakistan, Thailand, Eastern Europe (8).
- ¹⁰³Arvid Pardo, Foreword to San Diego Law Review 14 (1977): 516.
- ¹⁰⁴Ibid..
- ¹⁰⁵See, Proceedings of the United Nations Conference on Trade and
Development, vol. 1, Final Act and Report, U.N. Doc. E/CONF.46/141 vol.
1 UNTAD 1, Geneva 23 March-16 June 1964. Also see, K. M. Hagra, United
Nations Conference on Trade and Development (1965).

¹⁰⁶ Johnston and Gold, "Economic Zone: Survey, Analysis and Appraisal," p. 4. See, U. N. Doc. TD/SA 37-81.

¹⁰⁷ U.N. Conference on the Human Environment Subject Area Development and Environment, U.N. Doc. A/CONF.48/10/1972.

¹⁰⁸ United Nations Conference on Trade and Development: Report of the Conference on its Third Session, Santiago 13 April-21 May, 1972 (London: HMSO Doc. 5234).

¹⁰⁹ Ibid.

¹¹⁰ At the 25th Session, the General Assembly adopted Resolution 2750 (XXV) of 17 December 1970.

¹¹¹ U.N. Doc. A/AC 138/49, submitted by Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Peru, Trinidad and Tobago, Uruguay and Venezuela.

¹¹² Elisabeth Mann Borgese, "The International Sea-bed Authority as Prototype for Future International Resource Management Institutions." Unpublished paper delivered at a seminar at Dalhousie University, 19 February 1980, p. 3.

¹¹³ Ibid.

¹¹⁴ Ibid., p. 9.

¹¹⁵ Ibid.

¹¹⁶ Quoted in the World Order Research Institute, Villanova, Pennsylvania, No. 32, (June, 1979): 19085.

¹¹⁷ Although the EEZ stricto sensu is the product chiefly of African diplomacy at UNCLOS III, the concept does, of course, have historic antecedents in the Latin American doctrine of the Patrimonial Sea. See Nelson, "Patrimonial Sea," p. 668. Latin American and other delegations at the Sea-bed Committee discussions played a crucial role in persuading the majority to accept the African formulation with minor modifications. See, Andrés Aguilar, "The Patrimonial Sea or Economic Zone Concept, 11 San Diego L. Rev. (1974): 579. On diplomatic difficulties engendered by the EEZ proposal see, Thomas A. Clingan, Jr., "Emergency Law of the Sea: The Economic Zone Dilemma," 14 San Diego L. Rev. (1977): 530. In state practice, Chile was the first country to assert a claim to a 200-mile zone. This claim to a protection and control zone was promulgated in 1974. Peru proclaimed a 200-mile zone several weeks later on August 1st. See also, Ann L. Hollick, "The Origins of 200 Mile Offshore Zones," 71 Amer. J. Int. Law (1977): 494. The Peruvian claim is regarded as being territorial in scope.

- ¹¹⁸ Gold and Johnston, "Extended Jurisdiction," pp. 7-9.
- ¹¹⁹ Informal Composite Negotiating Text, U.N. Doc. A/CONF 62/WP.10 Rev. 1. Otherwise referred to as ICNT; Part V, Article 56.
- ¹²⁰ Ibid., Art. 60.
- ¹²¹ Jens Evensen, "Towards A New Law of the Sea: Global and European Aspects and Implications," 28 Chronique de politique: 591.
- ¹²² ICNT, Art. 87.
- ¹²³ Evensen, "A New Law of the Sea," p. 601.
- ¹²⁴ ICNT, Art. 192.
- ¹²⁵ Ibid., Art. 210.
- ¹²⁶ Ibid., Art. 212.
- ¹²⁷ O. E. Delogu and Douglas M. Johnston, Material for Marine Law Conference, The North American Offshore - Legal Developments and Policy Alternatives, p. 194.
- ¹²⁸ Ibid.
- ¹²⁹ Ibid., p. 195.
- ¹³⁰ ICNT, Part XIII.
- ¹³¹ Ibid., Art. 275.
- ¹³² L. D. M. Nelson, "The Function of Regionalism in the Emerging Law of the Sea, as Reflected in the Informal Composite Negotiating Text." Proceedings of the Law of the Sea Institute Eleventh Annual Conference, November 14-17, 1977 (Cambridge, Massachusetts: Ballinger Publishing Company, 1978), p. 17.
- ¹³³ ICNT, Arts. 269, 271, 276.
- ¹³⁴ Ibid., Arts. 69, 69(3), 61(3).
- ¹³⁵ Nelson, "The Function of Regionalism," p. 24.
- ¹³⁶ Delogu and Johnston, "Material for Marine Law Conference," p. 196.
- ¹³⁷ Friedman and Durch, "The International Sea-bed Resources Agency: Negotiations and the New International Economic Order," 31.2, Int'l Organisation (1977): 379.

138 Alvaro de Soto, "Polar Summary of Remarks of the Speakers from Five Panel Discussions on UNCLOS III," Geneva, 11 April-9 May 1978, p. 6.

139 Evensen, "A New Law of the Sea," p. 604.

THE JURIDICAL STATUS OF THE TERRITORIAL SEA,
CONTIGUOUS ZONE, EXCLUSIVE ECONOMIC ZONE
AND CONTINENTAL SHELF

In this chapter we shall take a detailed look at the juridical nature of the important regimes that have been the focus of considerable debate at the Third United Nations Conference on the Law of the Sea since its inception in 1974.¹ These regimes are the Territorial Sea, the Continental Shelf, and the Exclusive Economic Zone. The Territorial Sea, Continental Shelf and Contiguous Zone were dealt with in the 1958 Geneva Conventions.² It is interesting to note, however, that the four conventions on the Law of the Sea adopted at Geneva on the basis of the 73 draft Articles presented to the United Nations General Assembly by the International Law Commission contained no recognition of the concept of exclusive fishing rights in favour of coastal states beyond its territorial sea. This subject, as is well known, was closely related in the negotiations to the unresolved question of the breadth of the territorial sea, and was left in abeyance pending a further attempt at resolution at a Second United Nations Conference in the Law of the Sea.³ It is now part of the history of the development of the Law of the Sea that none of the proposals described in Chapter I on UNCLOS II succeeded in gaining the required two-thirds majority necessary for their adoption as new rules of international law. The Conference was faced with another unsuccessful attempt to arrive at agreement on the maximum permissible breadth of the Territorial Sea and on the establishment of an Exclusive Fishing Zone. However, it must be emphasized that at least one of the four conventions adopted in 1958, namely the Convention on Fishing and Conservation of the Living Resources of the High Seas, marked significant

milestones in the evolution of the Law of the Sea towards the acceptance of the concept of Exclusive Fishing Rights beyond the Territorial Sea.⁴ The concept of "preferential rights" for coastal states in matters of fisheries jurisdiction in specific circumstances was upheld at the Rome Technical Conference of 1955 by certain states of the Latin American region. These States maintained that:

"In determining the objectives of conservation ... many social and economic factors must be taken into account. The principal task of conservation was to harmonize the interest of coastal states with those of the remaining countries. The food situation of the human populations living nearest the resource must be the first to benefit from it, since otherwise, the whole programme of conservation would be doomed to failure."⁵

A number of proposals along these lines were tabled at the 1958 Geneva Conference on the Law of the Sea. One proposal, for example, tabled by the delegation of the Philippine Islands read as follows:

"The inhabitants of a coastal state have a preferential right to catch fish in any area (of the high seas adjacent to its territorial sea) but no coastal state shall prohibit the nationals of other states from fishing in said area, after the needs of its population have been reasonable assured."⁶

Developing coastal states responded gradually to the sentiments as heretofore expressed and, as early as 1972, the nature of Coastal States Jurisdiction was being discussed almost simultaneously in two regions. An African states' regional seminar on the Law of the Sea at Yaounde,⁷ and the specialized Conference of the Caribbean Countries on Problems of the Sea⁸ articulated and breathed life into the concept of the Exclusive Economic Zone.

TERRITORIAL SEA

A. Juridical Nature

Articles 2 and 3 of the ICNT acknowledges that a coastal state enjoys sovereignty beyond its land territory and internal waters and, in the case of an archipelagic state, its archipelagic waters over an adjacent belt of sea described as the territorial sea. The coastal state sovereignty in this zone also extends to the air space over the territorial sea, as well as to its sea-bed and subsoil. Article 3 stipulates that every state has the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles measured from the baselines. The establishment of a 12-mile breadth is indeed one of the major contributions made by UNCLOS III. It must be remembered that 42 states sent to the Hague Codification Conference agreed upon a draft on "the legal status of the territorial sea". The draft proclaimed a belt of territorial sea forms part of the territory of a state and the sovereignty exercised over this belt is to be the same as that which the state exercised over its land domain, though limited by "conditions established by international law".⁹ The Conference failed to reach agreement on the breadth of the territorial sea. The Geneva Convention, this time with 86 states in attendance, also failed to agree on an acceptable breadth.

Article 5 provides for the drawing of baselines. It specifies that 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, recognized by the coastal state.

Article 6 deals with reefs and the method of establishing the baseline for measuring the breadth of the territorial sea, which is the seaward low-water line of the reef. Article 7 deals with the method of drawing straight baselines where the coastline of the state is deeply indented. Paragraph 3 of Article 7 indicates that such baselines must not depart significantly from the general direction of the coast, and the seas within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.¹⁰

Article 8 deals with the regime of internal waters, with the exception of Part IV of the present convention. Waters on the landward side of the baselines of the territorial sea form part of the internal waters of the state. Articles 10 through 14 deal with mouths of rivers, bays, ports, roadsteads, and low-tide elevation.

B. Delimitation of the Territorial Sea Between States,
Opposite and Adjacent

Article 15 deals with delimitation of the territorial sea between states with opposite or adjacent coasts. Unlike the change that has been brought about in Article 74 with respect to delimitation of the EEZ, further to the Report of the Chairmen on the work of Negotiating Group 7,¹¹ the substance of Article 15 remained unchanged in that 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.¹² It is interesting to note at this juncture that Article 15 is, no doubt, an outgrowth of the 1958 Convention of the Territorial Sea and the Contiguous Zone which, in fact, was a recommendation of the 1956 preparatory draft by the ILC. Article 12, of the Territorial Sea Conventions prescribed not one but three rules for lateral boundary delimitation between opposite or adjacent states, negotiation between states, application of the equidistance principle as recommended by the ILC group of experts, and the rule of historic title or other special circumstances. The convention did not elaborate on what situations would qualify as exceptions to the general equidistance rule under "historic title or other special circumstances".¹³ However, there is little doubt that Article 15 of ICNT allows for considerable flexibility in the process of delimitation.

C. Scientific Research in the Territorial Sea

Within this 12-mile zone, the coastal state has the exclusive right to regulate, authorize and conduct marine scientific research. Other nations or international organizations wishing to research must obtain the coastal state's express consent and comply with any conditions it imposes.¹⁴ The explicitness of the consent provision was meant to exclude the application of tacit consent principles to foreign vessels' research in the territorial sea. Thus, for example, foreign vessels exercising the right of innocent passage in the territorial sea,¹⁵ cannot conduct research, nor may vessels exercising the right of passage through international straits undertake scientific activities without obtaining coastal state consent.¹⁶

D. Innocent Passage in the Territorial Sea

Article 17 speaks of the right of innocent passage; it stipulates that subject to this right, ships of all states, whether coastal or landlocked, enjoy the right of innocent passage through the territorial sea.

Articles 18 and 19 deal with the meaning of "passage" and the meaning of "innocent passage" respectively. In the former, passage entails navigation through the territorial sea for the purpose of transversing that sea without entering internal waters, or proceeding to or from internal waters. It specifies that passage shall be continuous and expeditious, and includes stopping and anchoring only insofar 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.¹⁷

Passage is considered 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.¹⁸ Paragraph 2 goes on to list instances in which passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal state (through L). Article 20 provides that in the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flags.¹⁹ The coastal state is authorized to make laws and regulations relating to innocent passage in the territorial sea; however, such laws are required to be in conformity with the present convention and other rules of international law. Such laws may be in respect of all or any of the following:

- (a) the safety of navigation and the regulation of marine 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 regulations of the coastal state;
- (f) the preservation of the marine 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 sanctuary regulations of the coastal state.

The coastal state is required, whenever it enacts such laws, to give due publicity to them; consequently, foreign ships exercising the right of innocent passage through the territorial sea must comply with all such laws. The coastal state has the right, whenever necessary, in the territorial sea to designate sea lanes and traffic separation schemes and to require foreign ships exercising the right of innocent passage through the territorial sea to obey same; however, in designating such sea lanes and separation schemes, the coastal state shall take into account:

- (a) the recommendation of competent international organizations;
- (b) any channels customarily used for international navigation;
- (c) the special characteristics of particular ships and channels;
- (d) the destination of traffic.

The Article further provides that such sea lanes and traffic separation schemes be clearly indicated on charts and that due publicity be given to same.²⁰

The coastal state shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with the convention, nor shall it impose requirements on such ships which have the effect of impairing the right of such passage, or discriminate against the ships of any state or against ships carrying cargoes to, from or on behalf of any state.²¹

Article 25 stipulates the rights of protection of the coastal state in its territorial sea. The coastal state has the right to take the necessary steps to prevent any breach of the conditions to which admission of ships to its internal waters was given in this regard. The coastal state can suspend temporarily in specified areas the passing of ships if such measures are essential for the protection of its security or for the safety of these ships; such suspension shall take effect after the measures taken have been duly made public.²² The coastal state also has the right to levy charges on a foreign ship passing through its territorial sea, as payment specifically for services rendered by the state to the ship.²³

Article 27 prohibits the coastal state from exercising its criminal jurisdiction on board a foreign ship passing through its territorial sea, to arrest any person or to conduct any investigation save in the following instances. The right of invoking its criminal jurisdiction becomes operable:

- (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 good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the captain of the ship or by the 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.

Furthermore, the coastal state has the right 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.²⁴ However, before taking steps as outlined in paragraphs 1 and 2 of Article 27, the coastal state is obliged, if so requested by the captain, to notify the diplomatic agent or consular officer of the flag state before taking any steps. Nevertheless, in cases of emergency, both notification and the measures may operate simultaneously. The coastal state may not exercise civil jurisdiction with respect to a person on board a foreign ship passing through its territorial waters, or levy execution against or arrest the ship for purposes of any civil proceedings. However, where a foreign ship is lying in the territorial sea, or passing through the territorial sea after leaving internal waters, the coastal state has the right to levy execution against or effect an arrest, for the purpose of any civil proceeding.²⁵

Articles 29, 30, 31, and 32 deal with warships, the non-observance by warships of the laws and regulations of the coastal state, immunities of warships and other government ships operated for non-commercial purposes. For instance, if any warship fails to comply with the laws and regulations of the coastal state concerning passage

through the territorial sea, the coastal state may require it to leave the territorial sea immediately;²⁶ the flag state must bear international responsibility for any loss or damage to the coastal state, resulting from the non-compliance by a warship or other government ship, when passing through the territorial sea of the coastal state.²⁷

Article 33 on the Contiguous Zone provides that the coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or the territorial sea. The breadth of this zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

THE EXCLUSIVE ECONOMIC ZONE REGIME

The establishment of the 200-mile Exclusive Economic Zone (EEZ) is the most dramatic development in ocean law since the articulation of the doctrine of the freedom of the high seas. For over 300 years, states have exercised jurisdiction over only a narrow belt encircling their coasts; the area beyond has traditionally been considered high seas, in which all nations have an equal right of participation and which are not subject to appropriation by any nation.²⁸ The EEZ claims have been the most far-reaching in their scope and, indeed, will be the most profound in their influences.

Although negotiations at the Third United Nations Conference on the Law of the Sea (UNCLOS III) has not yet concluded, it would be fairly safe to say at this juncture that there is widespread accord and consensus with respect to the Exclusive Economic Zone Regime as it

currently features in Part V of the Informal Composite Negotiating Text Rev.1 (ICNT). As was expected, the concept gained substantial support from two important regional groups -- the Latin Americans and the Africans -- and was recognized as a common aim of the Group of 77, the largest bloc of developing countries. At Caracas, both in the Plenary and the Second Committee, over 100 states spoke in favour of some version of an EEZ.²⁹

Article 55, entitled Specific legal regime of the exclusive economic zone, states that, "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdictions of the coastal state and the rights and freedom of other states are governed by the relevant provisions of this Convention." Article 57 fixes the maximum breadth of the EEZ at 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Article 56 sets out the rights and duties of the coastal state in its EEZ. These are described as (1) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters; (2) Exclusive jurisdiction, including the exclusive right to construct and authorize and regulate the construction, operation and use with respect to (a) artificial islands, (b) installations and structures for purposes otherwise subject to its jurisdiction (e.g. resources) and for other economic purposes, and (c) installations and structures which may interfere with the exercise of the rights of the coastal state in the zone³⁰ and, in addition, the right to establish necessary safety zones of specified breadth around such artificial

islands, installations and structures.

The coastal state also has jurisdiction with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from the water currents and wind,³¹ and to scientific research and the preservation of the marine environment.³² Coastal states, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone. Other marine scientific research in the EEZ may be conducted with the consent of the coastal state.³³

Coastal states have the exclusive right to authorize and regulate sea-bed drilling for all purposes. The coastal state may establish reasonable safety zones, generally not to exceed 500 meters around such structures,³⁴ taking into account applicable international standards. No artificial islands, structures, or safety zones may be established where they would interfere with "the use of recognised sea lanes essential to international navigation;"³⁵ the presence of such structures does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.³⁶ Articles 61 and 62 provide for the conservation and utilization of the living resources in the EEZ. On the basis of the best scientific evidence, the coastal state has the right to determine the total allowable catch and, in addition, its capacity to harvest the living resources of the EEZ.³⁷ However, where the coastal state does not have the capacity to harvest the entire allowable catch, it shall give other states access to the surplus, having particular regard to the provisions of Articles 69 and 70, especially in relation to the developing states mentioned therein.³⁸ The coastal state may establish regulations, with which

nationals of other states fishing in the exclusive economic zone shall comply.³⁹ Articles 63 through 67 concern highly migrating species, marine mammals, anadromous stocks and catadromous species.

Articles 69 through 72 describe the rights of landlocked and geographically disadvantaged states in the EEZ which are subject to the provisions of Articles 61 and 62. Landlocked states, however, are restricted in that their right to fish in the zone is a non-transferable right, unless otherwise agreed upon by the coastal state concerned.⁴⁰ This right is to be exercised under terms and conditions determined by agreement, and would be subject to the conservation and utilization principles as expressed in Articles 61 and 62.⁴¹ The coastal state position is not at all lessened in the zone by virtue of Article 69; as a matter of fact, its position is strengthened by the provision that such agreements shall take into account "relevant economic and geographical circumstances," including the need to avoid effects detrimental to fishing communities or fishing industries of the coastal state.⁴² Furthermore, coastal states whose economies depend overwhelmingly on the exploitation of the living resources of their exclusive economic zones are exempted from the requirements of Articles 69 and 70.⁴³

Article 73 provides that coastal states may, in the exercise of their sovereign rights, take the necessary enforcement measures -- such as boarding, inspection, arrest and judicial proceedings -- but not imprisonment or corporal punishment. When such measures are taken, the coastal state has a duty to notify the flag state promptly of any arrest or detention of the flag state's vessels and to release vessels and crews on the posting of security.⁴⁴

Article 74 provides the procedure for the delimitation of the EEZ between adjacent and opposite states. Such delimitation shall be by agreement "in conformity with international law" and "in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned."⁴⁵ States which do not conclude an agreement within a reasonable time must resort to the dispute settlement procedures in Part XV of the ICNT.⁴⁶ The article provides further that, pending agreement as provided in Paragraph 1, states concerned shall enter into provisional arrangements of a practical nature during the transitional period in a spirit of understanding and co-operation.

Finally, Article 75 provides for the drawing of charts and list of geographical co-ordinates defining the limits and boundaries of the EEZ.⁴⁷ The coastal state has the obligation to publicize such charts and lists.

The EEZ, therefore, can be best described as a multi-purpose, multi-functional regime⁴⁸ in which the resources are subject to the control by the coastal state; nevertheless, that state would, for various reasons, either take into account the policies being developed by neighbouring coastal states or it might desire to develop joint policies with these states. For example, an examination of maritime legislation enacted by Grenada would, of necessity, take a close look at corresponding legislation in Trinidad, Venezuela and Barbados. Such a study ought to be commenced now, as the period of conference diplomacy nears its end so as to clear the way for development of strategies for rational management of coastal resources no matter what the outcome of UNCLOS III.

DEFINITION OF THE CONTINENTAL SHELF IN ICNT

The first and by far the most important development with respect to the continental shelf regime was the assertion of jurisdiction and control over the natural resources of the continental shelf by President Truman in his celebrated Presidential Proclamation No. 2667 of 28 September, 1945.⁴⁹ This Proclamation, as the International Court of Justice (ICJ) recognized some 24 years later,⁵⁰ came to be acknowledged as the starting point of the positive law on the continental shelf. The pronouncement made by the ICJ was later codified and developed in the Geneva Convention on the Continental Shelf of 1958.⁵¹ From its inception in the Truman Proclamation, the concept of the legal continental shelf has been plagued by uncertainty over the question of its boundaries.⁵² The International Law Commission, at the request of the United Nations General Assembly, examined the question over many years within the overall study of the Law of the Sea. Two principles were proposed for defining the outer limits of the zone -- one based on a geological-cum-depth concept, and the other based on the ability to exploit. The latter took into consideration the needs and capacities of coastal states rather than the nature of the sea-bed. The eventual decision was to combine the two proposals, and the resulting definition found its way into the Convention on the Continental Shelf.⁵³ The definition reads as follows: "For the purposes of these articles, the term 'continental shelf' is used as referring (a) to the sea-bed 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; (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands."⁵⁴ This definition is, no doubt, based on a depth criterion on the one hand and on the criterion of exploitability on the other; as a result, this has given rise to a number of problems. For instance, the developing countries argue convincingly that the exploitability criterion gave the industrialized states with the advanced technology the right to extend their jurisdiction outwards to areas extending into the center of the deep oceans and even beyond, leading to a situation of potential conflict between coastal states.⁵⁵ The origin of the reference in Article 76 (see App. B) to "the natural prolongation of its land territory" is to be found in the following passage of the judgment of the International Court of Justice in the North Sea Continental Shelf cases (1969):

"What the Court entertains no doubt is the most fundamental of all the rules of laws relating to the Continental Shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, - namely that the rights of the coastal state in respect of the area of the continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many states have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised.⁵⁶ ... Some delegates at UNCLOS III satisfied themselves with the notion of natural prolongation of the continental shelf. They no doubt felt that the distance criterion is complemented by the natural prolongation/continental margin criterion. While it is true, therefore, that a 200 mile continental shelf would give narrow-shelf countries jurisdiction beyond the margin, it would not -- if com-

plemented by the natural prolongation/continental margin reference -- deprive broad-shelf countries of their natural rights.⁵⁷

Paragraph 3 of Article 76 specifies the nature of the continental margin, which consists of the sea-bed and subsoil of the shelf, the slope and the rise. The coastal state has the exclusive right to establish the outer edge of the margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Paragraph 5 of Article 76 provides that the outer limits of the continental shelf on the sea-bed, drawn in accordance with Paragraph 4(a)(i) and (ii) shall not exceed 350 nautical miles from the baseline 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 the line connecting the depth of 2,500 meters.⁵⁸

To date, general consensus has not yet been reached with respect to the juridical nature of Article 76 (ICNT). The U.S.S.R. submitted an informal proposal to amend Article 76, Paragraphs 3 and 5 of ICNT/Rev. 1.⁵⁹ The first suggested amendment concerned the last sentence of Article 76, Paragraph 3, as follows:

"It does not include the deep ocean floor, with its oceanic ridges, seamounts, guyots and any other submarine elevations not situated on the continental margin, or the subsoil of the ocean floor."

The second suggested amendment concerned adding a new paragraph under Paragraph 5:

"Notwithstanding the provisions of paragraph 5, in areas of any other submarine ridges and elevations except those referred to in paragraph 3 of this Article, the outer limits of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured."

There were also informal suggestions by Sri Lanka to amend the

Irish Formula, as Paragraph 3 is often called. The Sri Lanka suggestion was that a new sub-paragraph (c) be added to Paragraph 3, to read as follows:

(c) "In the case of a continental margin where the foot of the slope occurs at an average distance of less than nautical miles from the baseline from which the territorial sea is measured, and a greater proportion of the sedimentary rocks of the margin lie beneath the rise, by a line delineated in accordance with Paragraph 4 connecting fixed points at which the thickness of such sedimentary rocks is not less than the minimum thickness of such rocks at the outer edge of the continental margin in areas to which the preceding sub-paragraphs of this paragraph apply:"

Sri Lanka also suggested a new Paragraph 5:

"The coastal state may determine the outer limit of the continental margin by any of the methods provided for in Paragraph 3 of this Article, or a combination thereof as appropriate to different conditions along its continental margin."⁶⁰

On August 10, 1979 Sri Lanka submitted yet another informal proposal with respect to Article 76. It suggested a new paragraph (iii) to Paragraph 4(a) of Article 76, to read as follows:

4(a)(iii) "In the case of a state where the mathematical average of the thickness of sedimentary rocks along the entire outer edge of the continental margin established at the maximum distance permissible in accordance with the preceding provisions of this paragraph is not less than 3.5 kilometers, and where more than half of the margin lies beyond the outer edge as so delineated, by a line delineated in accordance with paragraph 6 by reference to the outermost fixed points at each of which the thickness of the sedimentary rocks is not less than 0.8 kilometers."⁶¹

On August 13, 1979 an informal proposal was submitted by Argentina, Australia, Canada, India, Ireland, New Zealand, Norway, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay with respect to Article 76. The informal proposal suggested that Paragraph 5 be revised to read as follows:

5. "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 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 contour connecting water depths of 2,500 meters. However, this paragraph shall apply to submarine oceanic ridges, which are, for the purposes of this paragraph, long narrow submarine elevations formed of oceanic crust, in such a manner that the outer limit of the continental shelf in the area of such ridge does not exceed the above 350 mile distance."

Article 76 has been criticized by most delegations as being unacceptable because it is considered a good recipe for future conflict, as is the definition in Article 1 of the Geneva Convention which it would replace. The confusion with the definition stems from its inability to accommodate a variety of coastal states' competing interests in their quests for extended coastal state jurisdiction. As explained by E. D. Brown:

"Ideally, the criterion should be one which will give a boundary which (i) is precise and certain; (ii) includes those parts of the natural prolongation of the land territory to which broad-shelf states are convinced that they are entitled under the present law (whether rightly so or not is irrelevant; satisfaction of their expectations would seem to be a sine qua non of agreement); and (iii) does not extend unreasonably far so as to deprive mankind of a significant part of its expected common heritage."⁶²

Paragraphs 6 and 7 of Article 76 speak of the method to be used by the coastal state in delineating the seaward boundary of its continental shelf, where that shelf extends beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured; provision is also made beyond 200 miles for coastal states to submit boundary problems to the Commission on the Limits of the

Shelf.⁶³ Paragraph 8 of Article 76 demands that the coastal state deposit with the Secretary-General of the United Nations charts and other relevant information including geodetic data, permanently describing the outer limits of its continental shelf.⁶⁴

Article 77 of the ICNT sets out the rights and duties of the coastal state over the continental shelf; these are described as "sovereign rights" for the purpose of exploring and exploiting its natural resources. The rights mentioned above are exclusive in that no one can explore and exploit the resources of the shelf without the express consent of the coastal state. The Article specifies that 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.⁶⁵

Article 78 concerns the rights and freedoms of other states and the legal status of the superjacent waters and air space. The coastal state, in exercising its rights over the continental shelf, must not infringe or unduly interfere with navigation and other rights and freedoms of other states as provided for in the convention.⁶⁶

Article 79 provides for the laying of submarine cables and pipelines on the continental shelf of the coastal state by all other states. The coastal state ought not to hinder the exercise of this right by other states; however, insofar as delineating the course or routes for the laying of such pipelines on the continental shelf, the consent of the coastal state must be solicited.⁶⁷

Article 80 deals with artificial islands, installations and structures on the continental shelf, wherein the regulations of Article 60 apply. The coastal state thus has exclusive rights regarding their

construction, operation and use and exclusive jurisdiction over them. The obligation to give due notice that such structures exist applies mutatis mutandis to such installations on the continental shelf.

Article 81 gives the coastal state exclusive rights to authorize and regulate drilling on the continental shelf for whatever purpose.⁶⁸

Article 82 provides for payments and contributions with respect to the exploration of the continental shelf beyond 200 miles. The coastal state is obliged to make payments or contributions in kind to the Authority 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. Paragraph 2 of Article 82 establishes the method to be adopted by coastal states and the quantum of such payments; it stipulates that the first five years of production at the site require no payments or contributions to be made. However, from the sixth year onward, the rate shall increase by one per cent for each subsequent year until the twelfth year, and shall remain at seven per cent thereafter. Payments made to the Authority shall be distributed to states which are parties to the convention on the basis of equitable sharing criteria -- that is to say on the basis of need -- especially to the economically depressed Third World and also to landlocked states.

It is indeed unfortunate that Article 82 has not been given the stamp of approval by the majority of conference participants. This provision is a very important one for the developing countries, and one which has been watered down over the years to an almost empty formula. By the time of Caracas in 1974, the EEZ had been invented. However, before Caracas it was mainly the developing coastal states

which were aggressively pushing their claims seaward. The United States in 1970 (under a team headed by Elliot Richardson in the Nixon Administration) produced a draft treaty that provided for generous revenue sharing beyond the 200 meter depth line. Canada offered a proposal providing for revenue sharing beginning at the shoreline.⁶⁹ In 1976, the Trilateral Commission, whose membership includes such names as Mondale, Vance and Brezinski, advanced a plan for liberal revenue sharing inside a 200-mile line. In 1972 even the Soviet Union spoke in favour of sharing inside 200 miles!

A number of delegations expressed reservations as to the method of sharing established in Article 82. For instance, the Netherlands submitted their version of Article 82 as follows:

1. Any extension of national jurisdiction of the coastal state with respect to the exploration and exploitation of the natural resources of the continental shelf beyond the 200 miles economic zone reduces the area of the common heritage of mankind and should as such be accompanied by an equitable and practicable system of revenue sharing.

2. Principles which should govern a revenue sharing system are the following:

- (a) the production charge shall be fixed as a percentage of the gross proceeds of all sold production at the site in accordance with the following schedule:

- (i) first period of commercial production
(x) per cent.

- (ii) second period of commercial production
(y) per cent.

The first period of commercial production, referred to above, shall (a) commence in the first year of commercial production and terminate in the year in which the net cash inflow after payments to the International Authority and before home-taxation, discounted on a 15 per cent. interest rate based on constant terms, exceeds the net cash outflow,

excluding national tax payments (if any) and payments to the International Authority, discounted on a 15 per cent interest rate based on constant terms.

(b) Adequate supervision through independent accountancy and satisfactory dispute settlement procedures should be provided for.

(c) Provision should be made that the least developed countries will be exempted from the obligation of making payments to the International Authority.

(d) The International Authority, to which the payments will be made, should distribute them to all state parties on the basis of equitable sharing criteria, taking into account the interest and needs of developing countries, particularly the least developed and the landlocked amongst them.⁷⁰

Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia submitted an informal proposal with respect to Article 82, recommending a redraft of Paragraph 4 to read as follows:

"The payments or contributions shall be made to the Common Heritage Fund, as established in Article ... through the Authority which"

Seychelles also submitted an informal suggestion with respect to Article 82. It suggested that Paragraph 1 be the same as found in the ICNT, but that Paragraph 2 should read as follows:

"The payments and contributions shall be made annually with respect to all production at a site after the first year of production at that site. For the sixth year, the rate of payment or contribution shall be 10 per cent of the value or volume of production at the site. Production does not include resources used in connection with exploitation."⁷¹

DELIMITATION OF THE CONTINENTAL SHELF
BETWEEN STATES WITH OPPOSITE AND ADJACENT COASTS

The regime of the Continental Shelf also gave rise to boundary delimitation issues, which is dealt with in Article 6 of the 1958 Geneva Convention on the Shelf.⁷² The drafting history of Article 6 supports the claim that the median-equidistance line standard was regarded as a general rule, the application of which is limited by the existence of special circumstances.⁷³ It is argued that since the "special circumstance clause" is an exception to the general rule of equidistance, it can logically be deduced that such provision must be strictly construed -- *Exceptiones Sunt Strictissimae Interpretationis*.⁷⁴ -- consequently the party alleging special circumstances, in order to modify the equidistance line or replace it, must carry the burden of proof. In short, he who alleges must prove. The tribunal in the arbitral award between the United Kingdom and France with respect to the delimitation of the continental shelf, wherein the United Kingdom submitted that Article 6(1) laid the burden of proof upon the French Republic, observed that "special circumstances" were difficult to prove.

Article 6, as both the United Kingdom and the French Republic stress in the pleadings, does not formulate the equidistance principle and "special circumstances" as two separate rules. The rule there stated in each of the two cases is a single one -- a combined equidistance special circumstances rule. This being so, it may be doubted whether, strictly speaking, there is any legal burden of proof in regard to the existence of special circumstances.⁷⁵

Proponents of the median-equidistance line standard say it is straightforward, based on facts and not on philosophical notions of equity. They consider the equitable principles standard to be vague and subjective. It is also said that the standard is not amenable to direct application between parties because it must rely on third party procedure to determine equitable limitation.⁷⁶ The proponents of this standard recognize Article 6 of the 1958 Continental Shelf Convention as stating the applicable law on the delimitation of maritime boundaries.⁷⁷

Those who agree with the equitable principles standard see this concept as representing the international law governing delimitation, thereby relying on the decision of the International Court of Justice in the North Sea Continental Shelf cases⁷⁸ and on the decision of the Court of Arbitration in the United Kingdom-France Continental Shelf Arbitration.⁷⁹ The ICJ in the North Sea cases de-emphasized the importance of the median-equidistance line of Article 6 of the 1958 Continental Shelf Convention and emphasized the equitable principle standard; the Court dealt with customary international law and found that customary law was, in fact, based on equitable principles. The Court said that there was no obligation to use any particular method of delimitation; it would all depend on the geography of the situation or the area involved. As the Court of Arbitration remarked, "In short, whether under customary law or Article 6, it is never a question either of complete or of no freedom of choice as to method; for the appropriateness -- the equitable character -- of the method is always a function of the particular geographical situation."⁸⁰

Article 83 of the ICNT provides for the delimitation of the

continental shelf between adjacent and opposite states. As we will observe, in the ICNT Rev. 1 the issues of Maritime boundary delimitation are treated in three articles that relate to three differing legal regimes. Article 15 provides a legal framework for boundary delimitation of the territorial seas between states with opposite or adjacent coasts. Article 74 relates to the delimitation of exclusive economic zone boundaries between adjacent and opposite states. Article 83 addresses the delimitation of the continental shelf between adjacent and opposite states. These articles were the subject of much public and private debate in the formal and informal sessions as well as in the working groups of the conference. At the Ninth Session of the conference in New York, March 3 - April 4, 1980, the delimitation of the continental shelf and the exclusive economic zone between states with opposite or adjacent coasts became the main focus of Negotiating Group 7, which was subdivided into the sponsors of document NG7/10 and NG/2. The Chairman of Negotiating Group 7 conducted consultations with the members and supporters of the groups concerned.

The discussions were centered on Paragraph 1 of Articles 74 and 83, with the understanding that, according to a number of delegations (including the delegation of which the author is a member), all central questions subject to consideration in Negotiating Group 7 -- delimitation criteria, interim measures and settlement of delimitation disputes -- are finally to be settled together as part of a "package" solution.

The Chairman of Negotiating Group 7 submitted the following suggestion relating to possible revision of Articles 74, 83 and 29(1)(a) of the ICNT/Rev.1. Having already dealt with Article 74 (see page 71), the Chairman's suggestion for 83 will be cited here:

Article 83:

1. The delimitation of the continental shelf between states with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned.
2. If no agreement can be reached within a reasonable period of time, the states concerned shall resort to the procedure 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.

It was suggested by Morocco and Norway, at the Seventh Session, that a compromise text on the subject of delimitation should provide for interim measures, which would give the parties to the dispute time to re-evaluate their respective positions, and to engage in more meaningful negotiations in order to solve the dispute through a third party procedure.

In the Eighth Session, India, Iraq and Morocco submitted a number of worthwhile suggestions which, in fact have been fused into the new definitions of Articles 74 and 83 for further consideration. Paragraphs 3 and 4 of the informal suggestions read as follows:

3. Pending agreement or settlement, the states concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
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 provision of that agreement.

These informal suggestions appear to indicate a moratorium in the area of dispute pending negotiations between the parties. It is worthwhile noting also that there is a difference between the EEZ and the Continental Shelf; they are treated somewhat differently in the text and deal with different species of water. The EEZ speaks of sovereignty over sea-bed, subsoil and superjacent waters; within 200 miles, therefore, the continental shelf is part of the EEZ. On the other hand, if the continental shelf is a natural prolongation of a state's territory, one can envisage the problem of natural prolongation extending into another state or beneath waters that may form the EEZ of another state. The situation may develop in law where the waters may belong to one state and sea-bed to another state. These and other problems will no doubt be the focus of further negotiations at the Ninth Session to be resumed at Geneva in the summer of this year.

As a member of the Grenada delegation, the writer is hoping that the advocates of the median line standard and proponents of the equitable principle standard will relax their rigid stance in future negotiations. It is only through the spirit of give-and-take on issues concerning the four elements of a delimitation rule that a treaty text on delimitation can be properly formulated. Chairman Manner, in his final report, emphasized the desire to complete the final consensus package of the conference. He stressed that, "owing to the obvious difficulties in agreeing upon a more detached definition, it has been indicated by some delegations that the final solution might be found in a concise formulation merely identifying the most fundamental elements of delimitation, i.e. that it shall be affected by an agreement and based on international law,"⁸¹

Article 84 provides for the drawing of outer limit lines of the continental shelf, with the lines of delimitation drawn in accordance with Article 83 and shown on charts and lists of geographical co-ordinates. Paragraph 2 requires the coastal state to give due publicity to such charts or list of geographical co-ordinates, a copy of which shall be deposited with the Secretary-General of the United Nations.

Article 85 provides for tunneling for purposes of exploiting the subsoil of the coastal state by that state.

NATIONAL MARITIME LEGISLATION OF GRENADA

1. Territorial Waters Act 1978 Compared with the Relevant Provisions of the ICNT

Section 3, paragraph (1) of the Act describes the limits of territorial waters. It comprises those limits of the sea having as their landward limit the baselines which, according to section 4, shall be the low water line along the coast of Grenada and as their seaward limit a boundary line which, at every point, is a distance of 12 nautical miles, or such other distance from the nearest point of these baselines as the Minister may by order prescribe.⁸²

Paragraph (2) states that the submarine areas and the territorial waters form part of the territory of Grenada.⁸³ This section does not spell out in clear terms the juridical nature of Grenada's territorial sea. It establishes the breadth of the sea to be 12 nautical miles, which is in conformity with the ICNT provision Part II, Article 3, on the territorial sea. However, it stops short of clearly defining Grenada's sovereignty in the zone. Paragraph (2) makes no reference to the air space over the territorial sea as well as the subsoil. The

Act is completely silent on this matter, whereas the ICNT states that the sovereignty of a state extends to the air space over the sea and to the subsoil.⁸⁴

Section 4(1) provides for the drawing of baselines from which the breadth of the territorial waters shall be measured. The Article specifies that the low water line along the coast of Grenada shall be the baselines from which such breadth, as is established in Section 3, shall be ascertained. This provision is in compliance with Article 5 on the territorial sea.⁸⁵

Section 5 deals with the regime of internal waters; it states that this term includes any area of the sea that is on the landward side of the baseline, as provided for in Section 4, and, together with the submarine area thereof, forms part of the territory. This provision is in compliance with the counterpart Article 8 of the ICNT, namely the regime of internal waters.

Article 6 of the ICNT indicates the procedure for drawing baselines in the case of islands situated on atolls or islands having fringing reefs. It provides, in such instances, that the baselines for measuring the breadth of the territorial sea is the seaward low water line of the reef. Grenada's Territorial Waters Act has no comparable provision, which is an unfortunate occurrence, for the simple reason that Carriacou, the island to the north of Grenada and constitutionally part of Grenada, has prolific reef formation around its northern and western coast.

In the ICNT, Section 6(2) provides that a foreign ship shall enjoy the right of innocent passage in territorial waters; however, sub-paragraph (ii) stipulates that a foreign warship shall not

navigate in the territorial waters without the prior permission of the coastal state, obtained by the state to which the ship belongs. The Grenada legislation on innocent passage makes a distinction between non-warships and warships with respect to passage in the territorial waters. The ICNT, Article 17, does not make such a distinction; the relevant Article reads as follows: "Suspect to this Convention, ships of all states, whether coastal or landlocked, enjoy the right of innocent passage through the territorial sea."⁸⁶

Grenada has set up a consent regime, as it were, for warships entering her territorial waters. This provision is, in fact, a break with state practice and customary international law and has already been challenged by the Government of the United Kingdom.

Section 7 deals with circumstances whereby passage of a foreign ship could be deemed to be prejudicial to the peace, good order or security of Grenada.⁸⁷ The enumerated provision is identical to its counterpart in the ICNT Article 19 except for paragraph 2, which provides that the passage of a foreign ship of war in territorial waters shall be deemed to be prejudicial to the peace, good order or security of Grenada if the ship navigates in territorial waters without the permission required by Section 6(2). There is no comparable provision in the Grenada statute to that of Article 20 of the ICNT, namely that in the territorial sea submarines and other underwater vehicles are required to navigate on the surface and show their flags.⁸⁸

Section 8 of Grenada's Territorial Waters Act outlines the powers of police and authorized persons when a foreign ship engages in any act or activity that is deemed to be prejudicial to the peace, good order or security of Grenada. In essence, Grenada is exercising its

right to take steps authorized by its laws for the purpose of arrest or investigation of foreign ships passing through its territorial waters. Article 27 of the ICNT does not contain a similar provision; on the contrary, it prohibits the arrest of any person or the conduct of any investigation in connection with any crime committed on board the ship during its passage, unless the consequences of the crime extend to the coastal state or if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea. It is at this juncture that Grenada's provision is in keeping with the ICNT; sub-paragraph (ii) of Section 8 provides that where the passage of a foreign ship is deemed to be prejudicial to the peace, good order or security of Grenada, the captain or other person in charge of such ship and any person participating in the activity of the ship and who is deemed to be prejudicial is guilty of an offence under this Act. However, it should be noted that Article 27(5) makes it quite clear that 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.⁸⁹

Grenada's Territorial Waters Act does not provide for the establishment of sea lanes and traffic regulation schemes in the territorial sea.⁹⁰ In general, the statute, while in conformity with a number of articles in the ICNT, is also silent on a great many issues that may directly affect her sovereignty. More particularly, the Act is silent as to the breadth of the contiguous zone.

2. Some Further Observations with Respect to Islands, Reefs, Rocks, Islets and Innocent Passage in Relation to Grenada

(a) Islands

In the Geneva Convention on the Territorial Sea and Contiguous Zone, islands are defined, cited, or inferred in various articles.

Article 10 defines an island, in paragraph 1, as follows:

- 1) An island is a naturally formed area of land surrounded by water, which is above water at high tide.

The Article suggests no size criterion, location to mainland or continent, or any other geographical requirement except that the island must be naturally formed.

In Part VIII of the ICNT, entitled Regime of Islands, Article 121(1) follows the Geneva Convention in defining an island. However, paragraph 2 specifies that 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. Paragraph 3 of Article 121 provides that rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. Thus, an island, regardless of its size and other physical attributes, is entitled to a territorial sea. By virtue of the geography of the eastern Caribbean, not all islands can be allocated the full 12 mile territorial sea. However, the most seaward island would be in a position to extend its territorial sea outward for the claimed breadth.

The geographic location of Grenada and its islands of Ile de Rhone, Jacadam, Sandy Island, Carriacou and Petite Martinique are located less than five miles from Union Island, Palm Island, Mustique and

Two Sisters. To illustrate the problem, Palm Island is adjacent to Petite Martinique which, in turn, is opposite to Union Island. Palm Island and Union Island are under the jurisdiction of St. Vincent, a foreign state, whereas Carriacou and Petite Martinique are under the jurisdiction of Grenada. If Ile de Rhone and Jacadam are considered as part of the Grenadines, alleged by St. Vincent, then a situation would develop wherein Grenada would control islands, such as Petite Martinique, 34 miles from its shore but closer to St. Vincent, and would thereby affect the territorial sea of St. Vincent. Similarly, Palm Island is less than 1/2 mile from Petite Martinique. On the other hand, St. Vincent's islands -- such as the Grenadines -- are situated immediately adjacent to and off the shore of Grenada, the closest being Ile de Rhone, which is approximately four miles away. These geographical factors limit the extent of the territorial sea around these islands. Other factors that may play a part or be considered as "special circumstances" are the facts of size and relationship to the respective mainlands. There is little doubt that these islands will produce great difficulty in the delimitation of maritime boundaries, especially in light of the fact that the distance between each of these islands in the Northern Chain, from the mainland of Grenada to the mainland of St. Vincent, is less than 12 nautical miles. The grossest inequalities will develop in the case of these islands detached from the mainland of the parent state, and thereby lying close onshore to a second state.

Another example of this situation can be found in the coastal islands south of Papua, New Guinea, which have been reserved to

Australia. Due to the positions of these islands and their effects, they would (or could) deprive Papua, New Guinea of virtually all territorial seas south of the main state area. The results could be very inequitable for this particular area. Although the percentage of the total territorial sea of the "state" may not be excessive, a condition of relative inequity could prevail. It is the writer's opinion that the Papua, New Guinea situation compares closely to that of Grenada, vis-à-vis St. Vincent, wherein an opportunity for the greatest inequalities will most likely develop in the case of the island of Petite Martinique, detached from the parent state of Grenada and situated in close proximity to a second state -- in this case, St. Vincent. This inequality is bound to have an effect on the total territorial sea of the respective states.

(b) Rocks

There are many rocks in this Northern Chain which cannot support human habitation. Two Sisters, as it is referred to, is located some two miles off the coast of Carriacou. The Article is silent on whether rocks can have a territorial sea. If they cannot, then their value would be of little interest to Grenada. On the other hand, however, if they can be attributed with a territorial sea, then their importance becomes crucial. Rocks that cannot support human habitation have no right to an exclusive economic zone or a continental shelf. However, they have a right to a territorial sea. Consideration must also be given to low tide elevation, since low tide elevation within the territorial sea can have the effect of extending the territorial sea. Islands on the other side of the line may have to be treated as

creating a situation of special circumstances, and would have to be regarded as having limited maritime zones. Factors such as size, location, low tide elevations, relationship to the mainland and to other rocks would then have to be taken into consideration in delimiting the breadth of the territorial sea around them. These rocks could, nevertheless, be used as sites for navigational lights.

(c) Islets

Islets are in a somewhat different category from rocks, in that some of them can support human habitation or economic life on a limited scale. However, due to their restricted size, they cannot accommodate large populations. There are a number of such islets along the Windward Chain; some of them have become the homes of wild goats, wild birds, and a sanctuary for sea turtles to lay their eggs. The problem that may be generated as a result of these islets/isles would depend to a large extent on their proximity to the mainland in the course of delimiting maritime boundaries. Robert Hodgson, in discussing the effects of islets in delimitation situations, thinks that they should be granted a partial effect in the construction of an equidistant boundary. The precise value to be assigned would derive from the relationship of the islet to the adjacent or opposite state. He advocates, as a measure of the effect of an islet, the equidistance line be constructed with and without the islet as a base point.⁹¹ An example of Kuwait and Saudi Arabia is cited. Three disputed islands lie offshore from Kuwait and Saudi Arabia. If all three of these islets/isles were to come under Saudi sovereignty, the resulting effect of an equidistance boundary would be most inequitable to Kuwait.

(d) Reefs

Article 6 provides that 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 official charts. Around the northern coast of the island of Carriacou is a prolific reef formation, called the Reefs of Dover. The reef forms a lagoon which generates considerable fish life. A system of straight baselines, if geographic conditions permit, may be drawn so as to use the reef rather than the locus as a turning point. Grenada would have to include in future legislation some mention of the delimitation of the territorial sea, taking into account the phenomenon of coral reefs.

(e) Innocent Passage of Warships in the Territorial Sea of Grenada and the Evolution of the Concept of Innocent Passage

As was alluded to earlier in this chapter, Grenada's Territorial Waters Act, section 6(2), requires a foreign ship of war to have prior permission before navigating in the territorial waters. This provision does not appear to be reflected in the spirit of the text of the ICNT Rev. 1.

A draft article formulated by the International Law Commission at its Eighth Session gave the coastal state the right to make passage subject to prior authorization or notification.⁹² However, at the Geneva Conference of 1958 the suggestion that passage be subject to prior notification did not get the support it required; consequently, no article of the convention addressed itself to the question directly. The draft article of the convention dealing with this matter was

omitted.⁹³ Some jurists argue, however, that Articles 17-17 entitled "Rules applicable to all ships" make it clear by implication that "all ships" include warships.⁹⁴ It is further argued that the right of passage arises by implication from Article 23 of the convention, which is the only article dealing with warships and stipulates that "if any warship does not comply with the regulations of the coastal state concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal state may require the warship to leave the territorial sea."⁹⁵ This provision is, no doubt, identical to that of Article 30 of the ICNT Rev. 2.

A few countries nevertheless have insisted on notification and/or prior permission from the state before a foreign warship navigates its territorial sea. Pakistan's Territorial Waters and Maritime Zones Act, 1976, section 3(2) reads as follows:

"Foreign warships, including submarines and other underwater vehicles and foreign military aircraft may enter or pass through the territorial waters and the air space over such waters with the prior permission of the Federal Government."⁹⁶

Similarly, India's Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, section 4(2) reads as follows:

"Foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government."⁹⁷

The Republic of Guyana, while not going as far as India or Pakistan, requires foreign warships, including submarines, to give prior notice to the Government of Guyana before passing through her territorial sea.⁹⁸

As was mentioned earlier, Article 30 provides a penalty for warships that fail to comply with the laws and regulations of the coastal state concerning passage through the territorial sea. When such violations occur, the coastal state may require the ship to leave the territorial sea immediately. It may be argued, however, that since the ICNT gives coastal states the right to make laws concerning passage through their territorial seas, it is conceivable that one such regulation could be the necessity of prior notification to the coastal state.

The Informal Composite Negotiating Text has, in a somewhat unique manner, supported the position advanced by N.A.T.O. powers, Australia and New Zealand, and reinstated the customary law position as it was perceived since the Hague Codification Conference in 1930; wherein coastal states had authority only to regulate the use of the territorial sea by foreign warships but not to require prior permission for their transit. This provision, in a sense, is in conformity with customary international law and state practice. The requirement in Grenada's Territorial Waters Act, section 6(2), that prior permission be procured from the competent authority before a foreign ship of war may navigate the territorial waters of the state is not in conformity with customary international law or state practice and, as such, it may be open to further interpretation by the International Court of Justice.

The historical background of innocent passage, briefly outlined below, points to the early and continuing concern with this subject and also assists in attaining a more objective perception of it. The question of whether merchant ships as well as warships were entitled to exercise the right of innocent passage in the territorial sea of

a sovereign state did not become a contentious issue until the late nineteenth century. As a matter of fact, it was not until almost the turn of the century that a distinction was made between merchant ships and warships for purposes of traversing the territorial sea. The first distinction between these two types of ships was made by the eminent nineteenth century author, Massé, whose ideas were later developed by Hall in 1880. On the subject of innocent passage, Hall says:

"The right of innocent passage does not extend to vessels of war. Its possession by them could not be explained upon grounds by which commercial passage is justified. The interests of the whole world are concerned in the possession of the utmost liberty of navigation for the purposes of trade by vessels of all states. But no general interests are necessarily, or commonly involved in the possession by a state of a right to navigate the waters of other states with ships of war. Such privilege is to the advantage only of the individual state; it may often be injurious to third states; and it may sometimes be dangerous to the proprietor of the waters used."⁹⁹

In 1882, Perels argued "that warships had no general right to enter the ports or roadsteads of foreign countries, any more than troops had the right to enter foreign territory."¹⁰⁰ During this period, many authors asserted the existence of a right to uninterrupted passage through the sea, while other writers denied it. Liszt and Strupp affirmed such a right, while Cases denied it.¹⁰¹ Frenzel was among the most ardent defenders of the right of warships to transit across the territorial sea:

"Foreign warships do not require permission to enter the territorial sea. Even in time of war their stay in neutral territorial sea is only prohibited when they unnecessarily extend it or use it for direct preparation for belligerent activities."¹⁰²

Jessup said that "... normally the passage or sojourn of such vessels is not prohibited."¹⁰³ Mercker asserted that warships had the right

of innocent passage under customary international law.¹⁰⁴

(i) The Hague Codification Conference

In the report to the Committee of Experts, Schucking, the Chairman of the Sub-committee, in his draft Article 7, proclaimed the right of passage for "All vessels, without distinction." The United States delegations were not prepared to cede the unimpeded right to passage of warships. They vehemently denied that there was such a right, "...because innocent passage existed primarily in favour of commerce, and that so far as warships were concerned the question was wholly one of usage and comity".¹⁰⁵

(ii) Modern State Practice

The right of innocent passage of warships was guaranteed by Iran in 1934.¹⁰⁶ Yugoslavia guaranteed the right of innocent passage of warships, subject to the requirement of prior authorization for the passage of more than three vessels, and the right to close the territorial sea in the interest of national defence by means of notice in the official gazette. The Danish, in 1951, passed regulations permitting the passage of warships without formalities except in the case of passage through the Little Belt, which required notification in advance.¹⁰⁷ Honduras, in 1935, decreed limitations on the entry of foreign warships into territorial waters and required previous notification. Bulgaria, in 1951, decreed that foreign warships might not pass through the territorial sea without prior authorization.¹⁰⁸ There was no uniformity in state practice around the early 1950's with respect to passage in the territorial sea; nevertheless, it appears that the practice of the majority of states shows that in peacetime states generally do not hinder the passage of foreign warships in their territorial seas.

(iii) The Corfu Channel Case on the Question
of Innocent Passage

This case was based on an issue which arose between the United Kingdom and Albania. The contention of the United Kingdom was that warships had a right of innocent passage through the territorial sea, which was a right a fortiori in the case of straits. Albania, on the other hand, argued to the contrary, holding that there was no such right either generally or specifically in the case of straits. Albania took the view that the territorial sea is part of the adjoining state, and recognized the principle of sovereignty over it. Therefore, there could be no deviation from the political power of the state in the area.¹⁰⁹ In its judgment, the International Court of Justice expressly avoided expressing an opinion on the right of passage of warships through territorial waters. It limited its observations to the case of straits and did not advert to the British contention that the right of passage for warships through straits was merely a particular instance of a general right of passage through the territorial sea. Consequently, the present position of state practice seems to suggest that no distinction is to be made between ships of commerce and ships of war. Innocent passage without prior permission appears to be accorded to all ships by a majority of states.

3. The Exclusive Economic Zone: A Comparison of
the National Legislation of Grenada and Venezuela

Part II of the Marine Boundaries Act of Grenada, 1978 deals with the exclusive economic zone. Section 3(1) defines the EEZ as follows:

- 3(1) There is established, contiguous to the territorial waters, a marine zone to be known as the Exclusive Economic Zone having as its inner limit the boundary line of the seaward limit of the territorial waters and as its outer limit a boundary line which, subject to sub-section (3) at every point is a distance of 200 miles from the nearest point of the baselines of the territorial waters or such other distance from the nearest point of those baselines as the Minister may by order prescribe.
- (2) An order read under sub-section (1) is subject to affirmative resolutions of the Senate and the House of Representatives.
- (3) Notwithstanding sub-section (1), where the median line as defined by sub-section (4) between Grenada and any adjacent or opposite state is less than 200 miles from the baselines of the territorial waters, the outer boundary limit of the zone shall be that fixed by agreement between Grenada and that other state, but where there is no such agreement, the outer boundary limit shall be the Median line.
- (4) The median line is a line every point of which is equidistant from the nearest points of the baselines of the territorial waters, on the one hand, and the corresponding baselines of the territorial waters of any adjacent or opposite state as recognized by the Minister on the other hand.
- (5) An agreement entered into pursuant to sub-section (3) shall be laid before Parliament and shall be judicially noticed.¹¹⁰

In the above Article, a number of important aspects of the Exclusive Economic Zone are enumerated. Firstly, the Article establishes the zone and goes on to speak of its breadth as that of 200 miles from the baselines from which the breadth of the territorial sea is measured. Sub-sections (3) and (4) of the Act speak of delimitation of the exclusive economic zone by the implementation of the median line approach where the zone is less than 200 miles between Grenada and opposite or adjacent states. Sub-section (3) also provides for the fixing of the boundary line in such circumstances by agreement. Article 55 of the ICNT, and the counterpart to Part II Section 3 of Grenada's statute,

used a somewhat different terminology. Article 55 states that the EEZ is an area beyond and adjacent to the territorial sea. Grenada's legislation speaks of the zone as being contiguous to the territorial sea. The Congress of the Republic of Venezuela endorsed into law "AN ACT ESTABLISHING AN EXCLUSIVE ECONOMIC ZONE ALONG THE COASTS OF THE MAINLAND AND ISLANDS OF THE REPUBLIC OF VENEZUELA" on July 26, 1978.¹¹¹

Article 1 of this Act established and described the EEZ as beyond and adjacent to the territorial sea all along the coast of the mainland and the islands of the Republic of Venezuela.

Article 2 of this Act established the breadth of the zone, the outer limit of which shall be a line every point of which is a distance of 200 nautical miles from the baseline used to measure the breadth of the territorial sea. The Article provides for delimitation of the zone by agreement between states. The legislation of Grenada, Venezuela, and Article 57 of the ICNT as to the breadth of the exclusive economic zone is the same; they all conform to the 200 nautical mile limit. However, the suggested method of delimitation of the EEZ between opposite or adjacent states as stipulated by the ICNT on the one hand and the respective national legislation of Grenada and Venezuela on the other hand differs in some material ways. Grenada,¹¹² like Venezuela,¹¹³ contemplates delimitation by agreement; however, Grenada goes a step further in that the legislation provides that where there is no such agreement the outer boundary limit shall be the median line. Grenada contemplates no other method of delimitation in the absence of an agreement save the median line principle. The ICNT, Article 74, while enunciating a similar approach as that of Grenada and Venezuela, says that the delimitation of the exclusive economic zone between states

with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Nevertheless, it goes on to stipulate that such agreement shall be in accordance with equitable principles, employing the median or equidistance line where appropriate, and taking account of all circumstances prevailing in the area concerned. Article 74 moves more to the implementation of equitable principles in delimiting the exclusive economic zone than the relevant sections of the legislation either of Grenada or Venezuela. Although the statutes of the respective countries both contemplate delimitation of the outer boundary limit by agreement, there is no requirement that it be in accordance with equitable principles.

Section 5 of Grenada's Marine Boundaries Act spells out the rights in and jurisdiction over the zone. It stipulates that, "There is vested in the Government of Grenada -

- (a) all rights in, and jurisdiction over the zone in respect of
 - (i) the exploration, exploitation, conservation, protection or management of the natural living and non-living resources of the seabed, subsoil and superjacent waters;
 - (ii) the construction, maintenance or use of structures or devices relating to exploration or exploitation of the resources of the zone, the regulation and safety of shipping or any other economic purpose;
 - (iii) the authorization, regulation or control of scientific research;
 - (iv) the preservation and protection of the marine environment and the prevention and control of marine pollution;
 - (v) all other activities relating to the economic exploration and exploitation of the zone; and
- (b) all other rights in, and jurisdiction over, the zone recognized by international law"

Article 3 of the Venezuelan Act provides for the right of the Republic in the exclusive economic zone. It stipulates that the Republic has

- (a) sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed 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 wind;
- (b) jurisdiction as provided for in the relevant provisions of this Act and the regulations with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the preservation of the marine environment.

The rights set out in this Article with respect to the sea-bed and subsoil shall be exercised in accordance with provisions relating to the Continental Shelf.

Section 5 of Grenada's legislation does not clearly define the nature of Grenada's sovereignty in the zone. It says, "... all rights in and jurisdiction over ..." This is in stark contrast to Article 56 of the ICNT and the Venezuelan legislation on the zone. The ICNT says that "... in the exclusive economic zone the coastal state has sovereign rights" In the Venezuelan legislation the Republic has sovereign rights for "... the purpose of exploring it" "... The Venezuelan Act then goes on to enumerate the specific areas over which it has jurisdiction. Many of the areas enumerated in the Grenada legislation fall into the same category as that of Venezuela. However, with respect to Grenada, the interpreter is unsure as to whether the reference to the enumerated sub-headings, i.e. (i), (ii), (iii), (iv), (v), relates to rights in, or to jurisdiction of. The draftsman may have intended to equate rights with sovereignty, but this is a dangerous

assumption to make since rights do not connote or, for that matter, possess the same attributes as sovereignty. Furthermore, the section does not spell out clearly what areas the state has rights over as opposed to jurisdiction. The terms "rights" and "jurisdiction" seem to be used synonymously and interchangeably. This, in fact, creates confusion in determining the scope and nature of the state's sovereignty and jurisdiction in the zone. Unlike the ICNT and the Venezuelan legislation, which speak of the "coastal state" or the "Republic" respectively as having sovereignty in the zone, the Grenada Act refers to the Government of Grenada. Another interesting observation to be made is with respect to Article 56(1)(c) of the ICNT: "... other rights and duties provided for in this Convention" The ICNT clearly distinguishes sovereign rights from rights. They are not, and cannot be, one and the same.

Article 4 of the Venezuelan legislation deals with the rights of other states in the exclusive economic zone. It states that,

"In the exclusive economic zone of the Republic, other states, whether coastal or landlocked, shall enjoy, subject to the relevant provisions of the present Act, the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea associated with navigation and communication."

The provisions in the Venezuelan legislation do not deviate from Article 58 of the ICNT, which speaks of the rights of other states in the same context. Section 7 of the Grenada Act, while guaranteeing the enjoyment of customary freedom in the zone by coastal states, is silent as to land-locked states.

Section 6(1) of the Grenada Act is a redundant provision except for the absence of a statement concerning the nature of state's rights in the zone. The provision states that, subject to this Act, no person shall within the zone, except under or in accordance with an agreement with the Government of Grenada or a permit granted by the Minister -

- (a) explore or exploit any resources thereof;
 - (b) carry out any search or excavation;
 - (c) conduct any research;
 - (d) drill in or construct, maintain or operate any structure or device; or
 - (e) carry out any economic activity.
- (3) Any person who contravenes this section is guilty of an offence and liable", etc.

The writer contends that if in Section 5 the Act had stated, as it should, that the State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, living or non-living, of the sea-bed and subsoil and superjacent waters, then section 6(1) would not have been necessary.

Article 5 of the Venezuelan Act provides for the conservation of the living resources in the zone; establishes the allowable catch of the living resources; introduces conservation and management measures so that the living resources are not endangered by over-exploitation. To that end, the Republic shall co-operate with relevant sub-regional, regional and global organizations. This provision takes into consideration the provisions of Article 61 of the ICNT and, although not identical to it, highlights the most salient features. There is no comparable provision in the legislation of Grenada.

Article 6 of the Venezuela Act speaks of the utilization of the living resources. It states as follows: "The Republic shall promote

the optimum use of the living resources of the exclusive economic zone without prejudice to Article 5 of said Act." It stipulates that the National Executive shall determine the capacity of the Republic to harvest the living resources of the exclusive economic zone and, if conditions permit, gives states access to the surplus of the allowable catch. This provision is similar to its counterpart, Article 62 of the ICNT entitled "Utilization of the Living Resources". Grenada does not have comparable legislation with respect to utilization of the living resources; however, section 11 does make provision for the granting of fishing permits to foreign fishing vessels. This, however, is the extent to which the Act goes with respect to establishing any type of regulatory control in the zone. Unlike Article 62 of the ICNT, there is no mention in the Grenada statute as to determine which species may be caught; to regulate the seasons and areas of fishing; or to set standards for the size and amount of gear. The Act is barren as to any conservation measures; however, Part IV contemplates the appointment of marine conservation officers, who are basically enforcement personnel rather than trained conservation officers.

Article 7 of the Venezuelan Act speaks of co-ordination with other states in respect of measures for the conservation of the living resources. It provides for the conservation and development of stock, or stocks of associated species, either within the exclusive economic zone of the Republic or the exclusive economic zone of neighbouring states. The Republic shall endeavour, through regional or sub-regional organizations, to come to an agreement with states where nationals harvest these species according to the measures necessary for their conservation. This provision is identical to Article 63 of the ICNT

with respect to stocks occurring within the exclusive economic zones of two or more coastal states, or both within the EEZ and in an area beyond and adjacent to it. There is no comparable provision in the Grenada legislation.

Article 8 of the Venezuelan legislation deals with artificial islands, installations and structures in the exclusive economic zone. This provision, once again, is identical to Article 60 of the ICNT with respect to artificial islands, installations and structures in the EEZ. The Marine Boundaries Act of Grenada does not contain a comparable provision; as a matter of fact, the Act is silent on this issue.

Article 9 of the Venezuelan Act deals with marine scientific research in the exclusive economic zone. The provisions in Article 9(1) state that marine scientific research activities in the EEZ shall be conducted with the prior consent of the Republic. Article 246 of the ICNT, on the same topic, states in sub-section (2): "Marine scientific research activities in the Exclusive Economic Zone and on the Continental Shelf shall be conducted with the consent of the coastal state." The Venezuelan Article 9(2)(a) states that the Republic will not withhold its consent to the conducting of a marine scientific research project if it -

- (a) is directly related to the exploration and exploitation of living and non-living natural resources;
- (b) does not involve drilling, the use of explosives, or the introduction of harmful substances into the marine environment;
- (c) does not involve the construction, operation or use of artificial islands, installations and devices as referred to in Article 15 of this Act;
- (d) does not unjustifiably interfere with activities undertaken by the Republic in accordance with its jurisdiction and as provided in this Act.

Here again, the provisions mentioned above are almost identical with those found in Article 246(5).

The only mention of scientific research in the legislation of Grenada is pursuant to section 5, wherein the rights in, and jurisdiction over, the zone is enumerated. Section 5(iii) speaks of "the authorization, regulation or control of scientific research". The Act does not spell out the jurisdiction of the state in regard to scientific research vis-à-vis other states.

CONCLUSION

In conclusion, the author must emphasize that whereas the juridical nature of the Territorial Sea, the EEZ, and the Continental Shelf have been agreed upon, the more critical issue of delimitation of the EEZ and the Shelf still remains uncertain. At the Ninth Session in New York in 1980, Judge Manner, Chairman of Negotiating Committee 7, submitted a compromise formula. However, further consideration will have to be given to Articles 74 and 83 at the continuation of the Ninth Session at Geneva.

Furthermore, there is no doubt that in the not too distant future vessels may have to submit to a multiplicity of national laws which often may be different from state to state, and that some of these laws might be more severe than others and could possibly have the effect of creating obstacles to freedom of navigation.

As was discussed in the preceding chapter, states can enact unilateral legislation with respect to prevention of pollution and protection and preservation of the marine environment, and to the nature of marine scientific research. The continuation of the Ninth Session in

Geneva could upset the delicate balance that currently prevails in the text if significant changes are made to Articles 74 and 83.

FOOTNOTES - CHAPTER II

¹Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF.62/WP10/Rev. 1, Informal Composite Negotiating Text (ICNT).

²United Nations Conference on the Law of the Sea, Official Records vol. III, U.N. Doc. A/CONF.13/39 (1958).

³Winston Conrad Extavour, The Exclusive Economic Zone: A Study of the Evolution and Progressive Development of the International Law of the Sea (Institut Universitaire de hautes études internationales, 132 rue de Lousanne, 1211 Genève 21, 1979), p. 104. See Resolution VIII of 1958 Conference, Official Records of the U.N. Conference on the Law of the Sea, vol. II Annexes, Doc. A/CONF.13/156 and Resolution 1307 (XIII) of the U.N. General Assembly concerning second conference on the law of the sea.

⁴The 18 power proposal failed to be adopted in the Committee of the Whole, being rejected by 39 votes to 36 votes, with 13 abstentions. The Icelandic proposal was adopted in the Committee of the Whole by 31 votes to 11 votes, with 46 abstentions; however, it was rejected in the Plenary Session. The joint Canada-U.S.A. proposal was adopted in the Committee by 43 to 33 votes, with 12 abstentions but, having been amended by the inclusion of a proposal of Brazil, Cuba and Uruguay in the Plenary Session, it failed to be adopted by a single vote.

⁵Extavour, EEZ: A Study, p. 117.

⁶Official Records of the United Nations Conference on the Law of the Sea, vol. V, A/CONF.13/L3/L.5, p. 136. Also see A/CONF.10/SR12, p. 3.

⁷Yaounde, 1972. U.N. Doc. A/AC.138/79. The African seminar lasted from 20-30 June 1972. The states represented were: Cameroon, Tunisia, Algeria, Dahomey, Egypt, Sierra Leone, Zaire, Senegal, Ethiopia, Equatorial Guinea, Kenya, Ivory Coast, Nigeria, Mauritius, Tanzania, Togo, and Central African Republic. Perhaps the two most important parts of this recommendation were Articles III and IV. Article III stated, "The African states have equally the right to establish beyond the territorial sea an economic zone over which they will have an exclusive jurisdiction for the purpose of coastal regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples and their respective economies." Article IV stated, "The exploitation of the living resources within the economic zone should be open to all African States both land-locked and near land-locked, provided that the enterprises of these states desiring to exploit these resources are effectively controlled by African capital and personnel."

⁸The First Conference for the Codification of International Law (The Hague), 1930. See, League of Nations Official Journal, Special Supplement No. 53, p. 9.

⁹A/CONF.62/WP.10/Rev. 2, p. 23. El Salvador and Honduras claimed a 200 nautical mile territorial sea in 1950. Chile, Ecuador and Peru claimed a 200 nautical mile territorial sea in 1952. Representatives of the Caribbean States, including Mexico, approved the Declaration of Santo Domingo on July 7, 1972, U.N. Doc. A/AC.138/80 (1972), and the African States Regional Seminar held in Yaounde June 20-30, 1972 adopted a resolution, U.N. Doc. A/AC.138/79 (1972). Both of these documents called for the establishment of a 12 mile territorial sea.

¹⁰ICNT, Rev. 2, Article 15.

¹¹U.N. Doc. A/CONF.62/L47.

¹²Office of the Geographer, U.S. Dept. of State, Limits to the Seas, No. 45, Maritime Boundary: Mexico - United States (1974).

¹³The Mexico-United States Boundary Delimitation provides an example of state practice in post-1958 lateral boundary delimitation. A treaty signed on November 23, 1970 clarified the Rio Grande boundary and delimited the maritime boundaries in both the Gulf of Mexico and the Pacific Ocean, between Mexico's 12 nautical mile territorial sea and the United States' territorial sea and contiguous zone. The Pacific Ocean boundary was based on a practical simplification, through a series of straight lines, of the equidistance method established in Article 72 of the Geneva Convention on the Territorial Sea and Contiguous Zone. See, Articles 56(I)(a) and 56(II)(iii).

¹⁴ICNT, Rev. 2, Article 246.

¹⁵Ibid., Art. 19 defining innocent passage.

¹⁶Ibid., Arts. 18, 19. See also, for a more elaborate discussion, Abulaawi A. Yusuf, "Towards a New Legal Framework for Marine Research: Coastal-State Consent and International Coordination," Virginia J. of Int. Law, vol. 19 (1979): 415.

¹⁷Ibid., Art. 18.

¹⁸Ibid., Arts. 18, 20.

¹⁹Ibid., Art. 21(1), (2).

²⁰Ibid., Art. 22(1), (2), (3), (4).

²¹Ibid., Art. 24(1)(a), (b).

²²Ibid., Art. 25.

²³Ibid., Art. 26.

²⁴Ibid., Art. 27(1), (2), (3), (4).

²⁵ Ibid.

²⁶ Ibid., Art. 28.

²⁷ Ibid., Art. 30.

²⁸ Robert B. Krueger and Myron H. Nordquist, "The Evolution of the 200-mile Exclusive Economic Zone: State Practice in the Pacific Basin," Virginia J. of Int. Law, vol. 19.2 (1979): 321.

²⁹ Official Records of the Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF.62/33 (1975), p. 59; 2 Official Records of the Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF.62/33 (1975), p. 170.

³⁰ ICNT, Rev. 2, Art. 60.

³¹ Ibid., Art. 56(1)(a).

³² Ibid., Art. 56(ii), (iii).

³³ Ibid., Art. 246.

³⁴ Ibid., Art. 246(2).

³⁵ Ibid., Art. 60(5).

³⁶ Ibid., Art. 60(7).

³⁷ Ibid., Art. 60(8).

³⁸ Ibid., Art. 62(2).

³⁹ Ibid., Art. 62(4).

⁴⁰ Ibid., Art. 72.

⁴¹ Ibid.

⁴² Ibid., Art. 70(3).

⁴³ Ibid., Art. 69(2)(a).

⁴⁴ Ibid., Art. 71.

⁴⁵ Ibid., Art. 73(1), (4).

⁴⁶ Ibid., Art. 74.

⁴⁷ Articles 74(2), 75(1), (2).

⁴⁸ Douglas M. Johnston and Edgar Gold, "The Economic Zone in the Law of the Sea: Survey, Analysis and Appraisal of Current Trends," Occasional Paper Series, Law of the Sea Institute, University of Rhode Island, June 17, 1973, p. 8.

⁴⁹ Presidential Proclamation No. 2667 of 28 September, 1945. "Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and uninhibited navigation are in no way thus affected." See, United Nations Legislative Series, ST/LEG/SER B1, 11th January 1951, pp. 38-40.

⁵⁰ North Sea Continental Shelf Judgment, International Court of Justice Reports 1969, para. 47, pp. 32-33.

⁵¹ Convention on the Continental Shelf, April 29, 1958; 15 UST 471; T.I.A.S. No. 5578, 499; UNTS 311.

⁵² E. D. Brown, "The Continental Shelf and the Exclusive Economic Zone: The Problem of Delimitation at UNCLOS III," Maritime Policy and Management, vol. 4, (Oct. 1977): 377.

⁵³ Convention on the Continental Shelf, UNTS 311.

⁵⁴ Ibid.

⁵⁵ D. C. Kapoor, "The Delimitation of Exclusive Economic Zones," 4 Maritime Policy and Management (1977): 255.

⁵⁶ (1969) I.C.J. 3. This case resolved two disputes over the delimitation of the continental shelf of the North Sea. The first dispute involved the Federal Republic of Germany and Denmark, and the second dispute involved the Federal Republic of Germany and the Netherlands. See, judicial decision in 63 Amer. J. Int'l Law (1969): 591.

⁵⁷ See, A/CONF.62/C.2/L.18, Turkey. A/CONF.62/C.2/L.23; A/CONF.62/C.2/L.28. Also see the nine power draft A/CONF.62/C.2/L.96.

⁵⁸ ICNT, Rev. 1.

⁵⁹ Informal proposal submitted by the Soviet Union, NG6/21, 18 March 1980.

⁶⁰ Informal proposal submitted by Sri-Lanka, NG6/5, 4th April 1979.

⁶¹ Informal proposal submitted by Sri-Lanka, NG6/10, 10th August 1979.

⁶² Brown; Continental Shelf and the EEZ, pp. 377, 385.

⁶³ See Annex for the mechanics of the Commission.

⁶⁴ INCT, Rev. 1, Art. 76(8).-

⁶⁵ Ibid., Art. 77.

⁶⁶ Ibid., Art. 78.

⁶⁷ Ibid., Art. 69.

⁶⁸ Ibid., Art. 80(8).

⁶⁹ Informal proposal as submitted by Canada, NG6/7, 17th April 1979.

⁷⁰ Informal proposal NG6/15, 16th August 1979; ICNT, Art. 82.

⁷¹ Informal Proposal NG6/3, 7th September 1978.

⁷² Convention on the Continental Shelf, April 29, 1958, 15 U.S.T. 471; T.I.A.S. No. 5578, 499; U.N.T.S. 311.

⁷³ Ibid, Art. 6. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

(2) Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

(3) In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in Paragraphs 1 and 2 of the article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on land.

⁷⁴ L. D. M. Nelson, "Equity and Delimitation of Maritime Boundaries," Iranian Rev. Int'l Rel. (1978): 197. Also see Tanaka, International Court of Justice Reports 1969, p. 186.

⁷⁵ Ibid.

⁷⁶ A. O. Adede, "Towards the Formulation of the Rule of Delimitation of Sea Boundaries Between States with Adjacent or Opposite Coasts," 19 Virginia J. of Int'l Law (1979): 214.

⁷⁷ Northcutt Ely, "Seabed Boundaries Between Coastal States: the Effect to be Given Islets as 'Special Circumstances'," 6 Int'l Law (1972): 226-227. See, Oda, "Boundary of the Continental Shelf," 12 Japan Int'l Law (1968): 280-283.

⁷⁸ See judicial decision, 63 Am. J. Int'l L. (1969): 519.

⁷⁹ The Court of Arbitration was constituted pursuant to the Arbitration Agreement of 10 July 1975 between the United Kingdom and France. For the text of the award of the Court of Arbitration see, Court of Arbitration (the United Kingdom of Great Britain and Northern Ireland v. The French Republic) Delimitation of the Continental Shelf Decision, 30 June 1977. See also, The United Kingdom French Continental Shelf Arbitration, 72 Am. J. Int'l L. (1978): 95; McRae, "Delimitation of the Continental Shelf Between the United Kingdom and France: The Channel Arbitration," 15 Can. Y. B. Int'l L. (1977): 173.

⁸⁰ A/CONF.62/L.47, 24th March 1980.

⁸¹ See, Reports of 20th April 1979, NG7/39, and 17 May 1978, NG7/21. It would seem that the location in the convention of the definition of the median or equidistance line, as included in Article 74(4) of the ICNT/Rev. 1, could be left for consideration in the Drafting Committee. See, NG7/4, 21 April 1978.

⁸² Grenada Territorial Waters Act, 1978, S. 3(1), (2), S. 4.

⁸³ Ibid.

⁸⁴ ICNT, Rev. 2, Art. 3.

⁸⁵ Ibid., Art. 5.

⁸⁶ Ibid., Art. 17. See, S. 6(1) Grenada Territorial Waters Act, 1978.

⁸⁷ Grenada Territorial Waters Act, 1978, S. 7.

⁸⁸ ICNT, Rev. 2, Arts. 19, 20.

⁸⁹ Ibid., Art. 27(5). Grenada Territorial Waters Act, 1978, S. 8.

⁹⁰ ICNT, Rev. 2, Art. 22.

⁹¹ Robert D. Hodgson, "Boundary Issues Created by Extended National Jurisdiction," vol. 69, no. 4 Geographical Review (October, 1979).

⁹² International Law Commission Yearbook 1956, pp. 276-277. States requiring prior authorization or notification, inter alia Belgium, Bul-

garia, Colombia, Egypt, France, Honduras, Italy, Norway, Poland, Rumania, U.S.S.R., Yugoslavia. See also, reservations to Art. 23 of the Committee on the Territorial Sea by Bulgaria, Byelorussia, Czechoslovakia, Hungary, Rumania, and the Ukraine. Those permitting a right of passage, inter alia Denmark, Netherlands, United Kingdom. See, 7 I.C.L.Q. (1958): 544, United States, Federal Republic of Germany, Iran, Peru, Sweden.

⁹³ Ian Brownlie, Principles of Public International Law (Oxford: Clarendon Press, 1966), p. 190. See also, U.N. Conference on the Law of the Sea, Official Records ii, pp. 66-68

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Passed by Parliament on 22 December 1976. Assented to by the President on 31 December 1976. Text provided by the Permanent Representative of Pakistan to the United Nations in a note dated 3 June 1977.

⁹⁷ The Gazette of India Extraordinary, Part II, S. 2 of 28 May 1976, pp. 971-979.

⁹⁸ Act No. 10 of 1977, passed by the National Assembly on 3 June 1977, entered into force on 30 June 1977. Text provided by the Permanent Representative of Guyana to the United Nations in a note verbale dated 15 November 1977.

⁹⁹ Quoted paper by Daniel P. O'Connell, Innocent Passage of Warships, p. 411. See McDougal and Burke, The Public Order of the Oceans, pp. 192-194, 216-221. Also see Columbus, International Law of the Sea, 6th ed., p. 122; Gidel, iii, pp. 277-289; Jessup, 59 Columbia L. R. (1959): 247-249; Harvard Research (1929): 23; U.N. Legis. Series, The Territorial Sea, pp. 361-420.

¹⁰⁰ O'Connell, Innocent Passage, p. 411.

¹⁰¹ Ibid., p. 413.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p. 417.

¹⁰⁶ Ibid., p. 422.

¹⁰⁷ Ibid., p. 423.

¹⁰⁸ Ibid.

109 Ibid., p. 425.

110 Ibid., p. 440.

111 Ibid., p. 441.

112 Ibid., p. 443.

113 Grenada, Marine Boundaries Act, 1978.

GRENADA'S LEGISLATION

1. Issues which have not been dealt with in the legislation of Grenada

Grenada's legislation on the Exclusive Economic Zone does not exhaustively enumerate the rights, jurisdiction and duties of the coastal state in the zone itself. Section 5 of the Act enumerates, in a general way, the nature of Grenada's rights in and jurisdiction over the zone, but it does not go beyond generalities as does the ICNT. For instance, in the legislation there is no mention of the state's exclusive rights and jurisdiction over Artificial Islands, Installation and Structures, as in the case in the ICNT,¹ Article 60. In conferring jurisdiction upon the coastal state for this purpose, the Article on its face appears to make a distinction between the "artificial islands", "installations" and "structures" which might be constructed in the exclusive economic zone. The term "artificial islands" refers to man-made structures fulfilling a wide range of functions including, for example, artificial ports for the loading of heavy oil tankers, offshore terminals and the like. The term "structures" refers to structures designed for industrial purposes, such as for the installation of certain pollution creating industries.² These artificial constructions may also be used for conducting certain kinds of marine scientific research or for military activities.³ In the light of the anticipated activities that may eventually take place within the zone, it is almost imperative that legislation on the exclusive economic zone spell out the legal implications of such artificial islands, installations and structures in that area.

Although the Grenada legislation recognizes the state's right and jurisdiction with respect to the authorization, regulation and control

of scientific research, the legislation does not go beyond such recognition. Article 246 of the ICNT⁴ establishes a consent regime and properly spells out the conditions or requirements that states and international organizations must comply with so as to be granted the consent of the coastal state prior to the conduct of research activities in the exclusive economic zone. Legislation is needed that would, inter alia, permit Grenada to participate in any programme of research it authorizes, to obtain the results of such research, and to require that the results of all scientific research be published only with its consent. The ICNT accords coastal states discretionary powers in exercising consent powers which apply to all forms of research. The language of Article 246(6) states that coastal nations "may ... in their discretion withhold their consent".

There are a number of important provisions found in the ICNT, Part XIII on marine scientific research that could properly be the subject of future legislative enactment in Grenada. For instance, conditions could be enumerated whereby states and competent international organizations, which intend to pursue scientific research in the EEZ of a coastal state, must comply with the conditions as stipulated in Article 248 of the ICNT and also in 249.⁵

Again, Section 5(iv) of the Marine Boundaries Act speaks in rather general terms of the preservation and protection of the marine environment and the prevention and control of marine pollution. It does not spell out the nature of its jurisdiction in this regard, nor does the legislation adopt a functional approach in the regulation, prevention and control of marine pollution. It is interesting to note that

exclusive coastal state jurisdiction over this area of activity has been advocated in the document of the Sea-bed Committee and of the Third United Nations conference on the Law of the Sea.⁶ It must be recognized by the legislature that the economic zone is not simply a contiguous zone but that it involves the function and inter-relationship between resources jurisdiction and the prevention of pollution.⁷ To this end, legislation should be so designed as to deal with ship-generated pollution in a general context, vessel traffic systems, land-based pollution, disposal of waste (nuclear and otherwise) in the oceans, and similar contingencies. Under the existing rules, which were partly codified in the 1958 Geneva Conventions on the Law of the Sea, states have both the right and the duty to protect the marine environment against pollution. There can be no argument that coastal states can take the necessary action in their internal and territorial waters to prevent pollution. This right can be generally implied under the provisions of the Convention on the Territorial Sea and the Contiguous Zone.⁸ Although there is no mention whatsoever in the Grenada Act as regards the contiguous zone, nevertheless the state is competent to legislate in this area to prevent infringement on its customs, or fiscal, immigration, or sanctuary regulations. These enumerated headings are generally understood as including pollution measures, and within these parameters the coastal state is competent to legislate. The ICNT Article 33 approves of this jurisdiction. Any contemplated legislation in this regard can take stringent measures necessary for the preservation of fisheries against pollution. It appears that the coastal state can legislate freely in respect of various sources of pollution within the territorial sea and,

for specific purposes, in the contiguous zone. The ICNT further provides for international rules and national legislation to prevent and control pollution of the marine environment. Article 207 gives coastal states the prerogative to introduce legislation as may be necessary for the protection of the marine environment. The other rights and duties of the coastal state in the exclusive economic zone, for instance with regard to the laying of submarine cables and pipelines, include the consent of the coastal state where the delineation of the course of such pipelines is concerned. It is noteworthy that enforcement rights and the right of hot pursuit do fall into this category of "other" rights and, as such, are proper subjects for legislative enactments by coastal states.

Section 3(3)(4) of the Maritime Boundaries Act deals with the subject of delimitation of the exclusive economic zone between Grenada and adjacent or opposite states. There are serious shortcomings in this legislation; however, because it attributes undue emphasis to the implementation of median line approaches to delimitation in the absence of agreement to the contrary. Article 74 of the ICNT, on Delimitation of the Exclusive Economic Zone Between States with Opposite or Adjacent Coasts, advocates a number of approaches to delimitation. For instance, the Article emphasizes that delimitation of the zone must be in conformity with international law; that the agreement must be in accordance with equitable principles; and that the employment where necessary of the median or equidistance lines must also take into account all circumstances which prevail in the area.⁹ The Act does not articulate any of the above-noted criteria and that due consideration must be given to

other approaches delimiting maritime boundaries. The Act is silent as to the method to be adopted in attempting to delimit the continental shelf between states with opposite and adjacent coasts.

A. Grenada Territorial Waters Act, 1978

Section 3, sub-paragraph (2) specifies that the territorial waters, including the submarine areas thereof, form part of the territory of Grenada.¹⁰ It is silent as to whether this sovereignty extends to the airspace over the territorial sea. Article 2, Paragraph 2 of the ICNT clearly states that the sovereignty of a state over its territorial sea extends to the airspace over the sea as well as its bed and subsoil.

The Act does not make any provisions for the drawing of baselines to ascertain the breadth of the territorial sea where reefs are involved; nor is there any mention of the mouths of rivers, bays and ports as important geographical phenomenon to be considered in establishing baselines as an aid to ascertaining the breadth of the territorial sea. Reefs, mouths of rivers and bays are exhaustively dealt with in the ICNT. Article 6¹¹ considers the case where islands situated on atolls, or islands having fringing reefs are involved; in such instances, the baselines for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on official charts. In the case of a river mouth flowing into the sea, Article 9¹² states that the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks. Article 10¹³ exhaustively deals with bays. Article 10, Paragraph 5, states that where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of 24 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. Finally, Article 11¹⁴ deals with ports and, in essence, proclaims that for the purpose of delimiting the territorial sea, the outermost permanent harbour marks which form an integral part of the harbour system are regarded as forming part of the coast. While the Grenada legislation recognizes the right of innocent passage for foreign non-military ships, foreign ships of war cannot navigate in the territorial waters without the prior permission of the state.

The Grenada Act is silent as to delimitation of the territorial sea between states with opposite or adjacent coasts; this provision is provided for in Article 15 of the ICNT. It is worthwhile to note that although the Grenada legislation requires prior notice by foreign ships of war before passing through its territorial waters, it does not, as Article 20 of the ICNT, require submarines and other underwater vehicles to navigate on the surface and show their flags while navigating through the territorial sea. Although the coastal state is competent to make laws and regulations relating to innocent passage in the territorial sea, pursuant to Article 21 of the ICNT, Grenada's legislation is silent as to each and every possible legislative enactment as found in this Article. The Act is also silent as to the implementation of sea lanes and traffic separation schemes in the territorial sea, whereas Article 22 of the ICNT gives coastal states the right to require foreign ships exercising the right of innocent passage through their territorial seas to use such sea lanes and traffic separation schemes as is necessary for the regulation of the passage of ships.

The Grenada Act does not give sufficient consideration to the island territories of Carriacou and Petite Martinique. It could have provided that each of the islands shall have a territorial sea, contiguous zone, exclusive economic zone and continental shelf of its own, and that all provisions of the Territorial Waters Act and the Maritime Boundaries act shall be applicable to it.

B. Issues Which Seem to go Contrary to the Text

Section 7(2) of the Grenada Territorial Waters Act reads as follows:

"The passage of a foreign ship of war in territorial waters shall be deemed to be prejudicial to the peace, good order or security of Grenada if the ship navigates in territorial waters without the permission required by Section 6(2)."

Section 6(2) requires a foreign ship of war to obtain prior permission of the state before navigating the territorial waters of Grenada.¹⁵

This provision, as above noted, in the Grenada statute runs contrary to the provisions regarding innocent passage in the ICNT Rev. 2.

Section 3 deals with Innocent Passage in the Territorial Sea. Article 17 specifies that ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.¹⁶

Article 19 stipulates that passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Entry into the territorial waters by a foreign warship, without obtaining prior consent of the coastal state, is not considered prejudicial to the peace, good order or security of the coastal state. The text is silent on this matter.

CONCLUSION

In concluding, it must be mentioned that most of the legislation that has been enacted by a number of countries, including Grenada, has been done in contemplation of a successful conclusion of a Law of the Sea treaty. If such a treaty in fact materializes, a significant portion of current legislation would become redundant and an urgent need for more current national legislation to reflect and conform to the treaty-text would become manifest.

FOOTNOTES - CHAPTER III

¹ Act 20, Grenada Marine Boundaries Act, 1978, s. 3.

² U.N. Doc. A/CONF.62/WP.10/Rev. 2, 1980, Informal Composite Negotiating Text (ICNT).

³ A. Phylactopoulos, "Artificial Islands and Installations: A Call for International Legislative Action," 4 International Relations (Journal of the David Davies Memorial Institute for International Studies) (1974): 427-428.

⁴ H. Charles, "Les Iles Artificielles," 71 RADIP (1967): 355.

⁵ Grenada Marine Boundaries Act, S. 5(iii).

⁶ ICNT, Art. 246.

⁷ *Ibid.*, Arts. 248, 249.

⁸ For instance, see the Declaration of Santo Domingo of 9th June 1972, paragraph 2 of the section on the Patrimonial Sea, the conclusions of the African States at the Yaounde Seminar which, however, speaks of "exclusive jurisdiction" over pollution control activities. See also, Declaration of the Latin American States on the Law of the Sea (Lima Declaration Doc. A/AC.138/SC II/L.10; Draft Article on the Exclusive Economic Zone Concept submitted by Kenya, Article 11 et seq.

⁹ See, U.N. Doc. A/CONF.62/C3/SR4, Official Records of the Third Conference, vol. 11, p. 318 et seq. See also statements of the Chilean delegate, A/CONF.62/C3/SR6.

¹⁰ Such implication would be derived from the language, wherein it states that the sovereignty of the coastal State which extends "beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea". Article 1(1) of the Convention.

¹¹ ICNT, p. 54.

¹² Grenada Territorial Waters Act, 1978, s. 3(2).

¹³ ICNT, Art. 6.

¹⁴ *Ibid.*, Art. 9.

¹⁵ *Ibid.*, Art. 11.

¹⁶ *Ibid.*, Art. 22.

SOME PROBLEMS FOR CERTAIN STATES ARISING FROM

THE DEVELOPING LAW OF THE SEA

1. The Role of Geography in the Law of the Sea

Of the 86 states represented at the 1958 Geneva Conference on the Law of the Sea, 54 had direct access to the open seas, 19 had access through relatively narrow straits, and 13 were landlocked and must depend upon other states for transit rights to the sea.

Most, but not all, of the issues considered at the Third United Nations Law of the Sea Conference have their geographical facet. For instance, the breadth of the territorial sea and the means by which it is measured logically qualify as geographic. All boundaries extending through offshore waters have a geographical base. It is geography which determines the following aspects of the law of the sea in -

- (1) The territorial sea, its breadth and application to the coasts of the states of the world.
- (2) The baseline as the criterion for determining the breadth of the territorial sea.
- (3) The continental shelf, legal versus physical aspects of a portion of the floor of the sea.
- (4) Offshore boundaries, the median line as a determinant of full sovereignty or other types of jurisdiction.
- (5) Landlocked countries, shelf-locked countries, access of landlocked states to the ocean space.¹

(a) Baselines

The key to zoning off the coast of a state is in the baseline.

It forms the inner limit of the territorial sea, and from it is measured the outer limit. The same baseline forms the maximum seaward

margin of a state's internal waters, such as bays, inlets, estuaries and other bodies of water associated with the shoreline. The baselines also serve indirectly as a point of departure for determining both the inner and outer limits of the contiguous zone and the inner limits of the continental shelf and the high seas.² It is therefore of crucial importance to know exactly where the baselines are placed for purposes of ascertaining just how far seaward a state may exercise jurisdiction, whether it be complete and absolute sovereignty as is exercised in the territorial waters, or a mixture of sovereignty and exclusive jurisdiction as is exercised in the exclusive economic zone, or only exercise of control to prevent infringement of regulations over such matters as customs, immigration and sanitation as is the case with the contiguous zone.

In the Informal Composite Negotiating Text,³ Articles 5 and 7 respectively make provisions for establishing baselines.

(b) Normal Baselines

Article 5 of the ICNT provides that the normal baseline for measuring the breadth of the territorial sea shall be the low-water line along the coast. Article 7, however, deals with a number of geographical phenomenon -- for example, where there is a fringe of islands along the coast, a delta, and other natural conditions. 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. In these instances, baselines must not, however, significantly depart from the general direction of the coast.

(c) Archipelagos

The history of proposals to regulate the problem of archipelagos is somewhat detailed.⁴ There had been sufficient discussion prior to the 1930 League of Nations codification conference on the subject to warrant the Preparatory Committee to propose the following as a basis of discussion:

"In the case of a group of islands which belong to a single state and if the circumference of the group are not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters."⁵

The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of the territorial waters.⁶

(1) The Anglo-Norwegian Fisheries Case⁷

In this case, the issue before the International Court was the validity of the method of straight baselines used by Norway on the basis of a Royal Decree of 1935. The case primarily dealt with archipelagos of the coastal type. The Court found the Norwegian coastline to be of a highly distinctive nature and configuration,⁸ and took note of its "peculiar geography".⁹ In essence, the Court held, inter alia, that straight baselines must follow the general direction of the coast. It emphasized that the lines "must not depart to any appreciable extent from the general direction of the coast,"¹⁰ and that this criterion, rather than one of length, was the more appropriate provided it was applied to the coast as a whole and not one sector.¹¹

(2) Part IV of the ICNT

Part IV of the ICNT deals at some length with archipelagic states. Article 46 defines the phenomenon as: a group of islands enclosing a portion of the sea, or including parts of islands interconnecting waters so closely related so as to form a geographical, economic and political entity, or which may have been historically so regarded. Article 47,¹² defines the nature of baselines to be drawn, the length of such baselines,¹³ and states that such baselines shall not be applied so as to cut off from the high seas or the exclusive economic zone the territorial sea of another state.¹⁴ The archipelagic state shall indicate its baselines on charts of a scale adequate for determining them, and give due publicity to same in the normal fashion.¹⁵ The breadth of the territorial sea, exclusive economic zone and the continental shelf of archipelagic states shall be measured from the baselines drawn in accordance with Article 47.¹⁶

Article 48 deals with the juridical status of archipelagic waters and the air space over such waters and the sea-bed and subsoil. The sovereignty of the state extends to the archipelagic waters, regardless of their distance from the coast.

Article 50 provides for the delimitation of internal waters, which is to be in accordance with Article 9, which deals with the mouths of rivers. Article 10 deals with bays, and Article 11 deals with ports. Archipelagic states are to respect the right of innocent passage of foreign ships; however, further to Article 52(2), there resides in the coastal state the right to suspend temporarily in specified areas the right of innocent passage on grounds of security.

(d) Bays

The provisions of Article 7 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone are described as being intended to apply only to bays, the coasts of which belong to a single state. Article 7(2) reads as follows:

"For the purpose of these Articles, 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 the 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."

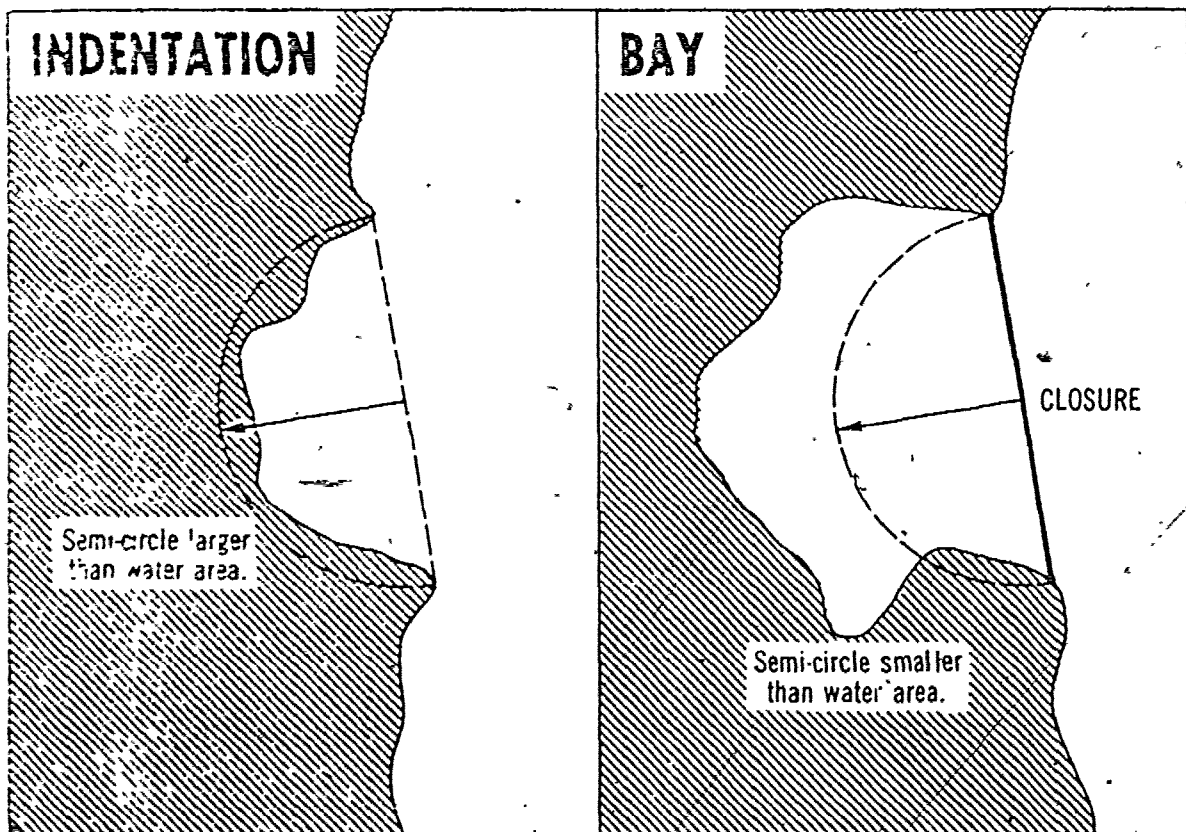


Figure a

Figure b

FIG. 1 An indentation in a coastline qualifies as a bay only if a line closing its entrance serves as the diameter of a semi-circle smaller than the area of water enclosed. Of the two diagrams above only the one on the right may legally be considered as illustrating a bay.**

**G. Etzel Percy, "Geographical Aspects of the Law of The Sea." 49 Annals of The Association of Geographers, March 1959.

The geographical importance of bays to Grenada can hardly be overly emphasized. For the most part, they afford a reasonably safe place of retreat from wind and storms. They also afford good anchorage, and for commercial purposes facilitate the loading and unloading of goods and passengers. St. George's in Grenada and Harvey Vale in Carriacou are good examples of this geographical phenomenon. The definition of a bay is contained in Article 10 of the ICNT.¹⁷ The material section of this article, namely Article 10(2), does not differ from its predecessor, Article 7(2) of the 1958 Geneva convention. There can be little doubt that a bay serves a three-fold purpose: firstly, it secures the land from invasion; secondly, it safeguards shipping and commerce; and more importantly, because of its landlocked nature, it acts as a good refuge from violent storms and other natural catastrophes at sea.

(e) Presence of Islands, Islets and Atolls

The irregularity of the coastal topography and the presence of scattered islands, islets and atolls can have a significant impact when ascertaining the breadth of the territorial sea of a state. A combination of international situations prevail; for instance, the territorial sea of mainland and island may overlap, as in the case of the Isle of Wight off the southern coast of England, or as is the case of Grenada and St. Vincent, vis-à-vis Grenada's offshore island of Carriacou and St. Vincent's Union Island.

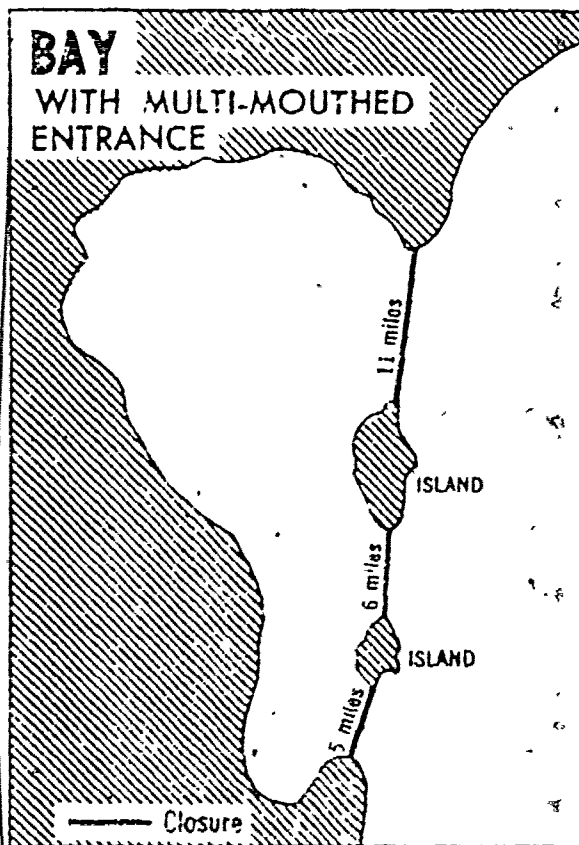


FIG. 2. The closing line of a bay with a multi-mouthed entrance may have a maximum length of 24 miles, water measurements only. Individual segments must be straight lines.**

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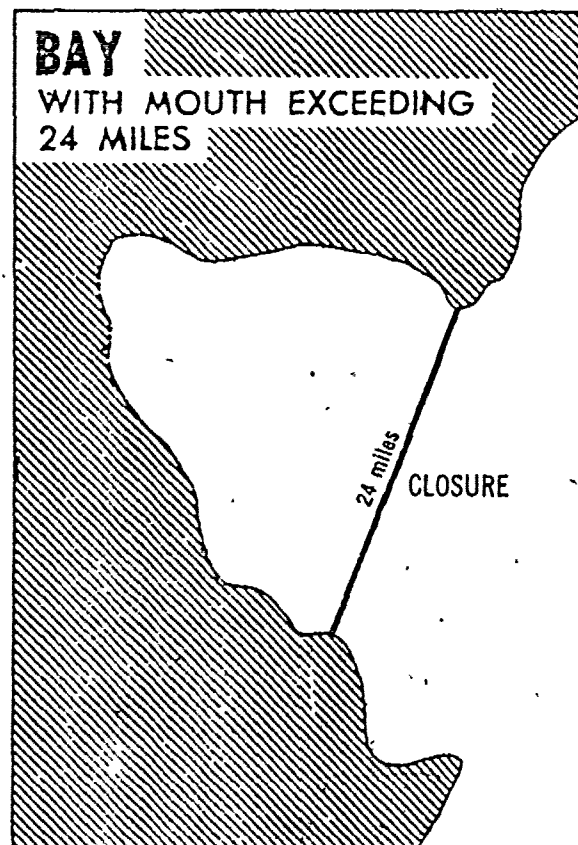


FIG. 3. A straight line 24 miles in length is the maximum permitted to close a bay. In event of a mouth exceeding that distance, a closure of 24 miles is applied within the bay in such a way as to encompass the greatest possible area of water. **

However, if the territorial sea of the mainland and island is of a considerable distance from each other, then what may result is two non-contiguous areas of territorial waters. An example of this is the French island of Corsica in the Mediterranean, which has a territorial sea separate from that of France. Martinique and Guadeloupe, two French islands in the Caribbean, also come to mind. There also are situations where the territorial seas of two or more islands overlap with each other, and also with the territorial sea of the mainland. The island of Skye and some neighbouring islands have a common territorial sea which coalesces with that of the insular mainland of Great Britain (Scotland).

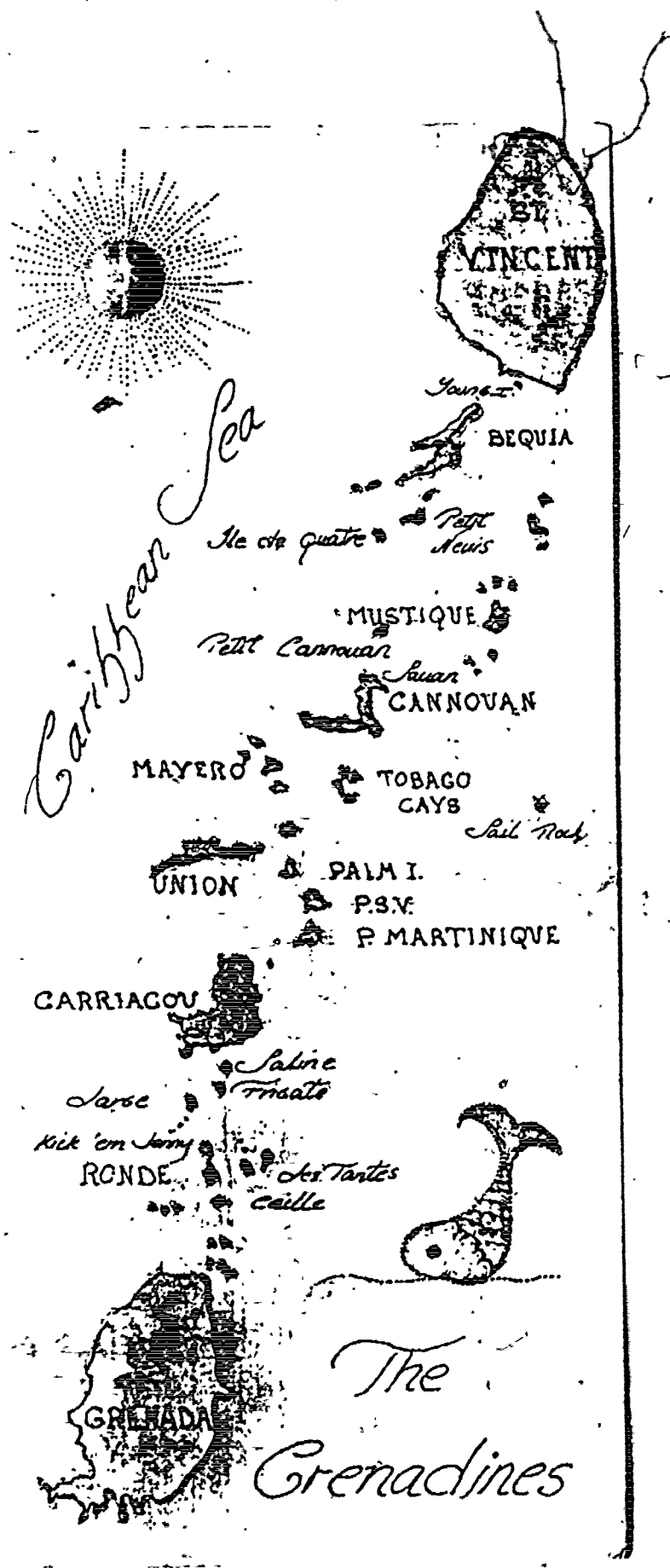


Figure 3

2. Delimitation of the Territorial Sea Between States with Opposite or Adjacent Coasts (Article 15 of ICNT)

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 sea 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 sea of the two states in a way which is at variance therewith.

As is evident from Figure 8, along the coast of the Caribbean Sea a median line boundary may be drawn. However, the situation can become very complicated by virtue of the number of offshore islands between, let us say, Grenada and St. Vincent. Beginning with St. Vincent and travelling in a southerly direction, one encounters the following islands: Young Island, Bequia, Petit Nevis, Ile de Quatre, Mustique, Petit Cannouan, Cannouan, Mayero, Tobago Cays, Sail Rock, Union, Palm Island, Petit St. Vincent -- all allegedly belonging to St. Vincent, and followed by Petite Martinique, Carriacou, Saline Frigate, Two Sisters, Ile de Ronde, Jaradam, and finally Grenada. It is alleged that from Petite Martinique to Grenada the jurisdiction belongs to Grenada. The distance between Grenada and St. Vincent is 56 nautical miles; however, between Carriacou and St. Vincent is 36 1/2 nautical miles. The problem with respect to delimitation of a territorial sea lies in the fact that one must take into consideration the islands that exist

between the two countries. For instance, Union Island falls within St. Vincent's jurisdiction whereas Carriacou falls under Grenada's administration. The distance between Carriacou and Union Island is $3 \frac{1}{2}$ nautical miles. Furthermore, the coasts of these two islands are opposite, warranting, therefore, the application of median line approaches awarding $1 \frac{3}{4}$ nautical miles as part of the territorial sea between the two states. The problem we are confronted with in this example is the situation where the territorial seas of the respective states overlap. Similarly, the distance between Carriacou and Canouan is $10 \frac{1}{2}$ nautical miles. This problem does not persist, however, to the south of Grenada with respect to delimitation of the territorial sea. Since the distance between Grenada and Trinidad is about 70 nautical miles, the situation is even less complicated because there are no islands or rocks present in that expanse. Tobago, a bit to the northeast of Trinidad, is closer to Grenada but still is situated a distance of some 68 nautical miles away. Similarly, Barbados is situated some 106 nautical miles east of Grenada, whereas Venezuela is situated some 71 miles to the southwest. With respect, then, to delimiting the territorial sea between Grenada and St. Vincent, Carriacou and Petite Martinique, Union Island and Petite St. Vincent would have to be used as establishing the baselines from which the breadth of the territorial sea from each of the islands would be measured. The median line boundaries are the only feasible and justified method that could be employed in the situation in the absence of an agreement to the contrary.

The problem that is considerably more urgent and worthy of greater attention is that of delimiting the Exclusive Economic Zone between

Grenada and her neighbours both North and South. Presently no agreement exists between Grenada and Venezuela, between Grenada and Trinidad, between Grenada and Dominica -- her farthestmost northern neighbour in the Windward Islands (at a distance of 170 nautical miles) -- between Grenada and Martinique (111 nautical miles). The delimitation of this zone in a semi-enclosed sea like the Caribbean will be no easy task, even more so in light of the varying political cultures that now prevail in the islands. In addition, there are geopolitical, historic, cultural, social and economic factors that warrant careful consideration. The difficulty that arises from an a priori application of the equidistant line to adjacent states, as distinct from the application of the median (also equidistant) line to opposite ones, is not a monopoly of continental states. An island "opposite" to another prima facie may actually constitute a situation of adjacency.

"A median line between Trinidad and Grenada would inevitably fall into the adjacency relationship on that point on Tobago through where, due to Tobago's northeasterly thrust and the Grenadine insular chain, both countries would have to meet the claim of Barbados, (and probably that of St. Vincent). Off the Northwestern corner of the Gulf of Venezuela, Colombia, and Venezuela face both situations, opposition and adjacency."¹⁸

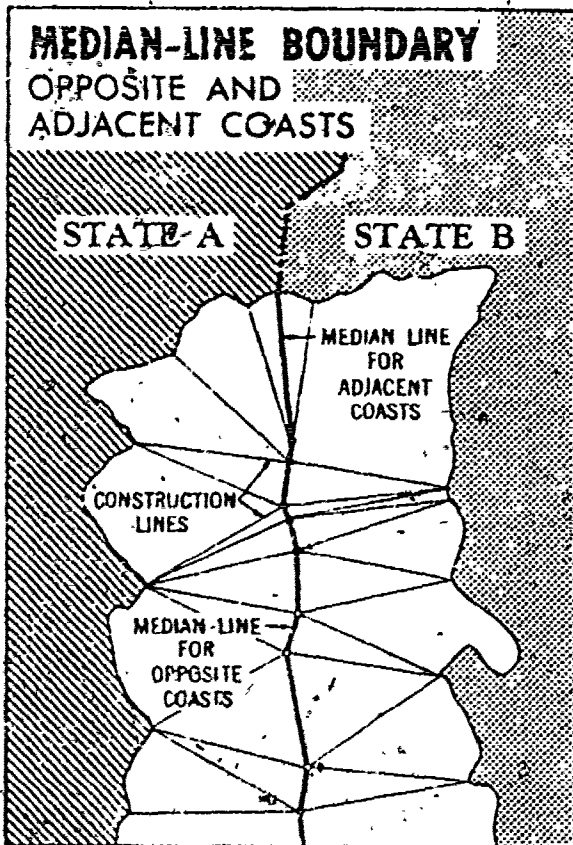


Fig. 4 . When two coasts fulfill the requirements of being both *opposite* and *adjacent* to each other a single median-line boundary serves to divide the water between them in both instances. **

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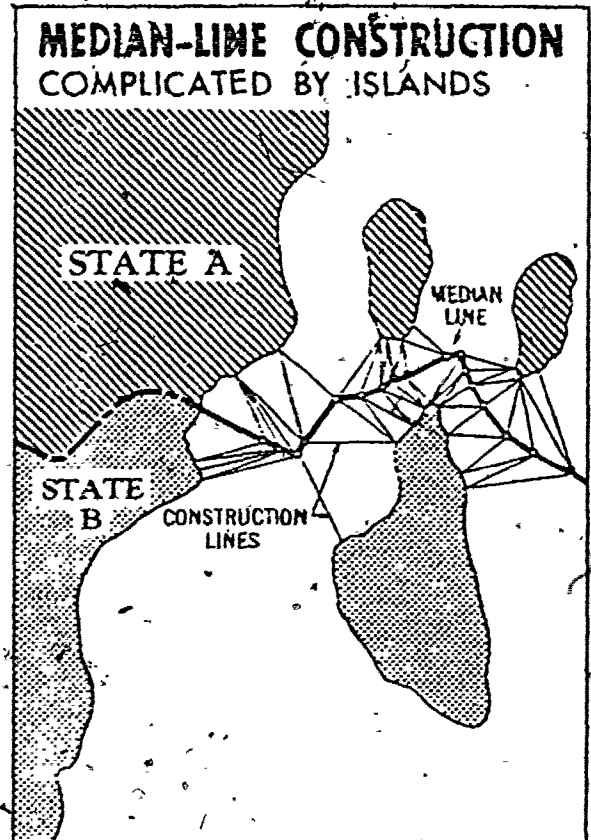


Fig.5 . The formula for constructing a median-line boundary enables the waters between two states to be divided equitably. Offshore islands complicate but do not prevent the principle of equi-distance from being applicable. **

The problem that is presently confronting a number of Caribbean countries is that many have advanced unilateral claims to the economic zone: Guatemala in June, 1976; Grenada in 1978; Cuba in January, 1977; Dominican Republic in February, 1977; Haiti in April, 1977; Guyana in May, 1977; Bahamas in 1977; Venezuela in July, 1978. Most of these claims do not clearly and precisely indicate how the zone would be demarcated beyond general principles. Representatives from states bordering the Caribbean Sea met in Santo Domingo, Dominican Republic, in June, 1972, to address themselves as to the maritime approach to be taken with respect to jurisdictional problems with the Caribbean Sea. The Santo Domingo Declaration on the Patrimonial Sea was endorsed by 10 of the 15

assembled delegations.¹⁹ In essence, the Conference suggested a new regime for the exploitation of marine resources in the adjacent waters by the coastal states.²⁰ Since then, Jamaica has advocated a similar regime for the entire area, namely the matrimonial sea concept.²¹ So far, there has been no serious attempt at convening another conference comparable to that of 1972; however, in light of recent political and economic developments in the region, it is almost inevitable that the political community will get together to decide on a regional delimitation policy, ipso facto and ab initio. To date, delimitation is being carried out bilaterally by neighbouring states; for example, Venezuela and Colombia have had encouraging results.²²

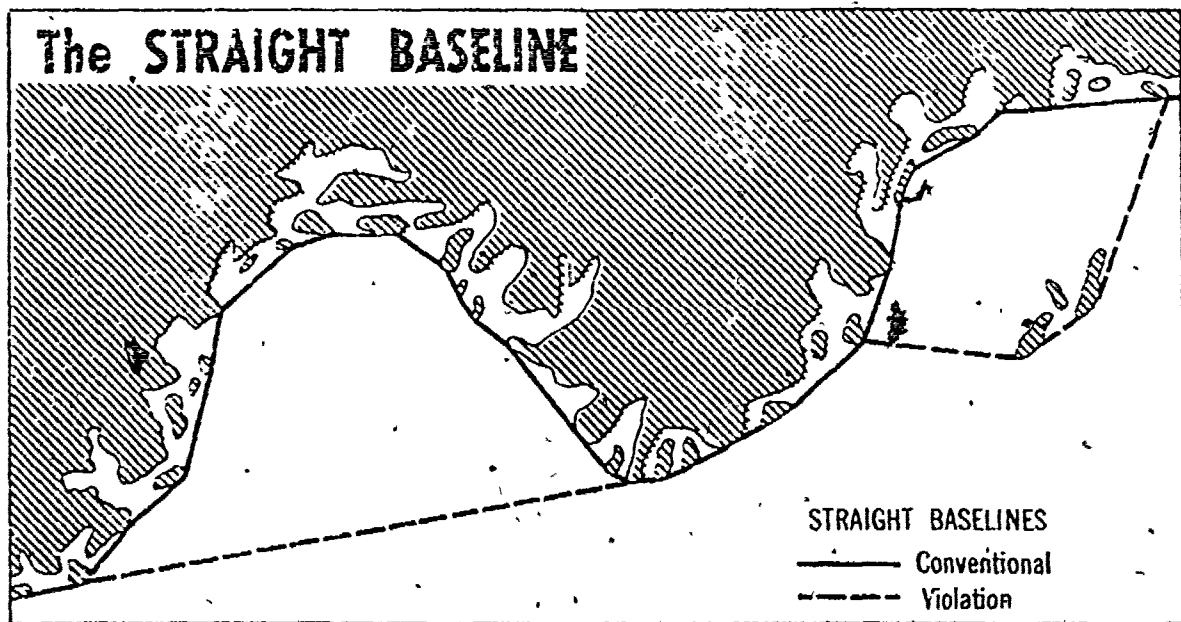


FIG. 6. Irregular coastlines or those fringed with islands may have a straight baseline as the basis from which to measure the territorial sea, but it cannot depart appreciably from the general direction of the coast itself. **

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THE CONTINENTAL SHELF

The Continental Shelf, a term recognized by geographers, geologists, oceanographers and lawyers, has played a significant role in the Law of the Sea deliberations. Article 76(i) describes the shelf as:

- (i) 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.²³

The seabed area beyond the outer limits of the territorial sea which constitutes the Continental Shelf, as discussed at length in preceding chapters, may be exploited exclusively by the coastal state.

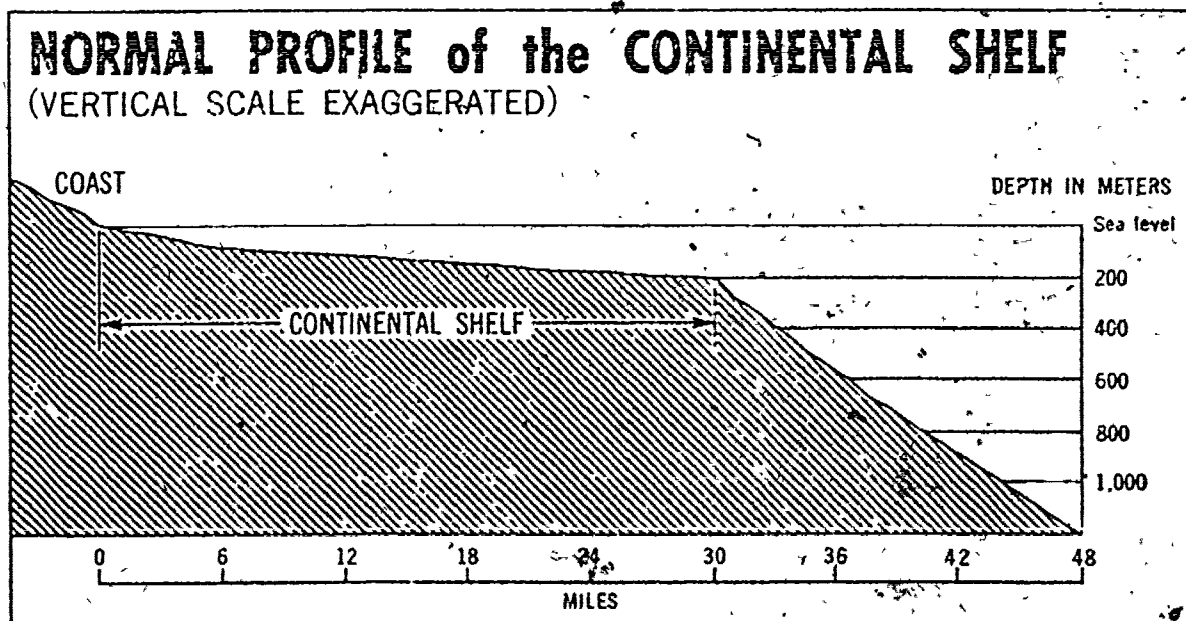


FIG. 7. The continental shelf by geographic definition coincides with the shallow offshore waters of continents and islands, normally those not exceeding 200 meters in depth. **

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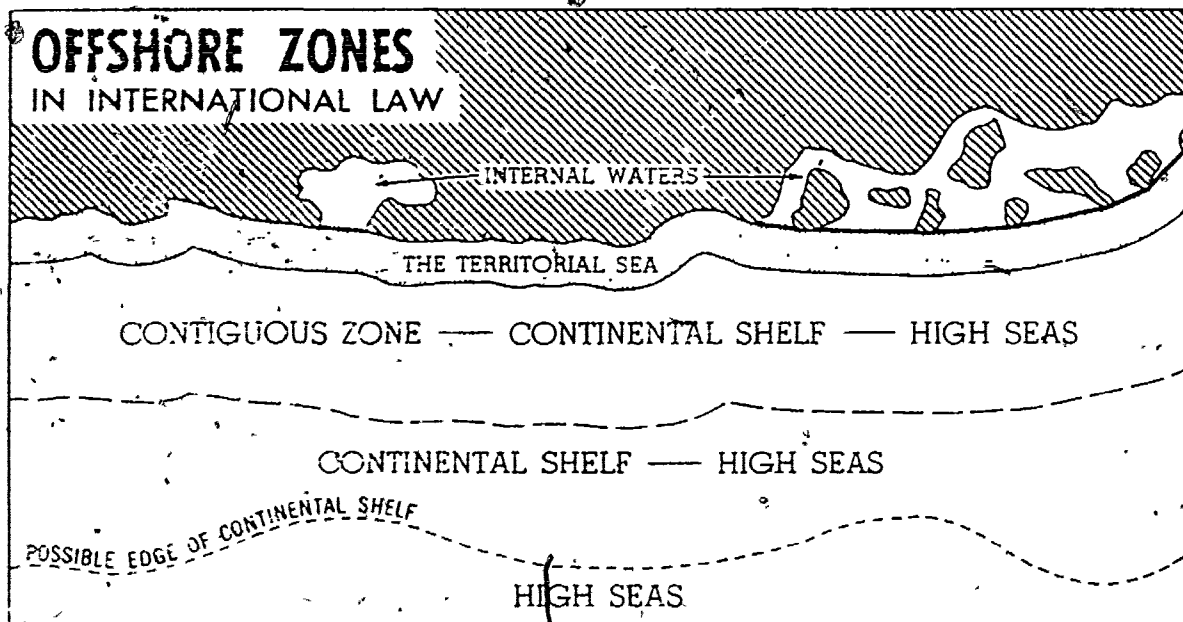


FIG. 8a. Concepts of five distinct zones of water attendant to shorelines are illustrated. Note that in some instances the zones overlap.

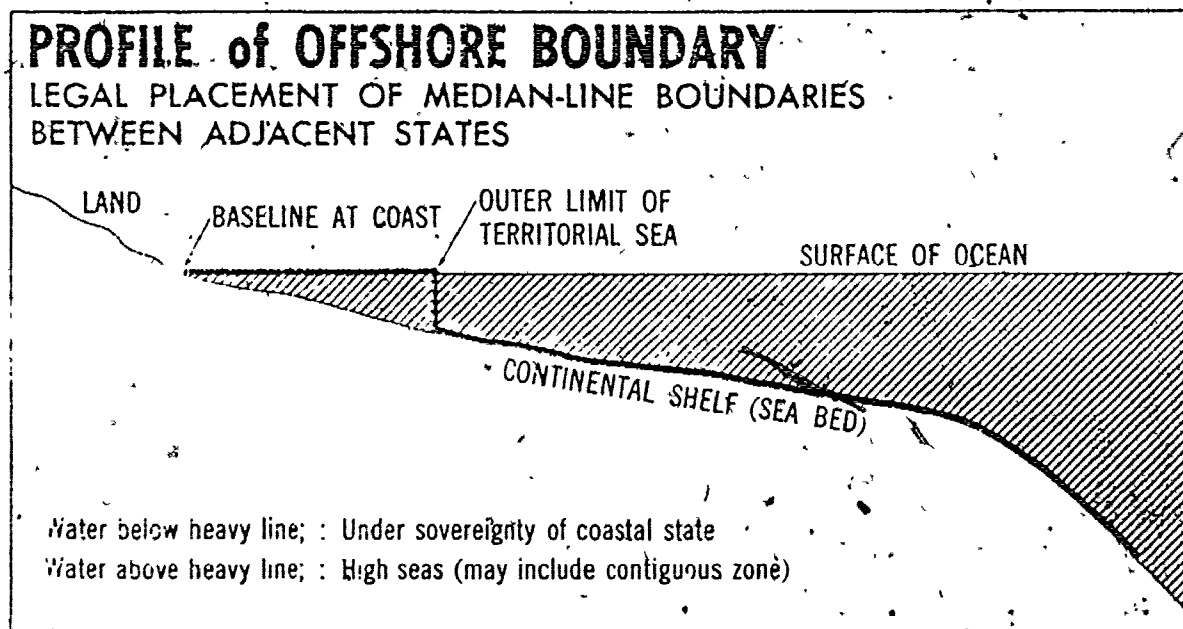


FIG. 8b. The status of the waters superjacent to the continental shelf outside the territorial sea is not identical with that of the shelf. When compared to Figure 7a this diagram represents a "third dimension" in illustrating control of offshore water. **

**Pearcy

Geography has placed Grenada in a rather unique but unfortunate position. As was mentioned earlier, the physical configuration of the states, being of volcanic origin, is of special significance to the law of the sea since there exists a fringe of islands stretching from the northern tip of Grenada through St. Vincent and beyond, giving rise to what may correctly be referred to as a chain of islands, or a semi-circular chain of islands, enclosing the Caribbean Sea.



GULF OF MEXICO

ATLANTIC OCEAN

MEXICO

BAHAMA ISLANDS

Mexico City

Veracruz

Merida

YUCATAN CHANNEL

Nassau

WINDWARD PASSAGE

HAITI

Port-Au-Prince

DOMINICAN REP.

Santo Domingo

PUERTO RICO

San Juan

ANGUILLA

VIRGIN IS.

ST. MARTIN

ST. KITTS

ST. ANTON

MONTserrat

GUADELOUPE

DOMINICA

ST. LUCIA

ST. VINCENT

ST. GRENADA

TOBAGO

Port of Spain

Colima

BRITISH HONDURAS

GUATEMALA

Guatemala City

HONDURAS

Tegucigalpa

San Salvador

EL SALVADOR

NICARAGUA

Managua

COSTA RICA

San Jose

PANAMA

CARIBBEAN SEA

Kingston

MORANT CAYS

PEDRO CAYS

MONA PASSAGE

LEEWARD ISLANDS

WINDWARD ISLANDS

ARUBA

CURACAO

BOINAIRE

Maracaibo

Caracas

VENEZUELA

PACIFIC OCEAN

200 400 600 Miles

LAND-LOCKED STATES

By far the most interesting geographical phenomenon that UNCLOS III was called upon to deal with was that of land-locked states. It is generally recognized that a state which is cut off from the sea by the territory of one or more other states is in an unfortunate geographic position.²⁴ As a result of this occurrence, international agreements and treaties abound whereby these interior states are given the right of transit through other states in order to reach the high seas. In addition, there are always arrangements made with the coastal states whereby the ships of land-locked states are entitled to use the ports and storage facilities of the coastal states.

Part X of the ICNT provides for the right of access of land-locked states to and from the sea and for freedom of transit. Articles 124 through 132²⁵ are most important.

RIGHT OF ACCESS TO AND FROM THE SEA

AND FREEDOM OF TRANSIT

ARTICLE 125

Certain rights and privileges are accorded to land-locked states pursuant to the convention. These states are to have access to and from the sea for the purpose of exercising such rights as freedom of the high seas. As a result, they are to enjoy freedom of transit through the territorial sea of all states; however the modalities for exercising this freedom shall be worked out between the transit state and the land-locked state, either on a bi-lateral or sub-regional basis.

Other rights enumerated in the Articles are as follows:

- I. Exclusion of application of the most-favoured nation clause (Article 126).

- II. Traffic in transit, exempt from customs duties, taxes and other charges (Article 127).
- III. Free Zones and other customs facilities (Article 128).
- IV. Co-operation in the construction and improvement of means of transport (Article 129).
- V. Measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit (Article 130).
- VI. Equal treatment in marine ports (Article 131).
- VII. Grant of a greater transit facility (Article 132).

3. The Notion of Geographically Disadvantaged States

Article 70 of the ICNT reads as follows:

"States with special geographical characteristics 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."

The notion of geographically disadvantaged states in the law of the sea context could be classified as the aggregate advantage or disadvantage that accrues to the state, based on its national marine interests.²⁶ Lewis Alexander²⁷ attempted to define the concept by resorting to a number of antecedent criteria that may qualify a state as being disadvantaged. He does this under four headings: accessibility, investment, dependency and control.

A state that has no access to the ocean is completely disadvantaged insofar as the resources, uses and benefits that may have accrued to the state had it access to the ocean. Accessibility, as defined, includes a multiplicity of advantages that accrue to a coastal state,

vis-à-vis the ocean that is denied a landlocked or otherwise geographically disadvantaged state.

Similarly, a state that has no investment in the ocean is completely disadvantaged insofar as economic benefits on such returns are concerned. Furthermore, a state that is completely dependent on the ocean may be classified as disadvantaged if it is deprived, through climatic conditions or otherwise, of any landbased economic infrastructure.

Control, in this context, is related to the extent of offshore areas over which a state purports to have jurisdiction. This concept has much validity in the case of Grenada, St. Vincent, St. Lucia, Dominica and, to a limited extent, Barbados. The degree of control that each of these states could exercise over its jurisdictional area is limited by the fact of geographical proximity, thereby leaving a narrow strip of sea dividing one state from the other.

The group of landlocked states, no doubt, fits into Lewis' model, in that landlocked states do not have ready access to the resources of the ocean, especially to the non-living resources within 200 miles of a coastal state. Hence, the 30 or so landlocked states would prefer to have large areas of the ocean under international control; in that way, both landlocked and shelf-locked²⁸ countries may be able to share in the revenues derived from mineral exploitation or the continental slopes and rises of other countries.²⁹ They also fit into all of Lewis' other criteria; therefore "landlockedness" is a criteria for being geographically disadvantaged. 30 states have an absolute disadvantage; however, a great many more states may be disadvantaged in one respect or another. Thus it is safe to say that "disadvantage" is

more a relative than an absolute concept.³⁰

A further attempt to clearly define the concept of geographically disadvantaged states was made by Alexander and Hodgson.³¹ Here, the criteria considered as attributing to geographically disadvantaged states was interpreted as being geographical and, to some limited extent, economic. It followed, then, that certain states with the following geographical and economic peculiarities were considered geographically disadvantaged: landlocked states; shelf-locked states; states with limited economic zones (distance) and limited resource potential within their respective zones; states with limited continental margins; states in isolated oceanic locations, considerably removed from major shipping lanes; states producing minerals and other raw materials which may, in time, be competing with commodities obtained from sea-bed mining; states which are particularly dependent for the satisfaction of their nutritional needs on the exploitation of the living resources of the economic zones of other states of the region.

Another attempt to bring clarity to the term "geographically disadvantaged" was made by Kawenas,³² who advocated a systems approach in ascertaining states that could be properly described as geographically disadvantaged for purposes of the law of the sea. He divides them into four main categories based on the benefits or on inequities that would result from the exploitation of resources within and beyond national jurisdiction. These categories are: states with wide continental margins; states with narrow continental margins; landlocked states; and shelf-locked states. The first group of states, he contends, stands to benefit the most from the exploitation of ocean resources beyond national jurisdiction. The second category would gain

slightly less than the first, whereas the last category, namely land-locked and shelf-locked states, would stand to benefit only if there existed an equitable and progressive revenue sharing arrangement with respect to mineral exploitation within and beyond national jurisdiction. Little wonder, then, that the informal suggestion from Nepal³³ advocated some sharing of revenue, albeit a graduated sharing of some of the \$30 trillion worth of oil and gas within the 200-mile exclusive economic zone. The distinguished delegate said:

"It is our conviction that many delegates from many countries would like to see some sharing of that immense treasure of offshore mineral wealth. They know how great and how urgent are the needs of poor countries for capital assistance to help them meet the urgent needs of their people. They know how urgent is the need for capital to help countries -- and especially poor countries -- take measures which are necessary to preserve and protect the marine environment:"³⁴

A number of writers on the subject so far have admitted the difficulty of adequately defining the concept. As Professor Glassner³⁵ observed, when applying one definition to various states participating at UNCLOS III, 140 countries could have qualified as "geographically disadvantaged". He contends that the whole concept is bizarre. As a substitute for geographically disadvantaged states by Ambassador Nardon of Fiji, it subsequently appeared in ICNT Article 70. The definition given therein includes only two of the previously suggested criteria, and neither the term nor the definition is likely to prevent further confusion over the basic concept if applied to specific situations.

CONCLUSION

It is generally felt that the 200-mile economic zone has created more problems that it may solve; one of the inescapable results of the concept is the growing tendency of states to seek solutions to some of the problems generated on a regional or sub-regional basis. As a consequence, it is indeed conceivable that regional customary international law may become a feature of our international legal system. The concept of marine navigation is a growing one, particularly in well-defined geographical areas such as semi-enclosed seas, Caribbean and Mediterranean. It is apparent that states bordering these seas, especially the disadvantaged among them, would be able to share more or less equitably as a region or sub-region with other states of that vicinity.

FOOTNOTES - CHAPTER IV

¹ Lewis Alexander and Robert D. Hodgson, "The Role of the Geographically Disadvantaged States in the Law of the Sea," 13 San Diego Law Review (1976): 558.

² U.N. Doc. A/CONF.62/WP.10/Rev. 2, Informal Composite Negotiating Text (ICNT).

³ Ibid., Arts. 5, 7.

⁴ Jens Evensen, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagoes," Preparatory Documents for the 1958 U.N. Conference on the Law of the Sea, A/CONF.13/37, p. 289.

⁵ Ibid., p. 290.

⁶ Derek W. Bowett, The Legal Regime of Islands in International Law (Dobbs Ferry, N.Y.: Oceana Publications, 1979), p. 75.

⁷ Judgment of 18 December 1951, International Court of Justice Reports 1951, p. 116.

⁸ Ibid., p. 127.

⁹ Ibid., 139, also 133.

¹⁰ Ibid., p. 133.

¹¹ Ibid., p. 131. Where the Court treated as mere proposal attempts to subject archipelagoes to conditions analogous to those of bays, for which a closing line limited distance, has been mooted.

¹² ICNT, Art. 47.

¹³ Ibid., Art. 47(1).

¹⁴ Ibid., Art. 47(2).

¹⁵ Ibid., Art. 47(5).

¹⁶ Ibid., Art. 47(6).

¹⁷ Ibid., Art. 10.

¹⁸ Kaldone G. Nweihed, "EZ (UNEASY) Delimitation in the Semi-Enclosed Caribbean Sea: Recent Agreements Between Venezuela and her Neighbours," 8 Ocean Development and International Law Journal, (1976): 6.

¹⁹ Declaration of Santo Domingo, U.N. Doc. A/AC.138/80.

²⁰ Ibid.

²¹ K. O. Rattray, Allan Kirton and Patrick Robinson, "The Effects of the Emerging Law of the Sea on the Development of the Caribbean and the Gulf of Mexico," Pacem in Maribus IV, Malta, 23-26 June 1973.

²² Nweihed, "EZ Delimitation," p. 10.

²³ ICNT, p. 53. See, Venezuela and Trinidad/Tobago Fishing Agreement of 12 December 1977; Venezuela and the Netherlands Delimitation of the Maritime Boundary with the Dutch Antilles, 31 March, 1978.

²⁴ Martin Ira Glassner, "Transit Rights for Land-locked States and the Special Problem of Nepal," 140 World Affairs (1978): 304.

²⁵ ICNT, p. 70.

²⁶ ICNT, Art. 70.

²⁷ Lewis Alexander, "Indices of National Interest," 1 Ocean Dev. and Int'l Law (1973): 21.

²⁸ Ibid., p. 23.

²⁹ Ibid., p. 33. Shelf-locked states mean that their continental shelf abuts on that of their neighbour, so that no portion of it descends below the 200 meter isobath into the continental slope, i.e. North Sea, Red Sea, Persian Gulf.

³⁰ Ibid., p. 25.

³¹ Lewis Alexander and Robert Hodgson, "The Role of Geographically Disadvantaged States in the Law of the Sea," 13 San Diego Law Review (1975-76): 558.

³² . Kañenas, "Wide Limits and Equitable Distribution of Sea-bed Resources," 1 Ocean Development and International Law (1973): 137.

³³ Informal Suggestion, Nepal. A/CONF.62/65.

³⁴ Ibid.

³⁵ Martin Glassner, "Transit Rights for Land-Locked States," 24.

GRENADA AND THE NEW LAW OF THE SEA

1. Fishing

It is generally recognized that the provisions of the Informal Composite Negotiating Text on Fisheries represent a compromise that is unlikely to change. A significant number of coastal states, including Grenada, Carriacou and Petite Martinique, have enacted "unilateral" legislation embodying the Exclusive Economic Zone provision, Article 56 of the ICNT.¹ As a consequence, a number of countries have extended their fisheries jurisdiction to 200 nautical miles (see Annex

Part II Section 11(1) of the Marine Boundaries Act,² of Grenada establishes a fishing zone of unspecified breadth. Consequently, one would have to assume that it is of 200 miles since Grenada has established an exclusive economic zone of 200 nautical miles.³

Section 11(2) of the Act requires the Master of a foreign vessel used for the purpose of fishing in the zone to have on board with him a valid permit granted by the Minister of Fisheries. The Act does not contemplate bi-lateral agreements between governments with respect to fishing within the zone. In fact, it seems to contemplate a situation whereby the Minister deals directly with foreign fishermen seeking permission to fish within the fishing zone.

Section 12(1) specifies the content of the permit in respect of a foreign vessel. This permit must contain:

- (a) the name of the owner or charterer;
- (b) the name of the vessel;
- (c) a description of the vessel;
- (d) a description of the area designated for fishing;

- (e) the periods of times allowed for fishing and the number of voyages authorized;
- (f) the descriptions and quantities of fish permitted to be taken;
- (g) the method of fishing;
- (h) conditions respecting the landing of fish or parts of fish;
- (i) the name of the port or place for the landing of fish caught;
- (j) the permitted use of any fish caught; and
- (k) any other term or condition, including fees and charges payable, approved by the Minister.

The management measures, as enumerated above, are designed to maintain stocks at levels capable of producing maximum sustainable yields, as qualified by pertinent environmental and economic factors, and taking into consideration fishing patterns, the interdependence of stocks, and generally recommended subregional, regional or global minimum standards. States would be required to promote the objectives of optimum utilization of the living resources in the economic zone. As was alluded to earlier, a determination would have to be made concerning the allowable catch in the specific zone and the state's capacity to harvest these resources. In cases where the total allowable catch exceeds a state's own capacity to harvest, that state would be required to give other states access to the surplus.⁴

In giving access to other states to its exclusive economic zone, the coastal state would be required to take into account all relevant

factors, including, for example, the rights of landlocked and geographically disadvantaged states and traditional fishing practices.⁵

2. Grenada's Legislation and the ICNT Text Concerning Management Responsibilities

There is very little conformity with respect to Grenada's statute and the Text. Like most traditional fisheries legislation, Grenada attempts to manage her fisheries resources through licensing of fishing efforts and through the prescription of conservation measures. It appears that the main thrust is designed to provide revenue rather than to serve as a prime tool for an effective fisheries management system. Pursuant to Section 12(1) of the Act, the only consideration that may hint at some form of management being contemplated is with regard to 12(1)(e), (f), (g). It could be generally inferred that the underlying criteria for granting of licences do not include management and conservation considerations as a top priority.

The Mexican legislation, for example, provides that the aim of management and conservation measures is to ensure that the living resources of the exclusive economic zone are not endangered by over-exploitation. Their legislation places an obligation on the Federal Executive Branch to take proper management and conservation measures.⁶ The relevant Portuguese law⁷ provides that the "Government shall enact and enforce regulation of fishing in the exclusive economic zone, including inter alia (d) Protection, Conservation and Management of the living

resources of the exclusive economic zone". The laws of the Bahamas,⁸ Fiji,⁹ and the United States¹⁰ show a great deal of similarity with respect to management principles. They seem to contemplate conservation and management principles as being vital to the survival and constant reproduction of the living resources. As a result, their legislation reflects measures designed to rebuild, restore or maintain fishing resources and the marine environment, thereby guaranteeing a steady supply of food and recreational benefits on a continuing basis. They seek to avoid irreversible or long-term adverse effects and to assure a future choice of options for the use of these resources. The determination of the total allowable catch or, in the case of the Bahamas and the United States, the optimum yield, is to be based on the maximum sustainable yield as modified by relevant economic, social or ecological factors. An identical definition of total allowable catch is given in the New Zealand legislation. Furthermore, the definition of optimum yield in the Bahamas and the United States stipulates also the greatest overall benefit to the nation with specific reference to food production and recreational opportunities. Australia,¹¹ and the U.S.S.R.¹² legislation recognizes the notion of "Optimum Utilization" as an objective but does not define it. This notion is also expressed in the Gambian¹³ legislation as the aim of fisheries management and the basis for the preparation of fisheries management plans. There, optimum utilization and the determinators of the total annual catch are to be based on assessments of potential average yields from each fishery and take into account all relevant biological, social and economic factors.¹⁴ The Gambian legislation, like the U. S. Fisheries Conservation and Management Act, requires

the preparation and periodical updating of fisheries management plans. Reference is made in a few laws to the need for harmonization of management resources at the regional and subregional levels,¹⁵ and for the taking into account of recommended subregional, regional or global standards in establishing management measures and, in particular, in establishing the total allowable catch, optimum yield or optimum utilization of the fishery resources.¹⁶

Grenada cannot benefit directly from the 200-mile fishing zone claimed because of geographical constraints. On the one hand, Trinidad and Venezuela are only some 90 miles to the south and southwest respectively. On the other hand, Grenada is met by St. Vincent, about 23 miles due north, and Barbadoes, between 80 and 90 miles northeast. In either direction it is difficult to acquire more than 100 miles. It therefore becomes necessary that some form of regional or subregional arrangement be entered into with a number of these islands, especially the Windward Islands, so that they may be better able to implement a comprehensive management programme for the better management of the living and non-living resources of the oceans around their shores.

At this juncture, it is interesting to note that Part IX of the ICNT addresses itself to co-operation among states bordering on an enclosed or semi-enclosed sea, defined in Article 122 as a gulf, basin or sea surrounded by two or more states and connected to the open seas by a narrow outlet, or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states. Both the Caribbean Sea and the Gulf of Mexico qualify under this definition. The Text provides that states are under an obligation to co-operate in this regard (should the current draft be adopted) as follows:

Article 123

Co-operation of States Bordering Enclosed
or Semi-enclosed Seas

States bordering enclosed or semi-enclosed seas should co-operate with each other in the exercise of their rights and 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 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.

The Caribbean Sea certainly falls within the guidelines as enumerated and, as a consequence, a viable regional organization could be established pursuant to 123(a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea. A significant number of regional groupings has taken place over the last five years with the explicit intention of conserving and protecting the marine environment. These groupings came about as a result of the rapid deterioration and degradation of the marine environment in certain semi-enclosed areas, such as the Baltic and the Mediterranean. This deplorable situation forced, or otherwise compelled, the littoral states of these regions to submerge their ideological, political, cultural and, perhaps, religious differences and conclude important international

instruments, such as the Convention on the Protection of the Marine Environment of the Baltic Sea Area (1974) and the Convention for the Protection of the Mediterranean Sea Against Pollution (1976). This was followed by the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.¹⁷

3. Possible Innovations to Grenada's Fisheries Legislation

Many coastal states, including Grenada, that license foreign fishing operations provide, at least in theory, for the implementation of management measures of some sort -- such as minimum mesh or species size -- contained in the basic fisheries laws and regulations. In the case of Grenada, the permit granted to foreign fishermen may contain the descriptions and quantities of fish permitted to be taken.¹⁸ However, the Act does not stipulate the scientific basis upon which such decisions would be premised.

For instance, fairly stringent management controls are exercised over foreign fishing operations in the legislation of Canada and the United States. The licences for foreign fishermen are made subject to strict quota limitations. To effectively enforce such measures, a system of scientific monitoring is put into place in order to terminate the activity once the quota has been reached.

In a number of jurisdictions, restrictions are placed on the areas within which foreign fishing vessels are allowed. Regulation of this type has a double effect; on the one hand it serves as a good conservation measure, and on the other hand it protects local fishermen from undue competition from foreign fishermen. Countries such as Brazil¹⁹ have implemented a system of zoning whereby fishing areas up to 100

miles from the coast are reserved for local fisheries; in Ecuador up to 40 miles from the coast; in El Salvador and Uruguay both 12 miles from their coasts.²⁰

a. Reporting Requirements and Observers

A number of coastal state legislations require foreign ships to report upon entering into the fishery zones, commencing fishing operations, ceasing these operations and departing from the zone. Canada has an elaborate system of monitoring foreign fishing fleets, whereby during the period of fishing operations they are required to maintain log books showing position, effort, catch and other relevant data, such as transshipment of catches.²¹ Canada also places observers on board foreign vessels. These observers are given access to vessels and their facilities, such as radio communication equipment, to enable them to better perform their duties.²² The Canadian legislation makes it a condition for any licence issued in respect of a foreign fishing vessel that the Master of the vessel comply with instructions given to him by authorized officials of the flag state in respect of any programme of sampling, observation or research as requested of the flag state by the Minister.²³

The fisheries legislation of Fiji and New Zealand contain certain provisions as a condition for fisheries licensing. Of particular note is that if the foreign state should undertake to conduct specific programmes of fisheries research in the zone, the results of such programmes are to be shared with the coastal state granting the licence.

b. Enforcement

Article 73 of the ICNT recognizes the right of coastal states to take such measures in the exclusive economic zone, including boarding

for inspection, arrest and judicial proceedings as may be necessary to ensure compliance with its laws and regulations. Arrested vessels and their crews are to be released promptly on the posting of reasonable bond or other security. Penalties are not to include imprisonment in the absence of agreement to the contrary with the states concerned, or other form of corporal punishment. Where foreign vessels are arrested or detained, the coastal state is to notify the flag state of the action taken and the penalties imposed.

Grenada, in conjunction with her neighbours, stands to benefit a great deal from certain regional management measures as outlined above, with regard to conservation, reporting, research and observatory requirements. These measures, although not spelled out in Grenada's legislation, are considered fundamental to the implementation of an effective management programme. Such a programme for Grenada can only be done with the co-operation from the other Windward Islands, such as St. Vincent, St. Lucia and Dominica.

4. Pollution

Beginning as far back as 1945, man's perception of the ocean had begun to undergo a drastic change. He began to look at the ocean no longer as a surface area to be traversed but as a resource to be conserved and harvested, and as a natural environment to be preserved and protected.²⁴

The first successful attempt at global uniformity of anti-pollution law of worthwhile significance was the convention that emerged from the International Conference on Pollution of the Sea by Oil, held in London in 1954.²⁵ This conference was attended by 42 nations which adopted

articles establishing certain defined zones, within which the discharge of oil and oily substances from tanks and bilges of ships was prohibited. Permissible dumping was to be carried out "as far as practicable from land".²⁶ The Convention also required vessels of signatory states to be equipped with appropriate pollution avoidance facilities and the ports of these states to be fitted with proper disposal and treatment facilities. The ships of these states were also required to carry oil record books. In spite of these measures, the success of the convention, in retrospect, was minimal since the jurisdiction to prosecute offenders was entirely at the option of the flag state. The coastal state possessed very little power in this regard. Furthermore, the convention was limited in its application since it restricted itself to pollution of the seas by oil and exempted from its control states that were not signatories.

The 1958 Geneva Conference of the Law of the Sea gave some attention to pollution. Article 24 of the Convention on the High Seas provided as follows:

"... Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject."

Article 25 provides:

"... Every state shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organization.

2. All states shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.²⁷

The 1958 Convention on the High Seas established no international standards or regulatory mechanism of global application. In fact, coastal states were at liberty to impose regulatory measures in waters within their jurisdictions. It was not until the inauguration of UNCLOS III, and particularly at the Second Session held in Caracas, Venezuela, in the summer of 1974, that serious consideration was given to the question of marine pollution.

a. Coastal State Jurisdiction to Implement Measures in ICNT

Article 212 provides as follows:

1. States shall, within air space under their sovereignty or with regard to vessels or aircraft flying their flag or registry, establish national laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, taking into account internationally agreed rules, standards and recommended practices and procedures, and the safety of air navigation.
2. States shall also take other measures as may be necessary to prevent, reduce and control such pollution.
3. States, acting in particular through competent international organizations or diplomatic conferences, 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 or through the atmosphere.

There is no doubt that coastal states have the right to implement preventive and control measures in the territorial sea and the air space over that sea in order to reduce the pollution of the marine environment. However, this right is subject to the provisions of the Convention relating to "innocent passage in the territorial sea". In this regard, it is interesting to note Article 19, Paragraph 2(a) which stipulates that passage ceases to be innocent if the vessel commits "... Any act of willful and serious pollution, contrary to this Convention". Article

21, Paragraph (2) tends to restrict the coastal state's power, since it is denied the right to set design, construction, manning and equipment standards for foreign vessels. The coastal state can still exercise a significant measure of control as to the fitness or seaworthiness of the vessel to undertake further voyages once it is within its port. Article 219 provides that, "States which have ascertained, upon request or on their own initiative, that a vessel within their ports or at their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing."

Canada has implemented a rather comprehensive pollution prevention programme which is effective in ascertaining unseaworthy vessels. In July 1976, a voluntary reporting system applicable to all waters off Canada's Eastern Seaboard was initiated.²⁸ In October, 1978 the Eastern Canada Traffic Regulations (ECAREG) made this reporting system mandatory. The system works as follows: all ships of 500 grt. or more entering the ECAREG zone from a berth or from the open sea are required to request, twenty-four hours in advance, a clearance to enter from the Traffic Control Centre. Clearance requests must be accompanied by confirmation, such as the identification of the vessel and her Master, position, course, speed, destination, estimated time of arrival in the traffic zone, the nature of her cargo, draft, and any deficiencies in machinery, equipment, or navigational aids.²⁹ Whilst within the control zone, ships are required to notify the Traffic Centre of any accident or fire on board the ship, any defects which occur to machinery or equipment, or any other

ship in apparent difficulty, or having malfunctioning navigational aids, or any pollutants discharged or sighted. With such information, the Centre can determine whether to enforce the provisions of Article 219,

Grenada does not have any legislation in regard to the pollution of her marine environment by vessels; however, the pertinent sections of the ICNT already cited, and the Canadian experiment as outlined above, are important areas that future legislators should address. Further to Article 221, Para.(1), Grenada has the right:

"... pursuant to international law, both customary and conventional, to adopt and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline and related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty, which may reasonably be expected to result in major harmful consequences." 30

Grenada has the right to implement national legislation, to reduce and control pollution of the marine environment from land-based sources, including estuaries and pipelines, pursuant to Article 207. Similarly, it has the right to implement legislation with respect to pollution from seabed activities (Article 208), dumping (Article 210), and pollution from vessels (Article 211, para. 6).

The crucial question that one must ask is: how effective is national legislation in its attempt to reduce and control pollution of the marine environment? The writer submits that as a unit, Grenada's legislation will be of little effect. Regional co-operation is vital in the case of the eastern Caribbean states if pollution abatement measures are to have any effect.

b. Coastal State Jurisdiction to Enforce Measures

Apart from the legislative competence of the coastal state, the

enforcement powers contained in Article 220 are somewhat stringent. It would be Grenada's prerogative to incorporate the measures as outlined in Article 220 into legislative enactment. The enforcement powers of the coastal state extend beyond the territorial seas to the EEZ. The coastal state is empowered, pursuant to Article 220, Paragraph (2), to undertake physical inspection of the vessel relating to the violation and may, when warranted by the evidence of the case, cause proceedings, including detention of the vessel, to be taken in accordance with its laws.³¹ Similarly, where a vessel navigating in the exclusive economic zone commits a violation causing major damage or threat of major damage to the coastline, or to any resource of the territorial sea or exclusive economic zone, that state may prosecute (paragraph 6). However in both situations, paragraph (7) provides that if financial security is "appropriately" provided, the offending vessel shall be allowed to proceed.

Grenada has not yet addressed itself to the implications of the provisions of the ICM with respect to marine pollution and to the potential regulatory control she could possess over her marine environment. The author has endeavoured, in a rather ad hoc manner, to enumerate the rights of a coastal state in implementing rules and standards for the prevention, reduction and control of pollution from vessels, and the remedial procedures at its disposal.

The Caribbean Sea is a very ecologically delicate area in that the coastal eco-system is described as a closed system.³² The introduction of large amounts of toxic substances into the ocean destroys the delicate balance that is maintained through a complex process of oxidization in tropical waters. To avoid regional catastrophes in semi-enclosed seas

like the Caribbean, the United Nations has instituted an Environmental Protection Programme either to prevent undue pollution of such regional seas or to clean up polluted regional seas.

UNEP (United Nations Environmental Programme) has a unique role among various U.N. agencies. It is not as operational as FAO, UNESCO, WHO and such like because it does not go into the field to execute projects. Instead, UNEP starts a programme, provides the initial impetus, then withdraws. The first time that a regional approach was specifically endorsed by UNEP was in 1974. The Governing Council of the organization expressed its mandate thus:

Priority should be given to regional activities with the possible establishment of a Program Activity Center in the Mediterranean.

2. UNEP should encourage and support the preparation of regional agreements and conventions on the protection of specific bodies of water.³³

It is the writer's hope that Grenada, in conjunction with her neighbours, will embark on a regional approach with the assistance of UNEP to monitor and assess the impact of marine pollution on the Caribbean Sea.

5. Delimitation

a. Present legislation of Grenada with respect to delimitation

In Part II of the Marine Boundaries Act No. 20, 1978 concerning the economic zone, Section 3, Paragraph (3) provides as follows:

- (3) Notwithstanding subsection (1), where the median line as defined by subsection (4) between Grenada and any adjacent or opposite state is less than 200 miles from the baselines of the territorial waters, the outer boundary limit of the zone shall be that fixed by agreement between Grenada and that other state, but where there is no such agreement, the outer boundary limit shall be the median line. [Emphasis added]

- (4) The median line is a line every point of which is equidistant from the nearest points of the baselines of the territorial waters, on the one hand, and the corresponding baselines of the territorial waters of any adjacent or opposite state as recognized by the Minister, on the other hand.

Grenada, in the absence of agreement, would resort to the median line standard in its efforts to delimit maritime boundaries. It should be noted that the median line has inhibiting aspects in that between Grenada and Trinidad it may be equitable, but between Grenada and Venezuela the use of the median line equidistance approach may lead to inequitable results.

b. Formulation of the rules for delimitation in the ICNT

Discussions during the Ninth Session of the third United Nations Conference on the Law of the Sea, with respect to the formulation of the rules of delimitation of sea boundaries between states with adjacent or opposite coasts, culminated in a compromise treaty text on delimitation.³⁴ Before this apparent compromise, two prevailing views traditionally dominated the inexhaustible debates concerning the rule that should govern delimitation of maritime boundaries.

One theory would base delimitation of sea boundaries between states with adjacent or opposite coasts on a rule that allows maximum flexibility in order to accommodate the great diversity of geographical situations.³⁵ "The proponents of this viewpoint would quite simply leave the matter to be settled solely by the parties themselves by agreement."³⁶ At the 1958 U.N. Conference on the Law of the Sea, a member of the Venezuelan delegation, commenting on a proposal which favours the median line only as a criterion for delimitation, observed that different situations existed in various parts of the world defying

the adoption of a general rule applicable everywhere. He thus recommended that "the question should, therefore, be left to the states concerned to settle, since they were at once the most interested and best informed parties."³⁷

The other position insists that definite rules on delimitation must be drawn up so that courts and tribunals may rely on their guidance when assisting states in the settlement of delimitation problems. In fact, they advocate the inclusion in a treaty of clear and unambiguous rules on delimitation, thus going beyond any provision that simply requires the parties to a delimitation problem to settle it themselves by agreement.³⁸

At the Ninth Session of the Negotiating Committee No. 7, Judge E. J. Manner, Head of the delegation of Finland and Chairman of this Committee, guided the discussions on the issue. Two basic positions on the proper standards for delimitation emerged. One side advocated the "median or equidistance line" as the standard to be adopted, whereas the other side purported to favour a delimitation standard relying on "equitable principles". Articles 74 and 83 mentioned both standards and therefore were unacceptable to the supporters of either position.³⁹ A number of delegations⁴⁰ submitted informal suggestions that they felt might be acceptable to all parties; however, no compromise was reached. As Judge Manner indicated, in submitting his suggestion as Chairman, "The following text does not reflect any final compromise reached in Negotiating Group 7 but indicates the Chairman's assessment of alternatives which might, in time, secure a consensus at the Conference."⁴¹ Advocates of the median-equidistance line standard insist that it is

the principle of international law governing delimitation cases, based on Article 6 of the 1958 Geneva Convention on the Continental Shelf.⁴² The proponents of this standard claim that it is based on facts and not on philosophical notions of equity; they further suggest that an equitable principle standard must be linked to compulsory judicial settlement procedures.⁴³

c. What impact would a final compromise position on delimitation have on Grenada?

Grenada is located about 12° North latitude and 61° 41' West longitude. It is surrounded by a number of states at varying distances from the island itself. The island of St. Vincent is about 56 miles north; whereas Trinidad is about 70 miles south; Barbados, the furthest island east is about 122 nautical miles from Grenada. St. Lucia is about 92 miles north, Dominica about 170 miles, whereas Venezuela is about 71 miles to the southwest. At some point Grenada would have to consider delimiting her maritime boundaries, territorial sea, exclusive economic zone, and continental shelf. Article 15, as spelled out in the ICNT, would be an acceptable standard for implementation in the absence of agreements with neighbouring states. It can be expected, however, that some countries in the region may stress equidistance as the foremost delimitation method, while others may advocate equitable principles.⁴⁴ It would be only through honest negotiation and compromise that these problems could be effectively settled. Venezuela, given some direction in this regard, entered into a fishing agreement in 1977 with Trinidad and Tobago. In addition, two economic zone delimitation treaties were concluded almost simultaneously in 1978 -- one with the

United States (Puerto Rico and the Virgin Islands) and the other with the Netherlands and Dutch Antilles. These agreements fell within two separate sectors of the Caribbean.⁴⁵

A look at any hypothetically-delimited map, however, reveals a great deal of inequity that can only be overcome through diligent negotiations. Only Grenada, for instance, recognizes Aves Island in delimiting its boundary with Venezuela. It is said that the dividing line between Venezuela and Aves Island is based on equidistance; the line could therefore be negotiated. Consequently, it is possible for Grenada to consider Aves Island as a "special circumstance" and raise the question of inequality.⁴⁶ In dealing with this matter, one may resort to the judgment of the International Court of Justice in the North Sea Continental Shelf cases, wherein it demonstrates the absolute inequality of such lines when the coast has a special configuration or when "special circumstances" exist.

Grenada will not agree to arbitrary geometric median and equidistant lines, nor will she accept that zones of offshore foreign islands, which allegedly form part of Grenada's zone, seal her coast off from her traditional navigation routes. It is worthwhile to observe that Venezuela's zone pushes northward in the Eastern Caribbean by virtue of Aves Island, which is also traditionally referred to by fishermen as Bird Island.

It is inevitable that Grenada must resort to the application of equitable principles in its attempts to delimit maritime boundaries. To this end, the judgement as delivered by the International Court of Justice in the North Sea Continental Shelf cases can serve as a guide

to Grenada's approach to delimitation. The ideas as outlined by the Court are worthy of mention. It is stated thus:

- (a) The Parties are under an obligation to enter into negotiations with a view to arriving at an agreement and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insist upon its own position without contemplating any modification of it.
- (b) The Parties are under an obligation to act in such a way that, in the particular case, and taking all the circumstances into account, equitable principles are applied. For this purpose the equidistance method can be used, but other methods exist and may be employed, alone or in combination, according to the areas involved.
- (c) For the reasons given in Paragraphs 43 and 44, the Continental Shelf of any state must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another state.⁴⁷

The main function of this concept, in the Court's view, is to redress the inequity which may be the result of utilizing the equidistance method as a mandatory rule in all situations.⁴⁸ However, it should be emphasized that there are certain geographical inequalities that cannot be remedied by the equity. Grenada suffers from a few such geographical inequalities, inter alia, a short coastline, shelf-locked, and the presence of foreign offshore islands within 12 miles of her coast. These factors should be taken into consideration in order to achieve an equitable delimitation.

A number of countries continue to emphasize that delimitation of maritime areas should be effected by agreement in accordance with equity. The 18th power African Article on the Economic Zone echoes this claim:

- (i) The delimitation of the Exclusive Economic Zone between adjacent or opposite states shall be done by agreements between them on the basis of principles of equity; the median line not being the only method of delimitation.
- (ii) For this purpose, a special account shall be taken of geological and geomorphological factors as well as other special circumstances which prevail.⁴⁹

As was suggested by Kaldone Nweihed in dealing with an area as complex as the Caribbean:

"Some help may be derived by determining the horizontal axis or general median line that would separate the waters adjacent to the northern coast of South America (Costa Firme) from those of the Greater Antilles (Cuba, Hispaniola, and Puerto Rico), roughly along 15° North, allowing for bulges when insular territory projects the sovereignty of a state across the opposite side of such a line, as in the case, for example, of Venezuela's EEZ penetrating into the northeastern Caribbean due to the location of Aves (Bird) Island. [See map, page] A similar view could be taken of the Gulf of Mexico with the United States and Mexico being treated as opposite states, in which case such a potentially satisfactory median line would fall along 25° North. On the same basis it is said, it may be argued that a median line between pairs of opposite jurisdictions will render a fair solution to most of the islands in the leeward and windward chains, provided no other circumstances prevail.⁵⁰

But other circumstances do, in fact, prevail and were mentioned earlier in this chapter. For instance, "the difficulty that arises from an a priori application of the equidistant line of adjacent states as distinct from the application of the median (also equidistant) line to opposite ones, is not a monopoly of continental states".⁵¹ An island "opposite" to another prima facie may actually constitute a situation of adjacency, i.e.

"A would-be median line between Trinidad and Grenada would inevitably fall into the adjacency relationship on that point on the Tobago Trough where, due to Tobago's northeasterly thrust and the Grenadine insular chain, both countries would have to meet the claim of Barbados, and probably St. Vincent, off the north-

western corner of the Gulf of Venezuela; Colombia and Venezuela face both situations, opposition and adjacency, let alone the historic background of the long process that led to the demarcation of the actual frontiers.⁵²

In spite of the fact that delimitation is essentially a bi-lateral issue, nevertheless there must be attempts made to find a regional solution for the problem. The region sooner or later will have to decide on a regional delimitation policy to be applied ipso facto and ab initio. At the moment there is agreement only on the need to define jurisdiction, on the one hand, and to determine the extent to which these jurisdictions will be influenced by the conservation methods proposed by an inter-Caribbean consultative body such as FAO's West Central Atlantic Fishery Commission (WECAFC) and/or anti-pollution methods advanced by IOC RIBE which, by the way, is co-ordinating its efforts with those of WECAFC quite closely,⁵³ on the other hand.

6. Marine Scientific Research

The ICNT Scientific Research Provisions establish a consent regime for three areas of the ocean: the Territorial Sea, the Exclusive Economic Zone (EEZ), and the Continental shelf.⁵⁴ The Marine Boundaries Act of Grenada, Act 20, S.5(a)(iii) provides as follows:⁵⁵

- "There is vested in the Government of Grenada
- (a) All rights in, and jurisdiction over, the zone [EEZ] in respect of - ...
 - (iii) The authorization, regulation or control of scientific research [within the EEZ]."

Further to Articles 2 and 3 of the ICNT, the coastal state enjoys complete sovereignty in the territorial sea up to a breadth of 12 miles. Within this breadth, the coastal state has the exclusive right to regulate, authorize and conduct marine scientific research. All states

wishing to conduct any form of scientific research must first obtain the coastal state's express consent and comply with the conditions it lays down. Consent of the coastal state to foreign vessels to carry out research in the territorial sea is mandatory; hence the provision in Article 19 defines innocent passage:

- (1) Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state.
- (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 ...
- (g) The carrying out of research or survey activities....⁵⁶

7. The Exclusive Economic Zone and the Continental Shelf

Pursuant to Articles 55 through 57, a coastal state possesses sovereign rights along with other rights, jurisdictions and duties in the Exclusive Economic Zone. Article 56(1)(b)(ii) specifies that coastal states have "jurisdiction" over marine scientific research in the exclusive economic zone and on the continental shelf.⁵⁷ However, in exercising this right it must comply with other provisions of the Convention. The relevant provisions in this regard are Articles 246-258 of the ICNT. Article 246 provides as follows:

1. Coastal States, in the exercise of their jurisdictions, have the right to regulate, authorize and conduct marine scientific research in the exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this convention.
2. Marine scientific research activities 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 use and 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. Normal circumstances may exist in spite of the absence of diplomatic relations between the Coastal State and the researching state for the purposes of applying Paragraph 3 of this Article.

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 as 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 prior research projects.

6. Notwithstanding the provisions of Paragraph 5 of this Article, Coastal States may not exercise their discretion to withhold consent under subparagraph (a) of the above-mentioned paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of Part XIII of this convention outside these specific areas of the Continental Shelf, beyond 200 miles from the baselines from which the breadth of the territorial sea is measured, which Coastal States may at any time publicly 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 to the designation of such areas as well as any modifications thereto, but shall not be obliged to give details of the operation therein.

7. The provisions of paragraph 6 of this Article are without prejudice to the rights of Coastal States over the Continental Shelf as established in Article 77 of the convention.
8. Marine scientific research activities referred to in this Article shall not unjustifiably interfere with activities undertaken by Coastal States in accordance with their sovereign rights and jurisdiction as provided for in this convention.

There can be little doubt that the right to authorize, deny and regulate marine scientific activities in the exclusive economic zone and on the continental shelf belongs absolutely and unconditionally to the coastal state.⁵⁸ Any state, therefore, engaging in marine research activities in the above-mentioned zones without the express consent of the coastal state does so in violation of that coastal state's jurisdiction, and also in violation with the relevant provisions of this Convention.

Coastal states, however, in normal circumstances are obliged to grant their consent for scientific research projects to be conducted exclusively for peaceful purposes, in order to increase scientific knowledge of the marine environment for the benefit of all mankind.⁵⁹ The same Article also provides that coastal states in their discretion may withhold their consent to the conduct of marine scientific research projects of another state, if such projects are designed to explore and exploit the resources of that state, living and non-living, or entail further drilling on the Shelf, or the introduction of harmful substances into the marine environment.

The coastal state has wide powers in determining which state or international organization conducts research within its zone. The coastal state decides what constitutes normal circumstances and,

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therefore, the nature of the research that is undertaken depends to a great extent on the discretion of the coastal state. Furthermore, the requirement that research be for peaceful purposes, and for the benefit of all mankind, seems to give the coastal state the unequivocal right to reject a research project that is designed to collect information for a purely military purpose. The responsibility, or burden, of proving that a research project is of a non-military nature and is designed to benefit mankind rests with the researching state or institution.⁶⁰

The coastal state is obliged to grant consent only in normal circumstances. If such circumstances do not pertain, then the coastal state is authorized to withhold consent.⁶¹

Pursuant to Article 253, a coastal state, after consenting to a research project, continues to have supervisory powers over it. Consequently, the coastal state may halt an ongoing research activity if it is not being conducted in accordance with the information originally communicated to the coastal state under Article 248.⁶² This is a very important provision, since it gives the coastal state adequate notification (six months) of the contemplated research project and, therefore, ample time to study and evaluate the proposed research. Article 248 thus enables the coastal state to exercise its consent powers based on information it has had sufficient time to study. This is very important for a developing coastal state like Grenada, which has very few qualified marine scientists. The researching state also has sufficient time to modify or alter its research project if circumstances so warrant.

The researching state is under an obligation to comply with certain conditions pursuant to Article 249:

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 rights of the Coastal State, if it so desires, to participate or be represented in the research project, especially onboard research vessels and other craft or 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 research 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 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 of this Article, that the research results are made internationally available through appropriate national or international channels, as soon as feasible;
 - (f) Inform the Coastal State immediately of any major change in the research programme;
 - (g) Unless otherwise agreed, remove the scientific 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.

Although states and organizations engaged in research have certain rights flowing from Articles 246 and 247, they must fulfil certain obligations towards the coastal state. If it so desires, the coastal state must be allowed to participate in the research project without the obligation of having to contribute towards costs. Such participation may entail the presence of the coastal state scientists aboard the research vessel or other craft or installations.⁶⁴ The coastal state is guaranteed access to all data and samples obtained from the research, and the researching institution must assist the coastal state in assessing such data and samples.⁶⁵ The research results are to be made available to the international community as soon as practicable.⁶⁶ Finally, the researching state, unless otherwise agreed upon, must remove all scientific equipment upon completion of the research project.

a. Rights of Neighbouring Land-locked and Geographically Disadvantaged States (Article 254)

Researching coastal states and organizations are obliged to "take into account the interests and rights of neighbouring land-locked and geographically disadvantaged states,"⁶⁷ and also to give notice to such disadvantaged states of the proposed research project. The researcher is further obliged to provide the neighbouring land-locked and geographically disadvantaged states, at the request and when appropriate, with relevant information as specified in Articles 248 and 249(1)(f).

Article 257 recognizes the right of all states irrespective of their geographical location, as well as competent international organizations, to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone. Moreover, Article 87 strengthens this right, since scientific research is listed as one of

the high sea's freedoms enjoyed by all nations. Article 283(3) requires a coastal state that has taken measures in contravention of the provisions to be liable pursuant to the principles set out in Article 235 for damages arising out of marine scientific research undertaken by them or on their behalf.

b. Settlement of disputes

The settlement of disputes arising out of the conduct of scientific research is governed by the general dispute settlement mechanism of the ICNT,⁶⁸ Section 2 of Part XV, except that the coastal state shall not be obliged to submit to such settlement of any dispute arising out of:

- (a) the exercise by the Coastal State of a right or discretion in accordance with Article 246 or -
- (b) a decision by the Coastal State to terminate a research project in accordance with Article 253.

8. Navigation

The maintenance of the smooth flow of international trade is of vital importance to Grenada. For this reason, Grenada shares with her neighbours a universal interest in preserving and developing internationally accepted rules and regulations that foster and develop the concept of freedom of passage and the responsibility of shippers.⁶⁹

Grenada, however, is located in a central location for tanker traffic travelling north from the oil rich islands of Venezuela and Trinidad. To avoid a further catastrophe in the event of tanker accident and subsequent oil spills, Grenada has embarked on a plan of ship routing systems in conjunction with her northern neighbours. This programme of traffic management, it is hoped, would curtail the congestion in cer-

tain areas and thereby lessen the potential for further accidents. The financial burden of such management would be shared by all participating parties, including IMCO (Intergovernmental Maritime Consultative Organization). This agency is the only global body in the regulation of shipping and the area of vessel traffic control. It should be noted, however, that the possibility of establishing shore-to-ship, ship-to-shore and ship-to-ship communication is an essential condition for improved performance of the complex marine-transport system and the other sectors of the economy connected with navigation.⁷⁰ The function of Marine Communication is to ensure safety of navigation, protection of human lives at sea, rational control of shipping, and increased carrying capacity of shipping.⁷¹

Grenada maintains freedom of navigation in her territorial sea, in keeping with Articles 17 and 18 of the ICNT. The only requirement pursuant to Section 6(2) of the Grenada Territorial Waters Act 17 is that, "A foreign ship of war shall not navigate in territorial waters without the prior permission of the competent Authority obtained by the state to which the ship belongs."⁷² This provision seeks to maintain the territorial integrity and sovereignty of the state of Grenada. The enactment should not be interpreted as restricting the freedom of navigation but, instead, should be regarded as enhancing it.

CONCLUSION

The importance of marine scientific research to Grenada in enabling a better understanding of the marine environment is axiomatic. What requires greater emphasis is that this knowledge, once acquired, should be used to the benefit of mankind, not merely to the profit of

the advanced industrial states.⁷³ The impact of such oceanographic research objectives on Grenada could be impressive, especially in areas of long-range weather forecasting. The constant accumulation and verification of data derived from ocean-atmosphere is essential for the accurate prediction of seasonal climatic variations; better knowledge of ocean temperatures and currents is also necessary to broadening our knowledge of the Caribbean fish supply,⁷⁴ since varying temperatures may have some influence on the environment in which fish stocks multiply and migrate. At present, Grenada and, indeed, the entire Caribbean lack proper and accurate forecasting mechanisms and also any rational scheme of fish allocation, both of which are vital for productive economic development.

Another area of comparative ignorance is the migratory pattern of tropical fish such as red snapper, hind, kingfish and tuna. Maximization of the sustainable fish yield of the Caribbean Sea to provide growing populations with cheap protein is supposed to be an economic goal that every state endorses, but to attain this on a scientific basis will require much greater knowledge of fishery dynamics than can be obtained from the meager data currently available.⁷⁵ Grenada is in desperate need of a marine laboratory that has the capacity to commence the process of data accumulation.

Marine pollution is another area where basic data is entirely lacking. It is commonly known that the levels of mercury, lead, and oil pollution in the oceans are constantly rising,⁷⁶ and that pollution emanating from offshore garbage and waste disposal has largely destroyed the marine life of inland seas like the Mediterranean and the Baltic.⁷⁷ The

unfortunate conclusion to all this is that man does not have the ability to predict the effects and consequences of this pollution on a global scale; his understanding of ecological relationships in the ocean is limited and primitive. If man is to better understand the effects of pollution on the environment, more knowledge -- and hence more research in the oceans -- is necessary, urgent and vital.

The ocean is of special significance to Grenada since it is the only frontier remaining that offers some hope from starvation, a source of new energy and of prevention and control of disease. For these reasons, Grenada intends to make access to the marine environment, for the purpose of scientific exploration, a top priority.

FOOTNOTES - CHAPTER V

¹U.N. Doc. A/CONF.62/WP.10/Rev. 2. (ICNT)

²Grenada Marine Boundaries Act, 1978, p. 127.

³Ibid., p. 126.

⁴Gerald Moore, "National Legislation for Management of Coastal Resources," 11 Journal of Maritime Law & Commerce (1979-80): 158. The notion of "surplus" and "coastal state capacity" are not closely defined in the text. Article 62(4) of ICNT envisages joint ventures or other co-operative arrangements in fisheries between the coastal and foreign states as one example of conditions for access which may be laid down by the coastal states. It is not clear, however, whether "coastal state capacity" should be viewed as excluding any industries run under joint venture arrangements, even where there is a majority local holding in the industry or industries run under management contracts. Any obligation regarding "surplus" and granting access to other states are in any case watered down.

⁵ICNT, Art. 62.

⁶Mexico, Decree Amending Art. 37 of the Federal Law on Fisheries Development, 10th February 1976.

⁷Portuguese Statute, Act No. 33/77 of 1977, Art. 5.

⁸Bahamas, The Fishery Resource Jurisdiction and Conservation Act, 1977, S. 2.

⁹Fiji, Marine Space Act, 1977 S.(2).

¹⁰U.S.A. Fishery Conservation and Management Act of 1976, S.3(18).

¹¹Australia, Fisheries Amendment Act, 1978, S.(6).

¹²U.S.S.R., Decree of the Presidium, 10th December 1976.

¹³The Gambia, Fisheries Act, 1977, p. 3.

¹⁴Moore, "National Legislation," p. 159.

¹⁵The Gambia, Fisheries Act, p. 4.

¹⁶E.g., Bahamas, The Fishery Resource (Jurisdictional and Conservation) Act, 1977, S.10; Fiji, Marine Space Act, 1977, S.(2); Japan, Law on Provisional Measures Relating to the fishing Zone, 1977, Act 2(3); New Zealand Territorial Sea and Exclusive Economic Zone, 1977, S.(2); U.S.S.R. Decree of the Presidium 1976.

17 L. Dolliver-M. Nelson, "Marine Regionalism and the Law of the Sea," Proceedings of the Symposium on Marine Regionalism, Oct. 25-26, 1979, p. 28.

18 Marine Boundaries Act, S.12(1)(F), p. 137.

19 Brazil, Decree No. 68.459 of 1971.

20 El Salvador, Order No. 12263, 1974; Uruguay, Law No. 13,833, 1969.

21 Canada Fisheries Act, Revised Statutes of Canada 1970, C. F14.

22 Coastal fisheries protection regulation, 1976, Reg. 11(m). The regulation tries to ensure that obligations undertaken at an intergovernmental level are passed down to the practical level of implementation.

23 Edgar Gold and Douglas Johnston, "Ship-Generated Marine Pollution, The Creator of Regulated Navigation," presented at the 13th Annual Conference of the Law of the Sea Institute, Mexico, D.F. Mexico, October 24, 1979.

24 See, International Convention on Pollution of the Sea by Oil (London, 1954), p. 372, U.N.T. S.3.

25 Ibid.

26 Ibid.

27 Geneva Convention on the High Seas, 1958, 40 U.N.T. S.82, Art. 24.

28 Gold and Johnston, "Marine Pollution," p. 30.

29 Ibid.

30 ICNT, Art. 221.

31 Ibid., Art. 220.

32 See, Nelson, "Marine Regionalism," p. 32.

33 Ibid., p. 42.

34 ICNT, Arts. 74, 83.

35 This view was adopted by M. Hudson during the discussion on "Regime of High Seas" by the International Law Commission (ILC) in 1951. See, 1 Y.B. Int'l L. Comm. (1951): 287. U.N. Doc. A/CN.4/SER.A/1951. During the discussion of the same subject by the ILC in 1958, F. I. Kozhernikov also defended this view of delimitation by agreement by

proposing the following text: "The boundaries of the Continental Shelf contiguous to the territories of two or more states shall be established by agreement between those states. Failing such agreement, a dispute between them shall be resolved by one of the methods for joint peaceful settlement of disputes." 1 Y.B. Int'l L. Comm. (1953): 130. U.N. Doc. A/CN.4/SCR.A/1953.

³⁶ L. Dolliver Nelson, "Equity and Delimitation of Maritime Boundaries," Iranian Rev. Int'l Rel. (1978): 197.

³⁷ 6 Official Records of the United Nations Conference on the Law of the Sea (1958): 94. U.N. Doc. A/CONF/13/42.

³⁸ A. O. Adede, "Towards the Formulation of the Rule of Delimitation of Sea Boundaries Between States with Adjacent or Opposite Coasts," 19 Virginia J. of Int'l L. (1979): 209.

³⁹ Report of Negotiation Group NG7/44. See, U.N. Doc. A/CONF.62/L.47.

⁴⁰ Ibid., p. 2.

⁴¹ Ibid., p. 3.

⁴² Convention on the Shelf, Art. 6, April 29, 1958. U.S.T. p.471; T.1.AS. No. 55781, p. 499. U.N.T. p. 3. Article 6 of the Geneva Convention on the Continental Shelf provides:

1. Where the same continental shelf is adjacent to the territories of two or more States where coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identification points on the land.

⁴³ A. O. Adede, "Formulation," p. 215.

⁴⁴ Kaldore G. Nweihed, "EZ (UNEASY) Delimitation in the Semi-enclosed Caribbean Sea: Recent Agreements between Venezuela and her Neighbours," 8 Ocean Development and Int. Law J. (1980): 1.

⁴⁵ Ibid., p. 2.

⁴⁶ Ibid., p. 4.

⁴⁷ Quoted in Nelson, "Equity and Delimitation," p. 8. Note; Morel's observation in his dissenting opinion. "In my opinion it is not at all possible to recognize the existence of any general obligation to negotiate. A State which is asked by another State to enter into negotiations with a view to the conclusion of an agreement for the settlement of certain relations may, without doing anything contrary to law, refuse to do so, unless there be a specific rule requiring negotiation."

⁴⁸ Ibid., p. 12.

⁴⁹ U.N. Doc. A/CONF.62/C.2/L.82.

⁵⁰ Nweihed, "EZ Delimitation," p. 218.

⁵¹ Ibid.

⁵² Ibid.

⁵³ UNESCO/IOC. Meeting of ad hoc group of experts on future programmes and co-operation in marine science in the Caribbean and adjacent regions, Summary Report, University of Puerto Rico, Mayaguez, P.R.; IOCARIBE ad hoc N/3 Paris, 15 April 1976. See also, Kaldone G. Nweihed, "La Delimitation Maritima al Noroeste del Golfo de Venequela," Instituto de Tecnología y Ciencias Marinas (INTECMAR), Universidad Simon Bolivar, Caracas, 1975. C.f. Reid and Mary Jeanne Martz, "Delimitation of Marine and Submarine Areas: the Gulf of Venezuela," 9 Lawyer of the Americas (1974): 301.

⁵⁴ ICNT, Rev. 2.

⁵⁵ Marine Boundaries Act, S. 5.

⁵⁶ ICNT, Art. 19(f).

⁵⁷ Ibid., Art. 56(1)(b)(ii).

⁵⁸ Ibid., Art. 246(1).

⁵⁹ Ibid., Art. 246(3).

⁶⁰ A. Yusuf Abdulaawi, "Towards a New Legal Framework for Marine Research: Coastal State Consent and International Co-ordination," 19 Virginia J. Int'l L., (1979): 419.

⁶¹ ICNT, Art. 246(3)(a), (b), (c), (d).

⁶²Ibid., Article 248. Provided.

States and competent international organisations 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 research project, provide that state with a full description of:

- (a) the nature and objectives of the research project;
- (b) the method and means to be used, including name, tonnage, type and class of vessel and a description of scientific equipment;
- (c) the precise geographical areas in which the activities are 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 research project; and
- (f) the extent to which it is considered that the coastal state should be able to participate or be represented in the research project.

⁶³Article 249 (1)(a).

⁶⁴Ibid., Art. 249 (1)(b).

⁶⁵Ibid., Art. 249 (1)(d).

⁶⁶Ibid., Art. 249 (1)(e).

⁶⁷Ibid., Art. 254.

⁶⁸Ibid., Art. 264.

⁶⁹Convention of the Inter-Governmental Maritime Consultative Organisation, 289 U.N.T.S.(1958)48.

⁷⁰Ibid.

⁷¹Edgar Gold and Douglas Johnston, "Ship-generated Marine Pollution: the Creator of Regulated Navigation," presented at the 13th Annual Conference of the Law of the Sea Institute, Mexico, D.F. Mexico, October 24, 1979.

⁷²Grenada Territorial Waters Act, 17, of 1978, 56(2).

⁷³The United Nations General Assembly has adopted several resolutions declaring the need for more scientific research on the oceans and endorsed the International Decade of Ocean Exploration. G.A. Res. 2172, 21 U.N. GAOR, supp. 16, at 32. U.N. Doc. A/6316 (1967) G.A. Res. 2414, 23 U.N. GAOR supp. 18, at 30 U.N. Doc. A/7218 (1969).

⁷⁴Charles Maechihy, Jr., "Freedom of Scientific Research, Stepchild of the Ocean," Vol. 15, Virginia Journal of International Law, p. 552.

⁷⁵Ibid., p. 553.

⁷⁶ C. Moorcraft, Must The Sea Die? See, Council on Environmental Quality, Ocean Dumping, Ottawa; A National Policy, (1970).

⁷⁷ Boleslaw A. Boczek, The Baltic Sea. Symposium on Marine Regionalism, sponsored by the Marine Affairs Program, University of Rhode Island, Dutch Inn, October 25-26, (1979), p. 41.

THE GROUP OF 77 IN THE LAW OF THE SEA (ROLE OF EQUITY)

The Group of 77 can be best described as the watchdog of the New International Economic Order that it hoped would materialize as a result of the United Nations Law of the Sea Conference. This Group is made up of developing nations, the so-called Third World, whose main purpose at the Conference has been to avoid plunder or, at any rate, to attempt to bargain for a fair and just share of the ocean's wealth from the hands of the developed world who, if left to themselves, would invent the most ingenious arguments to justify their claims to huge portions of the ocean space as part of their national jurisdictions. UNCLOS III has been a rebirth, or revival, of eighteenth century imperialist expansionism. The single difference is that instead of Europeans arbitrarily splitting the continents, as they did with Africa, Asia, the Caribbean and South America, this time they are grabbing at ocean space. Once again they have almost succeeded but for the commendable efforts of the Group of 77, which has acted as a check on the acquisitive instincts of the industrialized powers' respective delegations. The members of the Group of 77 were responsible for introducing a number of innovative concepts to this Conference, such as the "Common Heritage of Mankind",¹ a proposal submitted by the Permanent Representative of Malta to the United Nations. The memorandum suggested that the sea-bed and ocean floor be declared "the common heritage of mankind" and that an international agency be created to assume jurisdiction over this area "as a trustee for all countries" and control all activities therein. Also, during the spring session of the Eighth Session of the Law of the Sea Conference, Nepal submitted a proposal for a Common Heritage Fund.²

This proposal was considered by a majority of the Group of 77 to be "in the best interest of each nation and of the world community".³ Dr.

Lohani, Chairman of Nepal's delegation, speaking in Plenary, indicated inter alia that,

"Although the hour is late, we believe that there is still time to make the Law of the Sea Conference a major turning point in the struggle to build a new and more just economic and political order, ... to protect the gravely threatened marine environment and to preserve endangered marine species. But for this to happen the Conference must recover the vision that inspired the launching, the vision of the oceans as the common heritage of mankind."⁴

Lohani believed that the establishment of a common heritage fund would not only help realize the raison d'etre of the Conference but also would go a long way towards creating the new international economic and political order which is vital if the global community is to live in peace, justice and prosperity. The task of the Group of 77, when considered seriously, is to use the law of the sea as one more device for helping to achieve a new international economic order.

VOTING ON COUNCIL

The Group of 77 is not a homogeneous group and, unlike other negotiating groups, the Group of 77 does not deliberate on matters on a day-to-day basis; however, in times of "crisis" the Group meets. At such meetings the author has observed the Chairman of the Group of 21, on First Committee matters, speak not in the capacity as Chairman of the First Committee but as a member of the Group of 77 and Chairman of the Cameroon delegation. At the Ninth Session in New York, the First Committee encountered a deadlock over the question of a blocking minority

in the Council with reference to Article 161.⁵ The Council is of tremendous importance in the present Negotiating Text. It consists of 36 members elected according to a scheme so complicated that it is increasingly difficult to see exactly how the scheme would work in practice. The Assembly elects the 36 Council members, in order, from the following five categories of states: (a) four from ocean mining countries; (b) four from countries that are consumers of minerals mined from the oceans; (c) four from countries that are landbased producers of these minerals; (d) six from developing countries and, (e) 18 from countries on the basis of equitable geographical distribution. The question of required majority in the Council is about equal in importance to that of its composition. The current text provides; "All decisions on questions of substance shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in the session."⁶ With all 36 states voting, this would mean that 27 votes could pass a measure and 10 votes could block it. The United States expressed concern with this formula, for fear that it may not be able to muster 10 blocking votes on an issue it considered important to its interest. The U.S. Representative expressed a desire to have a vote of five having blocking power. The Group of 77 vehemently rejected the concept of veto, or a blocking mechanism. As a member of this group, we see a blocking vote as being reminiscent of that exercised in the Security Council of the United Nations General Assembly. We feel that it is time to abandon any voting formula that would permit a single group of states to dominate the Council or block its decisions. Therefore, at a meeting called by the Group of 77 about '26

March, 1980, we solidly rejected any informal suggestion that called for the exercise of a blocking minority.

THE COMMON HERITAGE FUND

The Group of 77 gave its unqualified support to the revised Nepal proposal on the Common Heritage Fund as introduced at the Eighth Session in New York, August, 1979. The Common Heritage Fund proposal was introduced with nine co-sponsors: Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia. Seventeen countries, including the important coastal states of Indonesia and Nigeria, petitioned the Conference President, H. Shirley Amerasinghe, to hold a debate on the Common Heritage Fund proposal. This debate was held over two days during the final week of the Session. Thirty-two delegations spoke, 17 in favour and 15 against. Those in favour were Afghanistan, Algeria, Austria, Bolivia, Cameroon, Cyprus, Greece, Israel, Lesotho, Mali, Morocco, Nepal, Singapore, Switzerland, Turkey, Uganda, Zambia. Those against were Argentina, Brazil, Colombia, Ecuador, El Salvador, Mauritius, Pakistan, Panama, Peru, Portugal, Senegal, Somalia, Thailand, Tunisia, Uruguay. It is interesting to note that of the 15 that spoke in opposition, 8 were from Latin America, which represents the hard-core opposition to the Common Heritage Fund proposal.

The Group of 77 represents the world's poor and, as such, this Group is intent on forcing the developed states to accept the New International Economic Order; they see the Law of the Sea Conference as one of the greatest and most painless opportunities for international justice that has ever existed or is likely to exist. The Group of 77 has recognized the development potential in ocean wealth and the oppor-

tunity which ocean wealth presents to poor countries through an internationally controlled sea-bed mining authority. As Maurice Strong, Founding Director of the United Nations Environment Program, pointed out, and as summarized in the Summary Record,

"... that the problem of sea-bed resources raised a critical question of equity in the relations between the more industrialized and the developing countries, as well as between coastal and shelf-locked or land-locked states. Failure to create a strong sea-bed regime would lead to pre-emption of the lion's share of the benefits by those with the capital and technology required, and to an accumulation of new pollution problems that would threaten in particular those states least able to take protective measures.

The two-thirds of the world's population whose lives were polluted by worsening poverty must receive their share of the benefits of exploiting the resources of the oceans; it was not a matter of Charity but of Equity."⁸

It is the author's belief that the role and objectives of the Group of 77 could be best understood if the texts, or series of texts, of the Proceedings of this Group were made available in this manuscript. The writer, as a member of the Grenada Delegation, had the advantage of being present during the hereinafter-mentioned deliberations of the Group.

At its March 16, 1979 meeting called by the chairman of the Group of 77, Ambassador Setya Nandan of Fiji, it was decided that the Group address itself to general issues such as deep sea-bed mining, with a view to having adequate participation by the developing states in the mining of the resources of the deep sea-bed, as well as substantial benefit from these resources for all mankind -- but with special emphasis on the developing countries. During the course of its deliberations, the Group also expressed its concern as to the protracted nature of the

Conference.⁹ (See App: E for full text.)

The Group also seized this opportunity to outline its position on the contemplated unilateral legislation on deep sea-bed mining by the United States Congress. The Group of 77 categorically rejected the view that the enactment of unilateral legislation has any basis in international law. This contemplated legislative enactment by the United States was seen as a ploy to jeopardize the conference and endanger the future of the entire system of multilateral negotiations under the auspices of the United Nations.¹⁰ (See App. E for full text.)

The Group of 77 met to review the work of the conference and to prepare itself for the next Session. It noted that a considerable amount of work needed to be done with respect to some of the key issues identified by the conference for its overall progress, with particular reference to issues relating to the deep sea-bed mining. The Group continues to be of the view that it is fundamental to any agreement that there is adequate participation by the developing states in the mining of the resources of the deep sea-bed as well as substantial benefit from those resources for all mankind, especially for the developing countries.

The Group hopes that the forthcoming negotiations will, inter alia, concentrate on the key issues relating to the sea-bed. Among these issues are the system of exploitation and the related questions of the validity of the enterprise, transfer of technology, resource policy, and the review clause relating to the system, the financial arrangements for the mining of the resources of the sea-bed, and the powers, functions and compensation of the institutions of the Seabed Authority. The Group

also agreed that progress must also be made on outstanding issues in areas other than sea-bed mining which form part of the overall package of key issues before the conference.

The Group of 77 directed its criticism of unilateral legislative action on sea-bed mining to the United States of America. The U.S.A. introduced legislation, styled Deep Sea-bed Hard Mineral Act - S493. The draft legislation in the Senate has been approved, while the House of Representatives version (H.R.2759) has passed four of the necessary five committees. The bill has been delayed in the House Foreign Affairs Committee since November, 1979 at the request of the State Department. It was the considered opinion of the State Department that the completion of negotiations in UNCLOS III on Deep Sea-bed Mining was close and the issue was sensitive enough that upsetting a delicate political balance by approving domestic legislation should not be risked.¹¹ In spite of the moderating influence of the State Department on the administration, a few congressmen supported unilateral action by the United States, pending the UNCLOS outcome. It is worthwhile that the United States has, in fact, taken unilateral action.

Speaking in 1976, Senator Murphy (Democrat - Long Island), a key supporter of the legislation, said:

"Congress can no longer sit back and watch this erosion of our technological lead. We can no longer sit back and watch the State Department bargain away U.S. interests. We can no longer sit idly and watch as secure sources of minerals evaporate before our eyes. It is time to act ... to enable ... the recovery of manganese nodules."¹²

The Group of 77 interpreted statements as above noted as a direct assault on the "Common Heritage" concept, and also as a systematic and

calculated move by the United States to threaten and erode "the future of the entire system of multilateral negotiations under the auspices of the United Nations."¹³ Ambassador Nandan of Fiji went so far as to term such contemplated actions as "illegal". It was felt by some members of the Carter administration that the passage of unilateral legislation would serve to hasten proceedings at the Law of the Sea Conference; this allegation was dismissed by the Group of 77 since the Group had always insisted on intensification of negotiations with a view to signature of the Convention at Caracas in the Spring of 1980 at the latest.

TRANSFER OF TECHNOLOGY

The Group of 77 has rendered a number of invaluable proposals, some of which have found their way into the ICNT. The Contact Group on First Committee Matters proposed the following at the Eighth Session:
Transfer of Technology - Suggested Amendments:

4(d) Redraft as follows:

The qualification standards shall require that every applicant shall undertake:

(i) (no change)

(ii) " "

(iii) " "

(iv) " "

4 bis (a) " "

(i) delete "non reserved"

(ii) redraft as follows:

Undertake to use, in carrying out activities in the area, technology other than that covered by subparagraph (iii) only if he has obtained a legally enforceable undertaking from the owner of the technology that he will, if and when the Authority so requests, make available to the same extent as made available to the contractor, to the Enterprise that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions.

(iii) in line 4, delete "which he is legally entitled to

transfer" and replace by "over which the contractor has a power of disposition".

4 bis (b) in the third sentence, delete the words following: "either party may", as well as the two last sentences, and replace by "within 60 days, refer the matter to the Law of the Sea Tribunal for its decision. If the contractor does not comply with the decision within a period (30) days thereof, the contractor shall be liable to penalties with reference to his principal contract in accordance with the provisions of Paragraph 12 of this Annex."

The obligation of the contractor specified in this paragraph in respect of transfer of technology includes technology relating to the exploration and exploitation of the resources of the area as well as transportation and processing of minerals recovered therefrom.¹⁴

The Group of 77 has made a significant and worthwhile contribution towards the transfer and accessibility of technology to the Enterprise. Worthwhile contributions in reaching consensus on the following subjects were made: Training of Personnel; Control by the Authority; Data Transfer; Secrecy; Title to Minerals; Transfer of Rights, etc. The Group of 77 certainly has made an effort to implement the Principles of Equity and the Common Heritage of Mankind in the seas. These principles were never abandoned and, as a consequence, the conference was able to achieve constructive results and agreement on very difficult issues.

FUTURE TASK OF LEGISLATORS

The future task of legislators in their efforts to embody in their respective national legislation provisions of the treaty text will not be at all easy. It will require a thorough and comprehensive understanding of the jurisdictional distribution of powers between coastal states and the international community. Coastal states are given legislative competence with varying degrees of regulative exclusivity

depending upon the particular zone concerned. In some instances, the exercise of their legislative prerogative must be done in conformity with internationally accepted rules and standards. There can be little doubt that the ICNT will act as a guide, and, indeed, the main source from which national legislation will be modelled.

For instance, national legislation on the territorial sea will have to reflect, and where necessary conform to, the internationally accepted freedoms and to the restrictions granted to foreign states vis-à-vis the coastal state. Countries whose national legislation does not conform to the treaty's provisions on the territorial sea will be called upon by the international community to bring their legislation in line with the accepted norm.

Prior to UNCLOS III, coastal state jurisdictional claims were generally restricted within narrow limits. This system was primarily evolved by the large maritime powers where interests were best served by ready access. The regime that was traditionally accepted for the governance of ocean space and resources was "Freedom of the Seas". UNCLOS III has drastically altered the old order. The Convention is normally divided into two broad subject areas -- the part of the ocean and ocean floor lying within national jurisdiction, and the international sea-bed area beyond. The water column and sea surface beyond the exclusive economic zone remained the high seas and, as such, subject to internationally formulated rules and standards, whereas the area within national jurisdiction concerned states. It is in this latter area that states can exercise legislative competence with respect to:

- (a) Rights and obligations in the Exclusive Economic Zone;
- (b) Continental Shelf;

- (c) Maritime boundary delimitation and settlement of disputes;
- (d) Territorial Sea and Contiguous Zones;
- (e) Regime of Islands;
- (f) Access of landlocked states to and from the sea, and freedom of transit;
- (g) Marine scientific research - (States individually or States as a regional body);
- (h) Protection and preservation of the marine environment.

States bordering enclosed and semi-enclosed seas should co-operate with each other in advancing common legislation, either on a regional or sub-regional basis.

Legislators in the future will have to adopt a more international approach since the states will not only have to consider their own national interests, but invariably the interests of a particular region, or that of the global community at large. Matters such as marine pollution, marine scientific research, and fisheries management within the area of national jurisdiction do not respect political boundaries. Legislators will increasingly have to solicit international, regional or sub-regional co-operation to better tackle and deal with the problems that confront them in this area.

Legislators will also have to pay greater attention to designing national legislation in accordance with inter-governmental, non-governmental and United Nations related organizations, since these organizations will have a tremendous impact in shaping the New Ocean Order. The author particularly calls attention to such organizations as IOC, UNESCO, WMO, FAO, UNEP, UNDP, WHO. National legislation will have to reflect their presence; it also will have to acknowledge their jurisdictions in specific areas and their methods of operation.

The general basis for international co-operation was furnished by

the adoption of the Action Plan for the Human Environment at the 1972 United Nations Conference on the Human Environment at Stockholm and the subsequent formation of the United Nations Environment Programme as mobilizer and co-ordinator of efforts at all levels to protect and preserve the biosphere from unnatural stresses due to human activity. Legislators in the future will have to forge some form of international and, whenever applicable, regional co-operation in order to ensure uniformity and consistency of legislation in this area.

The Caribbean Sea is an example of a regional sea where legislation will have to be contemplated on a regional basis. Article 123 of the ICNT contemplates that states bordering seas such as the Caribbean should co-operate with each other in the exercise of their rights and duties under the Convention.

The author can envisage four distinct areas where legislators in the Eastern Caribbean sub-region of Dominica, St. Lucia, St. Vincent and Grenada can co-operate in having uniform legislation. First, legislation is necessary to govern the needs and uses of their shoreline.

If these people decide to exploit their shoreline for recreational and conservation purposes, they will have to implement a Master Plan whereby areas will be zoned and designated for specific uses. This plan can be applicable throughout the region, so that certain areas of the islands can be designated for:

- (a) recreational activities and tourism;
- (b) sand withdrawal for the construction industry;
- (c) garbage disposal and sewer treatment plants;
- (d) mariculture and aquaculture.

In addition, common legislative enactments with respect of setting

catch quotas, seasonal quotas with respect to certain species of fish, and general fisheries management legislation would be of mutual interest and benefit in this region. The environmental effects of population growth should be considered, along with the increasing industrial and economic development and attendant increase in pollution. These factors represent serious threats to the ecology of the Caribbean and the Gulf of Mexico. Legislators in these areas will sooner or later come to the realization that these problems can only be effectively dealt with by co-operation and uniformity of laws.

UNITED NATIONS ENVIRONMENTAL PROGRAMME

1. A Regional Approach to Marine Pollution Problems

U.N.E.P. is a United Nations organization that is actively involved in regional marine development work. It is particularly active in regional seas programmes designed to carry out environmental assessment and management tasks in eight regional seas: the Mediterranean, the Caribbean, the Red Sea, the Persian (Arabian) Gulf, the Gulf of Guinea, the East Asian Seas, the Southwest Pacific and the Southeast Pacific.¹⁵

The agency has a fund which is voluntarily supported by the members of the United Nations to the extent of approximately \$120-\$130 million for a four-year period, so that, of the average, it spends somewhere in the vicinity of \$40 million per year.¹⁶ Unlike a number of other U.N. agencies, U.N.E.P. takes a rather unique approach to environmental problems. It plays a catalytic role in that it uses its funds largely to initiate programmes; however, once the programme is underway, U.N.E.P. withdraws and moves to some other troubled spot. As a result of this approach, U.N.E.P. encourages multilaterally funded enterprises.

The forerunner of U.N.E.P. was the 1972 Stockholm Conference on the Human Environment. This Conference recognized the critical state of the global environment and the need to come to grips with the constantly deteriorating situation. The objective of the Conference was to formulate a strategy for a sound global environmental policy encompassing all aspects of pollution and contamination of the environment.¹⁷ The Conference made specific mention of the acute problems of enclosed and semi-enclosed seas, and implicitly indicated that such problems could be handled by specific programmes. U.N.E.P. came into existence as a result of this Conference and was structured to address itself to these specific programmes of closed and semi-enclosed seas.

The first time that a regional approach in dealing with closed and semi-enclosed seas was generally endorsed as to modus operandi of U.N.E.P. was at the Second Session of the U.N.E.P. Governing Council in 1974. The Council said, inter alia:

1. Priority should be given to regional activities with the possible establishment of a Program Activity Center in the Mediterranean.
2. UNEP should encourage and support the preparation of regional agreements and conventions on the protection of specific bodies of water.¹⁸

To this end, U.N.E.P. embarked on its Mediterranean Program. This programme was a comprehensive package to deal with pollution in the Mediterranean in an integrated manner. The package included legal, scientific monitoring, and eco-economic development aspects.¹⁹ The legal package consisted of formulating a framework convention, attached to which would be technical protocols. The convention spells out obligations for co-operation among the states of the Mediterranean; however, the gist of the

matter rests within the protocols. ²⁰ U.N.E.P. has met with tremendous success in its attempts to clean up the Mediterranean. As a matter of fact, it is contemplating directing its energies to some other sea. It is hoped that, following a regional conference in Grenada in the winter of 1981, U.N.E.P. will be invited to participate with other regional governments in the hope of finding a solution that would facilitate the regulation and control of the flow of pollution into the Caribbean Sea.

INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION

The legal competence of an intergovernmental organization is indicated by its capacity to perform assigned tasks and necessary functions. To have legal standing, the organization must be legitimate. It must be recognized by the international community of member states and empowered by charter or other constitutional instrument to perform certain functions necessary to the fulfillment of its assigned tasks and goals. It is submitted that the I.O.C. possesses the legal competence to perform the functions necessary to the fulfillment of its stated objectives.

Establishment of the I.O.C.

One factor that legitimizes an international organization is the nature of its beginnings. International organizations are established by national governments in two ways: (1) by international conference called for the express purpose of creating a new organization and, (2) by decision of an existing international body to establish a new organization.

The I.O.C. is a UNESCO-related organization and was established pursuant to an International Conference on Oceanographic Research (ICOR)

held in Copenhagen in 1960 and attended by representatives of a number of nation states interested in marine science. Following the conference, it was recommended that an Intergovernmental Oceanographic Commission be established within UNESCO. This recommendation was introduced at UNESCO's Eleventh General Conference in November, 1960 and, with unanimous consent, the I.O.C. was "legally" established within UNESCO's Department of Natural Science.²¹

I.O.C. develops, recommends and co-ordinates international programmes for further scientific investigation. In addition to its regional co-operative investigation, the organization is involved in global and regional ocean services, such as the tsunami warning system in the Pacific, and the Training, Education and Mutual Assistance in the Marine Sciences (TEMA), which has a primary function of marine science and technology assistance to developing countries both individually and on a group basis. I.O.C. is currently attempting, in co-operation with U.N.E.P., to develop regional programmes based on such models as the Baltic Sea Program and the Mediterranean Program.

The I.O.C. has had considerable success in its Caribbean regional programme through its subsidiary IOCARIBE.²² The present IOCARIBE effort came about as a result of a previous seven-year trial I.O.C. programme called the Cooperative Investigation of the Caribbean and its Adjacent Regions (CICAR). CICAR met with some measure of success in the region in that it provided a focus on marine research in the area with the resulting development of oceanographic capabilities in many of the member states.²³

In 1975 in Mexico City, CICAR member states voted unanimously to

request I.O.C. to implement a six-year trial effort aimed at developing a permanent regional co-operative body which would work with the FAO and with the Western Central Atlantic Fisheries Commission (WECAFC) in developing regional programmes.²⁴ I.O.C. agreed to such a programme and, in March 1976, established a regional secretariat and convened a meeting of a group of experts in Mayaguez, Puerto Rico to draft a list of regional programmes that such a body might consider.²⁵ Following the CICAR final symposium and subsequent meeting in Caracas, Venezuela in July, 1976, the new regional body IOCARIBE met to consider programmes drafted by the group. The impetus here was to foster projects which were relevant to the resource needs of the region and within the regional capabilities of the member states. Although the prospect was envisaged whereby, in countries lacking the necessary capabilities, IOCARIBE would seek to implement training, education and mutual assistance. It is interesting to note that, under the auspices of I.O.C. in co-operation with IOCARIBE, three programme areas have developed:

- (a) A region-wide programme in Marine Pollution Monitoring;
- (b) An Oceanographic Program in Support of Fisheries in the Lesser Antilles and Central America;
- (c) A programme in Environmental Geology.²⁶

In December, 1976 a workshop was sponsored by FAO, IOC and UNEP on Marine Pollution Monitoring, during which a regional plan was developed for monitoring pollution in the region. Following this workshop in Trinidad, another on Oceanographic Programs related to fisheries was sponsored by IOCARIBE in Martinique in November, 1977. This workshop defined two programmes in detail: the first related to trap fisheries of the Lesser Antilles, such as used in St. Kitts, Dominica, St.

Lucia, St. Vincent and Grenada, and the second programme related to the lobster fishery off the coast of Central America.²⁷

A third workshop was sponsored by IOCARIBE in late 1978 in Trinidad on the subject of marine ecology. This workshop attempted to define the elements of the programme and develop more detailed plans for a pilot project in either the Gulf of Panama, off Costa Rica, or in waters off the Dominican Republic. Although a number of states are interested in the implementation of the above-mentioned programmes; not all states stand to benefit equally from them. This raises the question of funding. The United States, the largest industrialized nation, is the only one that may be able to financially support a programme that may not be of direct benefit to it. On the other hand, countries such as Mexico, Colombia and Cuba, who are all influential member states because they participate in all meetings, do not see their role as that of helping other IOC interests in the Lesser Antilles or Central America.

The concept of a regional approach to marine-related matters in the Caribbean is inevitable and necessary. The exploitation of fisheries and protection of critical fisheries habitats require a regional approach in research and in the protection and management of these resources. No one country can provide the financial support necessary to implement regional projects; however, there is some promise in this regard since a number of countries already have contributed to the IOC trust fund -- e.g. Venezuela \$50K, Panama \$2K, Mexico \$4.5K, the U.S.A. \$25K (for participant travel and workshops). In addition, Trinidad, Costa Rica, the Netherlands and the United States have either supported salaries of the Regional Secretariat or services to it.²⁸ However, the 1979/80 Regional Secretariat forecasted \$305,500 as being necessary to conduct

these programmes, whereas only \$139,970 could be identified.²⁹ Funding will always be a problem with such regional projects; nevertheless, it is hoped that the need will transcend difficulties and that marine regionalism will come closer to being an existent fact in the Caribbean.³⁰

WORK OF FOOD & AGRICULTURAL ORGANIZATIONS
IN AID OF MARINE RELATED MATTERS

Within the United Nations system, the FAO, IOC and UNEP are the major marine regional actors. Under FAO auspices there are eight regional fisheries commissions and councils, to which over 80 developing countries belong.³¹ Two of these commissions are concerned with inland (fresh water) fisheries. Although the fisheries organizations are primarily concerned with acquiring data on the conservation and preservation of fisheries stocks within their geographical areas, and with the gradual development of sound management practices, they also have an important role in expanding and improving the fisheries infrastructures, including harvesting, processing and marketing of catches.³² To promote these ends, the local or regional organizations attempt to solicit funding for their respective projects.

FAO interest in marine regionalism is perfectly understandable in view of the nature of fishery resources and the fact that these resources are shared by a number of countries, including the international community if one considers the fisheries resources of the high seas. As early as 1948, the first attempt was made by FAO to form a regional organization, the Indo-Pacific Fishery Council. This body, with 19 member nations, is still in existence.³³ This Council functioned, more or less, like a kind of fisheries science club, meeting once annually to discuss

matters of general importance. These forums were not particularly concerned with development and management of the fisheries resources in any real sense. It was not until the decade of the 60's that regionalism assumed added importance and the concepts of development and management were emphasized. Thus, in 1967, another regional commission, this time — the Indian Ocean Fishery Commission (IOFC) was formed. This body now has 36 members and is primarily concerned with management of the resources in the ocean. By 1969, IOFC aligned itself with UNEP on a regional project for the Indian Ocean, establishing a pattern that was followed by other FAO Commissions in the South China Sea, the Caribbean, and the West Coast of Africa.³⁴ This alignment of UNEP/FAO has been a healthy alliance for the purpose of funding and for assuring the uniformity of projects. Most of the activities funded by UNEP projects are development oriented, such as stock assessment, statistical advice, management techniques. Both the IPFC and IOFC have since formed tuna-management committees to look at a multiplicity of factors, including stock assessment and related statistical needs, as a matter of priority before any specific management measures are introduced.

The FAO Caribbean arm is called the Western Central Atlantic Fisheries Commission (WECAFC), with activities extending to both the Caribbean Sea and the Gulf of Mexico. States bordering these two bodies of water constitute the great majority of WECAFC membership. The WECAFC can therefore be considered the regional organization responsible for co-ordinating the management, conservation, exploration and exploitation of the living resources of the sea.³⁵ WECAFC was established in 1973 by the 61st Session of the FAO Council.³⁶ Its membership, open to

all FAO members and associate members, includes 22 countries: Bahamas, Barbados, Brazil, Colombia, Cuba, France, Guatemala, Guyana, Haiti, Jamaica, Japan, Republic of Korea, Mexico, Netherlands, Nicaragua, Panama, Poland, Spain, Trinidad and Tobago, United Kingdom, United States, and Venezuela.³⁷

The conservation and management objectives of WECAFC include the following:

- Promote and assist in the collection of national statistics and biological data relating to fisheries in general, and the shrimp fisheries in particular, and to provide for the compilation and dissemination of these data on a regional basis.
- Facilitate the co-ordination of national research programmes and promote, where appropriate, the standardization of research methods.
- Promote the interchange of information relating to the fisheries of the region.
- Promote and co-ordinate, on a national and regional basis, studies of the effect of the environment and of pollution on fisheries, and studies of appropriate methods of control and improvement.
- Understanding of the status of the stocks of the region and development of an appropriate statistical base and providing these key elements in conservation and management.

The WECAFC recently became involved in a UNDP/FAO Regional Fisheries Development Project, with headquarters in Panama. This project is designed to accommodate a number of developmental objectives, inter alia, the development of aquaculture and stock improvement, the establishment of national or regional institutions for educating and training nationals in marine resource management, and to further assist member governments

in establishing national policies for the development and utilization of the reserves consistent with national objectives, and the conservation and improvement of these resources.

It must be noted, however, that the resolution of regional fishery problems for improved conservation and management and the utilization of the fishery resource of the region will require adequate funding. The IOCARIBE and WECAFC are not adequately funded in light of the tasks they are called upon to perform. Fisheries regionalism in the Caribbean must succeed if the marine resources of the area are to be conserved and effectively managed. The importance of regional arrangements under which countries collect data and pool their scientific information and expertise hardly needs stressing. All coastal states, and especially those with, at present, limited scientific capacity, can benefit from studies carried out through regional bodies. The role of FAO and its affiliate bodies in establishing a framework for national management and optimum utilization of the fishery resources can be invaluable.

2. A Concerted Approach for the High Seas

The important aspect of the exclusive economic zone concept is that valuable ocean resources -- i.e. fish, etc. -- are removed from hitherto high seas jurisdiction and placed under national control. The solution to the question of the deep sea-bed also involves removing it from the "free for all" and placing it under international control. There are billions of tons of "manganese nodules" lying on the deep sea-bed of the Pacific, Indian and Atlantic Oceans. Already many firms in a number of countries (United States, Japan, Federal Republic of Germany, United Kingdom, the Netherlands and Canada) have spent many

millions on research and development and have formed four major international consortia committed to joint commercial mining operation. The Group of 77 has been fighting hard to gain control of the International Sea-bed Authority, which is to manage "the area". It is in the First Committee that the battle lines between rich and poor countries are most clearly drawn, and it is indeed on this issue that the Conference could succeed or fail. The poor countries see the Authority and its activities as an important device for achieving a New International Economic Order, reducing the gap in economic and political strengths between rich and poor. The rich countries continue to fight, to avoid the poor gaining any significant advantage; consequently this area of deliberations remain thorny. There are still sharp disagreements over such matters as control of marine scientific research in the sea; price and production controls of the minerals, particularly those which may compete with the exports of developing country land-based producers; the distribution of benefits from mining operations among the Authority, the miners and the international community; dispute settlement; and the machinery of the Authority itself.

In recent negotiations, much emphasis has been placed on building the financial and technological capabilities of the Authority and its Enterprise so that operations can commence as early as possible and continue to keep pace with the operations of other entities.

With respect to special rules and procedures, a simple majority is required to adopt a substantive decision in a committee (the first step), and a two-thirds majority of those present and voting is needed in the Plenary, provided that that majority includes at least a majority of states participating in the Conference.

The "gentlemen's agreement" is appended to the Rules of Procedure in these terms: "The Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted."

CONCLUSION

The continuation of the Ninth Session of the Third United Nations Law of the Sea Conference begins in Geneva on or about 27 July, 1980. A revised text was compiled and submitted to respective governments following the end of the first part of the Ninth Session. This revised text will be the basis of discussion at Geneva; it is hoped that consensus will be reached, followed by a signing ceremony in Caracas, Venezuela in 1981, thereby marking the establishment of a new law for the sea.

There is one very important observation that one can make about the entire conference from its inception, and that is its determination to foster more co-ordination of ocean uses and resources.

The 200-mile zone is now conceived as providing an opportunity to nationalize marine activities. Some writers refer to it as a multi-purpose, multi-functional zone.³⁸ Others refer to it as a zone warranting effective and national resource management.³⁹ Present conflicts of use are apparent -- oil rigs hindering fishing and navigation, dredging interfering with fisheries and coastal amenities.

States will need, now more than ever before, the technical and scientific know-how in order to determine the value of all ocean-related activity and to make policy decisions which will, in the final analysis,

involve choices and trade-offs between alternative uses.

The need for regional and sub-regional co-operation in many areas, particularly in fishery and pollution matters, is producing some coordinating efforts. Among world-wide bodies, the United Nations and many of its specialized agencies can be expected to adopt their policies and programmes to accommodate the requirements of the treaties and also the needs of developing countries in their new economic zones.

The Third United Nations Conference on the Law of the Sea has not yet taken a vote on a treaty subject; the "gentlemen's agreement" has prevailed. However, the long and protracted stage of informal negotiations has drawn to a close. By July, governments will be required to debate certain aspects of the Convention that are unsuitable to them. It is at this meeting, more than any other, that the fate of the Convention will be decided.

FOOTNOTES - CHAPTER VI

¹ U.N. Resolution 2749(XXV) of the United Nations General Assembly, December 17, 1970.

² U.N. Doc. A/CONF 62/65. See Nepal Proposal.

³ Ibid.

⁴ Ibid.

⁵ U.N. Doc. A/CONF 62/WP 10/ Rev. 2, Art. 161:

⁶ Ibid.

⁷ Ibid., note 2, p. 1.

⁸ See, statement of Maurice Strong, 8 July 1974; meeting of Plenary UNCLOS III records, U.N. Doc. A/CONF 62/SR 31.

⁹ U.N. Doc. A/CONF 62/C.I./L25. April 26, 1979.

¹⁰ Ibid.

¹¹ Letter to the Honourable Joan Davenport, Assistant-Secretary Energy and Minerals, U.S. Department of the Interior, from Daniel K. Inoue, Ted Stevens, Spark M. Matsunaga, John W. Warner, United States Senators, March 21, 1979.

¹² Statement of the Hon. John M. Murphy, Chairman, Merchant Marine and Fisheries Committee, United States House of Representatives, Committee on Interior and Insular Affairs, Sub-Committee on Mines and Mining, concerning deep seabed mining legislation, H.R. 3350, April 14, 1977.

¹³ Soundings, Vol. 2, No. 3, Law of the Sea News and Commentary, April, 1977, p.4.

¹⁴ Ibid., Note 5.

¹⁵ Lewis Alexander, "Regionalism as an approach to marine science and technology transfer," 13 Marine Technology Journal, 1979, p. 30.

¹⁶ Lawrence Juda, "Proceedings of the Symposium on Marine Regionalism," University of Rhode Island, Oct. 25-26, 1979. See, Jean Claude Faby, p. 94.

¹⁷ R. M. M'Gonigle and M. W. Zacher, "Canadian Foreign Policy and the Control of Marine Pollution," in Barbara Johnson and M. W. Zacher, eds., Canadian Foreign Policy and the Law of the Sea (Vancouver; U.B.C. Press, 1977), p. 125.

¹⁸Ibid., Note 16, p. 95.

¹⁹Ibid., Note 16, p. 95-96.

²⁰Ibid.

²¹Margaret E. Galey, "The Intergovernmental Oceanographic Commission: Its Capacity to Implement an International Decade of Ocean Exploration," Occasional Paper Series Law of the Sea Institute, (1973) 5.

²²Ibid., Note 2, p. 112.

²³Ibid.

²⁴Ibid.

²⁵Ibid.

²⁶Ibid., p. 113.

²⁷Ibid., p. 115.

²⁸Ibid., p. 116.

²⁹The eight regional fisheries bodies are:

- CARPAS - Regional Advisory Commission for the Southwest Atlantic
- CECAF - Fisheries Committee for the Eastern Central Atlantic
- GFCM - General Fisheries Council for the Mediterranean
- IOFC - Indian Ocean Fishery Commission
- IPEC - Indo-Pacific Fishery Commission
- WECAFC - Western Central Atlantic Fishery Commission
- CIFA - Committee for Inland Fisheries of Africa
- EIFAC - European Inland Fisheries Advisory Commission

³⁰Ibid., Note 1, p. 31.

³¹Ibid., Note 2, p. 90. James Storer; speaks on FAO and marine regionalism, Symposium on Marine Regionalism, October 25-26, 1979.

³²Ibid.

³³U.N. Doc. A/CONF 62/WP 10/ Rev. 1 at p. 71, Art. 123.

³⁴Ibid., Note 16, p. 68.

³⁵Ibid.

³⁶Ibid.

³⁷Ibid., Note 16, p. 69.

³⁸Ibid.

³⁹ Douglas M. Johnston and Edgar Gold, The Economic Zone in the Law of the Sea: Survey, Analysis and Appraisal of Current Trends, Law of the Sea Institute, University of Rhode Island, Occasional Papers Series No. 17, June 1973, p. 8.

⁴⁰ See, for example, Jon L. Jacobson, "Future Fisheries Technology and the Third Law of the Sea Conference," in H. Gary Knight, The Future of International Fisheries Management (1975), pp. 51-92, at 76-80. Quoted in Douglas Johnston and E. Gold, "Extended Jurisdiction: Impact of UNCLOS III on Coastal State Practice."

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APPENDIX A

Bases of Discussion:

A state possesses sovereignty over a belt of sea round its coasts. This belt constitutes its territorial waters.

The sovereignty of the coastal state extends to the air above its territorial waters to the bed of the sea covered by those waters and to the subsoil.

Bases of discussion:

The breadth of the territorial waters under the sovereignty of the coastal state is three miles.

Nevertheless, the breadth of the territorial waters under the sovereignty of the coastal state shall, in the case of the states enumerated below, be fixed as follows:

On the high seas adjacent to its territorial waters, the coastal state may exercise the control necessary to prevent within its territory or territorial waters the infringement of its custom or sanitary regulations, interference with its security by foreign ships. Such control may not be exercised more than 12 miles from the coast.

1. The territory of a state includes a belt of sea described in this convention as the territorial sea; sovereignty over this belt is exercised subject to the conditions prescribed by the present convention and other rules of international law.
2. The territory of the coastal state includes also the air space above the territorial sea, as well as the sea bed and the subsoil. Nothing in the present convention prejudices any conventions or other rules of international law relating to the exercise of sovereignty in these domains.

Conference Draft:

NO AGREEMENT.

NO AGREEMENT.

NO AGREEMENT.

APPENDIX B

DEFINITION OF THE CONTINENTAL SHELF IN ICNT

ARTICLE 76

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 seaward boundary 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, such points to be defined by co-ordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond the 200 nautical mile exclusive economic zone 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 taking into account 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 adjacent or opposite States.

APPENDIX C

ICNT, 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, such baselines shall remain effective until changed by the Coastal State in accordance with this Convention.
3. The drawing of such 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.
4. Straight baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are primarily 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 a long usage.
6. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

APPENDIX D

ICNT, ARTICLE 10: BAYS

1. This Article relates only to Bays, the coast of which belong to a single State.
2. For the purpose 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 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 miles, a straight baseline of 24 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 any case where the system of straight baselines provided for in Article 7 is applied.

APPENDIX E

Statement of the Chairman of the Group of 77 (Ambassador Satya Nandan of Fiji) Declaring the Position of the Group in Unilateral Legislation on Deep Sea-bed Mining

"The Group of 77 is firmly of the view that the Declaration of Principles Governing the Sea-bed and Ocean Floor and the Resources Thereof is declaratory of customary international law. It believes that all activities regarding the exploration and exploitation of the resources of the deep sea-bed and other related activities can only be carried out legally if governed by the international regime to be established by an international treaty of a universal character generally agreed upon. Consequently, the Declaration clearly makes illegal, as being contrary to customary international law, the carrying out of such activities prior to the establishment of such a regime, whether or not such activities are sought to be regulated by the national legislation of one or more countries.

At a time when states are engaged in serious and productive negotiations at the Third United Nations Conference on the Law of the Sea, and agreement on an international regime appears to be within reach, the action of some states participating in the Conference, in preparing national legislation purporting to authorize deep sea-bed mining on a unilateral basis, is not only illegal but also does not conform to the accepted principles and ethical standards of the parties to international negotiations. It is designed to frustrate the efforts of the international community to reach general agreement on an equitable regime that would benefit mankind as a whole, and the developing countries in particular.

The Group of 77 categorically rejects the view that the enactment of unilateral legislation has any basis whatsoever in international law. The enactment of such legislation will undoubtedly poison the atmosphere of the negotiations and would, most probably, lead to a breakdown of the Conference.

The responsibility of this consequence must lie squarely on those who are deliberately attempting to pre-empt the results of the Conference. The frustration of the Conference, through the calculated act of a group of the industrialized countries, places in jeopardy not only the substantial results achieved by this Conference in other areas of law of the sea, but also endangers the future of the entire system of multilateral negotiations under the auspices of the United Nations.

The undue haste with which certain of the industrialized countries rush to utilize their technological advantage to grab the resources of the common heritage is yet another example of the insensibility of these states to the ever-widening economic gap between the developing and the developed world, and the legitimate demands of the developing countries for an equitable share of the wealth of this planet.

The Declaration of Principles unequivocally asserts that the deep sea-bed area is not subject to appropriation or the exercise of sovereignty or sovereign rights by any state and, accordingly, bilateral legislation cannot serve as a legitimate foundation for the acquisition of rights in the area. Investors and mining companies which intend to obtain authorizations to mine the deep sea-bed under unilateral legislation must take notice that such legislation cannot confer any right whatsoever to mine any part of the international sea-bed area, and that consequently no such right will be recognized in the international treaty under negotiation. Any activity by a company under such purported authorization would be open to challenge at any time in an appropriate forum within any jurisdiction in which that company has assets. And it is open to the members of the international community to take such other measures as may be appropriate."

APPENDIX F

DECLARATION OF PRINCIPLES GOVERNING THE SEA-BED AND THE OCEAN FLOOR,
AND THE SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION

UN GENERAL ASSEMBLY RESOLUTION 2749 (XXV), 17. DECEMBER 1970

The General Assembly, Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969, concerning the area to which the title of the item refers,

Affirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national-jurisdiction, the precise limits of which are yet to be determined,

Recognizing that the existing legal regime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources,

Convinced that the area shall be reserved exclusively for peaceful purposes and that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole,

Believing it essential that an international regime applying to the area and its resources and including appropriate international machinery should be established as soon as possible,

Bearing in mind that the development and use of the area and its resources shall be undertaken in such a manner as to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities,

Solemnly declares that:

1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.
2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.
3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of this Declaration.
4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established.
5. The area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked without discrimination, in accordance with the international regime to be established.

6. States shall act in the area in accordance with the applicable principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether landlocked or coastal, and taking into particular consideration the interests and needs of the developing countries.

8. The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race.

9. On the basis of the principles of this Declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character,

generally agreed upon. The regime shall, inter alia provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof, and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

10. States shall promote international co-operation in scientific research exclusively for peaceful purposes:

a. By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

b. Through effective publication of research programmes and dissemination of the results of research through international channels;

c. By co-operation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes. No such activity shall form the legal basis for any claims with respect to any part of the area or its resources.

11. With respect to activities in the area and acting in conformity with the international regime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures for, inter alia:

a. The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

b. The protection and conservation of the natural resources of the area and the prevention of damage to the flora and fauna of the marine environment.

12. In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States, which may be affected by such activities. Consultations shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

13. Nothing herein shall affect:

a. The legal status of the water superjacent to the area or that of the air space above those waters;

b. The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the area, subject to the international regime to be established;

14. Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources,

whether undertaken by governmental agencies or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international regime to be established. The same responsibility applies to international organizations and their members, for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international regime to be established.