

THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982

AND

THE SECURITY OF SMALL ISLAND STATES

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AND

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I. INTRODUCTION

The question addressed in this paper is: what can the U.N. Convention on the Law of the Sea (1982) contribute to the security of small States and, more particularly, of small island States?

The answer is complex: There are aspects under which the Convention may indeed contribute to the insecurity of such States. There are other, perhaps even more important aspects, however, under which the contribution to security potentially is very positive.

The negative aspects are well known to the members of this Group:

1. In discussing the military dimensions of the security problem, the Report of the Study Group of the Commonwealth Parliamentary Association (1984) rightly indicated the possibility of threat of invasion arising from border disputes and territorial claims.

By expanding national jurisdiction over vast ocean spaces, the Convention has multiplied boundary disputes literally by a factor of hundreds. With this increase in boundary disputes comes an increased threat of invasion.

2. The same Report listed also other threats of a quasi-military nature: first among these, poaching and other incursions into the 200-mile Exclusive Economic Zone: a threat to island security which was far less important before the acquisition of such zones.

3. To these threats to island security, noted in the

Report, one might add a third, related, and rather significant one: control over a small island State by a foreign power -- no matter whether obtained by diplomatic or economic pressure or by military invasion -- may give control over far more important ocean spaces and resources. The brief war for the possession of the tiny Parcel islands in the South China Sea (Hsisha Ch'Untao); the Falklands' war, may have had as much to do with offshore resources as with anything else.

Small island States, sparsely populated but endowed with vast oceanic resource zones and/or the control of strategic waterways, may indeed increasingly become centres of attraction for a new type of ocean-oriented imperialism.

Beyond these dangers, however the Convention could make substantial contributions to the security of small States, and particularly, island States.

For, no matter what its defects and defaults -- and these are numerous -- the Convention provides a framework for a new international order in the oceans: an order founded on the new and revolutionary principle of the Common Heritage of Mankind; an order based on cooperation rather than competition, on functional rather than territorial sovereignty. The Convention, theoretically, offers the framework for a peace system within which the military uses of resources and technologies are constrained by the intensification and diversification of increasingly internationalized peaceful uses of ocean space and resources. The emergence of a marine-oriented peace system as opposed to the war system of sovereign territorial States, in which we are living, obviously would enhance the security of all States, large or small, but small States, being presently the most insecure, would benefit the most.

Practically, of course, the Convention as such can give only what States will choose to take of it. It depends on how they will give effect to, implement, utilize and further develop the Convention.



## II. WEAKNESSES OF SMALL ISLAND STATES

The particular weaknesses and vulnerabilities of small island States have been elucidated in the numerous papers before us. Dolman (1984) has conveniently summarized them for reference:

- (1) Diseconomies of scale, with effects increasing exponentially as a function of insularity and isolation.
- (2) Limitations in natural resource endowments, not only in terms of commercially exploitable minerals but also, in the case of 'low' islands, such basic resources as soil, water and vegetation.
- (3) Dependence on a very narrow range of tropical agricultural products -- typically sugar, bananas, copra, fruit and vegetables -- and little or no influence on their terms of trade.
- (4) Distance from markets, high external (and sometimes internal) transport costs and the need for the transshipment of goods.
- (5) Serious balance of payments problems, often the result of stagnating export performance and rapidly growing volumes of imports, especially of food and energy.
- (6) Very narrow range of local skills, with a critical shortage of trained manpower, problems of matching skills to available jobs, and a heavy reliance on expatriates.
- (7) Dependence on one or a few large companies, often foreign owned and operating on highly privileged terms.
- (8) Limited access to capital markets and a heavy

dependence on aid and external institutions.

(9) Proneness to certain types of natural disasters, especially cyclones, which can have long-lasting effects in small islands.

(10) Highly fragile natural ecology and very vulnerable physical environment. The genetic diversity, and hence genetic resource base, is smaller on islands, and species and sub-species of flora and fauna are more prone to extinction.

(Anthony J. Dolman, Islands in the Shade: The Performance and Prospects of Small Island Developing Countries. The Hague, Netherlands: Institute of Social Studies, August, 1984)

These weaknesses and vulnerabilities are constituted by geographic, ecological, and human factors, which, together, determine economic nonviability. Economic nonviability, in turn is the single major factor contributing to military insecurity, just as military security is the culmination of a process generating economic security.

### III. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982

The Convention states in the Preamble that the States Parties are "aware of the historic significance of this Convention as an important contribution to the maintenance of peace...."; that they recognize "the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which...will promote the peaceful uses of the seas and oceans...", and they believe "that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations..."

Some of the provisions of the Convention, to promote these goals, are of a legal nature; some affect military aspects of security; others enhance economic security; yet others contribute to environmental aspects: Actually, the entire range of problems of small island states may be positively affected by the Convention.

1. Economic/ecological aspects

a. The Exclusive Economic Zone

The establishment of the Exclusive Economic Zone, in Part V of the Convention, constitutes one of the major innovations of the new Law of the Sea. It affects at least four of the ten points of major weakness and vulnerability enumerated by Dolman: (2) Limitations in natural resource endowments; (3) Dependence on a very narrow range of tropical agricultural products; (5) balance of payments problems resulting, specially from growing volumes of imports of food and energy; and (6) narrow range of local skills.

The acquisition of an Exclusive Economic Zone may in fact totally change the development perspective of a small island State. What previously was a small, poorly endowed and already overexploited territory, now becomes a platform controlling a vast aquitory rich in underexploited, often even unexplored resources. That this change of perspective does not constitute instant wealth, is obvious. Territory (or aquitory) and resources as such do not generate wealth. Wealth is the product of resources, technology, capital, and manpower, and if the three latter factors are missing, territory (or aquitory) and resources may contribute to vulnerability rather than to security, by inviting incursions or occupation.

But the new perspective, the potential, is there: a new framework has been created in Part V of the Convention: a new resource base, the legal right to keep outsiders at bay, and a management framework. This creates strong



incentives for the development of technology, manpower, and capital.

These developments can only be conceived, however, in the context of regional cooperation and the strengthening of the basic international institutions dealing with the major uses of ocean space and resources (FAO, IOC/UNESCO, IMO, and UNEP). The Convention contains provisions to this effect.

b. Regional Cooperation

Part IX of the Convention urges regional cooperation among States bordering enclosed or semi-enclosed seas, with particular relevance, for the purpose of this paper, for the Caribbean and the Mediterranean seas. Regional cooperation is to extend to the management of living resources, the protection and preservation of the marine environment, and marine scientific research. But the Convention does not limit its recommendations for regional cooperation to enclosed and semi-enclosed seas. References to co-operation through "appropriate regional or subregional organisations" abound throughout the text of the Convention. Art. 63 mandates such cooperation with regard to fish stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it; Article 64 provides for regional cooperation in the management of highly migratory species, Articles 66 and 67 repeat this mandate with regard to anadromous and catadromous species. Cooperation between landlocked and coastal States (Part X) must also be conceived in the context of regional cooperation.

Part XI does not refer directly to regional cooperation, but it does provide for facilities or venues for the Enterprise besides its principal office in Jamaica. This may indeed give rise to the concept of "regional enterprises," as already envisaged by African States (at the Tunis symposium, 1983) or already enacted by the Arab States in the Saudi-Sudanese Red Sea Authority.



The protection and preservation of the marine environment (Part XII), marine scientific research (Part XIII), and the development and transfer of marine technology (Part XIV) require regional cooperation and have indeed given rise to the most comprehensive regional development in modern times: the Regional Seas Programme which now practically covers the world ocean with a network of regional Conventions and Action Plans and institutions affecting all major uses of the seas and oceans.

The establishment of a comprehensive framework for the protection and preservation of the marine environment is indeed one of the most creative innovations of the Convention. The principal beneficiaries, obviously will be States with the most fragile ecology, such as many of the small island States. It clearly is in the best interest of these States to fully implement the provisions of the Convention and to contribute to their further development. Part XII of the Convention makes a significant contribution to mitigating points 9 and 10 on the Dolman's list of weaknesses and vulnerabilities.

In Articles 276 and 277, the Convention provides for the establishment of regional centres to promote the conduct of marine scientific and technological research and foster the transfer of marine technology. It prescribes that all States of a region shall cooperate with the regional centres therein to ensure the more effective achievement of these objectives.

The functions of these centres are described as follows:

(a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the sea-bed, mining and desalination

technologies;

(b) management studies;

(c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;

(d) organization of regional conferences, seminars, and symposia;

(e) acquisition and processing of marine scientific and technological data and information;

(f) prompt dissemination of results of marine scientific and technological research in readily available publications;

(g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;

(h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;

(i) technical cooperation with other States of the region.

The Convention does not provide guidelines for the mode of establishment of these Centres. It would seem natural and logical, however, to begin by inserting them into the already existing regional institutional framework of the Regional Seas Programme. In a recent paper, Kesteven gives an estimate of the establishment cost of such a Regional Centre. This is reproduced in Annex 1.

Members of the Commonwealth are involved in x of the eleven existing Regional Seas Programmes. Hence, the Commonwealth Secretariat could play a significant role in the establishment of the Centres. This would be in line with the recommendations of the Commonwealth Group of Experts'on

## Ocean Management: Regional Perspective.

The Centres could be envisioned as instruments of South-South Cooperation, catering to specific regional needs, and, at the same time, as enhancing North-South cooperation: with each of them specializing in a technology of global concern, as, for instance, seabed mining, which would logically be located in Jamaica and linked to a Caribbean Regional Centre; or OTEC, which might, conceivably, be located in the South Pacific where such work has already been undertaken (in Nauru, by the Japanese) and where OTEC generated energy might have a particularly beneficial effect on the economies of small island States.

South East Asia might specialize in aquaculture, considering the impressive infrastructure already existing in that region.

The development of integrated aquaculture projects and alternative energy resources, especially small-scale OTEC and wave energy projects, through internationalized R&D in Regional Centres might greatly benefit the small island States in the South Pacific and Indian Oceans as well as in the Caribbean Sea, by reducing the import needs and improving their balance of payments. This is indicated by Dolman, and it is in line with the Commonwealth Experts' Report (Summary and Recommendations, para.23, and, particularly, Chapter 3, para 3.6 and 3.17).

In a longer-term perspective, one could carry this process one step further: One could think of establishing a mechanism to coordinate and integrate the science and technology policies of these various centres. This could be done through a "Board" consisting of the Directors of all the Centres, plus some other experts they might choose to coopt. Meeting once or twice a year, this Board could ensure the complementarity of the work of the various Centres and its usefulness to each region and to the international community as a whole.



It is particularly in view of this North-South cooperation aspect that the industrialized countries within the Commonwealth might see their interest in acting as catalysts in this development. A proposal to this effect has already gone forward to the Government of Canada.

Thus, if Part V of the Convention, with the establishment of the Economic Zone, provides the resource base, in legal and physical terms, the management framework, and, most important, the incentive to development, the numerous Articles dealing with regional cooperation, and especially Articles 176 and 277 could provide the means for the acquisition of the manpower skills and technologies necessary to transform these resources into wealth and realize this new dimension of development policy.

This would be a major contribution towards overcoming number 6 of the weaknesses and vulnerabilities of small island states enumerated by Dolman: "Very narrow range of local skills, with a critical shortage of trained manpower, problems of matching skills to available jobs, and a heavy reliance on expatriates."

It also would be a contribution towards meeting point 5, balance of payments problems, especially those resulting from the rapidly growing volumes of imports of food and energy.

One could also think of regional fishing enterprises, perhaps organised under the auspices of the Regional Centres. Regional fishing enterprise would be the only efficient way of meeting the challenge of the distant-water fishing fleets of the industrialized countries who are still the principal beneficiaries of the vast resources of the EEZs of the small Pacific islands. What the islanders can collect at present in licence fees amounts to at most 3-4 percent of the value of the fish caught. A properly constructed regional fishing enterprise certainly could do better than that.



Regional cooperation, also, offers the only hope to overcome weakness No. 1, the diseconomies of scale, and weakness No.4, distance from markets -- if the market is the region, not the distant former metropolis, and the economy is geared to internal development rather than to export. Dolman points out that, prior to the distortion of the economy by the colonial powers, hunger was unknown on the islands, which supported far larger populations than those inhabiting them today. "The colonial heritage is one that has undervalued the sea as a resource," Dolman points out. "In small island developing countries it will prove impossible to overcome growing food and energy dependence without the reconstitution of local food systems, the rediscovery of the sea, and the imaginative integration of marine and landbased resources. If small island countries are to invent a future that has one leg in the sea and the other on land, then many of them may have to reinvent their past."

#### c. Strengthening International Organisations

The Convention contributes to the strengthening of international organizations by putting a host of new tasks and responsibilities on them which they can only fulfil if they strengthen their institutional infrastructures and considerably increase their budgets. There are no less than sixty references in the Convention to the "competent international organisations," who are made responsible for

assisting coastal (and island) states in designating sea lanes and traffic separation schemes in their territorial seas (Art. 22), in straits used for international navigation (Art. 41), and archipelagic sea lanes (Art.53);

setting standards for the construction and removal of artificial islands, installations and structures in the EEZ (Art.60);

determining the allowable catch of the living resources in the EEZ (Art.61);

circulating available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks in the EEZ (Art. 61); on the High Seas (Art. 119);

managing stocks occurring within the EEZ of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it (Art. 63);

managing highly migratory species (Art.64); marine mammals, in the EEZ (Art. 65); on the High Seas (Art. 120); anadromous and catadromous stocks (Art. 66 and 67);

formulating and elaborating international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment (Art. 197);

receiving notifications of damage or imminent danger to the marine environment from States (Art. 198);

cooperating in contingency plans against pollution (Art. 199);

undertaking studies, research programmes and exchange of information and data (Art. 200);

establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (Art. 201);

promoting programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution

Art. 202);

monitoring the risks and effects of pollution (Art. 204);

circulating publications and reports thereon (Art.205);

establishing global and regional rules to reduce and control pollution of the marine environment from land-based sources (Art. 207); from sea-bed activities subject to national jurisdiction (Art. 208); from activities in the International Area (Art.209); from dumping (Art. 210);; from vessels (Art. 211); through the atmosphere (Art. 212);

providing witnesses and the admission of evidence in proceedings instituted pursuant to Part XII of the Convention (Art. 223).

In Part XIII of the Convention, on Marine Scientific Research, the rights and duties of the "competent international institutions" are parified with those of States. Twelve of the 27 Articles of this Part refer to "States and competent international organizations" without any differentiation. Just like States, these organizations have the right to carry out scientific research on their own, on the high seas, in the international sea-bed area, and, in cooperation with the coastal State, in the EEZ and on the continental shelf. The Convention provides incentives, not only to international cooperation, but to the internationalization of marine scientific research: Projects undertaken by, or under the auspices of international organizations in areas under national jurisdiction are privileged: They do not need the consent of the coastal State, provided only that the coastal State is a member of the international organisation and has not objected to the project during the decision-making.(Art. 247) The "competent international organisations thus may become clearing houses for scientific projects, guaranteeing their scientific nature, their reservation for peaceful purposes, and the international availability of all results.



Their special responsibility with regard to the development and transfer of marine technology has been noted. They must assist in the establishment of the above mentioned regional centres. They must assist developing countries in the acquisition, evaluation of technologies; in the development of appropriate marine technology; in the development of the necessary technological infrastructure to facilitate the transfer of marine technology; in the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them (Art. 268), with a view to accelerating the social and economic development of the developing States (Art. 266).

Finally, the Convention assigns a new responsibility to the "competent international organisations" with regard to dispute settlement, in the case of "special arbitration" regarding navigation, the environment, fisheries, or scientific research. IMO, UNEP, FAO and IOC (here, for the first time, mentioned by name) are to draw up and maintain lists of experts from which special arbitral tribunals may be constituted.

It is clear that these new tasks and responsibilities are quite considerable and will require larger inputs of funds and manpower. The Convention gives no guidelines in this respect. While, through innovating initiatives, quite a bit could be achieved relying on the non-monetary sector (voluntary work), new funds will have to be generated, most likely through the establishment, on a regional basis, of an ocean development tax, to be paid by States on the basis of their uses of ocean space and resources. This could be done through Conventions like the Convention for the establishment of an oil spill compensation fund, to which States contribute on the basis of the quantity of oil transported.

It is equally clear that the "competent international organisations" could make a crucially important contribution



to accelerating the social and economic development of small island States.

Under the ecological/economic aspect of security, the Convention, if properly applied and followed up, opens new horizons. It changes the resource base of small island states, which should give a new direction to their development strategy. It mitigates their isolation or insularity by creating new frameworks for regional and global cooperation. It provides instruments for the protection and preservation of their environment.

#### d. Recommendations

This writer almost unreservedly endorses the recommendations of the Report on Ocean Management: a Regional Perspective. The Prospects for Commonwealth Maritime Cooperation in Asia and the Pacific.

(1) At the national level -- no matter how small the island State -- there would appear to be three top priorities:

-- The drafting of national legislation covering all uses of ocean space, harmonized with the U.N. Convention on the Law of the Sea as well as with the Regional Seas Programmes, its Conventions, Protocols and Action Plans;

-- the establishment of an appropriate administrative structure, in line with Chapter 4, para4.6 of the report;

-- and the integration of the marine sector of the economy into the general development strategy, with special emphasis on diminishing dependence on food and energy imports and special consideration for the fragile ecology of small island States.

The Commonwealth Secretariat, through its groups of experts, should assist this process. Under one aspect, the Commonwealth Secretariat is particularly well prepared, even

though the technical competence built up by the Specialized Agencies of the United Nations may be greater. The Agencies, however, still reflect the sectoral, pre-UNCLOS, approach characterizing the United Nations System; the Commonwealth Secretariat seems to have opted from the outset for the more modern approach of integrated ocean management, reflected in the Preamble to the Convention in the statement that the problems of ocean space are closely interrelated and need to be considered as a whole.

The sectoral technical advice of the agencies, however, can be equally useful if the island State has established an institutional infrastructure for ocean management which can put the pieces together.

As to the integration of the marine sector into the development strategy, a great deal of new economic thinking will be required. As the above mentioned Report points out, "the development of a more comprehensive framework for macroeconomic evaluation of the costs and benefits of developing the marine sector and determining its place and contribution to GNP is very much in the early stages." The Economics of the Common Heritage, based on a synthesis of economy and ecology, is yet to come.

(2) At the regional level, active cooperation with the Regional Seas Programme is a top priority. Within this framework, priority should be given to the establishment of the Regional Centres prescribed in Articles 276 and 277 of the Convention, to internationalize R&D in marine science and technology through both South-South and North-South Cooperation. Here, again, the Commonwealth Secretariat might play a leading role, especially if its industrialized members saw it in their interest, and in the interest of their industries, to participate in such activities.

(3) Where there is an abundance of migratory fish presently caught by distant water fishing fleets of industrialized States, the possibility of a regional fishery enterprise should be seriously considered.

(4) On the global level, ways and means must be found to strengthen the U.N. institutions, in particular, IMO, UNEP, FAO and IOC, so as to enable them to fulfil the new tasks and responsibilities imposed on them by the Convention -- all of which are of direct benefit to small island States. Within the framework of the Regional Seas Programme, one should seriously consider the possibility of adopting Conventions establishing an ocean development tax, based on the uses of ocean space and resources.

## 2. Military aspects

### a. Reservation exclusively for peaceful purposes

The Convention deals only with the peaceful uses of the oceans. The military uses are purposely left out; disarmament questions were removed from the competence of UNCLOS III and entrusted to the Committee on Disarmament in Geneva. The Convention has, nevertheless, important implications for security in general, and for the security of small island States in particular. There is a difference, however. In the economic/ecological sector, benefits can be derived directly, through the implementation and application of the Convention; in the military sector, what is required, -- more than implementation -- is interpretation and further development of the Convention.

The starting point is that not only the international area, but also the high seas as well as marine scientific research are reserved for peaceful purposes (Art.88, 141,240).

The International Sea-bed is reserved exclusively for peaceful purposes (Art. 141). The Review Conference which is to be called fifteen years after the commencement of commercial production of minerals, is to ascertain and ensure the use of the Area exclusively for peaceful purposes (Art.155). This responsibility clearly implies that compliance with the principle during the fifteen-year period



must have been monitored somehow: or else, how could it be ascertained?

The Convention empowers the International Sea-bed Authority "to inspect all installations in the Area used in connection with activities in the Area" and endows it with the institutional structures, and the technology, to carry out such inspections, with the participation of any State Member which desires to participate (Art. 165). It is the responsibility of the staff of inspectors to "inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with;" but since the reservation of the Area exclusively for peaceful purposes clearly is one of the fundamental "provisions of this Part," and since some monitoring must take place to enable the Review Conference to ensure compliance with this provision, it would seem not only permissible, but necessary and logical, to entrust the Authority's staff of inspectors, joined by whatever Member State wishes to participate, with the task of monitoring compliance with the exclusion of military uses of the Area. The Treaty Prohibiting the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction in the Sea-bed, the Ocean Floor, and the Subsoil thereof, should be amended accordingly: entrusting the Sea-bed Authority with verification procedures.

These proposals have been worked out in greater detail in another paper, which is attached in Annex 2.

Particularly in the Pacific and Indian Oceans, this could amount to a major contribution to military security in this area. Personnel from small island States could be trained to serve in the Authority's inspectorate.

Once this interpretation of the reservation for peaceful purposes and the principle of a multi-purpose inspectorate has been accepted, it can be extended also to the high seas.



The reservation of the high seas for peaceful purposes (Art. 88) should be interpreted, -- beyond the inadequate statement in Art. 301 which, among other things, is not applicable to the reservation of marine scientific research for exclusively peaceful purposes (Art. 240) -- in the first instance, as de-nuclearization, which should be imposed on a regional basis, utilizing trends and developments which are already far advanced in some regions. The Treaty for the Prohibition of Nuclear Weapons in Latin America (1968) with its protocols, a path-breaking document, could serve, in many respects, as a prototype for other regions, perhaps with two modifications dictated by developments during 'seventies and 'eighties: Perhaps it would not be necessary, in regions like the Pacific and the Indian Oceans, to establish the elaborate type of specialized machinery provided for in the Latin American Treaty (Assembly, Council Secretariat) for the monitoring and enforcement of its provisions. Considering the dual nature of nuclear energy, with its environmental impact which may be as severe as its military impact, one might utilise the institutional structures emerging from the Regional Seas Programme rather than setting up a special machinery.

The modifications thus would be (1) less specialized machinery; and (2) enlarged scope: by including dumping of nuclear waste or, more broadly environmental impact of peaceful uses.

The creation of nuclear-free zones was evidently uppermost on the minds of the participants of the South Pacific Colloquium on the special Needs of Small States (Wellington, 13-15 August 1984. The present recommendation is merely an elaboration of the conclusions of that Colloquium.

#### b. Monitoring, Surveillance and Enforcement

The Convention confers substantial powers and responsibilities on coastal States regarding the

enforcement of their rights to the exclusive exploration and exploitation of the living and nonliving resources in their EEZ (Art. 73); on coastal States, flag States, and port States, regarding the enforcement of of pollution control measures and other measures for the preservation of the marine environment. Small island States, lacking coast-guard manpower and equipment, patrol boats, aircraft and electronic gear, will obviously be unable to fulfil these responsibilities.

The Report of the CPA Study Group (London, September 1984) recommended the establishment of a Commonwealth Defence Force to enhance the military security of small countries. "Within each region the Commonwealth countries would, under this recommendation, contribute to a small, but well armed and trained, ready reaction unit which could be employed at short notice in response to an external threat."

This writer fully agrees with this recommendation, but, in the light of the preceding discussion, would suggest two modifications:

(1) The Commonwealth Force should be a multipurpose force. Besides defence, its responsibilities should include monitoring of compliance with denuclearisation provisions, surveillance of peaceful activities in the EEZs of member countries, search and rescue, and disaster relief. As shown already by earlier Commonwealth studies (surveillance and monitoring in the Solomon Islands) a multi-purpose force is more economical than a single-purpose force. A multi-purpose force is the logical, modern, response to the problems arising from the fact that economic/ecological, and military security are intrinsically connected. A multi-purpose force would greatly alleviate weakness No. 9 on the Dolman list (proneness to certain types of natural disasters); it also would contribute to a solution of the problems created by the Convention on the Law of the Sea, indicated in the opening pages of this study, that is, the creation of very large EEZs for very small and weak island States, which invite incursions and violations.

(2) In oceanic regions containing States Members of the Commonwealth as well as other States, participation in the Force should be open to the other States as well, to enhance regional cooperation.

A multi-national, multi-purpose force of this kind needs a very special kind of training which will have to be institutionalized somehow. The Peace Academy, under General Indar Rikye, might be helpful in this respect.

#### c. Dispute Settlement

Another of the pioneering achievements of the U.N. Convention on the Law of the Sea is Part XV and its Annexes, providing, for the first time in the history of international law, for a global, comprehensive, binding dispute settlement system. The Convention creates new concepts and instruments of dispute settlement (The International Tribunal for the Law of the Sea in Hamburg; the provisions for "special arbitration;" the concept of "mandatory conciliation"). This system is extremely flexible, in that it leaves to litigants a wide range of options as to how and where they want to settle their disputes, but it is, in spite of some loop holes -- inevitable concessions to the present political situation -- rigorous in upholding the principle that disputes must be settled peacefully and that States, by signing the Convention, accept this obligation.

The obligation to settle disputes by peaceful means obviously benefits small and weak States more than big and powerful ones, apt to profit more from the principle that might is right.

Two dangers exist. One: that the loop holes are wide enough to burst the system. Disputes regarding boundary delimitations, military activities, or in respect of which the Security Council exercises the functions assigned to it by the U.N. Charter, may be, if States so decide, exempt



from binding dispute settlement. The record of these past few years seems to indicate, however, that States prefer to take their boundary delimitation cases to court rather than settle them by force. A whole new branch of international jurisprudence is in fact growing out of these disputes. Small island States should take it upon themselves to study these cases thoroughly to enable them to benefit from the system.

The second danger is that the international courts are loaded in favor of the bigger and more powerful States. This danger, too, can be obviated by education and learning. Since the judges of the international courts are elected on the basis of their personal merits, small island States should give great importance to the formation of first-rate international jurists who stand a chance to be elected to the international courts or to serve efficiently as ad-hoc judges.

The adoption of a binding dispute settlement system, besides benefitting the weak, has another advantage: It facilitates the establishment of systems of verification, surveillance and enforcement. The knowledge that disputes that may arise from often controversial measures of verification, surveillance and enforcement, will and must get a fair hearing in an international court encourages the acceptance of such systems. This was brought out clearly in the negotiations of the Treaty Banning Nuclear Weapons from the Seabed (see Annex 2). The time was not ripe, however, for the acceptance of either a compulsory dispute settlement or an international verification system. Now that we have one, we might move more successfully to the establishment of the other.

#### d. Recommendations

1. The reservation of the international sea-bed area exclusively for peaceful purposes should be interpreted as an obligation to demilitarize the international sea-bed area. Verification of compliance with this principle should

be entrusted to the Authority's inspectorate established in accordance with the Convention. Citizens of the small island States in the Pacific and Indian Oceans should be trained to serve in this inspectorate.

2. The reservation of the high seas for peaceful purposes should be interpreted, to start with as an obligation to denuclearize these ocean areas, preferably on the basis of regional conventions. Denuclearization should cover experimental nuclear explosions for whatever purposes, the dumping of nuclear wastes as well as weapons' testing and the introduction of nuclear weapons.

3. A Multi-purpose Commonwealth Defence Force should be established which could be deployed at short notice in response to an external threat, should assist in the surveillance of the peaceful uses of ocean space and resources in the EEZ, should monitor compliance with the provisions for de-nuclearization, render search-and-rescue services and provide first-aid and reconstruction assistance in areas stricken by natural disaster (hurricanes, cyclones, tsunamis, etc.). Participation in the Force should be open to all States in the region, whether members of the Commonwealth or not.

4. All disputes in the Region should be subject to peaceful settlement. Small island States should make special efforts towards the formation of first-rate international jurists apt to be elected to the International Court of Justice and the International Tribunal for the Law of the Sea to assure that the Region's legal system be effectively represented.

#### IV. Conclusion

There can be no doubt: the potential contribution of the U.N. Convention on the Law of the Sea to the economic/ecological, military, and legal security of small island States is of the utmost importance. The new order it creates in the seas and oceans can give reality and viability to the newly acquired independence and sovereignty

of many small island States. This can be achieved through the implementation and application of the Convention, especially with regard to the economic/ecological aspects of security. The implementation and application of the Convention necessitate developments at the national, regional, and global level, all favourable to the interests and to the security of small island States.

As far as the military aspects of security are concerned, the provisions of the Convention stand in need of interpretation and further development.

This report agrees with practically all of the recommendations of the CPA group on the Security of Small States, many of which are marine-oriented.

Small island States, numerous as they are, can decisively contribute to ensuring and accelerating the coming into force of the Convention by promptly completing the process of ratification.



ANNEX 1

Annex

Example of Costs Involved in Establishing and Maintaining a  
Marine Science and Technology Research and Training Institute:  
The Case of the Australian Institute of Marine Science\*

1. Summary of Costs (\$A)

	Capital* (Establishment Costs)	Annual	Total
	\$	\$	\$
1971/72	5,000	67,000	72,000
1972/73	95,000	153,000	248,000
1973/74	1,600,000	355,000	1,955,000
1974/75	1,235,000	840,000	2,075,000
1975/76	965,000	1,171,000	2,136,000
Total	3,900,000	2,856,000	6,486,000

Annual cost at completion of establishment phase - \$1,300,000 (1976/77)

\* Excluding cost of navigation system - costs not yet known but could be \$250,000.

2. Capital Costs of Establishment (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
Laboratory building		10,000	1,200,000	290,000		1,500,000
Office furniture and equipment	2,000	7,000	7,000	16,000		32,000
Laboratory equipment		40,000	100,000	225,000	10,000	375,000
Data collecting equipment				30,000	20,000	50,000
Computer terminal					60,000	60,000
Establishment of library		20,000	45,000	120,000		185,000
Workshop equipment			20,000	20,000		40,000
Motor vehicles	(1) 3,000	(2) 4,000	(1) 2,000	(2) 5,000		(6) 14,000
Launches		(1) 2,500			(1) 2,500	(2) 5,000
Cabin cruiser				15,000		15,000
80-ft vessel			200,000	100,000		300,000
120-ft vessel				300,000	600,000	900,000
Store and workshop, dock area					25,000	25,000
Establishment of field stations				75,000	200,000	275,000
Unallotted		21,500	26,000	39,000	37,500	124,000
Total	5,000	95,000	1,600,000	1,235,000	965,000	3,900,000

\* The tables are extracted from a report prepared for the Australian government in 1971. Cost estimates need to be multiplied by 2.5 to bring them to the levels prevailing today. (See text)

### 3. Recurring Costs (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
Salaries (incl. crews)	19,500	78,000	184,000	495,000	789,000	1,565,500
Traveling	12,500	23,000	50,000	76,000	72,000	233,500
Maintenance	35,000	42,000	40,000	145,000	213,000	475,000
Vessel operating costs		10,000	81,000	114,000	77,000	282,000
Charter of aircraft				10,000	20,000	30,000
	67,000	153,000	355,000	840,000	1,171,000	2,586,000

### 4. Staff Appointments (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
Scientific staff						
Director	1					1
Research scientists		4	8	12		24
Other science graduates			6	8	3	17
Non-graduate technicians			8	17	5	30
Support staff						
Administrative officer		1				1
Librarians		1		1		2
Laboratory craftsmen (workshop)		1	1	6	1	9
Clerical and other office staff	1	2	4	10	2	19
Miscellaneous and other		3	3	12	9	27
Total	2	12	30	66	20	130
Cumulative total	(2)	(14)	(44)	(110)	(130)	



Comment by Geoffrey L. Kesteven, in Small Island Countries, Regional Cooperation and the Management of Marine Resources. The Hague, Netherlands, RIO Foundation, December 1982.

Establishment of a regional institute will call for a substantial investment. The appendix to this paper, taken from an Australian report in which a recommendation was made for the establishment of a national marine science institute, will serve to indicate the order of magnitude involved and to give an idea of the relative cost of different elements. The costs given are at 1971 levels; multiplying them by 2.5 will bring them roughly to current Australian costs. The estimate of vessel cost is, however, too low. A modern ocean-going research vessel would probably today cost in the order of \$10 million. Part of the increase would be attributable to the cost of the more complex equipment (including computers) that such vessels now carry. Furthermore, the Australian exercise concerned the establishment of a research institute, with relatively minor consideration given to facilities required for a substantial training programme. In reality, the estimates for a new institute would be greatly influenced by such considerations as the availability of existing premises, and the readiness of aid donors (international and bilateral) to assume responsibility for some of the costs.

Worthy of special consideration would be the possibility of drawing upon existing training programmes, such as the one in Marine Resource Management organized annually by the International Ocean Institute (Malta) in cooperation with Dalhousie University (Canada). Those responsible for existing training programmes could be invited to conduct one or more of their programmes at the regional institute. Such an arrangement would accelerate the launching of the institute's own training programme and have a valuable cost reduction effect.

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THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1982)

AND

THE SECURITY OF SMALL ISLAND STATES

I. INTRODUCTION

The question addressed in this paper is: what can the U.N. Convention on the Law of the Sea (1982) contribute to the security of small States and, more particularly, of small island States?

The answer is complex: There are aspects under which the Convention may indeed contribute to the insecurity of such States. There are other, perhaps even more important aspects, however, under which the contribution to security potentially is very positive.

The negative aspects are well known to the members of this Group:

1. In discussing the military dimensions of the security problem, the Report of the Study Group of the Commonwealth Parliamentary Association (1984) rightly indicated the possibility of threat of invasion arising from border disputes and territorial claims.

By expanding national jurisdiction over vast ocean spaces, the Convention has multiplied boundary disputes literally by a factor of hundreds. With this increase in boundary disputes comes an increased threat of invasion.

2. The same Report listed also other threats of a quasi-military nature: first among these, poaching and other incursions into the 200-mile Exclusive Economic Zone: a threat to island security which was far less important before the acquisition of such zones.

3. To these threats to island security, noted in the



Report, one might add a third, related, and rather significant one: control over a small island State by a foreign power -- no matter whether obtained by diplomatic or economic pressure or by military invasion -- may give control over far more important ocean spaces and resources. The brief war for the possession of the tiny Parcel islands in the South China Sea (Hsisha Ch'Untao); the Falklands' war, may have had as much to do with offshore resources as with anything else.

Small island States, sparsely populated but endowed with vast oceanic resource zones and/or the control of strategic waterways, may indeed increasingly become centres of attraction for a new type of ocean-oriented imperialism.

Beyond these dangers, however the Convention could make substantial contributions to the security of small States, and particularly, island States.

For, no matter what its defects and defaults -- and these are numerous -- the Convention provides a framework for a new international order in the oceans: an order founded on the new and revolutionary principle of the Common Heritage of Mankind; an order based on cooperation rather than competition, on functional rather than territorial sovereignty. The Convention, theoretically, offers the framework for a peace system within which the military uses of resources and technologies are constrained by the intensification and diversification of increasingly internationalized peaceful uses of ocean space and resources. The emergence of a marine-oriented peace system as opposed to the war system of sovereign territorial States, in which we are living, obviously would enhance the security of all States, large or small, but small States, being presently the most insecure, would benefit the most.

Practically, of course, the Convention as such can give only what States will choose to take of it. It depends on how they will give effect to, implement, utilize and further develop the Convention.

## II. WEAKNESSES OF SMALL ISLAND STATES

The particular weaknesses and vulnerabilities of small island States have been elucidated in the numerous papers before us. Dolman (1984) has conveniently summarized them for reference:

- (1) Diseconomies of scale, with effects increasing exponentially as a function of insularity and isolation.
- (2) Limitations in natural resource endowments, not only in terms of commercially exploitable minerals but also, in the case of 'low' islands, such basic resources as soil, water and vegetation.
- (3) Dependence on a very narrow range of tropical agricultural products -- typically sugar, bananas, copra, fruit and vegetables -- and little or no influence on their terms of trade.
- (4) Distance from markets, high external (and sometimes internal) transport costs and the need for the transshipment of goods.
- (5) Serious balance of payments problems, often the result of stagnating export performance and rapidly growing volumes of imports, especially of food and energy.
- (6) Very narrow range of local skills, with a critical shortage of trained manpower, problems of matching skills to available jobs, and a heavy reliance on expatriates.
- (7) Dependence on one or a few large companies, often foreign owned and operating on highly privileged terms.
- (8) Limited access to capital markets and a heavy



dependence on aid and external institutions.

(9) Proneness to certain types of natural disasters, especially cyclones, which can have long-lasting effects in small islands.

(10) Highly fragile natural ecology and very vulnerable physical environment. The genetic diversity, and hence genetic resource base, is smaller on islands, and species and sub-species of flora and fauna are more prone to extinction.

(Anthony J. Dolman, Islands in the Shade: The Performance and Prospects of Small Island Developing Countries. The Hague, Netherlands: Institute of Social Studies, August, 1984)

These weaknesses and vulnerabilities are constituted by geographic, ecological, and human factors, which, together, determine economic nonviability. Economic nonviability, in turn is the single major factor contributing to military insecurity, just as military security is the culmination of a process generating economic security.

### III. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982

The Convention states in the Preamble that the States Parties are "aware of the historic significance of this Convention as an important contribution to the maintenance of peace...."; that they recognize "the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which...will promote the peaceful uses of the seas and oceans...", and they believe "that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations..."



Some of the provisions of the Convention, to promote these goals, are of a legal nature; some affect military aspects of security; others enhance economic security; yet others contribute to environmental aspects: Actually, the entire range of problems of small island states may be positively affected by the Convention.

1. Economic/ecological aspects

a. The Exclusive Economic Zone

The establishment of the Exclusive Economic Zone, in Part V of the Convention, constitutes one of the major innovations of the new Law of the Sea. It affects at least four of the ten points of major weakness and vulnerability enumerated by Dolman: (2) Limitations in natural resource endowments; (3) Dependence on a very narrow range of tropical agricultural products; (5) balance of payments problems resulting, specially from growing volumes of imports of food and energy; and (6) narrow range of local skills.

The acquisition of an Exclusive Economic Zone may infact totally change the development perspective of a small island State. What previously was a small, poorly endowed and already overexploited territory, now becomes a platform controlling a vast aquitory rich in underexploited, often even unexplored resources. That this change of perspective does not constitute instant wealth, is obvious. Territory (or aquitory) and resources as such do not generate wealth. Wealth is the product of resources, technology, capital, and manpower, and if the three latter factors are missing, territory (or aquitory) and resources may contribute to vulnerability rather than to security, by inviting incursions or occupation.

But the new perspective, the potential, is there: a new framework has been created in Part V of the Convention: a new resource base, the legal right to keep outsiders at bay, and a management framework. This creates strong

incentives for the development of technology, manpower, and capital.

These developments can only be conceived, however, in the context of regional cooperation and the strengthening of the basic international institutions dealing with the major uses of ocean space and resources (FAO, IOC/UNESCO, IMO, and UNEP). The Convention contains provisions to this effect.

b. Regional Cooperation

Part IX of the Convention urges regional cooperation among States bordering enclosed or semi-enclosed seas, with particular relevance, for the purpose of this paper, for the Caribbean and the Mediterranean seas. Regional cooperation is to extend to the management of living resources, the protection and preservation of the marine environment, and marine scientific research. But the Convention does not limit its recommendations for regional cooperation to enclosed and semi-enclosed seas. References to co-operation through "appropriate regional or subregional organisations" abound throughout the text of the Convention. Art. 63 mandates such cooperation with regard to fish stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it; Article 64 provides for regional cooperation in the management of highly migratory species, Articles 66 and 67 repeat this mandate with regard to anadromous and catadromous species. Cooperation between landlocked and coastal States (Part X) must also be conceived in the context of regional cooperation.

Part XI does not refer directly to regional cooperation, but it does provide for facilities or venues for the Enterprise besides its principal office in Jamaica. This may indeed give rise to the concept of "regional enterprises," as already envisaged by African States (at the Tunis symposium, 1983) or already enacted by the Arab States in the Saudi-Sudanese Red Sea Authority.



The protection and preservation of the marine environment (Part XII), marine scientific research (Part XIII), and the development and transfer of marine technology (Part XIV) require regional cooperation and have indeed given rise to the most comprehensive regional development in modern times: the Regional Seas Programme which now practically covers the world ocean with a network of regional Conventions and Action Plans and institutions affecting all major uses of the seas and oceans.

The establishment of a comprehensive framework for the protection and preservation of the marine environment is indeed one of the most creative innovations of the Convention. The principal beneficiaries, obviously will be States with the most fragile ecology, such as many of the small island States. It clearly is in the best interest of these States to fully implement the provisions of the Convention and to contribute to their further development. Part XII of the Convention makes a significant contribution to mitigating points 9 and 10 on the Dolman's list of weaknesses and vulnerabilities.

In Articles 276 and 277, the Convention provides for the establishment of regional centres to promote the conduct of marine scientific and technological research and foster the transfer of marine technology. It prescribes that all States of a region shall cooperate with the regional centres therein to ensure the more effective achievement of these objectives.

The functions of these centres are described as follows:

(a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the sea-bed, mining and desalination



technologies;

(b) management studies;

(c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;

(d) organization of regional conferences, seminars, and symposia;

(e) acquisition and processing of marine scientific and technological data and information;

(f) prompt dissemination of results of marine scientific and technological research in readily available publications;

(g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;

(h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;

(i) technical cooperation with other States of the region.

The Convention does not provide guidelines for the mode of establishment of these Centres. It would seem natural and logical, however, to begin by inserting them into the already existing regional institutional framework of the Regional Seas Programme. In a recent paper, Kesteven gives an estimate of the establishment cost of such a Regional Centre. This is reproduced in Annex 1.

Members of the Commonwealth are involved in x of the eleven existing Regional Seas Programmes. Hence, the Commonwealth Secretariat could play a significant role in the establishment of the Centres. This would be in line with the recommendations of the Commonwealth Group of Experts'on

Ocean Management: Regional Perspective.

The Centres could be envisioned as instruments of South-South Cooperation, catering to specific regional needs, and, at the same time, as enhancing North-South cooperation: with each of them specializing in a technology of global concern, as, for instance, seabed mining, which would logically be located in Jamaica and linked to a Caribbean Regional Centre; or OTEC, which might, conceivably, be located in the South Pacific where such work has already been undertaken (in Nauru, by the Japanese) and where OTEC generated energy might have a particularly beneficial effect on the economies of small island States.

South East Asia might specialize in aquaculture, considering the impressive infrastructure already existing in that region.

The development of integrated aquaculture projects and alternative energy resources, especially small-scale OTEC and wave energy projects, through internationalized R&D in Regional Centres might greatly benefit the small island States in the South Pacific and Indian Oceans as well as in the Caribbean Sea, by reducing the import needs and improving their balance of payments. This is indicated by Dolman, and it is in line with the Commonwealth Experts' Report (Summary and Recommendations, para.23, and, particularly, Chapter 3, para 3.6 and 3.17).

In a longer-term perspective, one could carry this process one step further: One could think of establishing a mechanism to coordinate and integrate the science and technology policies of these various centres. This could be done through a "Board" consisting of the Directors of all the Centres, plus some other experts they might choose to coopt. Meeting once or twice a year, this Board could ensure the complementarity of the work of the various Centres and its usefulness to each region and to the international community as a whole.



It is particularly in view of this North-South cooperation aspect that the industrialized countries within the Commonwealth might see their interest in acting as catalysts in this development. A proposal to this effect has already gone forward to the Government of Canada.

Thus, if Part V of the Convention, with the establishment of the Economic Zone, provides the resource base, in legal and physical terms, the management framework, and, most important, the incentive to development, the numerous Articles dealing with regional cooperation, and especially Articles 176 and 277 could provide the means for the acquisition of the manpower skills and technologies necessary to transform these resources into wealth and realize this new dimension of development policy.

This would be a major contribution towards overcoming number 6 of the weaknesses and vulnerabilities of small island states enumerated by Dolman: "Very narrow range of local skills, with a critical shortage of trained manpower, problems of matching skills to available jobs, and a heavy reliance on expatriates."

It also would be a contribution towards meeting point 5, balance of payments problems, especially those resulting from the rapidly growing volumes of imports of food and energy.

One could also think of regional fishing enterprises, perhaps organised under the auspices of the Regional Centres. Regional fishing enterprise would be the only efficient way of meeting the challenge of the distant-water fishing fleets of the industrialized countries who are still the principal beneficiaries of the vast resources of the EEZs of the small Pacific islands. What the islanders can collect at present in licence fees amounts to at most 3-4 percent of the value of the fish caught. A properly constructed regional fishing enterprise certainly could do better than that.



Regional cooperation, also, offers the only hope to overcome weakness No. 1, the diseconomies of scale, and weakness No.4, distance from markets -- if the market is the region, not the distant former metropolis, and the economy is geared to internal development rather than to export. Dolman points out that, prior to the distortion of the economy by the colonial powers, hunger was unknown on the islands, which supported far larger populations than those inhabiting them today. "The colonial heritage is one that has undervalued the sea as a resource," Dolman points out. "In small island developing countries it will prove impossible to overcome growing food and energy dependence without the reconstitution of local food systems, the rediscovery of the sea, and the imaginative integration of marine and landbased resources. If small island countries are to invent a future that has one leg in the sea and the other on land, then many of them may have to reinvent their past."

#### c. Strengthening International Organisations

The Convention contributes to the strengthening of international organizations by putting a host of new tasks and responsibilities on them which they can only fulfil if they strengthen their institutional infrastructures and considerably increase their budgets. There are no less than sixty references in the Convention to the "competent international organisations," who are made responsible for

assisting coastal (and island) states in designating sea lanes and traffic separation schemes in their territorial seas (Art. 22), in straits used for international navigation (Art. 41), and archipelagic sea lanes (Art.53);

setting standards for the construction and removal of artificial islands, installations and structures in the EEZ (Art.60);

determining the allowable catch of the living resources in the EEZ (Art.61);

circulating available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks in the EEZ (Art. 61); on the High Seas (Art. 119);

managing stocks occurring within the EEZ of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it (Art. 63);

managing highly migratory species (Art.64); marine mammals, in the EEZ (Art. 65); on the High Seas (Art. 120); anadromous and catadromous stocks (Art. 66 and 67);

formulating and elaborating international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment (Art. 197);

receiving notifications of damage or imminent danger to the marine environment from States (Art. 198);

cooperating in contingency plans against pollution (Art. 199);

undertaking studies, research programmes and exchange of information and data (Art. 200);

establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (Art. 201);

promoting programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution

Art. 202);

monitoring the risks and effects of pollution (Art. 204);

circulating publications and reports thereon (Art.205);

establishing global and regional rules to reduce and control pollution of the marine environment from land-based sources (Art. 207); from sea-bed activities subject to national jurisdiction (Art. 208); from activities in the International Area (Art.209); from dumping (Art. 210);; from vessels (Art. 211); through the atmosphere (Art. 212);

providing witnesses and the admission of evidence in proceedings instituted pursuant to Part XII of the Convention (Art. 223).

In Part XIII of the Convention, on Marine Scientific Research, the rights and duties of the "competent international institutions" are parified with those of States. Twelve of the 27 Articles of this Part refer to "States and competent international organizations" without any differentiation. Just like States, these organizations have the right to carry out scientific research on their own, on the high seas, in the international sea-bed area, and, in cooperation with the coastal State, in the EEZ and on the continental shelf. The Convention provides incentives, not only to international cooperation, but to the internationalization of marine scientific research: Projects undertaken by, or under the auspices of international organizations in areas under national jurisdiction are privileged: They do not need the consent of the coastal State, provided only that the coastal State is a member of the international organisation and has not objected to the project during the decision-making.(Art. 247) The "competent international organisations thus may become clearing houses for scientific projects, guaranteeing their scientific nature, their reservation for peaceful purposes, and the international availability of all results.



Their special responsibility with regard to the development and transfer of marine technology has been noted. They must assist in the establishment of the above mentioned regional centres. They must assist developing countries in the acquisition, evaluation of technologies; in the development of appropriate marine technology; in the development of the necessary technological infrastructure to facilitate the transfer of marine technology; in the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them (Art. 268), with a view to accelerating the social and economic development of the developing States (Art. 266).

Finally, the Convention assigns a new responsibility to the "competent international organisations" with regard to dispute settlement, in the case of "special arbitration" regarding navigation, the environment, fisheries, or scientific research. IMO, UNEP, FAO and IOC (here, for the first time, mentioned by name) are to draw up and maintain lists of experts from which special arbitral tribunals may be constituted.

It is clear that these new tasks and responsibilities are quite considerable and will require larger inputs of funds and manpower. The Convention gives no guidelines in this respect. While, through innovating initiatives, quite a bit could be achieved relying on the non-monetary sector (voluntary work), new funds will have to be generated, most likely through the establishment, on a regional basis, of an ocean development tax, to be paid by States on the basis of their uses of ocean space and resources. This could be done through Conventions like the Convention for the establishment of an oil spill compensation fund, to which States contribute on the basis of the quantity of oil transported.

It is equally clear that the "competent international organisations" could make a crucially important contribution

to accelerating the social and economic development of small island States.

Under the ecological/economic aspect of security, the Convention, if properly applied and followed up, opens new horizons. It changes the resource base of small island states, which should give a new direction to their development strategy. It mitigates their isolation or insularity by creating new frameworks for regional and global cooperation. It provides instruments for the protection and preservation of their environment.

#### d. Recommendations

This writer almost unreservedly endorses the recommendations of the Report on Ocean Management: a Regional Perspective. The Prospects for Commonwealth Maritime Cooperation in Asia and the Pacific.

(1) At the national level -- no matter how small the island State -- there would appear to be three top priorities:

-- The drafting of national legislation covering all uses of ocean space, harmonized with the U.N. Convention on the Law of the Sea as well as with the Regional Seas Programmes, its Conventions, Protocols and Action Plans;

-- the establishment of an appropriate administrative structure, in line with Chapter 4, para 4.6 of the report;

-- and the integration of the marine sector of the economy into the general development strategy, with special emphasis on diminishing dependence on food and energy imports and special consideration for the fragile ecology of small island States.

The Commonwealth Secretariat, through its groups of experts, should assist this process. Under one aspect, the Commonwealth Secretariat is particularly well prepared, even



though the technical competence built up by the Specialized Agencies of the United Nations may be greater. The Agencies, however, still reflect the sectoral, pre-UNCLOS, approach characterizing the United Nations System; the Commonwealth Secretariat seems to have opted from the outset for the more modern approach of integrated ocean management, reflected in the Preamble to the Convention in the statement that the problems of ocean space are closely interrelated and need to be considered as a whole.

The sectoral technical advice of the agencies, however, can be equally useful if the island State has established an institutional infrastructure for ocean management which can put the pieces together.

As to the integration of the marine sector into the development strategy, a great deal of new economic thinking will be required. As the above mentioned Report points out, "the development of a more comprehensive framework for macroeconomic evaluation of the costs and benefits of developing the marine sector and determining its place and contribution to GNP is very much in the early stages." The Economics of the Common Heritage, based on a synthesis of economy and ecology, is yet to come.

(2) At the regional level, active cooperation with the Regional Seas Programme is a top priority. Within this framework, priority should be given to the establishment of the Regional Centres prescribed in Articles 276 and 277 of the Convention, to internationalize R&D in marine science and technology through both South-South and North-South Cooperation. Here, again, the Commonwealth Secretariat might play a leading role, especially if its industrialized members saw it in their interest, and in the interest of their industries, to participate in such activities.

(3) Where there is an abundance of migratory fish presently caught by distant water fishing fleets of industrialized States, the possibility of a regional fishery enterprise should be seriously considered.



(4) On the global level, ways and means must be found to strengthen the U.N. institutions, in particular, IMO, UNEP, FAO and IOC, so as to enable them to fulfil the new tasks and responsibilities imposed on them by the Convention -- all of which are of direct benefit to small island States. Within the framework of the Regional Seas Programme, one should seriously consider the possibility of adopting Conventions establishing an ocean development tax, based on the uses of ocean space and resources.

## 2. Military aspects

### a. Reservation exclusively for peaceful purposes

The Convention deals only with the peaceful uses of the oceans. The military uses are purposely left out; disarmament questions were removed from the competence of UNCLOS III and entrusted to the Committee on Disarmament in Geneva. The Convention has, nevertheless, important implications for security in general, and for the security of small island States in particular. There is a difference, however. In the economic/ecological sector, benefits can be derived directly, through the implementation and application of the Convention; in the military sector, what is required, -- more than implementation -- is interpretation and further development of the Convention.

The starting point is that not only the international area, but also the high seas as well as marine scientific research are reserved for peaceful purposes (Art.88, 141,240).

The International Sea-bed is reserved exclusively for peaceful purposes (Art. 141). The Review Conference which is to be called fifteen years after the commencement of commercial production of minerals, is to ascertain and ensure the use of the Area exclusively for peaceful purposes (Art.155). This responsibility clearly implies that compliance with the principle during the fifteen-year period

must have been monitored somehow: or else, how could it be ascertained?

The Convention empowers the International Sea-bed Authority "to inspect all installations in the Area used in connection with activities in the Area" and endows it with the institutional structures, and the technology, to carry out such inspections, with the participation of any State Member which desires to participate (Art. 165). It is the responsibility of the staff of inspectors to "inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with;" but since the reservation of the Area exclusively for peaceful purposes clearly is one of the fundamental "provisions of this Part," and since some monitoring must take place to enable the Review Conference to ensure compliance with this provision, it would seem not only permissible, but necessary and logical, to entrust the Authority's staff of inspectors, joined by whatever Member State wishes to participate, with the task of monitoring compliance with the exclusion of military uses of the Area. The Treaty Prohibiting the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction in the Sea-bed, the Ocean Floor, and the Subsoil thereof, should be amended accordingly: entrusting the Sea-bed Authority with verification procedures.

These proposals have been worked out in greater detail in another paper, which is attached in Annex 2.

Particularly in the Pacific and Indian Oceans, this could amount to a major contribution to military security in this area. Personnel from small island States could be trained to serve in the Authority's inspectorate.

Once this interpretation of the reservation for peaceful purposes and the principle of a multi-purpose inspectorate has been accepted, it can be extended also to the high seas.



The reservation of the high seas for peaceful purposes (Art. 88) should be interpreted, -- beyond the inadequate statement in Art. 301 which, among other things, is not applicable to the reservation of marine scientific research for exclusively peaceful purposes (Art. 240) -- in the first instance, as de-nuclearization, which should be imposed on a regional basis, utilizing trends and developments which are already far advanced in some regions. The Treaty for the Prohibition of Nuclear Weapons in Latin America (1968) with its protocols, a path-breaking document, could serve, in many respects, as a prototype for other regions, perhaps with two modifications dictated by developments during 'seventies and 'eighties: Perhaps it would not be necessary, in regions like the Pacific and the Indian Oceans, to establish the elaborate type of specialized machinery provided for in the Latin American Treaty (Assembly, Council Secretariat) for the monitoring and enforcement of its provisions. Considering the dual nature of nuclear energy, with its environmental impact which may be as severe as its military impact, one might utilise the institutional structures emerging from the Regional Seas Programme rather than setting up a special machinery.

The modifications thus would be (1) less specialized machinery; and (2) enlarged scope: by including dumping of nuclear waste or, more broadly environmental impact of peaceful uses.

The creation of nuclear-free zones was evidently uppermost on the minds of the participants of the South Pacific Colloquium on the special Needs of Small States (Wellington, 13-15 August 1984. The present recommendation is merely an elaboration of the conclusions of that Colloquium.

#### b. Monitoring, Surveillance and Enforcement

The Convention confers substantial powers and responsibilities on coastal States regarding the



enforcement of their rights to the exclusive exploration and exploitation of the living and nonliving resources in their EEZ (Art. 73); on coastal States, flag States, and port States, regarding the enforcement of of pollution control measures and other measures for the preservation of the marine environment. Small island States, lacking coast-guard manpower and equipment, patrol boats, aircraft and electronic gear, will obviously be unable to fulfil these responsibilities.

The Report of the CPA Study Group (London, September 1984) recommended the establishment of a Commonwealth Defence Force to enhance the military security of small countries. "Within each region the Commonwealth countries would, under this recommendation, contribute to a small, but well armed and trained, ready reaction unit which could be employed at short notice in response to an external threat."

This writer fully agrees with this recommendation, but, in the light of the preceding discussion, would suggest two modifications:

(1) The Commonwealth Force should be a multipurpose force. Besides defence, its responsibilities should include monitoring of compliance with denuclearisation provisions, surveillance of peaceful activities in the EEZs of member countries, search and rescue, and disaster relief. As shown already by earlier Commonwealth studies (surveillance and monitoring in the Solomon Islands) a multi-purpose force is more economical than a single-purpose force. A multi-purpose force is the logical, modern, response to the problems arising from the fact that economic/ecological, and military security are intrinsically connected. A multi-purpose force would greatly alleviate weakness No. 9 on the Dolman list (proneness to certain types of natural disasters); it also would contribute to a solution of the problems created by the Convention on the Law of the Sea, indicated in the opening pages of this study, that is, the creation of very large EEZs for very small and weak island States, which invite incursions and violations.

(2) In oceanic regions containing States Members of the Commonwealth as well as other States, participation in the Force should be open to the other States as well, to enhance regional cooperation.

A multi-national, multi-purpose force of this kind needs a very special kind of training which will have to be institutionalized somehow. The Peace Academy, under General Indar Rikye, might be helpful in this respect.

#### c. Dispute Settlement

Another of the pioneering achievements of the U.N. Convention on the Law of the Sea is Part XV and its Annexes, providing, for the first time in the history of international law, for a global, comprehensive, binding dispute settlement system. The Convention creates new concepts and instruments of dispute settlement (The International Tribunal for the Law of the Sea in Hamburg; the provisions for "special arbitration;" the concept of "mandatory conciliation"). This system is extremely flexible, in that it leaves to litigants a wide range of options as to how and where they want to settle their disputes, but it is, in spite of some loop holes -- inevitable concessions to the present political situation -- rigorous in upholding the principle that disputes must be settled peacefully and that States, by signing the Convention, accept this obligation.

The obligation to settle disputes by peaceful means obviously benefits small and weak States more than big and powerful ones, apt to profit more from the principle that might is right.

Two dangers exist. One: that the loop holes are wide enough to burst the system. Disputes regarding boundary delimitations, military activities, or in respect of which the Security Council exercises the functions assigned to it by the U.N. Charter, may be, if States so decide, exempt



from binding dispute settlement. The record of these past few years seems to indicate, however, that States prefer to take their boundary delimitation cases to court rather than settle them by force. A whole new branch of international jurisprudence is in fact growing out of these disputes. Small island States should take it upon themselves to study these cases thoroughly to enable them to benefit from the system.

The second danger is that the international courts are loaded in favor of the bigger and more powerful States. This danger, too, can be obviated by education and learning. Since the judges of the international courts are elected on the basis of their personal merits, small island States should give great importance to the formation of first-rate international jurists who stand a chance to be elected to the international courts or to serve efficiently as ad-hoc judges.

The adoption of a binding dispute settlement system, besides benefitting the weak, has another advantage: It facilitates the establishment of systems of verification, surveillance and enforcement. The knowledge that disputes that may arise from often controversial measures of verification, surveillance and enforcement, will and must get a fair hearing in an international court encourages the acceptance of such systems. This was brought out clearly in the negotiations of the Treaty Banning Nuclear Weapons from the Seabed (see Annex 2). The time was not ripe, however, for the acceptance of either a compulsory dispute settlement or an international verification system. Now that we have one, we might move more successfully to the establishment of the other.

#### d. Recommendations

1. The reservation of the international sea-bed area exclusively for peaceful purposes should be interpreted as an obligation to demilitarize the international sea-bed area. Verification of compliance with this principle should



be entrusted to the Authority's inspectorate established in accordance with the Convention. Citizens of the small island States in the Pacific and Indian Oceans should be trained to serve in this inspectorate.

2. The reservation of the high seas for peaceful purposes should be interpreted, to start with as an obligation to denuclearize these ocean areas, preferably on the basis of regional conventions. Denuclearization should cover experimental nuclear explosions for whatever purposes, the dumping of nuclear wastes as well as weapons' testing and the introduction of nuclear weapons.

3. A Multi-purpose Commonwealth Defence Force should be established which could be deployed at short notice in response to an external threat, should assist in the surveillance of the peaceful uses of ocean space and resources in the EEZ, should monitor compliance with the provisions for de-nuclearization, render search-and-rescue services and provide first-aid and reconstruction assistance in areas stricken by natural disaster (hurricanes, cyclones, tsunamis, etc.). Participation in the Force should be open to all States in the region, whether members of the Commonwealth or not.

4. All disputes in the Region should be subject to peaceful settlement. Small island States should make special efforts towards the formation of first-rate international jurists apt to be elected to the International Court of Justice and the International Tribunal for the Law of the Sea to assure that the Region's legal system be effectively represented.

#### IV. Conclusion

There can be no doubt: the potential contribution of the U.N. Convention on the Law of the Sea to the economic/ecological, military, and legal security of small island States is of the utmost importance. The new order it creates in the seas and oceans can give reality and viability to the newly acquired independence and sovereignty

of many small island States. This can be achieved through the implementation and application of the Convention, especially with regard to the economic/ecological aspects of security. The implementation and application of the Convention necessitate developments at the national, regional, and global level, all favourable to the interests and to the security of small island States.

As far as the military aspects of security are concerned, the provisions of the Convention stand in need of interpretation and further development.

This report agrees with practically all of the recommendations of the CPA group on the Security of Small States, many of which are marine-oriented.

Small island States, numerous as they are, can decisively contribute to ensuring and accelerating the coming into force of the Convention by promptly completing the process of ratification.

ANNEX 1



Annex

Example of Costs Involved in Establishing and Maintaining a  
Marine Science and Technology Research and Training Institute:  
The Case of the Australian Institute of Marine Science\*

1. Summary of Costs (\$A)

	Capital* (Establishment Costs)	Annual	Total
	\$	\$	\$
1971/72	5,000	67,000	72,000
1972/73	95,000	153,000	248,000
1973/74	1,600,000	355,000	1,955,000
1974/75	1,235,000	840,000	2,075,000
1975/76	965,000	1,171,000	2,136,000
Total	3,900,000	2,856,000	6,486,000

Annual cost at completion of establishment phase - \$1,300,000 (1976/77)

\* Excluding cost of navigation system - costs not yet known but could be \$250,000.

2. Capital Costs of Establishment (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
Laboratory building		10,000	1,200,000	290,000		1,500,000
Office furniture and equipment	2,000	7,000	7,000	16,000		32,000
Laboratory equipment		40,000	100,000	225,000	10,000	375,000
Data collecting equipment				30,000	20,000	50,000
Computer terminal					60,000	60,000
Establishment of library		20,000	45,000	120,000		185,000
Workshop equipment			20,000	20,000		40,000
Motor vehicles	(1) 3,000	(2) 4,000	(1) 2,000	(2) 5,000		(6) 14,000
Launches		(1) 2,500			(1) 2,500	(2) 5,000
Cabin cruiser				15,000		15,000
80-ft vessel			200,000	100,000		300,000
120-ft vessel				300,000	600,000	900,000
Store and workshop, dock area					25,000	25,000
Establishment of field stations				75,000	200,000	275,000
Unallotted		21,500	26,000	39,000	37,500	124,000
Total	5,000	95,000	1,600,000	1,235,000	965,000	3,900,000

\* The tables are extracted from a report prepared for the Australian government in 1971. Cost estimates need to be multiplied by 2.5 to bring them to the levels prevailing today. (See text)

### 3. Recurring Costs (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
Salaries (incl. crews)	19,500	78,000	184,000	495,000	789,000	1,565,500
Traveling	12,500	23,000	50,000	76,000	72,000	233,500
Maintenance	35,000	42,000	40,000	145,000	213,000	475,000
Vessel operating costs		10,000	81,000	114,000	77,000	282,000
Charter of aircraft				10,000	20,000	30,000
	67,000	153,000	355,000	840,000	1,171,000	2,586,000

### 4. Staff Appointments (\$A)

	1971/72	1972/73	1973/74	1974/75	1975/76	Total
<b>Scientific staff</b>						
Director	1					1
Research scientists		4	8	12		24
Other science graduates			6	8	3	17
Non-graduate technicians			8	17	5	30
<b>Support staff</b>						
Administrative officer		1				1
Librarians		1		1		2
Laboratory craftsmen (workshop)		1	1	6	1	9
Clerical and other office staff	1	2	4	10	2	19
Miscellaneous and other		3	3	12	9	27
<b>Total</b>	<b>2</b>	<b>12</b>	<b>30</b>	<b>66</b>	<b>20</b>	<b>130</b>
<b>Cumulative total</b>	<b>(2)</b>	<b>(14)</b>	<b>(44)</b>	<b>(110)</b>	<b>(130)</b>	

Comment by Geoffrey L. Kesteven, in Small Island Countries, Regional Cooperation and the Management of Marine Resources. The Hague, Netherlands, RIO Foundation, December 1982.

Establishment of a regional institute will call for a substantial investment. The appendix to this paper, taken from an Australian report in which a recommendation was made for the establishment of a national marine science institute, will serve to indicate the order of magnitude involved and to give an idea of the relative cost of different elements. The costs given are at 1971 levels; multiplying them by 2.5 will bring them roughly to current Australian costs. The estimate of vessel cost is, however, too low. A modern ocean-going research vessel would probably today cost in the order of \$10 million. Part of the increase would be attributable to the cost of the more complex equipment (including computers) that such vessels now carry. Furthermore, the Australian exercise concerned the establishment of a research institute, with relatively minor consideration given to facilities required for a substantial training programme. In reality, the estimates for a new institute would be greatly influenced by such considerations as the availability of existing premises, and the readiness of aid donors (international and bilateral) to assume responsibility for some of the costs.

Worthy of special consideration would be the possibility of drawing upon existing training programmes, such as the one in Marine Resource Management organized annually by the International Ocean Institute (Malta) in cooperation with Dalhousie University (Canada). Those responsible for existing training programmes could be invited to conduct one or more of their programmes at the regional institute. Such an arrangement would accelerate the launching of the institute's own training programme and have a valuable cost reduction effect.