EXTENSION AND DELIMITATION OF NATIONAL SEA BOUNDARIES IN THE MEDITERRANEAN

by

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I. THE PHYSICAL BACKGROUND.

Eighteen sovereign entities have coasts on the Mediterranean. They are Morocco, Algeria, Tunisia, Libya, Egypt, Israel, Syria, Cyprus, Turkey, Greece, Albania, Yugoslavia, Italy, Malta, France, Monaco and Spain. In addition, a nineteenth sovereign entity, the United Kingdom, has two dependent territories in the Mediterranean, namely Gibraltar and the Sovereign Base Areas on the island of Cyprus.

The Mediterranean Sea extends for about 3,700 kms eastward from the Strait of Gibraltar to the coast of Syria. Its area is about 2,970,000 square kms or ten times the size of Italy. It consists of two distinct parts separated by a submarine platform which connects Sicily and North Africa.

The western part, which is the smaller of the two, can be divided into several distinct areas:

(a) The Balearic Basin which descends rapidly off the coasts of North Africa, the French Riviera, Corsica and Sardinia to reach a maximum depth of 3,180 metres off the west coast of the last island. Off the coasts of eastern Spain and in the Golfe du Lion there is a continental shelf with a maximum breadth of 60 kms;

(b) The Tyrrhenian Basin which is relatively shallow in the north between Corsica and the Italian mainland but descends rapidly further south to reach a maximum depth of 3,731 metres. In the south-east of this basin, north of Sicily, there are volcanic islands and submarine peaks.

The eastern part can also be divided into several distinct areas:

(a) The Ionian Basin, which extends from the Strait of Otranto southward to the coasts of Libya and Tunisia. It descends to nearly 5,000 metres south of Cape Matapan, and has practically no islands; There is a broad

continental shelf in the Gulf of Gabes;

(b) The Levantine Basin which forms the south-eastern part of the Mediterranean. This basin is separated from the Ionian Basin by a submarine ridge or sill located between Crete and Libya. It descends to about 4,500 metres near Rhodes, and contains a sedimentary continental shelf over 100 kms broad off the Nile estuary. The most significant island in the area is Cyprus;

(c) The Adriatic Sea which is 770 kms long and has a maximum width of 200 kms. Its average depth is about 250 metres and most of it is shallower than this, making it the shallowest part of the Mediterranean;

(d) The Aegean Sea which is an area of geographical instability and subsidence. The peninsulas and islands thereof continue the geological trend and structure of the adjacent mainlands.

The submarine platform linking the two parts of the Mediterranean is less than 200 metres deep over most of its area. It contains several islands such as Lampedusa, Pantelleria and Linosa under Italian sovereignty, as well as the Maltese islands.

An exchange of water, some in the form of deep currents, takes place with the Atlantic Ocean and a smaller exchange with the Black Sea. The inflow of water through runoff and precipitation is less than the loss through evaporation, causing the salinity of the Mediterranean to be higher than in the neighbouring Atlantic.

The Mediterranean Sea is connected to the Atlantic Ocean by the Strait of Gilbraltar. It is connected to the Black Sea by the Dardanelles, the Sea of Marmara and the Bosphorus. The Dardanelles narrows to about 1,700 metres.

The Strait of Gilbraltar is about 58 kms long and at its narrowest about 13 kms wide between Point Marroque in Spain and Point Cires in Morocco. Both Morocco and Spain claim a territorial sea of 12 nautical miles which means that most of the Strait lies in the territorial sea of one or the other State. As Spain possesses an enclave, Ceuta, on the southern coast of the Strait and at its extreme east end, in theory the whole width of the Strait for a few

kms consists of Spanish territorial sea. The bed of the Strait is irregular with some submarine canyons, and fast currents pass through it both at the surface and near to the bed. The deepest part of the Strait, about 300 metres, is located near Tangier.

II. THE ECONOMIC AND POLITICAL BACKGROUND.

Other papers at this Conference will doubtless emphasise the diversity among the Mediterranean States in political systems and economic resources, the tensions between certain of them, the economic resources of ths Mediterranean Sea itself, the problem of its pollution from both land and sea-based sources, its use by through navigation from the Suez Canal to the Atlantic, and the presence in the Sea of the military fleets of the two "Super-Powers".

III THE LEGAL BACKGROUND.

No apology is needed for asserting the importance of legal considerations to the subject matter of this Conference. For anyone with doubts, it is recommended that he reads the late Professor D.P.O'Connell's The Influence of Law on Sea Power, 1975.

1. The international law of the sea: the 1958 Conventions.

Before the particular problems of national sea boundaries in the Mediterranean can be discussed, it is necessary to explain briefly the general background of the international law of the sea.

Both the League of Nations and its successor the United Nations recognised the law of the sea to be a subject suitable for consolidation in a multilateral convention. The League of Nations Codification Conference in 1930 agreed on draft articles to regulate the legal regimes of internal waters and territorial sea but could not agree on a uniform breadth for the latter. The subject of the law of the sea was placed early on the agenda of the International Law Commission, a body of jurists appointed by the General Assembly to fulfil its function under Article 13(1) of the Charter of "promoting international co-operation in the political field and encouraging the

progressive development of international law and its codification." After 6 years' work the Commission produced draft articles in 1956 which were submitted to the first United Nations Conference on the Law of the Sea in 1958. This Conference resulted in the signature, by the majority of the States then in existence, of four conventions, dealing respectively with the Territorial Sea and the Contiguous Zone, the High Seas, the Continental Shelf and fourthly the Fishing and Conservation of the Living Resources of the High Seas. A Second United Nations Conference in 1960 narrowly failed to reach agreement on a uniform breadth for the territorial sea. After 9 years of deliberations, the Third United Nations Conference on the Law of the Sea (known hereafter as UNCLOS III) agreed in April 1982, by 130 votes to 4 with 17 abstensions, to proceed to the signature later this year of a single convention which will cover most aspects of the subject.

It is proposed to explain in some detail the legal concepts relevant to a discussion of national sea boundaries in the Mediterranean, taking the historical starting-point to be the 1958 Conventions.

All four Conventions are in force for the States which have ratified or acceded to them but the number of States parties to them is not great in proportion to the total number of States now in existence, or even to the total number of coastal States. Thus the High Seas Convention has about 60 parties, the Territorial Sea and Contiguous Zone Convention about 50, the Continental Shelf Convention about 55 and the Fisheries Convention about 50. Three of the Conventions, Territorial Sea, Continental Shelf, and High Seas, were to a large extent codifications of existing rules of customary international law or reflected general principles of international law. Thus the fact that many States are not parties to some or any of these three Conventions does not mean that such rules and principles are not binding on those states in any form. It will be as customary rules or as general principles that they will be binding, however, not as treaty rules. The practice of the Mediterranean States in respect of the Conventions will be discussed later.

2. Relevant concepts in the international law of the sea.

(a) Internal waters.

Article 5(1) of the Convention on the Territorial Sea and Contiguous Zone 1958 reads:

"Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State."

A coastal State exercises sovereignty over these internal waters, and equally over their subjacent bed and subsoil and superjacent airspace. Although this is not stated expressly in the above Convention it is clear that this is the case both from the customary international law which applied at the time of the Convention and still applies, and as a deduction a fortiori from the Convention's treatment of the concept of territorial sea.

Included in internal waters are ports, harbours, estuaries and bays, the latter being defined in a complex provision, Article 7, which lays down a maximum closing line of 24 nautical miles. Also within the concept of internal waters are so-called "historic bays", even though in excess of 24 miles in breadth as well as waters enclosed within a system of straight baselines drawn parallel to the general direction of the coast where the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast. The use of the system of straight baselines to enclose such features was recognised as lawful by the International Court of Justice in the Anglo-Norwegian Fisheries Case in 1951 and is now provided for in Article 4 of the above Convention of 1958.

The significance of internal waters for the purposes of this paper is that as the coastal State has full sovereignty therein it has the right to forbid navigation and any other activity on, under or over them. There is some mitigation of the rigour of this conclusion in respect of sea areas which have been enclosed by straight baselines. If the areas in question were previously part of the territorial sea or high seas, a right of innocent passage for foreign ships is preserved therein. The meaning of "innocent passage" will be discussed below.

(b) Territorial Sea

Article 1(1) of the above Convention reads:

> "The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea."

Article 2 reads:

> "The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil."

The baseline for the measurement of the territorial sea is normally the low-water line along the coast as marked on large-scale charts recognised by the coastal State, although the baseline may also be the seaward limit of internal waters, e.g. the closing line in bays. Article 6 of the above Convention states that "the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea." The Convention, however, does not prescribe the maximum limit of the territorial sea, and, as already mentioned, a second United Nations Conference failed to secure agreement on this in 1960.

The sovereignty of the coastal State over its territorial sea is fettered by the right of innocent passage for the ships of all other States whether coastal or not. Passage is defined in Article 14(2) of the above Convention to comprise navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters. Article 14(4) declares that "passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State," and a coastal State is permitted to prevent passage which is not innocent.

Article 17 provides that foreign ships in innocent passage "shall comply with the laws and regulations enacted by the coastal State in conformity with these Articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation." Article 19 enjoins the coastal State, however, not to exercise its criminal jurisdiction on board a foreign ship in innocent passage save only if (i) the consequences of the crime extend to the coastal State, or (ii) if the crime is of a kind to disturb the peace of the coastal State or the good order of the territorial sea, or (iii) the assistance of the local authorities has been requested by the captain or consul of the flag-State, or, (iv) such exercise of jurisdiction is necessary for the suppression of illicit traffic in narcotic drugs. Nor may a coastal State exercise civil jurisdiction on board a foreign ship in innocent passage.

The test of "innocence" is still a subject of controversy. The view favoured by ship-owning States is that it is objective, and only the manner of passage may be innocent or non-innocent, and not extraneous factors such as the cargo carried, the type of ship, potential as opposed to existing risks, etc. The view favoured by some coastal States is that these and subjective factors such as motive may be taken into account in assessing whether passage is innocent or not.

The provisions regarding innocent passage apply not only to privately owned merchant ships but also to government owned commercial vessels as well as to warships. In the case of warships, there is a long-standing controversy over whether they have a right to enter the territorial sea without the prior permission of the coastal State or notification thereto. This is not expressly clarified in the 1958 Convention although by Article 23 a coastal State is empowered to require a foreign warship to leave the territorial sea if it does not comply with the local regulations for passage and disregards any request for compliance with them. Foreign submarines are obliged to navigate on the surface and to show their flag.

Article 16(3) of the 1958 Convention permits the coastal State, without

discriminating among foreign ships, to suspend temporarily by notice in specified areas of its territorial sea the innocent passage of foreign ships if such suspension "is essential for the protection of its security". As will be seen later, the power to suspend innocent passage does not apply where the territorial sea is part of a strait used for international navigation.

The delimitation of the territorial sea is provided for in Article 12 (1) of the above Convention as follows:

> "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 provisions of this paragraph shall 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 with this provision."

(c) Contiguous Zone.

Article 24 provides as follows:

> " 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
>
> (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
>
> (b) Punish infringement of the above regulations committed within its territory or territorial sea.
>
> 2. The contiguous zone may not extend beyond twelve

miles from the baseline from which the breadth of the territorial sea is measured.

3. 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 contiguous zone 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 the two States is measured."

As most of the Mediterranean States now have a 12 mile territorial sea this provision of the 1958 Convention has lost much of its relevance. As will be shown later, the concept of the contiguous zone remains in the Draft Convention of 1982 where it is extended to a maximum distance of 24 miles.

(d) Straits.

Article 16(4) provides that there shall be no suspension of innocent passage "through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State." There is a strong inference from the fact that the provision is placed in the section of the Convention which deals with innocent passage through the territorial sea, that the other provisions relating to innocent passage apply in straits which are made up entirely of the territorial seas of the coastal States, including the requirement that submarines navigate on the surface.

Thisraises again the question whether a foreign warship has a right of innocent passage through a strait without the prior authorisation of the coastal State or States. The International Court of Justice in the Corfu Channel Case in 1949 considered that such a right existed under customary law. It also rejected an argument by Albania that in order to classify as a strait the feature had to be essential to passage between the particular two sections of the high seas in

question.

(e) Continental Shelf

Article 1 of the Convention on the Continental Shelf 1958 defines the concept as follows:

> " For the purpose of these Articles, the term 'continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres 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 seabed and subsoil of similar submarine areas adjacent to the coasts of islands. "

Article 2 reads:

> " 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploring its natural resources.
>
> 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
>
> 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
>
> 4. The natural resources referred to in these Articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable

to move except in constant physical contact with the seabed or the subsoil. "

Article 3 provides:

" The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters. "

These three Articles were considered by the International Court of Justice in the North Sea Continental Shelf Cases in 1969 to reflect existing customary international law and thus applicable even to States which were not parties to the Convention.

Article 6 of the Continental Shelf Convention sets out the rules for the delimitation of opposite and adjacent States. The respective provisions run as follows:

" 1. 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."

In the North Sea Continental Shelf Cases the International Court of Justice considered that Article 6(2) did not reflect an existing customary rule in being at the time the Convention was concluded, nor had it become such a rule by subsequent state practice. Consequently it was not binding on the Federal Republic of Germany, a non-party to the Convention. The same reasoning probably applies to Article 6(1).

(f) High Seas.

The Geneva Convention on the High Seas 1958 provides for the legal status of "all parts of the sea that are not included in the territorial sea or in the internal waters of a State." That this definition includes the waters superjacent to the continental shelf is expressly confirmed by Article 3 of the Continental Shelf Convention. It is controversial whether it applies to the bed and subsoil of the sea beyond the continental shelf.

The status of the high seas as so defined is set out in Article 2 of the Convention on the High Seas as follows:

> "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:
>
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) Freedom to lay submarine cables and pipelines;
> (4) Freedom to fly over the high seas.
>
> These freedoms, and others which are recognised by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

Article 6(1) confirms a basic rule of customary international law.

> "Ships shall sail under the flag of one State only, and, save in exceptional cases expressly provided for in international treaties or in these Articles, shall be subject to its exclusive jurisdiction on the high seas."

Two such "exceptional cases" provided for elsewhere in the Convention are piracy and the slave trade. Article 8(1) and 9 provide that warships and State owned or operated ships used on government non-commercial service shall be immune on the high seas from the jurisdiction of any other State. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas provides in Article 1(2) that "all States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals, as may be necessary for the conservation of the living resources of the high seas." Only three Mediterranean States are parties to this Convention, however, and the development of the concept of exclusive fishing zones outside the territorial sea must have diminished its significance.

(g) Hot pursuit.

Article 23 of the High Seas Convention 1958 permits a coastal State to pursue and arrest a foreign ship on the high seas if the authorities of the coastal State "have good reason to believe that the ship has violated the laws and regulations of that State." The pursuit must start when the foreign vessel is within the internal waters, territorial sea or contiguous zone of the pursuing State. If within the contiguous zone, pursuit may only be undertaken for violation of the rights for the protection of which the zone was established.

(h) Islands.

Article 10(1) of the Convention on the Territorial Sea and the Contiguous Zone defines an island as "a naturally-formed area of land, surrounded by water, which is above water at high tide." Article 10(2) then provides that

"the territorial sea of an island is measured in accordance with the provisions of these Articles" which means, for example, that the normal baseline on an island is the low-water line along the coast. An island as above defined is treated, in other words, just like any other part of State territory. Article 1 of the Convention on the Continental Shelf applies the term "continental shelf" equally to submarine areas adjacent to the coasts of islands.

3. The international law of the sea: the Work of UNCLOS III in respect of the above concepts.

The work of the United Nations which resulted in April 1982 in the adoption for signature of the Draft Convention on the Law of the Sea can be said to have started in 1967 when Mr. Pardo, Ambassador of Malta, introduced in the First Committee of the General Assembly of the United Nations an agenda item relating to the peaceful use of the seabed and ocean floor "beyond the limits of present national jurisdictions." This led to the establishment of an ad hoc Committee to study the subject, the passing by the General Assembly on 17 December 1970 of the historic "Declaration of Principles", and the decision of the General Assembly to convene a new conference to consider the law of the sea in general. The Conference met in New York in December 1973 and has since been meeting regularly. Over 150 States are now represented. The Conference has had before it a number of texts headed successively Main Trends, Informal Single Negotiating Text, Revised Single Negotiating Text, Draft Convention (Informal Text) and lastly Draft Convention. Some of the provisions in these texts have undergone little or no change from one text to another, reflecting the fact that the law is regarded as already substantially settled, other provisions have been subject to drastic changes in the course of the life of the Conference.

Taking the current Draft Convention as the relevant text, it is proposed to re-examine in the light of it the concepts which have already been discussed above in the context of the 1958 Conventions.

(a) Internal waters

The provisions in the Draft Convention are substantially similar to those in the Convention on the Territorial Sea and the Contiguous Zone 1958.

(b) Territorial Sea

Article 3 of the Draft Convention has made a substantial addition to that appearing in the 1958 Convention; it reads:

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

Article 15 relating to delimitation of territorial seas between States with opposite or adjacent coasts is in similar terms to Article 12 of the 1958 Convention already discussed.

The concept of innocent passage for foreign ships through the territorial sea is defined in the same terms as in Article 14(4) of the 1958 Convention. The Draft Convention, however, enumerates in Article 19 eleven activities which would render the passage of the foreign ship prejudicial to the peace, good order or security of the coastal state and thus "non-innocent". These are:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military devices;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of wilfil and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State.

A final residual item covers "any other activity not having a direct bearing on passage."

The Draft Convention goes on in Article 21 to provide that the coastal State may adopt laws and regulations relating to innocent passage in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic;

(b) the protection of navigational aids and facilities and other facilities or installations;

(c) the protection of cables and pipelines;

(d) the conservation of the living resources of the sea;

(e) the prevention of infringement of the fisheries laws and regulations of the coastal State;

(f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;

(g) marine scientific research and hydrographic surveys;

(h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

Articles 22 permits the coastal State to establish sea lanes and traffic separation schemes in the territorial sea.

Article 24, however, limits the power of the coastal State to control

innocent passage in its territorial sea in the following respects:

" Duties of the coastal State.

1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:

(a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage, or

(b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.

2. The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea."

Article 25 provides in terms similar to Article 16(1) and (3) of the 1958 Convention that:

"1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published."

The Draft Convention has not clarified the doubt whether a warship needs prior permission of, or must make prior notification to, the coastal State for passage through its territorial sea. Article 30 of the Draft Convention follows Article 23 of the 1958 Convention in requiring warships to comply with the laws and regulations of the coastal State concerning passage and in

empowering the coastal State to order the warship to leave the territorial sea if it fails so to comply. In other respects, however, warships remain immune from the enforcement jurisdiction of the coastal State.

(c) Contiguous zone

Article 33 of the Draft Convention repeats substantially the provisions of Article 24 of the 1958 Convention, with the important alteration that the minimum distance of the zone is increased from 12 to 24 nautical miles from the baseline of the territorial sea.

(d) Straits.

The Draft Convention makes considerable changes to the 1958 regime and it might be said that this is one of the major features of UNCLOS III. A new concept of "transit passage" has been devised which by Article 44 is not suspendable by the coastal State and so differs from the concept of "innocent passage" in the 1958 Convention. It also differs in quality from innocent passage with fewer restrictions on the vessel in transit. Furthermore, it applies to aircraft as well as ships.

Article 37 of the Draft Convention applies transit passage to:

> " ....straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. "

It would appear that such straits must fall within the territorial sea of one or the other or both of the coastal States since there is nothing in the Draft Convention (or in the 1958 Convention) to permit the coastal States to control a strait beyond the extent of their respective territorial seas simply on the ground that it is a geographical strait.

Not all straits, however, fall within the scope of transit passage. Article 38 (1) of the Draft Convention excludes transit passage from straits "formed by an island of a State bordering the strait and its mainland ... if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational

and hydrographical characteristics". In such straits a concept of non-suspendable innocent passage is applied by Article 45.

Article 38(2) of the Draft Convention defines transit passage as:

> "...the exercise ... of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."

The duties of ships and aircraft during transit passage are set out in Articles 38 and 40 of the Draft Convention. In particular, they must refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait and comply with 'generally accepted' international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships. Research and survey activities can only be carried out after permission of the coastal States.

Article 42 sets out the extent to which the States bordering straits may adopt laws and regulations relating to transit passage. Such laws and regulations, which must not discriminate among foreign ships and which must not have the practical effect of denying, hampering or impairing transit passage, are confined to all or any of the following:

> (a) the safety of navigation and the regulation of maritime traffic, as provided in article 41; [i.e. sea lanes and traffic separation schemes]
>
> (b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
>
> (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

(d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.

Article 42(4) provides that foreign ships exercising the right of transit passage shall comply with such laws and regulations.

The enforcement jurisdiction of the coastal State, as contrasted with its prescriptive jurisdiction, over foreign vessels passing through straits is constrained by Article 233 which in effect permits the coastal State to take "appropriate enforcement measures" only where the vessel has committed a violation of the laws and regulations referred to in Article 42, paragraph 1(a) and (b), "causing or threatening major damage to the marine environment of the straits."

The Straits of Gibraltar would appear subject to the regime of transit passage provided in the Draft Convention, though it is significant that Spain abstained on the vote to adopt the text. The Dardanelles, on the other hand, would be excluded from the operation of the Draft Convention since by Article 35(c) the Convention does not affect "the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits." Passage through the Dardanelles, as well as the Sea of Marmara and the Bosphorus, is regulated by the Montreux Convention of 1936.

Other international straits in the Mediterranean which are less than 24 miles wide are those of Messina, Bonifacio, Kithira and Karpathos. It will be a matter of some importance whether some or all of these are to be classified as straits in which transit passage will apply or whether they will be classified as falling within Article 38(1) above.

(e) Continental shelf.

The Draft Convention has brought about very significant changes in the extent and delimitation of the continental shelf. Article 76 reads:

" 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 limits of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude."

The effect of this provision is to separate the legal concept of the shelf from the exploitability criterion set out in the Continental Shelf Convention 1958 and indeed to separate it from the physical presence of a continental margin since a State without a continental margin in the physical sense is nevertheless entitled to a continental shelf in the juridical sense to a distance of 200 nautical miles.

Article 83(1) of the Draft Convention has substantially altered the criterion for delimitation of the shelf between States with opposite or adjacent coasts. It reads:

"The delimitation of the continental shelf between States with opposite or adjacent coasts shall be affected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

(f) High seas.

The concept of high seas has been affected in an important respect by the concept of the exclusive economic zone found in the Draft Convention. This latter concept will be dealt with fully in the next section of this paper.

Having defined high seas in Article 86 as "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State", the Draft Convention in Article 87 provides:

" 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area. "

Article 88 provides that the high seas shall be reserved for peaceful purposes while Article 89 proclaims that "no State may validly purport to subject any part of the high seas to its sovereignty." Article 92 repeats Article 6 of the 1958 Convention in declaring that "ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas." Piracy and the slave trade are again expressly provided to be exceptions.

Articles 95 and 96 provide for the complete immunity of warships and State owned or operated ships on governmental non-commercial service on the high seas from the jurisdiction of any State other than the flag State.

(g) Hot pursuit.

The Draft Convention has made a substantial broadening of the range of hot pursuit in order to accommodate the doctrine to the new maritime zones over which the coastal State has jurisdiction and which will be discussed in the next section of this paper. Article 111 of the text reads:

> "1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone.

If the foreign ship is within a contiguous zone, as defined in Article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones. "

(h) Islands.

In the Draft Convention there is a separate Article 121 which relates to islands. This makes a drastic change by way of paragraph 3. The Article reads:

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

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

Thus certain islands are not capable of generating rights beyond 12 miles from the baseline drawn in respect of them.

4. The international law of the sea: the work of UNCLOS III in developing new concepts.

The Draft Convention has introduced certain important concepts not found expressly in the 1958 Conventions.

(a) Transit passage through straits.

This has been discussed above.

(b) Archipelagic States.

The Draft Convention defines an "archipelagic State" as one constituted wholly by one or more archipelagos and may include other islands. The term "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

The Draft Convention permits such a State to draw straight baselines joining the outermost points of the islands within certain specified tolerances. Within the baselines, other than in areas of internal waters, foreign ships enjoy a right of innocent passage, suspendable on a non-discriminatory basis if essential for the protection of the security of the archipelagic State. The archipelagic State may designate sea lanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

In the Mediterranean, only Malta would seem to qualify as an archipelagic State under the above definition. The Maltese islands are compact and the total area of sea classified as archipelagic waters likely to be relatively restricted.

(c) Exclusive Economic Zone.

In the years following the conclusion of the 1958 Conferences one of the most significant developments in the International law of the sea was the

emergence of the concept of an exclusive economic zone to embrace not only the natural resources of the continental shelf but of the waters superjacent thereto. It thus extended beyond the seaward limits of the territorial sea and into the area defined as "high seas" in the 1958 High Seas Convention. The exclusive economic zone had its origins in part in the practice of States after 1958 in concluding bilateral agreements establishing exclusive fisheries zones. The European Fisheries Convention of 1964, concluded between 12 European States including 3 Mediterranean States and the United Kingdom, provided for an exclusive fisheries zone for each Party measured 12 miles from the baseline of the territorial sea. Thereafter the breadth of national exclusive fisheries zones, particularly in South America and Africa, widened as far as 200 miles. In the Anglo-Icelandic Fisheries Case in 1974, the International Court of Justice, though holding that a 50 mile Icelandic exclusive fisheries zone was not opposable to the United Kingdom, refrained from pronouncing it invalid erga omnes. State practice continued to regard such zones as lawful and in 1977 some member States of the European Economic Community proclaimed national exclusive fishing zones of 200 miles in the North Sea and the Atlantic.

Meanwhile, state practice, particularly in South America, was establishing the legality of a zone, called variously the patrimonial sea, the epicontinental sea or the exclusive economic zone, which extended to a maximum distance of 200 nautical miles from the baseline of the territorial sea. Article 1 of the Declaration of Santo Domingo in June 1972 illustrated the concept. It stated:

> "The coastal State has sovereign rights over the renewable and non renewable natural resources which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea."

The European States, and in particular the Mediterranean States, did not at this stage, however, assert economic zones in this sense.

The exclusive economic zone, is defined in Articles 55 and 57 of the Draft Convention as an area beyond and adjacent to the territorial sea not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Article 56 sets out the rights, jurisdiction and duties of the coastal State in the zone as follows:

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

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention."

By Article 60 the coastal State is also given the exclusive right therein to construct and regulate artificial islands, installations and structures "for the purposes provided for in Article 56 and other economic purposes."

A key provision is Article 58 which provides:

"In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms ... of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of

this Convention."

It seems from this provision that the exclusive economic zone is to be equated with the high seas rather than with an area sui generis. The opinion that it is equated with high seas is strengthened by Article 58(2) of the Draft Convention which reads:

> "Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part."

These Articles are located in the Part of the Draft Convention which deals with "high seas".

On the other hand, Article 86 provides that the provisions of the Part of the Draft Convention which deal with high seas " apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." Thus when Article 116 declares that "all States have the right for their nationals to engage in fishing on the high seas", the term "high seas" excludes the exclusive economic zone. By Article 61, the coastal State shall determine the allowable catch of the living resources in its exclusive economic zone. Article 62 provides that where the coastal State does not have the capacity to harvest the entire allowable catch it shall by agreement or other arrangements give other States access to the surplus of the allowable catch, having particular regard to the position of (i) land-locked States (ii) those States whose geographical situation makes them dependent upon the exploitation of the fishery resources of the exclusive economic zone of other States (iii) coastal States which cannot claim any exclusive economic zone of their own.

There is no freedom of scientific research either in the exclusive economic zone. Article 246 (1) of the Draft Convention provides that "marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State."

Among the Mediterranean States who expressed views in UNCLOS III debates, most regarded the zone as being one of limited coastal State rights. Three States, however, Algeria, Libya and Albania, took a "territorial" view of the zone. This division of opinion may become active again in the future, particularly when States are faced with the decision of ratifying the new Convention.

(d) Anti-pollution measures

The Draft Convention sets out drastic anti-pollution measures designed to increase the jurisdiction of the coastal State (as well as the flag State and the port State) over pollution of the marine environment from vessels and other sources. The exclusive economic zone is an important factor in these provisions which increase the prescriptive as well as the enforcement powers of the Coastal State over foreign vessels. Thus, in Article 211 an Article dealing with pollution from vessels, it is provided :

" 4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organisation or general diplomatic conference.

6. (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly

defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognised technical reasons in relation to its oceanographical and ecological conditions, as well as its utilisation or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organisation with any other States concerned, may, for that area, direct a communication to that organisation, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organisation shall determine whether the conditions in that area correspond to the requirements set out above. If the organisation so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organisation, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organisation.

(b) The coastal States shall publish the limits of such particular clearly defined area.

(c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall when submitting the aforesaid communication, at the same time notify the organisation thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organisation, provided that the organisation agrees within 12

months after the submission of the communication.

7. The international rules and standards referred to in this article should include inter alia those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges."

It is significant to note that under 211 (6) (c) above, the coastal State cannot impose its own arbitrary design, construction, manning or equipment standards on foreign vessels; such standards have to be those which conform to generally accepted international practice.

Enforcement jurisdiction in respect of the zone is provided in Article 220 as follows:

" Enforcement by coastal States

1. When a vessel is voluntary within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.

2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3 may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of

section 7.

3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its

laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organisation or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.

8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6."

Detailed provisions for safeguards on the enforcement of powers are found in section 7 of the Draft Convention. Article 224, for example, reads:

" The powers of enforcement against foreign vessels under this Part may only be exercised by officials or, by Warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect. "

Article 208 provides for the coastal State to have prescriptive jurisdiction for pollution arising from sea-bed activities. It reads:

" Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction... "

Enforcement jurisdiction is provided in Article 214 as follows:

"States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organisations

or diplomatic conference for the protection and preservation of the marine environment from pollution arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction."

The Draft Convention, in Article 221, reflects the contents of the Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties 1969. The Article reads:

" Measures to avoid pollution arising from maritime casualties.

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequence.

2. For the purposes of this article, "maritime casualty' means a collision of vessels, stranding or other incident of navigation, or other occurence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo. "

(e) Enclosed or semi-enclosed seas.

Part IX of the Draft Convention consists of two Articles 122 and 123, which have no counterpart in the 1958 Conventions, These Articles read:

" Article 122
Definition

For the purposes of this Convention, 'enclosed or semi- enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting

entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123

Co-operation of States bordering enclosed or semi-enclosed seas.

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organisation:

(a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

(d) to invite, as appropriate, other interested States or international organisations to co-operate with them in furtherance of the provisions of this article. "

In a discussion in the Second Committee of UNCLOS III on a proposal to incorporate a provision on "semi-enclosed areas" into the text, the Mediterranean States spoke with divided voices. Turkey considered that the concept of the exclusive economic zone should not be applied to the Mediterranean because, if it were, the entire sea would be subject to coastal State jurisdiction a fact which could threaten the freedom of navigation.

Israel and Algeria both spoke in favour of the proposal. Israel considered that the freedom of navigation and overflight must be given priority in a semi-enclosed sea and that a semi-enclosed sea poor in resources such as the Mediterranean did not lend itself to far-reaching national claims.

Greece and France spoke against the proposal. Greece considered that almost all semi-enclosed seas would be covered by the general provisions in the draft articles under discussion and that existing treaties and regional agreements provided for the necessary regional co-operation to deal with pollution problems. France acknowledged that a 200 mile exclusive economic zone would place all natural resources of such seas under the coastal States' jurisdiction and asserted that it was unnecessary to demand special provisions for semi-enclosed seas in a general convention, since regional agreements already provided for in the draft text would suffice.

5. The legal status of the Draft Convention on the Law of the Sea.

The Draft Convention is not yet a treaty document. Indeed, even after signature it will not become a treaty document binding on those States which have signed since by Article 306 and 308 the Convention is subject to ratification and shall not enter into force until the lapse of 12 months from the date of deposit of the 60th instrument of ratification or accession. Thereafter it will be in force for those States which have ratified or acceded but not for other States. Taking the practice in respect of other multilateral conventions as a guide, it is likely to be at the least several years before the document achieves the status of a treaty text. Furthermore Turkey and Israel as well as the United States voted against adoption of the text, while Spain, Italy and the United Kingdom abstained.

To some extent the Draft Convention, like the 1958 Conventions, reflects existing rules of customary international law and to this extent its provisions will be, and indeed already are, binding on all States.

In its judgment in the Tunisia/Libya Continental Shelf Case in February 1982, the International Court of Justice remarked:

> "[The Court] could not ignore any provision of the draft convention if it came to the conclusion that the content of such provisions is binding upon all members of the international community because it embodies or crystallises a pre-existing or emergent rule of customary

law."

But this cannot be said of some of the provisions which are of particular significance in the present study, for example the provisions relating to transit passage through straits, Articles 74(1) and 83(1) dealing with the delimitation of the exclusive economic zone and continental shelf respectively, and Article 76 dealing with the seaward extent of the continental shelf.

The status of the provisions regarding the exclusive economic zone is not beyond argument, although there is probably enough state practice to regard the zone as now established as a lawful extension of a coastal State's jurisdiction. What is particularly obscure in the Draft Convention is whether the exclusive economic zone appertains to a coastal State ipso jure or whether its appurtenance to the coastal State arises only from the fact that the State declares such a zone to exist. Although there is no provision dealing with the exclusive economic zone similar to Article 77(3), which provides that the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation, it would be important to assume that the right of a coastal State to declare such a zone does not create for it some kind of inchoate right even when it had not yet made such a declaration.

In the 1977 Arbitration between France and the United Kingdom over the delimitation of the continental shelf of the Channel and its western approaches, the French Government argued that "all the Geneva Conventions on the law of the sea, including the Continental Shelf Convention, have been rendered obsolete by the recent evolution of customary law stimulated by the work of the Third United Nations Conference on the Law of the Sea." In rejecting this argument, which was opposed by the United Kingdom, the Court of Arbitration stated in its decision:

"... the Court recognises both the importance of the evolution of the law of the sea which is now in progress and the possibility that a development in customary law may, under certain conditions, evidence

the assent of the States concerned to the modification, or even termination, of previously existing treaty rights and obligations. But the Continental Shelf Convention of 1958 entered into force as between the Parties little more than a decade ago. Moreover, the information before the Court contains references by the French Republic and the United Kingdom, as well as by other States, to the Convention as an existing treaty in force which are of quite recent date. Consequently, only the most conclusive indications of the intention of the parties to the 1958 Convention to regard it as terminated could warrant this Court in treating it as obsolete and inapplicable as between the French Republic and the United Kingdom in the present matter. In the opinion of the Court, however, neither the records of the Third United Nations Conference on the Law of the Sea nor the practice of States outside the Conference provide any such conclusive indication that the Continental Shelf Convention of 1958 is today considered by its parties to be already obsolete and no longer applicable as a treaty in force." (paragraph 47)

Despite the passage of another five years, it is submitted that this assessment is still correct. Although customary international law may develop and even change with increasing speed, there does not appear to be sufficient state practice, apart from manifestations of support at UNCLOS III, to crystallise as lex lata those parts of the Draft Convention which make far-reaching changes to the 1958 regimes. The ratification or non-ratification by the individual Mediterranean States will be crucial.

6. The Practice of the Mediterranean States.

(a) In respect of the 1958 Conventions.

Of the 19 Mediterranean States (including therein the United Kingdom), only 6 (Spain, Italy, Malta, Israel, Yugoslavia and the United Kingdom)are parties to the Convention on the Territorial Sea and Contiguous

Zone; 6 (Spain, Italy, Israel, Albania, Yugoslavia and the United Kingdom) are parties to the High Seas Convention; and 9 (Spain, France, Malta, Israel, Cyprus, Greece, Albania, Yugoslavia and the United Kingdom) are parties to the Continental Shelf Convention. Only 3 (France, Spain and Yugoslavia) are parties to the Convention on Fishing and Conservation of the Living Resources of the High Seas.

It has already been pointed out, however, that non-membership of these Conventions is not necessarily relevant in respect of provisions which are also rules of general customary international law.

In ratifying the Conventions, some of the above States have entered reservations Thus Spain has entered a reservation that its accession to the three Conventions is not to be interpreted as recognition of any rights or situations in connection with the waters of Gibraltar other than those referred to in Article 10 of the Treaty of Utrecht of 13 July 1713, between the Crowns of Spain and Great Britain. Spain has also entered a reservation to Article 1 of the Continental Shelf Convention that the existence of any accident of the surface, such as a depression or a channel, in a submerged zone shall not be deemed to constitute an interruption of the natural extension of the coastal territory into or under the sea. Italy entered a reservation to Article 24(1) of the Territorial Sea and Contiguous Zone Convention, which relates to the contiguous zone, reserving its right to exercise surveillance within the zone for the purpose of preventing and punishing infringements of the customs regulations in whatever point of this belt such infringement may be committed.

(b) Unilateral practice

The majority of Mediterranean States claim a territorial sea of 12 nautical miles; only Albania (15 miles) claims more than this. A minority of States claim less than 12 miles including Greece and Israel (6 miles) and the United Kingdom in respect of its dependent territories (3 miles). Lebanon has not proclaimed any particular distance. Although France and Spain have each declared exclusive economic zones of 200 miles these have not been applied to the Mediterranean.

Several States including France, Greece, Spain, Malta and Italy have issued continental shelf legislation. This legislation usually describes the limits of

the shelf in terms of the "exploitability" criterion embodied in Article 1 of the Continental Shelf Convention 1958, or, in the case of Malta, a median line in the absence of agreement with neighbouring States.

Several States including France, Spain, Egypt, Italy, Morocco, Yugoslavia and Turkey have instituted a system of straight baselines or single baselines for some part of their Mediterranean coast so as to enclose offshore islands or an indented coast. In 1973 Libya asserted a claim to the Gulf of Sirte north to latitude 32° 30' where the feature is about 300 miles wide. In 1981 this led to a confrontation with the United States.

Each of the Mediterranean States has enacted municipal legislation to control its maritime areas, including pollution from land and vessel-based sources. It is beyond the scope of this paper to discuss this legislation. In the words of one writer who has analysed it "perhaps the only generalisation that can be drawn from an examination of coastal state practice is that it has been uneven and fragmented in scope, purpose and application." (Scott C. Truver, The Strait of Gibraltar and the Mediterranean, 1980, p.123)

(c) Bilateral practice

There are only four bilateral delimitation agreements, a small number in comparison to the number of potential maritime boundaries in the Mediterranean. Italy has been a party to all four, with Spain in 1974, Tunisia in 1971, Yugoslavia in 1968 and Greece in 1977. All relate to the continental shelf and may be classified as agreements between opposite, rather than adjacent States. There are a number of observations which should be made about each of these delimitations.

Italy-Yugoslavia 1968 (in force 21 January 1970)

The most anomalous feature of the area delimited consists of certain Yugoslav islands, Jabuka, Kajola and Pelagruz, situated in the Adriatic Sea about half way between the two land masses. If a strict equidistant line had been adopted the boundary would have therefore been drawn to the disadvantage of Italy. Under the agreement, the above islands were given a 12 mile territorial sea and the area outside this zone, even though nearer to the Yugoslavian islands than to the

Italian mainland, was allocated to Italy. As a balancing factor, the Italian island of Pianosa was not taken into account in establishing the boundary.

It is clear that the baseline on the Yugoslavian coast was taken to be the straight baseline system adopted by Yugoslavia in 1965 which encloses the chain of islands stretching along most of the length of its coast.

Italy-Tunisia 1971 (in force 6 December 1978)

This follows a median line with some striking exceptions. These exceptions constitute the Italian islands of Pantelleria, Lampedusa, Lampione, and Linosa which are located nearer to the Tunisian coast than to the Italian coast of Sicily. For the purposes of arriving at the median line the islands were disregarded but a zone of 13 miles (12 miles territorial sea and contiguous zone and 1 mile continental shelf) was allocated to each island. The islands were so situated that the median line constructed in disregard of them could be diverted to follow the 13 mile arcs without totally cutting off the islands from the main part of the Italian continental shelf.

Italy-Spain 1978 (in force 16 November 1978)

This agreement provides for a boundary of some 137 nautical miles between Minorca and Sardinia. The boundary follows an approximate median line but not taking account of the straight baseline systems adopted by Spain and Italy for their respective islands.

Italy-Greece 1977 (in force 12 November 1980).

This agreement appears to follow a median line between the Greek coast taking account of the large islands from Corfu to Zante, and on the Italian side of a system of straight baselines closing the Gulf of Taranto and other, shallower, features on the east coast of Calabria.

Each of the agreements contains a provision that in the event of a deposit extending on both sides of the boundary the two Parties should work together, after consulting the concession holders, with the aim of reaching agreement on the manner in which the deposit is to be exploited.

(d) Current delimitation problems.

(i) Tunisia-Libya By its judgment of 24 February 1982, the International

Court of Justice indicated the principles and rules for the delimitation of the continental shelf between Tunisia and Libya and clarified the practical method for the application of these rules and principles, so as to enable the experts of the two countries to draw a line of delimitation. In arriving at its conclusions, the Court considered itself obliged to effect the delimitation in accordance with equitable principles and taking account of all relevant circumstances. The Court held that as the area in question formed a single continental shelf, and was the natural prolongation of the landmass of both Parties, no criterion for delimitation could be derived from the principle of natural prolongation. The relevant circumstances found by the Court were the general configuration of that part of the coasts which in the court's view was the area relevant to the delimitation, particularly the change in direction of the Tunisian coastline in the Gulf of Gabes; the existence and position of the Tunisian Kerkennah islands; the land frontier between the Parties and their respective practice with regard to the grant of petroleum concession offshore the land frontier; and an element of a reasonable degree of proportionality between the extent of the continental shelf areas and the length of the relevant part of the coast to which they appertain.

(ii) Libya-Malta The International Court of Justice has been requested by these two States to delimit the continental shelf boundary between them.

(iii) Greece-Turkey There are about 1,000 islands, mainly Greek, in the Aegean Sea, including some Greek islands which are close to the mainland coast of Turkey. If, as Greece claims, each island generates a continental shelf as well as a territorial sea, a large part of the seabed on the Turkish side of a hypothetical median line drawn between the two mainlands is claimed by Greece. In 1974 Turkey issued a decree which proclaimed the western edge of the Turkish continental shelf to be a median line drawn between the two mainlands, ignoring the islands. This has the effect of enclaving the Greek islands situated to the east of the median line, to which Turkey concedes only the 6 miles of territorial sea claimed by both States, and no continental shelf. Turkey maintains that the Greek islands in question are located on Turkey's continental shelf this being the "natural prolongation" of the Turkish

landmass. An attempt by Greece to refer the dispute to the International Court of Justice was unsucoessful.

IV. CO-OPERATION BETWEEN MEDITERRANEAN STATES.

(a) The General Fisheries Council for the Mediterranean.

This is an organisation formed in 1949 under the auspices of the FAO amongst governments "having a mutual interest in the development and proper utilisation of the resources of the Mediterranean and contiguous waters." The riparian Mediterranean States, with the exception of Albania and Israel, are members, as are Romania and Bulgaria. The functions of the organisation are set out in Article 4 of the Agreement as follows:

a. To formulate all oceanographical and technical aspects of the problems of development and proper utilisation of aquatic resources;

b. To encourage and co-ordinate research and the application of improved methods employed in fishery and allied industries with a view to the utilisation of aquatic resources.

c. To assemble, publish, or disseminate all oceanographical and technical information relating to aquatic resources;

d. To recommend to Members such national and international research and development projects as may appear necessary or desirable to fill gaps in such knowledge;

e. To undertake, where appropriate, co-operative research and development projects directed to this end;

f. To propose, and where necessary to adopt, measures to bring about the standardisation of scientific equipment, techniques, and nomenclature;

g. To make comparative studies of fishery legislation with a view to making recommendations to its Members respecting the greatest possible co-ordination;

h. To encourage research into the hygiene and prevention of occupational diseases of fishermen;

i. To extend its good offices in assisting Member(s) to secure essential materials and equipments;

j. To report upon such questions relating to all oceanographical and technical problems as may be recommended to it by Members or by the Organisation and if it thinks proper to do so, by other international, national, or private organisations with related interests;

k. To transmit every two years, to the Director-General of the organisation, a report embodying its views, recommendations and decisions, and make such other reports to the Director-General of the Organisation as may seem necessary or desirable.

(b) The International Commission for the Conservation of Atlantic Tunas. This was established in 1966 under a Convention which defines the area in question as including all seas adjacent to the Atlantic Ocean. Only three Mediterranean countries, France, Spain, and Monaco are members. The aim of the Commission is to maintain the tuna population at levels which will permit the maximum sustainable catch. To this end there is co-ordination, promotion and publication of research.

(c) The Work of the United Nations Environmental Programme.

In early 1975, the United Nations Environmental Programme organised in Barcelona an inter-governmental meeting on the protection of the Mediterranean. The meeting adopted an Action Plan for the protection and development of the Mediterranean Basin. In particular, the Plan envisaged the integrated planning of the development and management of the resources of the Basin, the co-ordinatio of pollution monitoring and research in the Mediterranean, and the conclusion of a framework convention with related protocols and technical annexes. At the same time the coastal States were exhorted to become parties to the International Convention on the Prevention of Pollution from Ships, 1973 (The London Convention) and to use their efforts within the International Maritime Consultative Organisation to have the Mediterranean designated as a special area for the purposes of Annex II of that Convention.

The adoption of the Action Plan led to the convening of a Conference in Barcelona in February 1976 which was attended by 16 Mediterranean States. The Conference adopted three instruments: a Convention for the protection of the

Mediterranean Sea against Pollution, a Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, and a Protocol concerning Co-operation in combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in cases of Emergency.

The Convention defines the "Mediterranean Sea Area" as "the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the Meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumlake lighthouses."

The internal waters of the Contracting Parties are expressly excluded from the Area.

In the preambles to the Convention the Contracting Parties, "conscious of the economic, social, health and cultural value of the marine environment of the Mediterranean Sea Area" go on to declare their full awareness "of their responsibility to preserve this common heritage for the benefit and enjoyment of present and future generations". This "common heritage" is clearly not analogous to the "common heritage of mankind" provided for in respect of the deep-sea bed since the Convention goes on to preserve from prejudice "the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction."

Article 4 sets out the "General Undertakings."

The Contracting Parties undertake thereunder to take measures to prevent, abate and combat four kinds of pollution (i) pollution caused by dumping from ships and aircraft (ii) pollution from ships discharges, other than dumping (iii) pollution resulting from the exploration and exploitation "of the continental shelf and the sea-bed and subsoil," (iv) pollution from rivers, coastal establishments or outfalls or other land-based sources within their territories.

Co-operation is sought (i) in taking the necessary measures in dealing

with pollution emergencies on the Area, (ii) in monitoring pollution (iii) in scientific and technological co-operation. At the same time the Contracting Parties undertake to co-operate as soon as possible to formulate and adopt appropriate procedures for the determination of liability and compensation or damage resulting from the pollution of the marine environment deriving from violations of the provisions of the Convention and Protocols.

The two Protocols take matters further. The Dumping Protocol is based on the Oslo and London Conventions of 1972, though it is stricter than the regimes laid down in those instruments. The Emergency Protocol provides that in cases of grave and imminent danger to the marine environment, the coast or related interests of one or more of the Parties due to the presence of oil or other harmful substances, Contracting Parties shall co-operate in taking the necessary measures.

The Convention and associated Protocols entered into force on 12 February 1978.

Following a Conference held in Athens in May 1980, under the auspices of UNEP, a Protocol for the Protection of the Mediterranean Sea from Land-Based Sources was adopted. This Protocol obliges the Contracting Parties to take all appropriate measures to prevent, abate, combat and control pollution of the Mediterranean Sea Area caused by discharges from rivers, coastal establishments or outfalls, or emanating from any other land-based sources within their territories. The Area to which the Protocol applies is not only the Mediterranean Sea Area defined in the 1976 Convention but includes waters on the landward side of the baselines from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit. The area also includes saltwater marshes communicating with the sea.

(d) Sub-regional agreements

Italy has concluded two agreements with its neighbours which might serve as precedents for other co-operative ventures in the Mediterranean.

(i) Italy - Yugoslavia An agreement for collaboration in safeguarding the waters of the Adriatic and its coastal zones from pollution was signed in

1974 and came into force in 1977. Its main aim is to create an institutional mechanism for collaboration between the two States, in order to assess and control pollution of the area, including pollution from land-based sources.

The agreement establishes a Joint Commission, nominated by the two States, assisted by a sub-commission of scientists and experts. Its aims are:

(a) to assess the problems concerning pollution in the area;

(b) to propose and recommend research programmes to the two States;

(c) to evaluate bilateral programmes and provide for their co-ordination;

(d) to propose to the two States necessary measures for combating existing pollution and preventing future pollution;

(e) to suggest to the two States programmes of international regulations in order to ensure the purity of the waters of the Adriatic.

The decisions of the Commission are taken by unanimity.

(ii) Italy-Greece. An agreement on the protection of the marine environment of the Ionian Sea and its coastal zones was signed in 1979. The aims are similar to those of the Adriatic agreement. It was adopted on the basis of "the spirit of co-operation upheld by the Parties to the Barcelona Convention". Under the agreement Italy and Greece are bound "to co-operate to prevent, combat and gradually eliminate" the pollution of the Ioninan Sea and its coastal zones. The decisions of the Commission are taken by unanimity.

V. THE LEGAL ASPECTS OF FUTURE DELIMITATIONS IN THE MEDITERRANEAN.

Under customary international law as well as under the 1958 Convention on the Continental Shelf every coastal State is entitled ipso jure to the shelf appurtenant to its land mass. This entitlement does not depend on proclamation or occupation. Each Mediterranean State thus has a continental shelf irrespective of proclamation or whether its lateral or opposite boundaries have been delimited. In the North Sea Continental Shelf Cases, the International Court of Justice stated:

"From this notion of appurtenance is derived the view which, as has

already been indicated, the Court accepts, that the coastal State's rights exist ipso facto and ab initio without there being any question of having to make good a claim to the areas concerned, or of any apportionment of the continental shelf between different States." (Paragraph 39, p. 29)

The definition of the continental shelf under the Draft Convention, not necessarily being linked to physical realities, would cover the entire bed and subsoil of the Mediterranean, leaving no part subject to the "common heritage of mankind" regime provided for the seabed beyond national jurisdiction. Furthermore, the 200 mile exclusive economic zone concept will subject the entire water area of the Mediterranean, outside internal and territorial waters, to this regime. The stark conclusion is that actually or potentially the whole Mediterranean sea is subject to some form of coastal State jurisdiction.

There is nothing in the Draft Convention any more than in existing customary and treaty law which prevents or even impedes a Mediterranean State from claiming its national share of the Mediterranean on the basis of the concepts of internal waters, territorial sea, continental shelf and exclusive economic zone. Article 123 of the Draft Convention requires the coastal States of a semi-enclosed sea to endeavour to co-ordinate the management and exploitation of the living resources of the sea, but nothing is said of the non-living resources such as minerals. The practice of Mediterranean States in negotiating continental shelf boundary agreements or of litigating such boundaries with their neighbours indicates that it is unlikely that there will be a moratorium on continental shelf delimitations in the Mediterranean or that a scheme for joint management of the shelf is near.

With regard to the natural resources of the waters, as opposed to the subjacent lands, there is some reason to think that the position might evolve otherwise. Article 123, as stated above, does refer to the living resources of the sea. Furthermore, as there is nothing naturally appurtenant about a 200 mile zone of water, States might not consider that they already have

such a zone by any principle of ipso jure appurtenance. If or when Spain enters the European Economic Community a large part of the waters of the western Mediterranean will become Community waters in which national rights of fishing will be diminished in favour of Community use. There is thus some cause to believe that Mediterranean States might refrain from claiming national exclusive economic or fisheries zones of substantial breadth. At present E.E.C. States exclude all foreign fishing from a 6 mile zone.

If the Mediterranean States do enter into negotiations or litigation with a view to the delimitation of the Mediterranean - and we have seen that there is every likelihood they will continue to do so for the continental shelf - on which principles will future delimitations be based?

It has already been seen that in respect of opposite or adjacent territorial sea, including the subjacent lands and the superjacent airspace, the basic principle, failing agreement, is one of equidistance. This is set out in Article 12(1) of the 1958 Convention and in Article 15 of the Draft Convention.

In respect of the continental shelf, however, the International Court of Justice in the North Sea Continental Shelf Cases in 1969 concluded that "the notion of equidistance as being logically necessary, in the sense of being an inescapable a priori accompaniment of basic continental shelf doctrine, is incorrect." In the more recent Tunisia/Libya Case the same Court states that "equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods." In that case, neither Tunisia nor Libya had in fact relied on equidistance.

In the North Sea Continental Shelf Cases in 1969 the Court stated the basic principle of shelf delimitation as follows:

> ".... the international law of continental shelf delimitation does not involve any imperative rule and permits resort to various principles or methods, as may be appropriate, or a combination of them, provided that, by the application of equitable principles, a reasonable result is

arrived at."

In the Tunisia/Libya Case in 1982 the Court stated:

"[The Court] ... is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result."

In the North Sea Cases the Court listed as factors to be taken into account the general configuration of the coasts of the parties including the presence of special or unusual features, the physical and geographical structure, and a reasonable degree of proportionality between the lengths of the respective coasts and the area of shelf appertaining thereto.

In the Tunisia/Libya Case, the Court rejected an argument based on the overriding importance of "natural prolongation" and ruled that the shelf in dispute was the natural prolongation of the land mass of both parties, i.e. there was an overlap of natural prolongations. It was unwilling to consider that geological factors were paramount in assessing natural prolongation. The Court thus gave a greater weight to the geographical features of the coastline than to the geology of the submerged lands. This approach may be relevant in the Aegean where Turkey claims inter alia that the shelf is a "natural prolongation" of its land mass, but it cannot be concluded therefrom that geological factors will be subservient to geographical factors in every future delimitation. By permitting a State a juridical continental shelf of 200 nautical miles from the baseline of of the territorial sea when that State does not have a physical continental margin, the new definition of continental shelf in the Draft Convention seems also to be turning away from natural prolongation. There is nothing natural about a fictitious shelf extending to a precise distance. Algeria and Morocco, for example, might be beneficiaries of this concept. In delimitations between adjacent States of this kind equidistance might be more important than it was in the North Sea and Tunisia/Libya Cases. Similarly in future delimitations of exclusive economic zones as contrasted with the continental shelf equidistance may still

be relevant. It may also be important in delimitations between opposite as contrasted with adjacent States.

In the Tunisia/Libya Case, both parties relied on economic factors as relevant to the delimitation process. Thus Tunisia argued that its relative poverty in comparison to Libya should be taken account of. Libya, while denying that economic poverty should be relevant, argued that the productivity of oil and gas wells on the respective areas of shelf was a relevant factor. The Court rejected the Tunisian argument but gave some weight to the Libyan submission. The relevant paragraph from the Court's judgment read as follows:

> "... these economic considerations cannot be taken into account for the delimitation of the continental shelf areas appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune and calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource. As to the presence of oil wells in an area to be delimited, it may, depending on the facts, be an element to be taken into account in the proceeds of weighing all relevant factors to achieve an equitable result."

The unpredictable variables mentioned above were discussed by Judge Evensen, the Norwegian ad hoc judge for Tunisia in the case. In his dissenting judgment Judge Evensen put forward the proposal of joint exploitation for a restricted area of overlapping claims. With so many potential maritime boundary disputes in the Mediterranean this could provide a possible future solution for some of them.

Judge Evensen was probably influenced in his comments by his membership of a Conciliation Commission set up by Iceland and Norway to make recommendatio for the dividing line of the continental shelf between Iceland and the Norwegian island of Jan Mayen, some 290 miles distant from Iceland.

Iceland had proclaimed a 200 - mile exclusive economic zone

and claimed that it was entitled to a shelf even beyond this limit as a natural prolongation of the land mass of Iceland. The Commission was instructed to "take into account Iceland's strong economic interests in these sea areas, the existing geographical and geological factors and other special circumstances." Having come to the conclusion that the submarine area between Iceland and Jan Mayen was a "micro-continent" and not a natural prolongation of either, the Commission defined an area, nearly three-quarters of which lay on the Jan Mayen side of the Icelandic 200-mile limit. In this area the Commission proposed joint development. Within that part of the area which fell inside the 200 mile line, Icelandic legislation, oil policy and control would apply, with Norway having the right to acquire up to a 25% stake in any joint venture. Within that part of the area which fell outside the Icelandic limit, Norwegian legislation etc. would apply with Iceland having the right to acquire up to a 25% stake in any joint venture.

The effect on military strategy of the possible partition of the Mediterranean amongst the coastal States needs to be discussed. As shown above, the Draft Convention contains a new concept of "transit passage" applicable to straits of less than 24 miles wide. Although it is probable that the Strait of Gibraltar will fall under this regime, transit passage is certainly not yet in force as a rule of treaty law or customary law. Indeed, the Spanish delegate at the beginning of UNCLOS III made a speech in opposition to the proposal to replace innocent passage as the regime in force in straits. He stated:

> "Straits used for international navigation were an integral part of the territorial sea in so far as they lay within territorial waters. Any attempt to set up separate regimes for the territorial sea and for straits would clearly violate the fundamental principle of sovereignty of the coastal State over its territorial sea..."

Professor John Norton Moore summarised the ambiguities and inadequacies of "innocent passage" as applied to straits by the 1958 Convention

on the Territorial Sea and Contiguous Zone as follows:

(a) failure to recognise the different community policies of a regime of passage through the territorial sea and through strait used for international navigation;

(b) no right of overflight over the territorial sea

(c) submarines in innocent passage must navigate on the surface and show their flag;

(d) subjectivity inherent in the definition of "innocent passage" coupled with the right of the coastal State to take the necessary steps in its territorial sea to prevent passage which is not innocent;

(e) uncertain and unbalanced coastal State regulatory competence over vessels in innocent passage, particularly the uncertain prescriptive and enforcement competence for dealing with vessel-source pollution;

(f) uncertainty over which straits are those "used for international navigation";

(g) failure of some States to adhere to the 1958 Convention and the consequent assertion of more restrictive rules such as the requirement for prior notification for the transit of warships, restrictive passage through "archipelagic waters" and "historic waters".

Some of these ambiguities remain under the Draft Convention's proposals. In particular, it is not clear whether straits in the Mediterranean other than Gibraltar, such as Messina and Bonifacio, will be subject to transit passage or to the non-suspendable innocent passage of Article 45, since it could be argued that there is an alternative route of similar convenience.

An important feature of the Draft Convention for the future of military strategy in the Mediterranean is the inclusion of a maximum breadth of 12 nautical miles for the territorial sea. It is probable that a customary rule of international law has developed permitting States to extend their territorial sea to this distance so that irrespective of the fate of the Draft Convention such a distance is already lawful. This development will result, and already has resulted, in areas of sea being unavailable for military use except with the consent of the coastal State. It is significant, however, that 12 miles

is stated to be the maximum breadth of the territorial sea, this preventing even more substantial claims.

The concept of the exclusive economic zone, though preserving the high seas freedoms of navigation and overflight by Article 58(1) of the Draft Convention, may cause some erosion of the exercise of these rights because of the coastal State's exclusive right to construct artificial islands, installations and structures in the zone. Article 59 provides that any conflict between the interests of the coastal State and other States "should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole."

A multilateral convention relevant to the problem is the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil thereof, 1970, passed by 104 votes to 2, with 2 abstentions, and in force on 18 May 1972. The Treaty has over 60 Parties.

Article 1(1) of the Treaty provides that:

"(1) The States Parties to this Treaty undertake not to emplant or emplace on the sea-bed or ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone as defined in Article II any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.

(2) The undertakings of paragraph 1 of this Article shall also apply to the sea-bed zone referred to in the same paragraph, except that within such sea-bed zone, they shall not apply either to the coastal State or to the seabed beneath its territorial waters.

(3) The States Parties to this Treaty undertake not to assist, encourage or induce any State to carry out activities referred to in paragraph 1 of this Article and not to participate in any other way in such actions. "

Article II of the Treaty reads:

"For the purpose of this Treaty the outer limit of the sea-bed zone referred to in Article 1 shall be coterminous with the 12-mile outer limit of the zone referred to in Part II of the Convention on the Territorial Sea and the Contiguous Zone (i.e. the contiguous zone)..."

After some early proposals in UNCLOS III to prohibit the construction or operation of military installations or devices on or over the continental shelf without the consent of the coastal State, the Draft Convention does not contain any specific provisions relating to the subject.

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