ARAB STATES AND THE LAW OF THE SEA

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Arab countries, like those of the rest of the Third World, are no longer mere outsiders or simple spectators in setting the agenda for sea policies. They have not been as influential as, for instance, the Latin American countries were in the recent process of reshaping sea policies that resulted in the adoption by the United Nations of the new and comprehensive Law of the Sea. However, the very fact that practically all Arab states--many of which are quite new even in their acqusition of statehood and most of which have not previously participated in similar conferences--played an active role in the eight-year-long activities of the Third United Nations Conference on the Law of the Sea (UNCLOS), is by itself a considerable achievement [El-Hakim, 1979: 78].

Arab States and the Third UNCLOS

The active participation of Arab and Third World countries has emphasized that "oceans' politics" no longer revolve around the simple issues of navigation and fisheries in a "free seas regime". The oceans agenda has

become far more reflective of the increasingly complex interdependence among nations and has become strongly influenced by various economic and technological changes that have raised a number of distributional questions. The major new issue is deep seabed resources, whose potential has increased the number of countries interested in the sea issue far beyond those who are major users of the oceans to include the coastal and less developed countries [Keohane and Nye, 1977: 97, 121-126, 148-150]. The high-technology issues of deep sea mining and research have also tended to highlight a cleavage over sea policies between the developed and the developing countries (known as the Group of 77), a cleavage that has often been reinforced through the channels of the existing regional groupings such as the Organization for African Unity (OAU) or the League of Arab States [cf. Hollick, 1976: 126-127].

For the Middle Eastern countries in particular, the significance of the Law of the Sea is understandable, given their strategic location at the meeting points between some of the busiest waterways of the world: the Mediterranean Sea, the Red Sea and the Persian Gulf. It is also interesting to note that of the four countries that opposed the new treaty, two countries are Middle Eastern (Turkey and Israel), while the third (the United States of America) was recently involved in a sea quarrel with a Middle Eastern country (Libya).

Turkey has an outstanding conflict with Greece over territorial waters in the Agean Sea, and with the present legalization of the 12-mile territorial waters rule, Turkey is trying to attract the political support of

other Middle Eastern countries in its attempt to resist "by all necessary measures" the extension of Greek territorial waters to the new internationally acknowledged limit [cf. Saudi Report, 7 June 1982, 8].

Israel has a sensitive position in the Red Sea (to be considered below) which may at least partly explain her rejection of the new law.

As for the United States, the crux of the American objection lies in the Reagan Administration's view that the treaty does not adequately protect the American firms that have pioneered the technology and the exploration for the mineral nodules (particularly manganese but also cobalt, zinc, copper and others) that can be scooped from the deep-sea bed. Among the interesting points denounced by the United States in the draft convention is that it "containes provisions concerning liberation movements, like the PLO, and their eligibility to obtain a share of the revenues of the Seabed Authority" [Oxman, 1982: 10-11].

The chairman of the Group of 77 expressed the feeling of the majority of states, Arab countries included, when he said that "The United States government cannot reject the work of over 150 nations including its own predecessor government for almost a decade, for in doing so it would be destroying the principle of good faith negotiations. There have been scores of changes in regimes in different countries since the work on the treaty was started, but no new regime has so far disowned what its predecessors had striven to achieve in the field of international cooperation..." [Oxman, 1982: 6].

The United States government, however, voted against the agreement,

and on 9 July 1982 President Reagan announced that America was not going to sign, thus leaving in limbo ultimate control over trillions of dollars worth of minerals waiting to be mined from the seabed. The treaty is nevertheless planned to be opened for signature in December 1982, and will come into force when sixty countries have ratified it.* If the new code founders, the seas will probably not disintegrate into anarchy, but a unique opportunity to bring more order into the world's marine affairs will have been lost [The Economist, 17 July 1982, editorial].

This is all the more so because the Law of the Sea and the submitted Convention deal with much more than the "philosophy of regulating manganese nodule mining: they deal with military and commercial navigation, overflight and communications, fisheries, continental shelf gas and oil, prevention of pollution, marine scientific research, and settlement of disputes..." [Oxman, 1982: 20]. Before proceeding any further, therefore, let us consider some of the general attitudes of Middle Eastern countries towards some of these issues.

General Attitudes and Positions

Although Iran, Saudi Arabia, Oman, South Yemen and Qatar have made recent claims to exclusive rights (essentailly for control of fishing activities)

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* There were 130 votes for the package, 4 against, and 17 abstentions. Turkey, Israel and Venezuela joined the United States in opposing the treaty. The Soviet bloc (with the exception of Romania) abstained along with Belgium, Britain, Italy, Luxembourg, the Netherlands, Spain, Thailand and West Germany. France, Canada and Japan were the main "Western" countries voting with the majority [The Guardian, 9 May 1982].

over areas of the sea much larger than those previously contemplated by international rules, it may be noted that, unlike other states, most Middle Eastern countries have abstained from making jurisdictional claims of considerable dimensions [El-Hakim, 1979: 42]. None of them claims a territorial sea in excess of twelve miles, and only very few of them claim exclusive fishing zones in excess of their territorial waters. Domestic legislations of these states also generally conform with the internationally recognized guidelines regarding the continental shelf.

In fact, Middle Eastern countries have had comparatively less influence on the recent process of reshaping the international law of the sea than have some other developing countries. Their positions with regard to many of the issues discussed at the Third Conference were, on the whole, developed in response or reaction to trends evolved by other states.

Like most other developing countries, Arab countries have no great strategic interests apart from their economic concerns. Their interests place them generally within the "coastal" group of states, rather than within the "marine" group that is not only already active in navigation but also has the highest potential for exploiting seabed resources.

The attitude of almost all Arab states towards the main elements contained in the Law of the Sea is fairly standard. There is a general acceptance of the twelve-mile territorial sea limit, Somalia and Mauritania being the only members of the League of Arab States to claim territorial seas in excess of twelve miles [El-Hakim, 1979: 46]. As far as straits are concerned, some Middle Eastern countries, especially those bordering on straits, support the

the principle of non-suspendable innocent passage for foreign ships, particularly warships, whereas others, especially Iraq, support the newly introduced principle of "free" or "transit" passage. The majority of them, however, insist that the "regime of straits" should be strictly confined to straits which connect two parts of the high seas [El-Hakim, 1979: 78].

As for the 200 mile exclusive economic zone, the concept is acceptable to practically all Middle Eastern states, with the exception of Kuwait which has developed a distant-water fishing fleet that fishes off the coasts of Africa and in the Indian Ocean. Owing, however, to the variance of interests among the different states there was no agreement among Middle Eastern countries in the Third UNCLOS as to whether the Mediterranean, the Red Sea and the Persian Gulf should be regarded as "enclosed or semi-enclosed seas", especially in connection with the exclusive economic zone concept, but also in relation to the freedom of navigation.

Egypt--whose position is quite typical--has taken the view that within the 200 mile exclusive economic zone, the coastal states must observe and enforce international standards, especially with regard to shipping and seabed mining. She has recognized, however, the need for special arrangements between coastal states whose area of national jurisdiction could not extend for 200 miles without overlapping, a situation which occurs in the Red Sea and the Mediterranean (on both of which Egypt has borders).

To many Middle Eastern countries, the questions relating to bays and navigation through straits are of special significance, since their coasts tend to be marked by many bays and embrace important international straits. In the case of Egypt, the controversy surrounding the legal status of, and the rules governing the right of passage through, the Gulf of Aqaba and the Straits of Tiran, have

been particularly significant. The Egyptian position is that the Gulf and the Straits do not constitute international waterways or connote high seas, but that they are simply territorial waters in which there is only a right of passage for innocent ships. Saudi Arabia, also with an eye on Israel's illegal presence in the Gulf of Aqaba, maintains that in straits "passage is innocent unless it is prejudicial to the security of the coastal State. Such passage is not innocent when it is contrary to the present rules or to other rules of international law." [MacDonald, 1980: 170].

As far as exploration and exploitation of the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are concerned, the Arab states, like most developing countries, believe that the proposed international authority for organizing these activities should have strong functional and supervisory powers, and should be essentially an operating rather than a licensing authority [El-Hakim, 1979: 60-79].

Relations among Middle Eastern countries themselves are likely to be influenced by the various provisions of the new treaty. Although several Arab countries had already announced--in advance of the treaty--a 12 nautical mile limit to their territorial waters, and while several had grabbed the 200 mile "exclusive economic zones" of sea that the new code is to legalize, the adoption of the new sea package is not by itself likely to end immediately all the outstanding "sea conflicts" between them , of which there are indeed quite a few.

Some Important "Sea Issues"

Since the Middle Eastern countries are located by some of the busiest and most heavily utilised seas of the world, it is useful to look briefly at some of

the most important of the outstanding issues involving Middle Eastern countries in the Mediterranean, the Red Sea and the Persian Gulf.

a. In the Mediterranean Sea

Arab states occupy the eastern and the southern shores of this median sea which they call the "White Sea" [al-bahr al-abyad]. Owing to the geographical conformation of the Mediterranean, and to the various political interests and legal claims by its states, there are some controversies over the delimitation of territorial waters, especially with regard to bays and gulfs. Egypt has indicated five bays as falling within her territorial seas even though they are "bays of considerable breadth and relatively small depth" [El-Hakim, 1979: 9].

Libya also considers the Gulf of Sirta (Sidra) as part of her territorial waters, and this claim led to the development of a bloody confrontation with the United States in 1981--ironically, in fact, since it occurred as the resumed tenth session of the Third UNCLOS was convening. In August 1981, two Libyan planes were shot down by United States navy planes in a dogfight that took place over the Gulf of Sidra, an area that Libya regards as its territorial waters while the United States considers it international waters. President Ronald Reagan announced that the exercise was staged "because we could not go on recognizing a violation of international waters" [Los Angeles Times, 22 August 1981].

Many observers could see, however, that although based on a legal disagreement, this was obviously a political conflict, since shooting down other countries' aircraft is not exactly the way to prove the freedom of the sea. Not surpris-

ingly, therefore, even the Arabs who had no sympathy for Qaddafi at all condemned this action most strongly. The leaders of the Gulf Cooperation Council, for example, described the American action as "a provocative trap and mediaeval piracy in the high seas" that would only encourage "cowboy politics" [Los Angeles Times, 23 August 1981], while one Egyptian made the comment that "Reagan now looks quite as mad as Kadafi" [Los Angeles Times, 4 September 1981]. For months afterwards, American authorities expected a retaliatory attack on Reagan, and since then both diplomatic and economic relations between the two countries have deteriorated seriously.

In fact, although the Gulf of Sidra (Sirta) does not meet the semicircularity test or the twentyfour nautical miles closing limit required of a legal bay, these requirements do not apply to so-called "historic" bays, and it appears that Libya has based its claim over the Gulf both on historic considerations and on the principle of vital bays. In a declaration made on 9 October 1973 the Libyan Arab Republic announced that the Gulf of Surt or Sirta

> ...constitutes an integral part of the territory of the Libyan Arab Republic and is under its complete sovereignty... it constitutes internal waters, beyond which the territorial waters of the Libyan Arab Republic start... Through history and without any dispute, the Libyan Arab Republic has exercised its sovereignty over the Gulf. Because of the Gulf's geographic location commanding a view of the southern part of the country, it is therefore crucial to the

> security of the Libyan Arab Republic. Consequently, complete surveillance over its area is necessary to ensure the security and safety of the State.

The declaration stated, furthermore, that private and public foreign ships were not allowed to enter the Gulf without prior permission from the Libyan authorities and in accordance with the regulations established by them in this regard [El-Hakim, 1979: 10].

In a protest dated 11 February 1974 against Libya's declaration, the United States described the Libyan claim as "unacceptable as a violation of international law". It noted that the body of water in question could not be regarded as the juridical internal or territorial waters of Libya, nor did the Gulf of Sirta meet the standards of past open, notorious and effective exercise of authority, continuous exercise of authority, and acquiescence of foreign nations necessary to be regarded historically as Libyan internal and territorial waters [El-Hakim, 1979: 215].

The revival of this legalistic conflict in the summer of 1981 was obviously motivated by political reasons. Indeed, the Libyans could see that some action was in the offing and in a note to the United Nations Security Council the Libyan Bureau for Foreign Liaison protested on 4 August 1981 that "the U.S. government has been escalating its campaign" against Libya in preparation for "a hostile action" [*Middle East Journal*, v. 36, no.1, Winter 1982, 79]. Two weeks later, on 18 August, a statement condemning an American naval exercise within the area claimed by Libya as territorial waters was issued by the Libyan government, in which the exercise was termed "uncalled

for interference and provocation". The following day, on 19 August, United States F-14 fighter planes shot down two Libyan planes as they were carrying out military exercises 60 miles off the Libyan coast over the Gulf of Sidra. The fighters were patrolling a sixteen-ship navy task force [Ibid.].

Following the air clash, Libya delivered a note of protest accusing the United States of "international terrorism". Both President Reagan and Secretary of State Alexander Haig denied that American naval exercises in the Gulf had been provocative [Middle East Journal. v. 36, no. 1, Winter 1982, 79-80 and refs. quoted therein]. One would hope that this really was the case, and that the American government, which has rejected the recent law of the sea, has not actually decided that force is more useful at sea than law, the former being always a strong temptation for a superpower.*

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* Keohane and Nye maintain that superpowers are nowadays declining to use force over sea issues, which increases the manoeuvrability of small states [Keohane and Nye, 1977: 126]. However, as the Third UNCLOS was convening, an American professor of Marine Law was suggesting, after angry condemnation of OPEC and the ruling elites of Third World countries that

> With respect to virtually all of the issues involved, the use of force is a possible method for pursuing U.S. security and economic objectives where these objectives conflict with the unilaterally or multilaterally etsablished regimes of coastal developing nations. Force could, for instance, be used to secure access to 200-mile fishing zones of other nations for distant-water fishermen on the basis that waters beyond twelve miles were subject to high seas freedom of fishing; force could be used to protect deep-seabed mining operations being conducted contrary to a Group of 77 seabed treaty; or force could be used to protect merchant shipping in economic zones, territorial waters, or straits... [Knight, 1977: 141-142].

Among other issues, the continental shelf boundaries in the central Mediterranean between Libya, Tunisia, Italy and Malta have not yet been determined. This problem has become more urgent because oil companies exploring the central Mediterranean have already made successful discoveries in Tunisian and Libyan areas, and it is feared that some oil may be found in areas claimed by two or more of these states. Discussions between Libya and Malta over oil exploration rights have not been successful, and the two countries have agreed to refer their dispute to the International Court of Justice [El-Hakim, 1979: 34].

Exploitation of seabed resources does not represent a problem yet since exploration efforts seem so far to indicate that the Mediterranean is void of the valuable manganese nodules. However, fishing activities are likely to represent an increasingly difficult issue, as overfishing continues in this relatively small sea. Problems between, say, Greece and Egypt in the eastern Mediterranean and between the Iberian countries and Morocco and Mauritania in the western Mediterranean are likely to be of some significance.

In other areas, there has been more cooperation between the states of the northern and those of the southern Mediterranean. For example, the Convention and Protocols for the Protection of the Mediterranean Against Pollution, adopted in 1976, were signed by Cyprus, France, Greece, Italy, Malta, Spain and Turkey, and from among Arab countries by Egypt, Lebanon and Morocco [El-Hakim, 1979: 24].

b. In the Red Sea

Since the Red Sea is almost an Arab lake, it is understandable that there will be problems surrounding Israel's position there. The most controversial issues in the Red Ska are those concerning the Gulf of Aqaba and the Straits of Tiran, and those concerning the Strait of Bab el-Mandab. In the Gulf of Aqaba and the Straits of Tiran in the northern Red Sea, Israel's right of passage has been established

more by political factors than by legal ones; that is, through the occupation of Sinai in 1956-57, and the consequent withdrawal which was effected in March 1957, accompanied by American assurances for freedom of passage in return for that withdrawal. The Gulf of Aqaba is, in fact, legally a bay which might be fairly dealt with by the littoral states--should they so agree--as a closed bay; but this had not been possible under the existing political circumstances, and it can therefore be regarded as territorial waters [El-Hakim, 1979: 167-177].

Israel's close proximity in the northern Red Sea not only to Egypt but also to Jordan and Saudi Arabia may, indeed, explain quite a few of Israel's sea policies, and may well be behind both her questioning of many of the normative provisions of the Law of the Sea during UNCLOS and, later, her eventual rejection of the whole deal. Among other things, Israel has, at the United Nations, publicly challenged the provisions on delimitation of economic zones and the continental shelf between states with opposite or adjecent coasts [Oxman, 1982: 14].

In the southern Red Sea, the Strait of Bab al-Mandab has been a source for Israeli apprehension. The narrower part of this strait lies entirely within the territorial seas of Democratic Yemen and the Republic of Djibouti, both of whom are members of the League of Arab States. Israeli sources report that during the Arab-Israeli war of October 1973, South Yemen had enforced a blockade against Israeli or Israel-bound ships [Abir, 1976: 20-21]. Israel's vote rejecting the Law of the Sea can thus be at least partly understood in the light of the problems that surround her status and activity in the overwhelmingly "Arab" Red Sea.

On the other hand, by no means all relations in the Red Sea have been characterized by conflict. This sea has good economic potential through the

utilization of its hot brines and other metalliferous mud deposits (particularly sodium, calcium, manganese, magnesium, copper, zinc and iron). Saudi Arabia and Sudan signed an agreement in 1974 that defined their respective exclusive seabed zones in the Red Sea and that provided for joint exploitation of the natural resources of the area between the two zones. Other countries bordering the Red Sea try also to coordinate their positions, and in 1972, for instance, a conference was held in which Egypt, Ethiopia, Saudi Arabia, Sudan and the Yemen Arab Republic issued a joint communiqué declaring that the deep resources of the Red Sea were the property of the states bordering it, and should remain so [El-Hakim, 1979: 178-188].

c. In the Persian Gulf

Even the very name of this gulf is controversial: should it be the Persian Gulf or else the Arabian Gulf? Or should some compromise name be devised, such as the "Perseo-Arab Gulf"? [cf. Amin, 1981: Ch. 2]. Iran recently threatened further action against Kuwait and other Gulf states if they did not give up using the term Arabian Gulf, and not long before this, the Iranian observer at a conference of radical Arab states withdrew when President Mu'ammar Qaddafi of Libya (who is quite friendly with the present regime in Iran) suggested calling the waterway the Iranian-Arab Gulf [cf. Ayubi, 1982: note 9].

Although several disputes in this region--such as the ones between Saudi Arabia and Bahrain, between Abu Dhabi and Qatar, and so on--have been solved, and although collective activities have been initiated--such as the signing of the 1978 Regional Convention and Protocols for Cooperation in the

Protection of the Marine Environment from Pollution--by Arab countries of the Gulf, quite a few difficulties remain outstanding. These problems include the question of offshore boundary delineations between a number of countries in the Gulf region, where the availability of offshore oil resources has made them of particular significance [MacDonald, 1980: 33-36]. Thus there are, for example, some problems between Saudi Arabia and Kuwait, between Iraq and Kuwait, between Saudi Arabia and Qatar, and between the United Arab Emirates and Qatar where the difficulties have escalated to some extent recently over the Hawar island [cf. Al-Mustaqbal, 3 April 1982, 32-35]. Then there are the much more difficult problems between Iran and a number of the Arab countries of the Gulf: outstanding problems with both Saudi Arabia and Kuwait over offshore boundaries, the more difficult conflict between the United Arab Emirates and Iran over the islands of Abu Musa and the Tumbs, and, of course, most tragically, the war between Iraq and Iran over--among other things--the Shatt al-Arab estuary [cf. Amin, 1981: Ch. 4].

Indeed, the Iraq-Iran land boundary, the offshore boundary and the Shatt al-Arab boundary have been subject to long historical disputes. Legally, and in practice, however, Iraq has usually controlled this estuary, which represents its only outlet to the sea and which is therefore most crucial for Iraqi oil exports. (In fact, at the time of writing--summer 1982--as the war continues around the Shatt al-Arab and as Syria, which supports Iran, refuses to allow Iraq's oil to flow to the Mediterranean through pipelines that extend into Syrian territory, Iraq is reduced to almost complete dependence on the pipelines to the Mediterranean that extend into Turkey's territory.)

From the late sixties, and at a time of rising pax iraniana over the Gulf region, Shah Muhammad Reza Pahlavi used very assertive strategies in the region. In 1969, Iran declared null and void the 1937 Irano-Iraqi Treaty on the estuary, and confronted Iraq with a show of force to back up its actions [MacDonald, 1980: 54]. On 22 April 1969 "the Iranian freighter Ebn-i Sina, escorted by the Iranian navy and covered by an umbrella of jet fighters, negotiated the disputed waterway into the Persian Gulf... The important precedent was thus established." [Ramazani, 1972: 43-44]. In the meantime, Iran continued its military assistance to the Kurdish revolt in Northern Iraq, carried out a military takeover of the Arab islands of Abu Musa and the two Tumbs, and sent troops to Oman to suppress the Dhofari revolution. In this atmosphere, Iraq was to sign the Algiers accord with the Shah on 13 June 1975, agreeing to delimit its river frontier according to the thalweg (median line) principle [MacDonald, 1980: 34], in return for the Shah stopping his military aid to and support of the Kurdish revolt in Northern Iraq.

Iraq was never happy about the Algiers agreement and there was always an underlying feeling that it represented the result of a certain amount of extortion on the part of the Shah. When the Iranian revolution occurred, not only did it reaffirm all the territorial gains made in the Gulf region by the ex-Shah, but it also launched a very hostile propaganda campaign against the Iraqi regime. The Iraqi government was therefore provoked into launching a war against Iran in October 1980 in a move that is politically understandable, although legally unfounded, since, among other things, the Algiers agreement had had incorporated into it a procedure for complaints

made about its operation [Falk, 1981: 80ff].

Another sensitive issue in the Gulf relates to the Straits of Hormuz which are currently divided between Oman and Iran. The two countries have adopted the principle of "innocent passage" in administering their territorial waters, which allows them the right restrict shipping in the Straits, a step which Iran followed in her war with Iraq and one which aroused the fears of the United States and other powers because of the fact that these straits represent an extremely "vital artery" for the oil-dependent Western economies [MacDonald, 1980: 5].

Conclusion

One can conclude in general by saying that the Arab states have, on the whole, accepted the main orientations of what may be termed customary international law concerning the sea. Their attitude in the recent conferences that resulted in the adoption of the new package deal over the law of the sea, has largely reflected variations on the general "Third World approach" [El-Hakim, 1979: 191]. Their positions derive mainly from socio-economic rather than from military-strategic considerations. Thus, for example, reference was made to such economic considerations in the continental shelf proclamations issued by the Gulf states at the end of the forties, and then, subsequently, by other Middle Eastern countries. The important claim by Saudi Arabia in 1949 defining its territorial waters was not the result of immediate security interests but was indirectly brought about by economic motivations and a desire to provide for offshore oil exploration and exploitation [MacDonald, 1980: 104-105].. The extension to twelve miles of the territorial sea was

based essentially on economic criteria, which also provided the reason for the exclusive fishing zones recently claimed by certain Gulf states.

The rather "standard" attitudes of most Arab countries do not by themselves, however, guarantee the end of all sea conflicts in the Middle Eastern region, since its countries tend to have different economic and political interests. Thus, for instance, the status of Israel in the Red Sea area remains quite sensitive, and some fairly bloody sea conflicts do actually occur, the most notable—as we have seen—being that between Libya and the United States over the Gulf of Sidra in 1981, and those between Iraq and Iran over the Shatt al-Arab estuary since 1980.

In terms of potentials and prospects for the region as a whole, there is still a great deal that can be done towards increased functional cooperation in areas such as scientific research, pollution control, and the like, and one would hope that the existing political and legal disagreements between certain Middle Eastern states will not hinder too severely the prospects for mutually beneficial collective endeavours.

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