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Section III

Continental Shelf

Marine areas beyond national sovereignty or jurisdiction (international ocean space) and the rights and duties of States therein.

According to present law of the sea, the high seas, comprising all parts of the sea (including the air space above) not included within the territorial sea or internal waters of a State and the seabed and its subsoil beyond the limits of the continental shelf, ^{1/} are open to all States and are subject to a regime of freedom, ^{2/} to be exercised with reasonable regard to the interests of ⁱⁿ other States in their exercise of the freedom of the high seas. ^{3/}

The single negotiating text proposes to establish two radically different legal regimes in marine areas beyond national sovereignty or jurisdiction by maintaining on the one hand, the traditional regime of the high seas for waters "that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of a State," and creating, on the other hand, a special regime, based

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- ^{1/} This is the prevalent opinion; some authors, however, have been of the opinion that, because of the exploitability criterion in the 1958 Continental Shelf Convention, all parts of sea-bed of the oceans are, potentially, part of the legal continental shelf.
 - ^{2/} The freedoms specifically recognized are: freedom of navigation, freedom of fishing, freedom to lay submarine pipelines and cables, and freedom of overflight, together with other freedoms recognized by the general principles of international law (a sentence generally held to include the freedom of scientific research.).
 - ^{3/} 1958 High Seas Convention, Articles 1 and 2.

on the principle of common heritage of mankind, for the seabed and ocean floor and their subsoil "beyond the limits of national jurisdiction."

(i) High Seas

In the more limited area to which it now applies, the regime of the high seas has been made more specific but remains basically unchanged. The traditional freedoms are maintained ^{1/} and to these are added the freedom to construct artificial islands ^{2/5} and other installations permitted under international law and the freedom of scientific research. ^{3/} All freedoms must be exercised "with reasonable regard to the interests of other States." All States, whether coastal or not, retain the right to sail ships under their flag, to ^f fix the conditions for the grant of their nationality ^{city} to ships, etc: ^{4/} the slave trade and piracy remain prohibited.

UN document A/CONF 62/WP 8/Part II, Article 75(1).

^{1/} The freedom of fishing, however, has been made subject to "the rights and duties, as well as interests of coastal States" and to the obligation "to cooperate with other States in adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas;" to cooperate in establishing subregional or regional fishery organizations and to exchange regularly scientific data and statistics through such organizations. See, *ibidem*, Part II, articles 103-105

^{2/} Subject to the obligations enumerated in Doc. A/CONF 62/ WP 8/ Part II, Article 48 (3) to (8).

^{3/} Subject to the provisions contained in Doc. A/CONF 62 WP 8/ Part III, (Marine Scientific Research) Articles 27 - 36 and in particular Article 25 (3) and (4).

^{4/} The single negotiating text Part II, Articles 76-78, 80(3), 81-93, 96-97, 99-102 reproduces often textually the text of Articles 4, 5, 6, 10(1), 9, 11-21, 23, 26, 27, 28. of the 1958 Geneva Convention on the High Seas.

In addition States have the duty, in determining the allowable catch and other conservation measures, to adopt measures designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield taking into account a number of enumerated factors, including the special requirements of developing countries.

The single negotiating text, however, contains some useful elaborations of present law. These may be summarized as follows: (a) modification of Article 7 of the 1958 High Seas Convention (dealing with the right of States to sail vessels under their own flag), to restrict the meaning of the term "intergovernmental organization" to the United Nations, its Specialized Agencies and the International Atomic Energy Agency; (b) elaboration of the sentence in the 1958 High Seas Convention to the effect that "every State must effectively exercise its jurisdiction and control in administrative, technical and social matters ~~of~~ over ships flying its flag" ^{1/} by requiring States to implement this principle by maintaining a register of shipping and by assuming jurisdiction under their municipal law over vessels flying their flag and their crews; ^{2/}(c) elaboration of Article 10 of the 1958 Geneva High Seas Convention by prescribing specifically that among measures to ensure safety at sea, the coastal State must include those measures necessary to ensure that ships flying its flag shall be surveyed by a qualified surveyor at appropriate intervals, have on board ~~such~~ charts and instruments appropriate for safe navigation and be in the charge of qualified masters and officers who are, inter alia,

8 1/ 1958 High Seas Convention, Article 5(1).
 9 2/ UN Document A/CONF 62/ WP 8/ Part II, Article 80(2).

conversant with the applicable international regulations concerning the safety of life at sea, the prevention of collisions, etc., 1/ These provisions are completed by a proposal that every marine casualty or accident causing loss of life or serious damage shall be the subject of inquiry by the flag State before a qualified person(s) and that if "a State has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised [it] may report the facts to the flag State" which is obligated to investigate and, if appropriate, to take any action necessary to remedy the situation; 2/ (d) obligation of States to cooperate in the suppression of unauthorized broadcasting; the person responsible may be arrested and prosecuted by the flag State of the vessel or installation, by the State of which the person is a national, by the States in which the transmissions can be received or by those where authorized radio transmissions suffer interference; 3/ (e) provision for international cooperation in the suppression of illicit traffic in narcotic drugs 4/, (f) extension of the right of hot pursuit of a foreign ship dealt with in Article 23 of the 1958 Geneva Convention on the High Seas to violations of coastal State laws and regulations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations. 5/

101/ Ibidem, Article 80(4)

112/ Ibidem, Article 80(6) and (7)

123/ Ibidem, Article 95

134/ Ibidem, Article 94

145/ Ibidem, Article 97. It is interesting to note that the provision in the 1958 Geneva Convention on the High Seas (Article 23(2)) to the effect that "the right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State" has been retained unaltered in the single negotiating text (Part II, Article 97(2)) with the anomalous result that, coastal State's ships may be freely pursued within its exclusive economic zone by foreign warships despite the comprehensive powers that the coastal State exercises within its economic zone.

(ii) Sea-bed beyond national jurisdiction.

The regime proposed for the sea-bed beyond the limits of national jurisdiction in the single negotiating text is highly innovative and marks a radical departure from traditional law of the sea.

The basic principle on which the regime is based is that the sea-bed beyond the limits of national jurisdiction is a common heritage of mankind and, as such, should be reserved for peaceful purposes and used and exploited "for the benefit of mankind as a whole irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries." ^{1/} In order to implement this principle in practice, an international agency (called the International Sea-bed Authority) is established "through which States Parties shall administer the Area, manage its resources and control the activities of the Area in accordance with the provisions of this Convention." ^{2/}

Definition of the Area -- Since the negotiating text leaves coastal States considerable freedom in determining the limits of their national sovereignty or jurisdiction in ocean space, the international sea-bed area is not defined directly but only by reference to the action taken by the States Parties to the

^{1/2/} UN Document A/CONF 62/ WP 8/ Part I, Articles 3 and 7. The proposed seabed regime does not affect "the legal status of the waters superjacent to the area or that of the airspace before those waters" (Ibidem Part I, Article 15).

^{1/2/} Ibidem, Articles 20 and 21, The drafting of the sentence quoted could be improved; probably ~~the~~ the words "control the activities of the area" should read "regulate and/or supervise activities in the area."

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B

Convention which "shall notify the International Seabed Authority" of the limits of their national jurisdiction over the sea-bed "determined by coordinates of latitude and longitude and shall indicate the same on appropriate large scale charts officially recognized" by the State concerned; the Authority shall register and publish the notifications received. 17

The question whether a coastal State may subsequently change its national jurisdiction^{al} limits and inform the international Authority to this effect is not addressed in the single negotiating text, nor are there provisions making it possible to establish provisional boundaries to the international area in cases where a coastal State may omit to inform the Authority of the limits of its national jurisdiction within a reasonable period of time.

General principles with regard to the Area---The single negotiating text contains a number of general principles applicable to the international sea-bed area which are derived from its status as a common heritage of mankind. These may be summarized as follows:

- a) "No State shall claim or exercise of sovereignty or sovereign rights over any part of the Area or its resources nor shall any State or person, natural or juridical, appropriate any part thereof." 2/8

17 1/ UN document A/CONF 62/ WP 8/ Part I, Article 2. The passive role of the Authority should be noted: the Authority may not question the limits of national jurisdiction notified to it nor is there anything in the proposed Convention limiting the right of coastal States to redefine as often as they wish the ~~limits~~ boundaries of their national jurisdiction within the broad limits set in Part II of the single negotiating text. Thus the extent of the international seabed area is ~~likely to~~ ^{could} decrease with the passage of time.

18 2/ Ibidem, Article 4. This article also proposes that no claims, acquisition or exercise of rights with regard to minerals, in their ~~raw~~ ^{raw} or processed form, derived from the area shall be recognized except in accordance with the provisions of the proposed Convention.

- (7)
- b. "States shall act in and in relation to the area in accordance with the provisions of this Convention and the United Nations Charter" in the interests of maintaining international peace and Security and ~~promising~~ *promoting* international cooperation and mutual ~~understanding~~ *1/19*
- c. all activities in the Area shall be governed by the provisions of the Convention *2/* and shall be undertaken "for the benefit of mankind as a whole, irrespective of the geographical location of States . . . and taking into particular consideration the ~~3/~~ interests and needs of developing countries." *(3)*
- d. the Area is reserved exclusively for peaceful purposes and is open to use, exclusively for peaceful purposes, without discrimination, by all States Parties in accordance with the provisions of the Convention. *4/*
- e. development and use of the Area shall be undertaken in such a manner as (a) to foster the healthy development of the world economy and a balanced growth in international trade and (b) to minimize adverse effects on developing countries "resulting from a substantial decline in their export earnings from minerals and other raw materials originating in their territory which are also derived from the Area." *5/*
- f. activities in the Area must ensure: orderly and safe development and rational management of resources; expanding opportunities in the use of the Area; conservation and utilization of resources for the optimum benefit of producers and consumers of raw materials; equitable sharing of benefits with particular consideration to the interests and ^dneeds of developing countries whether land locked or coastal. *6/*
- g. Scientific research, as all other activities, in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. *7/*

19 1/ Ibidem, Article 5.
20 2/ Ibidem, Article 6.
21 3/ Ibidem, Article 7.
22 4/ Ibidem, Article 8.
23 5/ Ibidem, Article 9 (1)
24 6/ Ibidem, Article 9 (2)
25 7/ Ibidem, Article 10 (1)

The term "exclusively for peaceful purposes" is not defined.

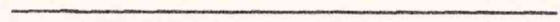
its economic zone, where particularly severe climatic conditions create obstructions or exceptional hazards to navigation...

(d) As already noted, the single negotiating text recognizes that in its exclusive economic zone a coastal State has "jurisdiction with regard to the preservation of the marine environment, including pollution control and ^{at} ~~absement~~." ^{1/ 119} The general norm contained in Part II of the single negotiating text is elaborated in Part III, where it is stated that the coastal State "has the exclusive right to permit, regulate and control" dumping of "wastes and other matter" within an, as yet, undetermined ^{2/ 120} distance from its coast and the right to establish and enforce appropriate non-discriminatory laws and regulations for "the protection of the marine environment within . . ." ^{3/ 121} The negotiating text also provides that "where internationally agreed rules and standards are not in existence, or are inadequate, to meet special circumstances and where the coastal State has reasonable grounds for believing that a particular area of the economic zone is an area where for recognized technical reasons in relation to its oceanographical and ecological conditions, its utilization and the particular character of its traffic, the adoption of special mandatory measures for the prevention of pollution from vessels is required, the coastal State may apply to the competent international organization for the area to be recognized a special area"; if recognition is given, the laws and regulations established by the coastal State become applicable in relation to foreign vessels six months after they have been notified to the international organization concerned. ^{4/ 122}

The coastal State is given full authority to enforce its laws and regulations ^{in its exclusive economic zone} in the case of suspected violations of international standards and rules relating to vessel discharges within a yet

- 119 1. UN document A/CONF 62/WP 8/ Part II, Article 45 (1) (d)
120 2. UN document A/CONF 62/WP 8/ Part III, (Protection of the Marine Environment), Article
121 3. U.N. Document A/CONF 62/WP 8/ Part III, (Protection of the Marine Environment), Article 20 (5). 19(3)
122 4. U.N. Document A/CONF 62/WP 8/ Part III, (Protection of the Marine Environment), Article 20.

undetermined distance from the baseline from which the territorial sea is measured, the coastal State may normally only require the vessel to identify itself, to specify its last and next port of call and such other information as will make it possible to establish whether a violation has been committed.^{1/} If the suspected violation "has been of a flagrant character causing severe damage or threat of damage to the marine environment,^{2/}" the vessel may be required to stop and submit to boarding and inspection. In either case the coastal State must promptly notify the flag State both of the suspected violation and of the measures taken^{3/} and must provide "recourse in its courts in respect of loss or damage resulting from the inspection, the enquiry or application of measures taken^m where they exceed those which were reasonably necessary in view of existing information."^{4/} 12c



- 123 1/ Ibidem, Article 30.
- 124 2/ Ibidem, Article 31.
- 125 3/ Ibidem, Article 32. If the vessel has been stopped and inspected the coastal State must also inform the consular and diplomatic representative of the flag State of the vessel.
- 126 4/ U.N. Document A/CONF 62/ WP 8/ Part III, Article 37.

EEZ.

Comments. —

~~The~~ The proposal to establish an exclusive economic zone is ~~a concept~~ of fundamental importance since it affects "more interests of more States than any other aspect of the single negotiating text" (1)¹²⁷ and the manner in which ~~the greater~~ ^{most} part of activities resource and non-resource activities in the marine environment are conducted.

As has been noted, the concept takes into ~~full~~ account the expansion of coastal State interests in ocean space, ~~and~~ ^{deals} comprehensively with a wide range of activities and attempts to balance coastal State and other interests with regard to different activities. Resource oriented activities, including resource-oriented, scientific research, are generally subject to the exclusive jurisdiction of the coastal State which is normally may be exercised with almost total freedom;⁽²⁾¹²⁸ while other

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- 127 1. John R. Stevenson and Bernard H. Oxman, ~~in~~ *American Journal of International Law* (The Third United Nations Conference on the Law of the Sea: the 1975 Geneva Session. *American Journal of International Law*, October 1975.
- 128 2. Subject to ~~certain~~ ^{a few} general limitations norms prescribed in the proposed convention, ^{and to general norms of international law} (the most important of which, perhaps, is, that in exercising its rights the coastal State must have due regard to the rights and interests of other States.

which may reflect ^(in part) lack of coordination between different committees at the Conference (4) 132

negotiating text and corresponding provisions in Part III,

it is also unfortunate that there is no provision is made in the single negotiating text to reconcile resource oriented uses with ~~no~~ resource oriented uses on the lines of Article 5(7) of the 1958 Continental Shelf Convention.

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Some articles are ~~both~~ unnecessary ^{(5) 133} and ~~are~~ unnecessarily discriminatory ^{(6) 134}, others are so detailed and cumbersome that their application is likely ~~to~~ to be difficult. ^{(7) 135}

~~The majority of article~~ (in the single negotiating text)

Fishing is dealt with in considerable ~~detail~~ ^{detail} but factors to be taken into account when enacting fishing conservation measures ^{(8) 136} the measures recommended in this field are sometimes mutually exclusive and the obligations imposed on States are unrealistic in the majority of cases. ^{(9) 137} it would probably be useful to re-draft ~~most~~ many of the provisions in this connexion.

References to cooperation in the exchange of fishery information are ~~highly~~ ^{highly} constructive, but ~~insuffi~~ the provisions concerning ^{international cooperation in the} ~~cooperative~~ management of fisheries are insufficiently precise and usually are not applicable within the exclusive economic zone, even with respect to species which move between the economic zone and an adjacent area of the High Seas. ^{(10) 138} Finally the articles on fisheries retain the concept of maximum sustainable yield ^{(11) 139} which seems inappropriate under contemporary circumstances, and do not attempt to ~~dead~~ limit fishing effort. ^{(12) 140}

do not attempt to define the term "conservation of the living resources of the sea" (the term, as such, is not even mentioned: only "conservation measures" are mentioned),

activities, including non-resource oriented research, may, in principle, be freely conducted ^{(1) 129} subject to traditional rules of international law, the rights and duties of the coastal State ^{(2) 130} and new norms proposed in the single negotiating text, particularly with respect to the marine environment.

The formulations of some of the most important provisions with regard to ~~some of the most~~ the exclusive economic zone are marred by an unfortunate vagueness which reflects, and attempts to accommodate, divergences of views expressed at the law of the sea conference ^{(3) 131}.

There are also a number of apparent contradictions between the provisions ^{on the exclusive economic zone} contained in ~~part~~ Part II of the single

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- 129 1. This is not, however, entirely clear. Article 47(i) expressly recognizes the freedom of navigation, overflight and of laying submarine cables and pipelines ^{or} and other internationally lawful uses of the sea related to navigation and communication and by reference ^{(Article 47(2))} the freedom to construct artificial islands and other installations and the freedom of scientific research. ~~But~~ ~~the~~
- (a) Article 48 states that the coastal State has the exclusive right to construct and to authorize and regulate the construction, ~~use and~~ ^{and use} operation of ~~artificial~~ artificial islands, ~~and~~ installations and structures for economic purposes and installations and structures which may interfere with the rights of the coastal State; (b) Article 50 states that the consent of the coastal State shall be obtained in respect of any research concerning the exclusive economic zone and undertaken there (c) the delineation of the course of a ~~pipe~~ pipeline requires the consent of the coastal State; and (d) navigation is subject to a variety of ^{environmental} rules and regulations enacted by the coastal State.

e) in exercising ~~non-economic activities~~ their rights in the ^{economic} zone, States "must comply with the laws and regulations enacted by the coastal State" with respect to the innumerable matters under coastal State jurisdiction, and (f) ~~where the present Convention does not attribute rights or jurisdiction . . . within the exclusive economic zone~~

130 2. ~~These~~ these are often substantial and are sometimes set out in considerable detail.

131 3. For instance: Article 47(3) "Where the present Convention does not attribute rights or jurisdiction . . . within the exclusive economic zone and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all relevant circumstances, taking into account the respective importance of the interests involved." In Article 51, the concept of "optimum utilisation of the living resources" is not defined.

on scientific research

- 122 4. For instance, the provisions of Article 49 (Part II) appear to contradict the corresponding provisions of articles 15-25 (Part III). The provisions of Article 48 (Part II) could be deemed to restrict excessively ~~the~~ the provisions of Article 47(2) (Part II). Article 65(3) appears to negate, in practice, the freedom to lay submarine pipelines, etc.
- 133 5. For instance, Article 51(4)(a)-(k). If the coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing ~~fish~~ living resources in the exclusive economic zone, it is unnecessary to enumerate the type of fishery regulations which the coastal State may enact.
- ~~134~~ For instance, ~~the provision~~ Article 58 and particularly the provision that only "developing coastal States which can claim no exclusive economic zones of their own shall have the right to participate ... in the exclusive economic zones of other States in a subregion or region". The provision is unnecessary because no developed coastal States, without an economic zone of their own, are located in the same region as developing States.
- 134 6. For instance, Article 57: "Developed land-locked States shall, however, be entitled to exercise their rights only within the exclusive economic zones of neighbouring developed coastal States." The provision is unnecessary because ~~there are~~ no developed land-locked States adjoin developing coastal States.
- 135 7. See, for instance, all the conditions and procedures with which States must comply when conducting scientific research in the exclusive economic zone (Part III, Scientific Research, Articles 15-23).

which include also "the interest and rights of the land-locked and geographically disadvantaged States of the region"; these be different from those of the ~~coastal~~ State controlling the economic zone where the research is to be conducted.

136 8. For instance, Article 50(3). The factors enumerated are "relevant environmental and economic factors, including the economic needs of coastal fishing communities... the special requirements of developing countries... fishing patterns... interdependence of stocks and any generally recommended subregional, regional or global minimum standards"

137 9. Articles 50 and 51 assume that all coastal States have, in fact, access to comprehensive information with respect to fish stocks, that they have ~~sign~~ the capability to gather this information and that they have significant management capabilities: this is demonstrably not the case.

138 10. International cooperation in the management of fisheries is essential: the single negotiating text provides for such cooperation only with respect to highly migratory stocks ^{and marine mammals} (without, however, ~~imply~~ suggesting any precise machinery). Cooperation in other cases is ~~at~~ essentially at a bilateral level. Within the exclusive economic zone the coastal State has the right to determine fishery management policy ~~as it~~ almost as it wishes.

139 11. ~~The concept with~~ ^{strongly} The concept has been ~~heavily~~ criticized in recent years.

140 12. Limitation of fishing effort through some ^{international} system of licensing of fishery vessels is crucial. The present world fishing fleet can ~~catch~~ harvest more than double the present catch of living resources.

nor, subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, may the coastal State impede the laying of submarine cables or pipelines. (5)

Continental shelf. -- According to the 1958 Geneva Convention on the Continental Shelf, "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources;" 1/ these rights are exclusive 2/ and "do not depend on occupation, effective or notional, or on any express proclamation" 3/ "Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources the coastal State may not impede the laying of submarine pipelines or cables on the continental shelf". 4/ Continental shelf exploration and natural resource exploitation "must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea nor result in any interference with fundamental oceanographical or other scientific research carried out with the intention of open publication" 5/ There are detailed rules with regard to the construction of installations and the establishment of safety zones around them 6/. Finally,

- 141 1/ 1958 Geneva Convention on the Continental Shelf, Article 2 (1).
- 142 2/ In the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. Ibidem, Article 2 (2). The natural resources of the continental shelf (ibidem, Article 2 (4)) "consist of the mineral and other non-living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil." The definition, which could seem clear, has given rise to considerable controversy in its interpretation.
- 143 3/ Ibidem, Article 2 (3).
- 4/ ~~Ibidem, Article 4.~~
- 144 5/ ~~Ibidem, Article 5 (1).~~ The provisions of this paragraph, however, do not appear in accord with the rules contained in a subsequent paragraph (Article 5 (8)) where it is stated that "the consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there." Ibidem, Article 4
- 145 6/ Ibidem, Article 5 (2) - (7).

"the rights of the coastal State over the continental shelf do not ^a effect the legal status of the superjacent waters as high seas or that of the airspace above those waters" 1/. 146

The single negotiating text, while proposing a new definition of the limits of the continental shelf (see supra page) maintains the basic structure of the rights and duties of coastal States as outlined in the 1958 Geneva Convention on the Continental Shelf. Several of the provisions of this Convention have been simply reproduced and in other cases, for instance with regard to offshore ^{no} ~~with regard~~ installations, provisions of the Convention have been transferred to the section of the single negotiating text dealing with the exclusive economic zone. Nevertheless there are some significant differences: the single negotiating text proposes ^{os} that scientific research concerning the continental shelf and undertaken there be subject to the consent of the coastal State 2/; ¹⁴⁷ that the coastal State have the exclusive right to authorize and regulate drilling on the continental shelf for all

146 1. Ibidem, Article 3.

✓ 147 2. U.N.Document A/CONF 62/ WP 8/ Part II, Article 71.

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purposes ¹⁴⁹ 1/; that the delineation of the course for the laying of pipelines be subject to the consent of the coastal State ¹⁴⁹ 2/ and that the coastal State "with respect to the artificial islands, installations and structures and seabed activities under its jurisdiction, shall take appropriate measures for the protection of the ~~the~~ marine environment from pollution and ensure compliance with appropriate minimum international ⁹ requirements . . . " 3/ 150

A The major innovation in the single negotiating text, ~~however~~, is the proposal that "the coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from ~~which~~ which the breadth of the territorial sea is measured" ¹⁵¹ 4/ to an International Authority, ¹⁵² 5/ at a rate and on terms yet to be agreed, which "will distribute these payments and contributions on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries." 6/ 153

✓ 148 1/ Ibidem, Article 67.

149 2/ Ibidem, Article 65 (3).

150 3/ Ibidem, Article 68.

151 4/ Ibidem, Article 69 (1).

152 5/ Presumably the proposed ⁴ International Seabed Authority. The International Authority is also given the function of determining the extent to which developing countries are obliged to make the payments provided for.

153 6/ U.N. Document A/CONF 62/ WP 8/ Part II, Article 69 (4).

That is to In other words -coastal State consent must be obtained also for non-resource oriented drilling on the continental shelf, such as drilling for scientific purposes.

6. Archipelagos States

Traditionally, waters (including airspace and seabed) on the landward side of straight baselines used for measuring the breadth of the territorial sea are considered internal waters over which the coastal State exercises as full a sovereignty as over its land territory.

The single negotiating text now proposes to distinguish between waters on the landward side of straight baselines drawn by coastal States which are not archipelagic States and waters enclosed by straight baselines drawn by archipelagic States to join the outermost points of the outermost islands of the archipelago. In the former case, the traditional full sovereignty of the coastal State is maintained unaltered. In the second case, the negotiating text suggests the introduction into international law of the new concept of archipelagic waters. Archipelagic waters, their seabed and the airspace above them ^{regardless of their depth or distance from the coast,} are under the sovereignty of the

coastal State^{1/154} but the exercise of this sovereignty is subject to the restraints enumerated in the negotiating text. Thus the archipelagic State must "recognize traditional fishing rights of immediately adjacent neighboring States in certain areas of archipelagic waters"^{2/15} and a "right of innocent passage through these waters exists for ships of all States."^{3/156} The right of innocent passage is circumscribed and carefully regulated in an attempt equitably to balance the requirements of international navigation and the desire of archipelagic States to obtain control over sea and air navigation. Thus, on the one hand, the archipelagic State is recognized the right to "designate sea lanes and air routes suitable for the safe, continuous and expeditions passage of foreign ships and aircraft," to suspend passage temporarily in specified areas ^{of archipelagic} "if such suspension is essential for the protection of its security" and to make laws and regulations, which must be observed by foreign ships, on such ~~am~~ matters as the prevention of pollution, safety of navigation, regulation of marine traffic, prevention of fishing, etc. On the other hand, the archi-

archipelagic

waters,

not to hamper archipelagic sea lanes passage

pelagic State is required to give "appropriate" publicity to dangers to navigation or overflight within the designated sea lanes of which it has knowledge; the designated sea lanes must be clearly indicated on charts, must be not less than a yet-to-be-decided width and must include all normal passage routes used for international navigation or overflight, etc.

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- 1/ UN. Document A/CONF 62/WP8/ Part II, Article 120.
 - 2/ Ibid. Article 122.
 - 3/ Ibid. Article 123.
 - 4/ For details, see UN Document A/CONF 62/WP8/Part II, Articles ~~124~~-129.

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balancing the rights and duties of the archipelagic ~~States~~ State and the rights and duties of other States. On balance, however, archipelagic seelanes passage ~~remains~~ is subject is not totally guaranteed since, inter alia, the archipelagic ~~State~~ State → The attempt is not totally successful.

It is unfortunate that scientific research and other activities in archipelagic waters are subject to the consent of the coastal State.

6.

Landlocked States. The 1958 Convention on the High Seas recognized that in order to enjoy the freedom of the seas on equal terms with coastal States, landlocked countries should have free access to the sea. To this end the Convention stated that States situated between the sea and a State having no sea-coast should, by common agreement with the latter, accord: "(a) to the State having no sea-coast, on a basis of reciprocity, free transit through their territory and (b) to ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of other States, as regard access to seaports and the use of such ports." ^{1/158} All matters relating to freedom of transit and equal treatment in ports were to be settled by mutual agreement, in case the States concerned were not already parties to existing international conventions.

The single negotiating text contains a different terminology and more detailed provisions than the 1958 Convention on the High Seas but does not significantly expand the rights of landlocked countries.

158 1958 Convention on the High Seas, Article 3.

The principle of freedom of transit to the sea is maintained but "the terms and conditions" for the exercise of this right must be agreed "through bilateral, sub-regional or regional agreements" and the States situated between the landlocked country and the sea are recognized "the right to take all measures to ensure that the rights provided. . . for landlocked States, shall in no way infringe their legitimate interests." 1/159

Equality of treatment in the ports of the country situated between the landlocked State and the sea, is limited to "treatment equal to that accorded to other foreign ships;" 2/160 on the other hand the negotiating text contains provisions not found in the 1958 High Seas Convention to the effect that, by agreement between the States concerned, "free zones or other facilities may be provided at the ports of entry and exit in the transit State," 3/161 and that "means of transport in transit used by land-locked States shall not be subject to taxes, tariffs or charges higher than those levied for the use of means of transport of the transit State." 4/162

159 1/ UN Document A/CONF 62/ WP 8/ Part II, Article 109.

that accorded to

2/ Ibidem, Article 115. It should be noted that the clause "treatment equal to their own ships" (i.e., equal to the ships of the country lying between the landlocked State and the sea) contained in Article 3 (1) (b) of the 1958 High Seas Convention, has disappeared.

161 3/ Ibidem, Article 113.

162 4/ Ibidem, Article 111 (2).

Enclosed and semi-enclosed seas.^{1/ 163} -- The 1958 Geneva Conventions do not contain special provisions concerning enclosed and semi-enclosed seas. The single negotiating text, on the other hand, reflecting developments actual or under consideration in some areas, proposes ^{an} ~~an~~ obligation of cooperation either directly or through an appropriate regional organization, between States bordering enclosed or semi-enclosed seas "in their exercise of their rights and duties," particularly with regard to living resources, preservation of the marine environment and scientific research. ^{2/ 164} Cooperation between these States, however, "shall not affect the rights and duties of coastal or other States under other provisions of the present Convention and shall be applied in a manner consistent with those provisions." ^{3/ 165}

Territories under foreign occupation or colonial domination.

The single negotiating text proposes that "the rights recognized or established by the present Convention to the resources of a territory . . . under foreign occupation or colonial domination . . . shall be vested in the inhabitants of that territory to be exercised by them for their own benefit . . ." and in no case may these rights "be exercised, profited or benefited from or in any way infringed by a metropolitan or foreign power administering ~~or~~ occupying such territory . . ." ^{4/ 166}

The article originated from proposals made by the group of 77. ^{5/ 167}

The article ~~is~~ is not easy to interpret and it will not be easy to implement.

- 163 1/ The somewhat vague definition of enclosed and semi-enclosed seas is contained in Article 133, Part II of the single negotiating text.
- 164 2/ UN Document A/CONF 62/ WP 8/ Part II, Article 134.
- 165 3/ Ibidem, Article 135.
- 166 4/ Ibidem, Article 136.
- 167 5/ The group of 77 now comprises more than one hundred developing countries.

Start new page

General norms.

Comments. —

Many of the provisions in this section are constructive and constitute a considerable development of present international law. Nevertheless the approach is still fragmentary, and the elaboration of general norms with regard to the rights and duties of States in ocean space as a whole is attempted only with regard to the protection of the marine environment, scientific research and the transfer of technology.

The general obligation ^{of States} to protect and preserve all the marine environment from pollution from any source is clearly set out: this obligation is balanced by a statement setting forth the sovereign right of States to exploit their natural resources pursuant to their environmental policies and their duty to take into account their economic needs and their programmes of economic development.

The general obligation of States to cooperate at all levels to formulate international rules and standards for the prevention of pollution ~~are~~ is clearly stated: unfortunately, however, the ~~with the~~ comprehensive formulations used in the single negotiating text are vague. No specific machinery ^{eff} to ~~for the~~ implementation of the duty to cooperate is mentioned and the impression is left that it is envisaged that international cooperation ^{will} shall continue to take place in the fragmentary and largely ineffective manner in which it now takes place ^{with regard to marine pollution} as it does at present: that is to say in a fragmentary manner.

(2)

in a multitude of forms.

The provisions on technical assistance with regard to the control of marine pollution are more specific, but they add little or nothing to the present situation in this respect and also fail to provide an implementation machinery.

Indeed, except with regard to vessel source pollution, ~~all~~ the ~~general~~ obligations of States ~~in the~~ with regard to marine pollution are of a general nature and lack an implementation machinery in the single negotiating text, apart from the dispute settlement machinery in Part IV of the single negotiating text (document A/CONF.62/WP.9). This is particularly ~~an~~ unfortunate with regard to the sea beyond national jurisdiction for which no entity is responsible.

Much attention is given to vessel source pollution, (which is responsible ~~for~~ globally for about 10 percent of marine pollution) and particularly to the respective competence of flag, port and coastal States in the enforcement of regulations and standards. It is important to note in this connexion that exclusive flag State enforcement jurisdiction is considerably weakened in the articles proposed by the single negotiating text, while at the same time the references to international rules and standards while numerous, are vague; no ^{specific} proposals are made for their speedy elaboration and no international enforcement procedures are proposed.⁽¹⁾ It may thus be predicted that coastal (and port)

1. Except with regard to pollution arising from activities concerning the exploration and exploitation of the sea-bed beyond national jurisdiction.

(3)

States will ~~assume~~ ^{exercise} increasingly the powers ~~as~~ recognized to them in the single negotiating text, with the clear possibility that such powers may ~~also~~ ^{also} be used in a manner that will hamper navigation and other legitimate uses of the sea. (1)²

Finally while the responsibility of States is clearly ~~affirmed~~ that activities under their control do not cause damage to the marine environment is clearly affirmed (2)³, the difficult question of liability is addressed somewhat vaguely and liability is excluded altogether with regard to ~~areas~~ the marine environment beyond areas where States exercise sovereign rights.

~~Possibly~~ Again with regard to scientific research, there is a notable difference between the general norms enunciated and the manner of their implementation.

~~While~~ ^{One} ~~we~~ can only welcome the solemn and explicit statement that all States have a right to conduct scientific research in the marine environment, and that such research should be conducted not only for their own

2. All ships necessarily pollute to some extent the marine environment: the distinction between pollution with little adverse environmental effect and dangerous marine pollution is obvious in extreme cases but is largely a matter of opinion in the majority of cases.

3. UN document A/CONF.62/Part IV, (Protection and Conservation of the Marine Environment), Article 41 (1) (2)

(1)

benefit but ^{also} for the benefit of the international community, and that it ~~should~~ ^{must} be conducted ~~for~~ exclusively for peaceful purposes. In the light of these statements, it is somewhat surprising, ~~however~~, in the light of these statements, that ^{most} articles in Part II and Part III of the single negotiating text dealing with scientific research restrict ~~the right~~ ^{the proclaimed} of States ~~to freely~~ to conduct scientific research in nearly half the area covered by the oceans, and subject the publication of the results of scientific research to the possibility of a veto by the coastal State.⁴ There is also no provision whatsoever designed to ensure, or even to ascertain, whether ~~to~~ marine research is conducted ~~for~~ "exclusively for peaceful purposes."⁵

The proclaimed right of States to conduct scientific research

The provisions to the effect ~~with~~ with regard to international cooperation in marine scientific research are excellent but the single negotiating text fails to suggest any ^{implementation} specific procedures.

~~The provisions with~~ The single negotiating text establishes the excellent principle that all States have the obligation to promote the development and transfer of marine

- 4 1. UN document A/CONF.62/WP.8/^{Part III} (Marine Scientific Research) Article 21(c)
- 5 2. This, of course, is a very difficult matter to ascertain, but then what is the purpose ~~to~~ of asserting the principle that marine scientific research ~~to~~ must be conducted exclusively for peaceful purposes.

(5)

science and technology ~~and~~ at fair and reasonable terms and ~~it~~ must cooperate in this connexion: but, despite the detailed enumeration of the measures which States must take, ⁶① the provisions ~~of~~ contained in the single negotiating text ~~have an air~~ appear somewhat unreal in view of the lack of any implementation machinery, indeed some articles in the single negotiating text would appear to suggest that no significant change of the present situation is expected, ⁷② The provision for

6 1. These detailed enumerations contained in Part ~~of~~ (Transfer of technology), articles 3 and 4, may be counterproductive ~~on that~~ because necessarily vague and because they might suggest that there is no obligation in respect of any matter included therein. The articles ^{in the single negotiating text} concerning regional marine scientific and

7 2. For instance, *ibidem*, article 5 and 7. technological centres appear questionable; the centres could undoubtedly be useful, but there would seem to be little justification for imposing an obligation to all States to promote them. The matter should be handled at the regional level and through an appropriate provision in Part I of the single negotiating text which deals with the International Seabed Authority.

of coastal State jurisdiction remain highly flexible within wide limits.

Adoption of the proposal contained in the single negotiating text frustrates any attempt precisely to define the limits of national jurisdiction in ocean space, benefits only a few States and has a very considerable conflict potential.^{1/}

With the establishment of a wide economic zone in which the coastal State enjoys exclusive rights to resources and exercises comprehensive powers, the continental shelf concept has lost its "raison d'être". It should consequently be ~~integrated with~~ ^{absorbed by} that of the exclusive economic zone. It is accordingly proposed that the entire section on the continental shelf contained in the single negotiating text be deleted and replaced by a provision providing appropriate payment by the international community through the proposed International Seabed Authority to coastal States in those few cases where submarine areas less than 200 metres deep extend beyond 200 miles from the coast. This would compensate the coastal States concerned for the loss of their legitimate expectations under the 1958 Continental Shelf Convention.^{2/}

^{1/} For instance, it may be anticipated that with the development of seabed resources, the coastal State would tend to assert jurisdiction over the waters above the continental shelf, thus in practice extending its economic zone. Also, when the continental shelf extends beyond 200 nautical miles, there could be cases of ~~the~~ "continental shelf" extending into the economic zone of another State. of one State

^{2/} Subject to the essential purpose of establishing a clear limit of 200 nautical miles measured from precisely defined baselines to national jurisdiction in ocean space, the suggestion in the text could be usefully supplemented by additional provisions intended to safeguard coastal State interests, such as guaranteed participation on special terms by the coastal State in the development of seabed resources in a defined area beyond ~~its~~ the exclusive economic zone, etc.

Section I. The Limits of National Jurisdiction in Ocean Space.

1 Baselines

The first issue which arises when considering problems related to national sovereignty or jurisdiction in the oceans is that of the line from which it is measured.

According to the 1958 Convention on the Territorial Sea, the normal baseline is the low-water line along the coast as marked on large scale charts officially recognized by the coastal State. Straight baselines joining "appropriate points" may be drawn where the coastline is deeply indented or if there is a fringe of islands in the immediate vicinity of the coast provided that straight baselines must not depart to any appreciable extent from the general direction of the coast and must not be drawn to or from low-tide elevations unless installations permanently above sea level have been built on them.

Where a system of straight baselines is applicable, "account may be taken, in determining particular baselines, of the economic interests peculiar to the region concerned the reality and importance of which are clearly evidenced by long usage."^{1/}

^{1/} 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, Articles 3-5. Article 11 of the Convention gives a definition of (elevation) low-tide and also states that "where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea."

The single negotiating text accepts in general the rules on baselines contained in the 1958 Geneva Convention on the Territorial Sea,^{1/} but proposes, further major departures from the general principle that the normal baseline should be the low-water line along the coast and relaxes the already highly flexible rules with regard ² criteria for drawing straight baselines. Thus it is now proposed (a) to legitimize the practice of drawing mixed baselines to suit different conditions (b) to permit the drawing of straight baselines to low tide elevations when no installations permanently above sea-level have been built on them "in instances where the drawing of baselines to and from such elevations has received general international recognition" (c) ~~to legitimize the drawing of straight baselines in the case of deltas;~~ to permit "where because of the presence of a delta or other natural conditions the coastline is highly unstable^u," the selection of appropriate points "along the farthest seaward extent of the low water line" and the maintenance of such baselines until changed by the coastal State "notwithstanding the subsequent regression of the low-water line."^{2/ 3}

In addition, the single negotiating text proposes that an archipelagic State^{3/ 4} "may draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that such baselines enclose the main islands and an area in which the ratio of the area of water to the area of land, including atolls, is between .

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- 2 1/ Article 3 of the 1958 Geneva Convention on the Territorial Sea is reproduced verbatim in Article 4, (Part II of the single negotiating text. Article 4 (1) of the Geneva Convention is reproduced verbatim in the first part of Article 6, Part II of the single negotiating text. Articles 4 (2), 4 (5), 5 and 11 of the 1958 Geneva Convention are also reproduced verbatim.
- 3 2/ See U.N. document A/CONF 62/WP8/ Part II, Articles 4-6 and 12. Article 5 contains a useful provision on the baselines of islands having fringing reefs, not contained in the 1958 Geneva Convention on the Territorial Sea.
- 4 3/ An archipelagic State is defined as "a State constituted wholly by one or more archipelagos and may include other islands." Document A/CONF 62/WP 8/ Part II, Article 117 (2) (a).

one-to-one and nine-to-one." The length of these baselines must not exceed 80 nautical miles "except that up to ... per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum of 125 nautical miles." (1) The single negotiating text states that for the purpose of computing the ratio of water to land, "land areas may include waters lying within fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau." (2)

It is noted finally that the single negotiating text provides for somewhat more specific publicity with respect to straight baselines than the 1958 Geneva Convention on the Territorial Sea. It is now proposed that "the coastal State must clearly indicate straight baselines on charts, supplemented by a list of geographical coordinates of points, deposited with the Secretary-General of the United Nations who shall give due publicity thereto." (3) The publicity required in respect of straight baselines established by archipelagic States is not significantly different. (4)

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1. U.N. document A/CONF 62/ WP 8/ Prt II, Article 118 (1) (2)
 2. Ibid. ~~U.N. document A/CONF 62/ WP 8/ Part II, Article 118 (8).~~
 3. Ibidem, Article 6 (7)
 4. Ibidem, Article 118 (6)

This permits the enclosure of vast sea areas by joining distant points. Fourthly a coastal State

4.

Comments and suggestions.

There can be no clear limits to national sovereignty or jurisdiction in ocean space unless the line from which such limits are measured is precisely defined and is not, normally, subject to change, particularly unilateral change.

The criteria for drawing straight baselines contained in the 1958 Territorial Sea Convention are far from precise. First, crucial terms are not defined: it is difficult in practice to give precise and strict interpretation to expressions such as "deeply indented", "immediate vicinity", "general direction of the coast", etc., and these expressions ^{found to be} have been increasingly interpreted rather loosely in the practice of States. Secondly, the 1958 Territorial Sea Convention does not specially state that straight baselines must join land points but only appropriate points; this ambiguity permits the establishment of straight baselines by geographical coordinates joining points in the sea at considerable distances from the coast. Thirdly, there is no limit to the length of straight baselines which may be drawn by the coastal State; at any time and with virtually unfettered freedom (within the loose criteria prescribed by the 1958 Territorial Sea Convention) may modify previously established baselines, or draw them further out to sea subject only to the obligation of giving "due publicity" to these actions.

In recent years, coastal States have taken increasing advantage of the flexible provisions of the 1958 Territorial Sea Convention with regard to baselines by enclosing hundreds of thousands of square miles of previously high seas and this process of enclosure is accelerating. One or two States have even begun to draw straight baselines by geographical coordinates situated far from land.

In these circumstances it would seem desirable to define more strictly the criteria for drawing straight baselines in order to avoid continued unilateral expansion of coastal State sovereignty in ocean space.

The single negotiating text, however, has preferred further to relax international rules with respect to baselines and to propose the international recognition of special rules continued relatively unimpeded, unhampered expansion of coastal State sovereignty in the seas.

in respect of archipelagic States: this approach permits permits

It is suggested that the single negotiating text be amended to make clear that straight baselines may connect only appropriate points on land. Secondly, it is suggested that straight baselines drawn by coastal States not ~~exceed~~ a length equal to from twice to four times the breadth of the territorial sea. Thirdly, it is believed that explicit provision should be made enabling any State and an appropriate international organization (perhaps the future ~~International Seabed Authority~~ ^{"integrative machinery" proposed in this study}) to challenge before an international Tribunal baselines drawn by a coastal State when these do not appear to conform to the rules set forth in the Convention. Fourthly, it would appear desirable to delete the new special provisions concerning deltas. Finally, if it proves necessary to retain the special rules concerning baselines drawn by archipelagic States, these rules should be considerably tightened by reducing the ratio of water to land to not more than three to one and by setting a flat limit to the length of the straight baselines which may be drawn.

The single negotiating text contains a constructive innovation ^W when it entrusts the Secretary-General of the United Nations with the duty of giving publicity to straight baselines drawn by coastal States. It is suggested, however, that the function of publicizing baselines could more appropriately be performed by the Secretary-General of the "integrative machinery" proposed in this document ~~or by the secretary-general of the International Seabed Authority.~~

It would also appear highly desirable for the single negotiating text to contain a provision to the effect that straight baselines drawn by a coastal State are not internationally recognized until a reasonable period of time ^(has elapsed) after due publicity has been given to them.

2. "Historic" bays and "historic" waters.

"Historic" bays are mentioned incidentally both in the 1958 Geneva Convention on the Territorial Sea and in Part II of the single negotiating text. ^{7/1}

1. 1958 Geneva Convention on the Territorial Sea, Article 7 (6) and U.N. document A/AC 62/ WP 8/ Part II, Article 9 (6).

In neither document is an effort made to define the concept.

There exist claims to certain marine areas as "historic" waters. These are not mentioned in the 1958 Territorial Sea convention or in the single negotiating text.

Comments and suggestions.

"Historic" bays and "historic" waters are ill defined, traditional concepts with a troublesome dispute potential. The concepts are unnecessary in the context of the vast expansion of coastal State jurisdiction proposed in the single negotiating text, and should be gradually eliminated from the law of the sea.

It is suggested that the single negotiating text be amended to the effect that (a) all present claims to historic bays and historic waters be registered with the Secretary-General of the "integrative machinery" (or with the secretary general of the International Seabed Authority) within two years of the coming into force of the proposed convention (b) any State may contest such claims before an international Tribunal, the decision of which is binding (c) no claim to historic bays or historic waters will be internationally recognized if it has not been registered within two years of the coming into force of the proposed convention.

3. Territorial Sea.

The territorial sea lies seaward of, and adjacent to, the baselines drawn by the coastal State. ^{TT} Until comparatively recently the great majority of the international community recognized a territorial sea of three miles. The breadth of the territorial Sea, however, was not defined directly in the 1958 Geneva Convention on the Territorial Sea, where it is stated only that "the contiguous zone (the zone contiguous to the territorial sea where the coastal State may exercise certain specific powers) may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured."^{9/}

^{9/} 1958 Geneva Convention on the Territorial Sea, Article 24 (2).

Over the past fifteen years an increasing number of coastal States have come to favour a limit of 12 nautical miles for the territorial sea and the single negotiating text reflects this increasingly popular view.

Comments and suggestions.

No comment is made since it would seem unrealistic to fail to recognize the overwhelming trend towards a wider territorial sea. The usefulness of the concept of territorial sea in the context of a new legal order in ocean space ^{will} ~~is~~, however, ^{be commented upon later (2)} ~~questioned.~~

4. Contiguous zone.

The contiguous zone is "a zone of the high seas contiguous to its territorial sea" in which "the coastal State may exercise the control necessary to:

- a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
- b) punish infringement of the above regulations committed within its territory or territorial sea"

The 1958 Territorial Sea Convention set a maximum limit of 12 miles for the contiguous zone.

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1. U.N. document A/CONF 62/ WP 8/ Part II, Article 2: "Every State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines drawn in accordance with the provisions of the present Convention." The baseline provisions of the Convention are highly flexible, thus it is unlikely that territorial sea limits will, in most cases, be established at 12 nautical miles from the coast.
 2. See page
 3. 1958 Geneva Convention on Territorial Sea, Article 24 (1).

The territorial sea proposed by the single negotiating text more than absorbs the contiguous zone as defined by the 1958 Territorial Sea Convention.^{1/12} Several States at the Law of the Sea Conference, however, did not wish to see the contiguous zone disappear; the breadth of the contiguous zone was accordingly more than doubled from 12 miles to "24 nautical miles from the baseline from which the breadth of the territorial sea is measured,"^{2/13}

Comments and suggestions.

The contiguous zone has been retained to accommodate those States arguing in favour of traditional coastal State control in customs, fiscal, immigration and sanitary matters extending somewhat beyond the territorial sea. The need for such control is difficult to justify in view of the fact that (a) the territorial sea proposed by the single negotiating text now includes the entire contiguous zone as defined by the 1958 Geneva Convention on the Territorial Sea; (b) it is proposed to establish an exclusive jurisdiction with regard to artificial islands and installations and where it may arrest vessels to ensure compliance with the laws and regulations enacted by it with respect to living resources of the sea; (c) ~~It~~ ^{it} is proposed to extend beyond the territorial sea the control of the coastal State over a number vessel activities.^{3/14}

A zone contiguous to the territorial sea with the characteristics mentioned in Article 24 of the 1958 Territorial Sea Convention is a needless complication in the context of the proposals contained in the single negotiating text, it is accordingly suggested that Article 33, Part II of the single negotiating text be deleted.

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- 12 1. The breadth of the territorial sea proposed by the single negotiating text is 12 nautical miles from baselines, the breadth of the contiguous zone under the 1958 Territorial Sea Convention is 12 miles from appropriate baselines. ~~The breadth of the new territorial sea will also be measured from straight baselines established on the basis of substantially looser criteria than those contained in the 1958 Territorial Sea Convention.~~
 - 13 2. U.N. document A/CONF 62/ WP 8/ Part II, Article 33.
 - 14 3. See for instance: U.N. document A/CONF 62/WP 8/ Part II, Articles 47 (4) and 95; U.N. document A/CONF 62/ WP 8/ Part III, (Protection of the marine environment) Article 25; (Scientific research), Chapter 3, etc.

5. Exclusive economic zone.

According to present law of the sea, the coastal State, in principle, exercises no jurisdiction beyond the contiguous zone apart from sovereign rights over the natural resources of the continental shelf. Over the last couple of decades, however, an increasing number of States have claimed and jurisdiction for a number of purposes and sovereign rights over resources, in marine areas far beyond the territorial sea (often up to 200 miles from the coast). The single negotiating text offers international recognition to this trend by proposing the establishment of an exclusive economic zone extending to a maximum distance of 200 nautical miles, not from the coast but "from the baseline from which the breadth of the territorial sea is measured."¹

Comments and suggestions.

The exclusive economic zone concept is undoubtedly intended to recognize the expansion of coastal State interests in the marine environment and to ^{balance} ~~accommodate~~ the expanding interests of the coastal State with the interests of other States. Under contemporary circumstances, a considerable extension of coastal State functional jurisdiction in the marine environment may not be unreasonable.

6. Continental Shelf.

The concept of a legal continental shelf over which the coastal State exercises sovereign rights for the purpose of exploration and exploitation was launched by the Truman Proclamation in 1945 and officially introduced into the law of the sea by the 1958 Geneva Convention on the Continental Shelf.

The legal continental shelf was defined as (a) "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) the seabed and subsoil of similar submarine areas adjacent to the coast of islands."²

¹ 1. U.N. document A/CONF 62/ WP 8/ Part II, Article 45 (2).

² 2. 1958 Convention on the Continental Shelf, Article 1.

The definition has given rise to controversy and, with the progress of technology, could be interpreted as giving coastal States sovereign rights over seabed resources at unlimited distances from the coast. Over the past fifteen years States have interpreted the definition in an increasingly expansive fashion as mineral resources ^{are} ~~were~~ discovered and became ^o ~~me~~ exploitable at increasing distances from the coast.

The single negotiating text redefines the legal continental shelf as "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."¹⁷ In short it is proposed to replace the present criteria of adjacency to the coast, depth (200 metres) and exploitability by the criteria of a minimum distance (200 nautical miles) from straight baselines and of the continental shelf as comprising the entire "natural prolongation" of the land mass up to the outer edge of the continental margin. The single negotiating text leaves it to be inferred that the coastal State will itself decide where the outer edge of its continental margin lies: this circumstance is of some importance since it enables the coastal State to exercise considerable discretion in determining the limits of its legal continental shelf.¹⁸ The single negotiating text also leaves the coastal State free to redetermine as often as it wishes the limits of its legal continental shelf.

¹⁷ 1. U.N. document A/CONF 62/ WP 8/ Part II, Article 62.

¹⁸ 2. It is usually difficult even for the most technologically advanced coastal States to determine with any precision where the outer edge of their continental margin lies. There has been some discussion *at the level of the Sea* of a possible review by an international commission of a determination by the coastal State of the outer limits of its continental margin. The commission would certify the result to the coastal State and to the International Seabed Authority. The proposal is not included in the single negotiating text and, even if adopted, would appear to be of limited significance since the proposed commission would probably have to rely on data and information supplied by the coastal State.

Conference

Comments and suggestions.

The concept of the legal continental shelf, as developed in the single negotiating text,^{1/} preserves only the most tenuous relationship with that of the geological shelf and is clearly political in nature. It is based on the dubious assumption that coastal States have acquired under the 1958 Geneva Convention on the Continental Shelf sovereign ^{rights} ~~sights~~ over the entire "natural prolongation" of their land territory up to the outer edge of the continental margin.^{2/} Furthermore the single negotiating text proposes inconsistent criteria for the determination of the legal continental shelf: a political criterion (distance from the coast) and a geological criterion (the outer edge of the continental margin) which is difficult to determine with any precision with present technology. Thus the limits

- 19 1/ The reference is to U.N. document A/CONF 62/ WP 8/ Part ^{II}, Articles 62-72.
- 20 2/ The assumption is dubious scientifically and legally. Scientifically, because while an appropriately defined continental shelf may constitute the geological submerged prolongation of a land mass it cannot constitute the prolongation of a State. Natural features, such as the Eastern European plain which extends from the Elbe to the Urals, cannot be considered the prolongation of any one State. The assumption is dubious legally because (a) until about ten years ago it was generally accepted that, in principle, the limits of the legal continental shelf could not extend beyond water depths of 200 metres: only in very recent years have States begun to assert claims of sovereign rights over seabed resources to the outer edge of the continental margin, partly for political and economic reasons (hydrocarbons situated on the continental slope and rise are becoming exploitable) and partly at the urging of petroleum companies and their legal advisers (b) there is no mention of the concept of "natural prolongation" in the 1958 Geneva Convention on the Continental Shelf. The concept is often mentioned in legal literature and has been ~~enbaced~~ based by the International Court of Justice in the 1969 North Sea case. The Court, however, has never stated that the "natural prolongation" cannot logically be applied to all coastal States. Atolls, for instance, (such as the Kingdom of Tonga) can have no natural prolongation of their land territory, since the land area of an atoll is itself the "natural prolongation" of a submerged submarine feature,

endorsed

of a land territory extends to the outer edge of the continental margin, even if it is situated many hundreds of miles from the coast; (c) the concept of natural prolongation

In these circumstances it would appear highly desirable for the single negotiating text to establish a general obligation on the coastal States to indicate clearly both straight baselines and the limits of each marine area under its sovereignty or jurisdiction on large-scale charts deposited with the Secretary General of the "integrative machinery" proposed in this paper, who would be obliged within a specific period of time to communicate copies of the charts to all States members of the integrative machinery. A similar obligation should be established in the case of delimitation of the territorial sea, contiguous zone, exclusive economic zone and continental shelf between States lying adjacent or opposite ^{to} each other.

The manner of drawing straight baselines and the determination by a coastal State of its jurisdictional limits in ocean space affects the interests of all States. The single negotiating text, therefore, should make specific provision to permit any State and the "integrative machinery" which we propose, to question within a reasonable period of time before an international tribunal under compulsory and binding dispute settlement procedures the baselines drawn and jurisdictional limits claimed by a coastal State.

Section II. Rights and duties of States in

marine areas under national sovereignty or jurisdiction. *(national ocean space).*

Baselines.-- Traditionally, waters, including airspace, seabed and its subsoil, on the landward side of baselines used for measuring the breadth of the territorial sea are considered internal waters over which the coastal State exercises as full a sovereignty as over its land territory. ^{1/ 45}

The single negotiating text maintains the sovereignty of the coastal State over waters, including airspace, seabed and its subsoil, on the landward side of baselines, but proposes that, in the case of straight baselines joining the outermost points of the outermost islands and drying reefs ~~belonging to~~ *(belonging to an archipelagic State, sovereignty be exercised subject to)* the provisions of the future convention. Among these provisions

⁴⁵ 1/ Subject to the provision that "where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas a right of innocent passage..... shall exist in those waters." 1958 Geneva Territorial Sea Convention Article 15 (2).

are the following: a) "if the drawing of ... straight baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct access and all forms of communication... between two or more parts of the territory of such State, the archipelagic State shall continue to recognize and guarantee such rights of direct access and communication;"^{1/} b) "archipelagic States shall respect existing agreements with other States and shall recognize traditional fishing rights of the immediately adjacent neighbouring States in certain areas of the archipelagic waters;"^{2/} c) "ships of all States, whether coastal or not, shall enjoy the right of innocent passage through archipelagic waters,"^{3/} subject to (i) the right of the archipelagic State, "without discrimination in form or in fact amongst foreign ships, (to) suspend temporarily in specified areas... the innocent passage of foreign ships if such suspension is essential for the protection of its security"^{4/} (ii) the right of an archipelagic State to "designate sealanes and air routes suitable for the safe, continuous and expeditious passage of foreign dhips and aircraft through its archipelagic waters."^{5/} These air and sea routes shall traverse the archepelago and adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through the archipelago.....^{6/}

^{1/} U.N. document A/CONF 62/ WP 8/ Part II, Article 118 (7)

^{2/} Ibidem, Article 122.

^{3/} Ibidem, Article 123 (1).

^{4/} Ibidem, Article 123 (2).

^{5/} Ibidem, Article 124 (1)

^{6/} Ibidem, Article 124 (4).

Passage through the sealanes may not be suspended by the archipelagic State.^{1/}

It is evident that the single negotiating text attempts to accomodate the desire of relatively few archipelagic States^{2/} ~~(to~~ ^{which wish} ~~enclose~~ the waters of their archipelagoes with the acquired rights of neighbouring States and with the international community interest in shielding peaceful navigation from interference by the coastal State.

The interests including security interests of archipelagic States in the waters, which connect and separate the different islands of which they are constituted is obvious. It would be dangerous, however, to recognize the principle that the archipelagic State has sovereignty over those waters. The legitimate interests of the archipelagic State can be equally secured and with far less danger to the balance of the law of the sea by ~~a~~ special provision^s within the context of the concept of the exclusive economic zone.

The section on archipelagic States in the negotiating text is followed

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^{1/} Ibidem, Article 126.

The single negotiating text (Article 127-129) carefully regulates in detail the rights and duties of the archipelagic State and of foreign ships and aircraft with respect to transit through archipelagic waters and, in particular through the sealanes designated by the archipelagic State. The emergence of two new legal terms should be noted: (i) "archipelagic waters" which has acquired the meaning of ~~these~~ waters which are enclosed by straight baselines drawn by an archipelagic State in accordance with the provisions of the future convention and which join the outermost points of the outermost islands and drying reefs of the archipelago constituting such a State; (ii) "archipelagic sealanes passage" which has acquired the meaning of the passage of foreign vessels in accordance with the provisions of the future convention through sealanes designated by the archipelagic State.

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^{2/} Not all archipelagic States have found it necessary to support the archipelagic concept.

by a section on "oceanic archipelagoes belonging to continental States" which contains a single article: "the provisions of section 1 are without prejudice to the status of oceanic archipelagoes forming an integral part of the territory of a continental State."^{1/} The purpose and meaning of this article are mysterious and it should be deleted. Territorial sea.--- According to present international law the sovereignty of the coastal State extends over its territorial sea^{2/} subject to the obligation not to hamper the innocent passage of foreign ships and to give appropriate publicity to any dangers to navigation of which it has knowledge.^{3/} Innocent passage is defined as "passage not prejudicial to the peace, good order or security of the coastal State."^{4/} The

54 1/ Ibidem, Article 131. The purpose is mysterious, because it is unclear why the single negotiating text should mention "oceanic archipelagoes forming an integral part of the territory of a continental State" and not non-oceanic archipelagoes (or oceanic archipelagoes forming an integral part of the territory of a non-continental State). The meaning is unclear because the single negotiating text does not mention what the present status of oceanic archipelagoes forming an integral part of the territory of a continental State, is.

*forming part of
the territory of
a continental
State*

55 2/ Including the airspace over the territorial sea and its seabed and subsoil.

56 3/ 1958 Geneva Convention on the Territorial Sea, Article 15.
The Convention (Articles 18-20) also contains provisions concerning charges which may be levied on a transiting vessel and limiting the exercise by the coastal State of its civil and criminal jurisdiction with respect to vessels passing through its territorial sea.

57 4/ Ibidem, Article 14 (4).

coastal State "may prevent passage which is not innocent" and may, "without discrimination among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships, if such suspension is essential for the protection of its security." ³⁸ ~~but~~ No suspension of innocent passage is permitted ³⁹ ~~through~~ ^{however,} straits "used for international navigation between one part of the high seas and another part of the high seas or territorial sea of a foreign State."²/₅₉

Foreign ships transiting the territorial sea must comply with the laws and regulations enacted by the coastal State, particularly with those relating to transport and communications,³/₆₀ and submarines "are required to navigate on the surface and show their flag."⁴/₆₁

The 1958 Geneva Convention on the Territorial Sea does not define clearly the term "straits used for international navigation" and leaves open the question whether the coastal State may decide, at its discretion, whether the passage of any specific vessel or class of vessels, is prejudicial to its peace, good order or security.

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- ⁵⁸1/ Ibidem, Article 16 (1) (3)
⁵⁹2/ Ibidem, Article 16 (4)
⁶⁰3/ Ibidem, Article 17
⁶¹4/ Ibidem, Article 14 (6)

The single negotiating text retains the existing regime of the territorial sea but develops the rather general provisions contained in the 1958 Geneva Convention in an attempt to establish objective standards of innocent passage, particularly through straits, with the aim of accomodating the concerns expressed by States fronting on straits with the general interest of unhampered international navigation.^{1/2} Many of the changes proposed with regard to navigation in the territorial sea are essentially technical: for instance, changes in the wording of some articles (including the definition of the terms "passage" and "innocent passage").^{2/3} Other changes are of considerable importance, among these is the enumeration of activities which make passage of a vessel prejudicial to the peace, good order and security of the coastal State^{3/4}; recognition of wide coastal State regulatory powers with regard to matters relating to innocent passage^{4/5}; a provision establishing the liability of ships exercising the right of innocent passage

^{4/} It is generally recognized that new provisions on the subject of passage through the territorial sea and particularly through straits used for international navigation have become necessary, both because it is proposed to extend the breadth of the territorial sea to 12 nautical miles (thus enclosing many straits within territorial waters) and because the failure appropriately to amend the baseline provisions of the 1958 Geneva Convention on the Territorial Sea makes it possible to draw baselines across important straits (which thus become internal waters).

^{6/} 2/ In order to cover the recent development of offshore terminals and harbours, passage has been defined as "navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters." Innocent passage now also specifically includes stopping "for the purpose of rendering assistance to persons, ships or aircraft in danger or distress". Article 14 (6) of the 1958 Geneva Convention on the Territorial Sea has been amended (Single negotiating text Part II, article 17) by providing that "submarines and other underwater vehicles are required to navigate on the surface and show their flag unless otherwise authorized by the coastal State" (all words underlined are new), etc.

^{6/} 3/ See, for details, U.N. document A/CONF 62/WP 8/ Part II, Article 16 (2)

^{6/} 4/ ^{For details} (See, ^{See also,} ibidem Article 18 and 19. A/CONF 62/ WP 8/ Part III, Article 20 (3) (4))

for any damage caused to the coastal State in the event that they do not comply with its laws and regulations concerning navigation. ^{14/}

The major differences between the single negotiating text and the 1958 Geneva Convention in the Territorial Sea lie, however, in the rules proposed for passage through straits used for international navigation.

As has been mentioned, the traditional rule is that there can be no suspension of innocent passage through straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State. It is now proposed to distinguish two regimes of passage: transit passage and innocent passage.

Transit passage is defined as "the exercise in accordance with the provisions of this Part (of the proposed Convention) of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one area of the high seas

^{14/} U.N. document A/CONF 62/ WP 8/ Part II, Article 23. Article 32 establishes the liability of the flag State for any damage caused by a warship or government ship operated for non commercial purposes, bearing its flag, which results from non-compliance with coastal State laws and regulations relating to passage through the territorial sea.

or an exclusive economic zone and another area of the high seas or an exclusive economic zone".^{1/} The distinguishing characteristic of transit passage is that it cannot be suspended or hampered.^{2/} The right of transit passage applies to "straits which are used for international navigation between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone,"^{3/} except that "if the strait is formed by an island of the strait State, transit passage shall not apply if a high seas route or a route in an exclusive economic zone of similar convenience exists seaward^{and} of the island."^{4/} The regime of transit passage does not in other respects affect the status of the waters forming such straits nor the exercise by the the strait State of its sovereignty or jurisdiction^{iv} over such waters....^{5/} nor does the regime affect (a) "any areas of internal waters within a strait, unless they were considered as part of the high seas or territorial sea prior to the drawing of straight baselines"^{6/} (b) "the status of the waters beyond the territorial seas of strait States..."^{7/} (c) "the legal status of straits in which passage is regulated in whole or in

"in accordance with the rules contained in the single negotiating text"

^{1/} U.N. document A/CONF 62/ WP 8? Part II, Article 38 (2)

^{2/} Ibidem, Article 43.

^{3/} *Ibidem*
(Article 37)

^{4/} Ibidem, Article 38 (1)

^{5/} Ibidem, Article 34

^{6/} Ibidem, Article 35 (a)

^{7/} Ibidem, Article 35 (b)

part by long-standing international conventions in ~~form~~^{force} specifically relating to such straits." ^{1/74} The exercise of the right of transit passage is subject to conditions designed to meet the concerns of States fronting on straits; thus ships and aircraft must proceed without delay through the strait; ^{2/75} the strait State may designate sealanes "where necessary to promote the safe passage of ships," ^{3/76} and the strait State is recognized wide, but not totally discretionary, powers to regulate transit passage through ^{4/77} ~~straits~~^{He}.

The regime of innocent passage, as modified, in the single negotiating text, is maintained in respect of those straits used for international navigation not covered by the regime of transit passage or joining one area of the high seas or of an exclusive economic zone and the territorial sea of a foreign State. ^{5/78}

Although neither transit passage or innocent passage through straits can be suspended and there are other similarities between the two regimes,

⁷⁴ 1/ Ibidem, Article 35 (c)

⁷⁵ 2/ For details, see ibidem Article 39.

⁷⁶ 3/ For details, see ibidem, Article 40. ~~Article 40~~ Article 40 (4) is an interesting example of the attempt to circumscribe the discretion of the coastal State in the interests of navigation and of the balance produced by the law of the sea negotiations: before designating sea lanes a strait State "shall refer proposals to the competent international organization with a view to their adoption" (IMCO); ⁷⁶ *at the same time,* "the organization may adopt only such sea lanes...as may be agreed with the strait State, after which the strait State may designate or prescribe them."

⁷⁷ 4/ For details, see ibidem, Article 41.

⁷⁸ 5/ Ibidem, Article 44.

there exist also major differences, among these are: a) less extensive and less specific recognition of coastal State regulatory powers in the case of transit passage¹⁹ (b) the obligations of vessels and aircraft exercising the right of transit passage are formulated in more general terms than those of vessels exercising the right of innocent passage^{2/80} c) there is a greater concern for the establishment and maintenance of aids to navigation in straits subject to the regime of transit passage.^{2/81}

Comments.

The single negotiating text enumerates the activities which make passage of a vessel through the territorial sea prejudicial to the peace, good order or security of the coastal State, but does not state that the passage of a vessel which does not engage in ~~such~~^{the} activities ^{enumerated} is innocent. Thus the element of subjectivity in the concept of innocent passage is not eliminated. At the same time, the content of the right of innocent passage is restricted to mere transit by provisions which

¹⁹ Compare, for instance, Articles 18 and 19 with Article 40 and 41 of Part II of the single negotiating text.

⁸⁰ 2/ Compare, for instance, Article 16 with Article 39 of Part II of the single negotiating text. In addition, it is important to note that submarines are not required to surface and to show their flag when exercising the right of transit passage.

⁸¹ 3/ See, for instance, single negotiating text, Part II, Article 42.

prescribe "continuous and expeditious" passage^{1/} and which define any activity not having a direct bearing on passage as prejudicial to the peace, good order or security of the coastal State^{2/}. The wide regulatory powers recognized^{3/} the coastal State with regard to matters relating to innocent passage through the territorial sea are circumscribed by articles designed to ensure that the coastal State will not exercise its extensive powers in a manner that will have the effect of prejudicing the right of innocent passage or of discriminating against ships of any State or ~~which~~^{that} will affect the design, construction, manning or equipment of foreign ships.^{3/} It remains to be seen how effective these provisions will be in practice, ~~in view of the comprehensive rights recognized to the coastal State.~~

Although the issue of straits is crucial to the success of the law of the sea conference, the precise meaning of the term "straits used for international navigation" has not been clarified and this could cause disputes in the case of ~~some~~ straits which are not often transited by foreign vessels.

The new regime of transit passage has been made necessary by the extension of the limits of the territorial sea and by the wide powers recognized to the coastal State in connexion with the regime of innocent passage.

The general effect of the proposals on the territorial sea and straits contained in the single negotiating text is not only to extend the limits of the territorial sea but also to resolve in favour of coastal State control most of the uncertainties of present law of the sea with long-term consequences that are unpredictable.

Contiguous zone.---The single negotiating text proposes no changes in the rights of the coastal State within the contiguous zone as set forth in the Geneva Convention on the Territorial Sea (Article 24).

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- 82 1/ U.N.document A/CONF 62/ WP 8/ Part II, Article 15 (2).
 83 2/ Ibidem, Article 16 (2) ~~(1)~~ (1)
 84 3/ Ibidem, Article 18 (2) and Article 21.

Exclusive economic zone.-- The exclusive economic zone is a new concept which conveniently consolidates into an integrated ^{regime} whole a variety of claims to exclusive access to resources and to control of activities in the marine environment advanced by coastal States with increasing frequency in recent years. As formulated in the single negotiating text, (Part II, Article 45) in an area beyond and adjacent to its territorial sea not extending beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, the coastal State has:

" a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the bed and subsoil and the superjacent waters;

b) exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures;

c) exclusive jurisdiction with regard to:

(i) other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (ii) scientific research;

d) jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement;

e) other rights and duties provided for in the present convention." ^{1/85}

At the same time all States "enjoy in the exclusive economic zone the freedoms of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation and communication", in so far as they are not incompatible with the provisions of the proposed convention

with regard to the exclusive economic zone. ^{2/86}

2. U.N. document A/CONF 62/ WP 8/ Part II, Article 47 (1) (2)

85 1. The text is based on the sixth revision of a text prepared by the "Evensen group", an informal group of some 40 representatives chaired by Jens Evensen of Norway. Important differences between this text and the single negotiating text are a) that this latter text omits the qualifying words "as provided for in this convention" in describing coastal State jurisdiction with respect to preservation of the marine environment and b) recognizes the exclusive jurisdiction (as distinguished from merely jurisdiction) of the coastal State with regard to scientific research, establishment and use of installations and other activities for economic exploration and exploitation with the exclusive economic zone.

Where the proposed convention does not attribute rights or jurisdiction within the exclusive economic zone, conflicts between the interests of the coastal State and of other States are to be resolved "on the basis of equity and in the light of all relevant circumstances taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole. 1/86

The single negotiating text contains detailed provisions which are intended to clarify the rights and duties of coastal States and other States within the exclusive economic zone with respect to a) artificial islands, installations and structures; b) scientific research; c) living resources; and d) protection of the marine environment.

a) The rules proposed with respect to artificial islands and other installations have been largely derived from the rules contained in the 1958 Convention on the Continental Shelf (Article 5). Apart from a few technical differences, 2/ there are, however, two important differences of substance.

First, the coastal State is now explicitly recognized the exclusive right "to construct and to authorize and regulate the construction,

1/ U.N. document A/CONF 62/ WP 8/ Part II, Article 47 (3)

2/ For instance; (i) the 1958 Continental Shelf Convention recognized that coastal States may establish 500 metre wide safety zones around installations; these are becoming inadequate for a number of reasons, accordingly the single negotiating text (Article 48 (5)), which while maintaining the rule providing for 500 metre wide safety zones, has added the clause "except as authorized by generally accepted international standards or as recommended by the appropriate international organizations", (ii) artificial islands are mentioned in the single negotiating text; these are not mentioned, because they did not then exist, in the Continental Shelf Convention.

operation and use of "artificial islands and other installations not merely on its continental shelf but also in the entire exclusive economic zone¹⁴. Secondly the provision of the 1958 Convention on the Continental Shelf (Article 5 (1)) to the effect that "the exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea nor result in any interference with fundamental oceanographic or other scientific research-...", has been deleted²⁹ together with the provision (1958 Continental Shelf Convention, Article 5 (7)) obligating the coastal State to undertake in the safety zones around installations all appropriate measures for the protection of the living resources of the sea.

88 1/

It is important also to note that the 1958 Continental Shelf Convention merely recognized the right of the coastal State to construct and maintain or operate installations and other devices necessary for the exploration and exploitation of the natural resources of the continental shelf. The convention did not give the coastal State the exclusive right to construct installations. Thus installations not directly connected with natural resource exploration and exploitation could be freely constructed by any State on the continental shelf, subject to the provisions of Article 5 (8) of the Continental Shelf Convention, ~~has important implications, inter alia, with regard to military uses of the sea-bed.~~

and to authorize and regulate the construction and operation of

← It is now proposed that the coastal State shall have the exclusive right to construct a) artificial islands; b) installations and structures for all economic purposes c) installations and structures which may interfere with the exercise of the rights of the coastal state in the exclusive economic zone. The broadened powers and wide discretion recognized to the coastal State has important implications, inter alia, with regard to military uses of the sea-bed.

89 2/

The single negotiating text, however, maintains the provision that artificial islands, etc. and the safety zones around them may not be established "where interference may be caused to the use of recognized sea-lanes essential to international navigation."

See 1958 Convention on the Continental Shelf, Article 5 (6) and UN document

17/CONF.62/WP.8/Part II, Article 48(7)

b) The 1958 Convention of the Continental Shelf, Article 5 (8) had provided that "the consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research and that in any ^{ev}vent the results shall be published." Part II of the single negotiating^{ev} text (Part II, Article 49) reproduces this article, with the omission of the reference to the "physical or biological characteristics of the continental shelf", 1/91 and extends its provisions to the entire exclusive economic zone with, however, a highly important modification: the last clause in article 5 (8) of the 1958 Continental Shelf Convention is ~~deleted~~ and replaced by a clause providing that the results of scientific research in the exclusive economic zone "shall be published after consultation with the coastal State concerned." 2/92

These provisions, elaborated by the Chairman of Committee II 3/93 are, in part, contradicted by the detailed articles on scientific research elaborated by the chairman of Committee III. Instead of a statement providing for coastal State consent for any research concerning the economic zone and undertaken there, we find in Part III of the single negotiating text that "marine scientific research...in the economic zone and the continental shelf shall be conducted by States as well as by appropriate international organizations in such a manner that the rights of the coastal State, as well as ~~as by appropriate international organizations in such a~~ provided for in this Convention ^{are} ~~had~~ respected." 4/ The 1958 Continental

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- 90 1/ The practical consequences of this omission are as yet unclear.
 - 91 2/ The suggestion is clear that publication of the results of scientific research is not desired without the approval of the coastal State; in this connexion, single negotiating text, Part III, (Scientific Research) Article 21 (c) is highly relevant. Marine
 - 92 3/ Committee II of the United Nations Conference on the Law of the Sea.
 - 93 4/ U.N. document A/CONF 62/ WP 8/ Part III, (^{Marine} ~~Section on~~ Scientific Research), article 14.

Shelf Convention had already distinguished for certain purposes between "purely scientific research into the physical or biological characteristics of the continental shelf" and other types of research. Part III of ~~the~~ the single negotiating text, as distinguished from Part II of the same text, now proposes a basic distinction between fundamental research and research related to the exploration and exploitation of the living and non-living resources of the exclusive economic zone. ^{1/14}

When "States and international organizations" ^{2/13} intends ^{ing} to conduct scientific research in the exclusive economic zone must communicate this fact through appropriate official channels to the coastal State concerned ^{3/} indicating whether they consider such research to be of a fundamental nature or related to the resources of the economic zone or continental shelf. The coastal State is required to acknowledge receipt of the communication immediately. If the coastal State considers that "the research project defined by the researching State as fundamental is not of such a ⁿ nature, it may object only on the ground that the said project

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- ⁹⁴ 1/ The ~~idea~~ ^{the two} of distinguishing between ~~types~~ of research was first proposed by the USSR and other socialist countries at the conference. See United Nations document A/CONF 62/ C 3/ L 26.
- ⁹⁵ 2/ It is not clear why the text mentions only States and international organizations instead of using a general term that would more explicitly permit the conduct of scientific research in the exclusive economic zone by private persons and institutions.
- ⁹⁶ 3/ The communication to the coastal State must include also all details concerning the scientific project. See U.N. document A/CONF 62/ WP 8/ Part III (Scientific research), Article 15.

would infringe on its rights as defined in this Convention over the natural resources of the economic zone, or continental shelf.^{1/97} Any resulting dispute, if not settled by negotiation, shall be submitted at the request of either party to the dispute settlement procedure established by the Convention.^{2/98} When an affirmative reply is received from the coastal State^{3/99} the project may be undertaken subject to compliance with the conditions enumerated in Article 16 (Part III)^{4/100} and to the obligations mentioned in Article 23 (Part III) of the single negotiating text.⁽⁵⁾¹⁰¹

Research related to the living and non-living resources of the exclusive economic zone may be conducted only with the express consent of the coastal State concerned. If permission is granted the entity

97 1/ Ibidem, Article 19.

98 2/ Ibidem, Article 20.

99 3/ It is not clear whether the sponsoring State or international organization may proceed with the research project if the coastal State does not acknowledge receipt of the communication received or does not express a view with regard to the nature of the project. According to Part II of the single negotiating text the coastal State has exclusive jurisdiction over scientific research in the exclusive economic zone (Article 45) and its consent is required for any research in the zone (Article 49). Part III (Article 22) of the single negotiating text permits the research project to proceed in the absence of a specific reply by the coastal State.

100 4/ It is interesting to note that it is proposed that the coastal State now enjoy far wider rights than those recognized to it under Article 5 of the 1958 Convention on the Continental Shelf. Thus not only is the coastal State now recognized the right to participate or be represented in the research project, but also the right a) to be provided with the conclusions of the project; b) to receive the raw and processed data and samples; c) to request assistance in assessing the data and samples; d) to be informed of any major change in the research programme. The obligation of publication is made more specific; research results must now be made available through International Data Centres or through other appropriate channels, as soon as feasible (Part III, Scientific Research, Article 16)

101 5/ Article 23 reads as follows: "States and international organizations conducting scientific research in the economic zone of a coastal State, shall take into account the interest and rights of the land-locked and other geographically disadvantaged States of the region, neighbouring to the research area....and shall notify these States of the proposed research project as well as provide at their request relevant information and assistance as specified in Article 15 and Article 16 sub-paragraphs (e) and these States also have the right to participate in the project (g), whenever feasible.

undertaking the research must provide the coastal State with a full description of the project, comply with the conditions enumerated in Article 16 (Part III), provide the coastal State as soon as practicable with "a report including a preliminary ~~interpretation~~^{interpretation}" and such other information relating directly to the project as the coastal State may request, but may not publish the results of the research or make such results internationally available "without the express consent of the coastal State."^{1/62}

The articles on scientific research in the economic zone are completed by providing that "liability in respect of damage caused within the area under national jurisdiction and/ or sovereignty of a coastal State arising from marine scientific research activities shall be governed by the law of the coastal State, taking into account relevant principles of international law."^{2/107}

^{1071/} U.N. document A/CONF 62/ WP 8/ Part III (^{Marine} Scientific Research), Article 21.

^{1072/} Ibidem, Article 35 (3). Discrepancies in terminology between Part II and Part III of the single negotiating text should be noted: for instance, Part III uses the term "economic zone" instead of "exclusive economic zone" used in Part II; Part III mentions only "States and international organizations" as entities which may be authorized to conduct scientific research in the exclusive economic zone, while Part II suggests that scientific research will normally be conducted by "qualified institutions." The reason for these, and other, discrepancies is unclear.

(c) Creation of the exclusive economic zone replaces freedom of fishing^{1/104} by the sovereign rights of the coastal State over the exploration, exploitation, conservation and management of living resources in a broad area beyond the territorial sea accompanied by broad coastal State enforcement powers.^{2/105} The sovereign rights of the coastal State are limited only by a duty (a)^{3/106} "to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over exploitation."

(b) to "promote the objective of optimum utilization of the living resources in the exclusive economic zone...."^{4/107}; (c) to allow adjoining landlocked States to participate in the exploitation of living resources in their

exclusive economic zone on an equitable basis; ^{terms and} the conditions of ~~which~~ such participation are to be determined by the States concerned through bilateral, sub-regional

¹⁰⁴ 1/ Tempered, however, by the recognition of the special interest of the coastal State "in the maintenance of the productivity of the living resources in any area of the high seas adjacent to the territorial sea." 1958 Geneva Convention on Fishing, Article 6 (1).

¹⁰⁵ 2/ These powers include "boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance with the laws and regulations enacted" by the coastal State, but coastal State penalties for violations enacted by the coastal State, ~~but coastal State penalties for violations~~ of fisheries regulations in the exclusive economic zone "may not include imprisonment... or any other form of corporal punishment" and "arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security." U.N. document A/CONF 62/ WP 8/ Part II, Article 60.

¹⁰⁶ 3/ Ibidem, Article 50 (2). Conservation measures must be designed "to maintain or restore harvested species at levels which can produce the maximum sustainable yield" taking into account a variety of factors (Ibidem, Article 50 (3) (4)) and provision is made for the regular exchange of scientific information, catch and fishing effort statistics through sub-regional and global organizations. (Ibidem Article 50 (5)).

¹⁰⁷ 4/ In this connexion, the coastal State has the obligation to determine its capacity to harvest the living resources of the exclusive economic zone. Where it does not have the capacity to harvest the entire allowable catch, it must through agreements, and other arrangements and pursuant to a wide variety of, sometimes burdensome terms, conditions and regulations give other States access to the surplus of the allowable catch (Ibidem, Article 51).

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or regional agreements.^{1/08} The same rights are recognized to developing coastal States which can claim no exclusive economic zone of their own and to developing coastal States¹⁰⁸ which are situated in a subregion or a region whose geographical peculiarities make such States particularly dependent for the satisfaction of the nutritional needs of their populations upon the exploitation of the living resources in the economic zones of their neighbouring States;^{2/109} d) for coastal States in a region "to seek either directly or through appropriate subregional ^{or} regional organizations to agree upon the measures necessary... to ensure the conservation and management" of living resources which occur within the economic zones of two or more States.^{3/110}

The single negotiating text recommends that "where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek either directly or through appropriate subregional or regional organizations to agree upon the measures necessary for the conservation of these stocks in the adjacent area."^{4/111}

^{3/}As distinguished from the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas,

¹⁰⁸ 1/ Ibidem, Article 57. Developed land-locked States, however, may exercise their rights only within the exclusive economic zone of neighbouring developed coastal States.

¹⁰⁹ 2/ U.N. document A/CONF 62/ WP 8/ Part II, Article 58.

¹¹⁰ 3/ Ibidem, Article 52 (1).

¹¹¹ 4/ Ibidem, Article 52 (2). It should be noted that agreement is recommended only with respect to the area beyond the exclusive economic zone. No cooperative management of stocks over their entire range (within and outside the exclusive economic zone) is recommended, presumably because it is not desired to give the impression of weakening the sovereign rights of the coastal State over living resources within the exclusive economic zone.

the single negotiating text contains special provisions for highly migratory species, anadromous and catadromous species, marine mammals and sedentary species.

With regard to highly migratory species, it is proposed that "the coastal State and other States whose national fish highly migratory species in the region shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region both within and beyond the exclusive economic zone." 1/ 112

The single negotiating text recognizes that "coastal States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks". 2/ 113 These States ~~have the responsibility for ensuring~~ ^{or shall ensure} the conservation of ~~anadromous~~ stocks originating ~~in their rivers~~ by the establishment of appropriate regulatory measures 3/ 114 and may establish total allowable catches after consultation with other States fishing these stocks ~~to facilitate enforcement of the regulations adopted by the coastal State~~ ^{(is facilitated by the provision that} "fisheries for anadromous stocks shall be conducted only in waters within exclusive economic zones..." 4/ 115 ~~States are more interested in anadromou~~

112 1/ Ibidem, Article 53 (2).

113 2/ Ibidem, Article 54. Anadromous stocks include salmon.

114 3/ No consultation with other States or with international organizations is required before issuing these regulations.

115 4/ Ibidem, Article 54 (3) (a). See Article 54 in its entirety for details of the system proposed for anadromous stocks.

1/2. 11.
States are more interested in anadromous stocks (salmon) than in catadromous stocks (eels), hence the single negotiating text is content to suggest similar but more general provisions for the latter. 1/ 116

The provision with regard to marine mammals^{5/} contained in the single negotiating text is general in nature: States are urged to cooperate, directly or through international organizations, in the protection and management of marine mammals, and ^{Coastal} States and international organizations are expressly authorized to prohibit, regulate and limit the exploitation of marine mammals. 2/ 117

The single negotiating text mentions sedentary species^{only for} the purpose of ensuring that they are not subject to the provisions with regard to fishing in the exclusive economic zone. 3/ 118 Thus with regard to these species the coastal State is exempted from the duty to ensure their proper conservation, management and optimum utilization and ^{from the duty} to cooperate with other States in their management; also the coastal State need not permit adjoining land-locked countries to participate in their exploitation.

116 1. U.N. document A/CONF 62/ WP 8/ Part II, Article 55.

117 2. Ibidem, Article 53 (3). It is not clear why it was found necessary expressly to authorize coastal States and international organizations to prohibit, regulate and limit the exploitation of marine mammals: coastal State powers in this regard within areas subject to its jurisdiction are unquestioned as are also the powers of international organizations, such as the International Whaling Commission, within the limits of their agreed functions.

118 3. Ibidem, Article 56.

Comments and suggestions

~~The modernization~~

~~The articles relate while~~

~~The articles relating to the High Seas in the single negotiating text propose ~~an~~ significant important developments of present international law. In particular freedom of fishing is subject to the duty to cooperate with other States for the conservation of the living resources of the High Seas~~

While ~~the~~ the basic concepts of the traditional regime of the High Seas remains unchanged, important developments of present international law are proposed: particularly significant, and welcome, ^{are} the modernization of the law with regard to shipping and the specific obligation required of States to co-operate in the management and conservation of the living resources of the High Seas. (1) However ~~no~~ ^{little} provision has been made to coordinate the regime of the High Seas with the ~~proposed~~ regime proposed with respect to the sea-bed beyond national jurisdiction (2). ~~the~~ The basic question remains as to whether even a modernized regime of the High Seas is viable in contemporary conditions, except in increasingly remote areas of the oceans. Certainly the jurisdictional vacuum existing with respect to the waters beyond national jurisdiction

33 1 U N document A/CN.4/62/WP.8/Part II, articles 103-106.

34 2. Particularly with respect to the laying of submarine cables and pipelines, ^{and} the use of the sea-bed ~~for~~ for installations of a ~~or~~ potentially military character.

permits, indeed encourages, continued expansion of coastal State jurisdiction, as technology advances and exploitation of resources intensifies. For this reason alone, serious consideration should be given to ~~extending to the~~ establishing for the waters of the ocean a regime based on the principle of common heritage of mankind. (1)

A number of questions arise with regard to the sea-bed regime proposed in the single negotiating text.

The area covered by the regime is subject to re-definition at the discretion of coastal States (2). This is an unsatisfactory state of affairs, and it is proposed that (a) consideration be given to enabling the proposed International Sea-bed Authority to object to the limits notified to it by coastal States in the event that such limits do not appear to conform to the provisions of and criteria contained in Part II of the single negotiating text with regard to the limits of national jurisdiction (b) ~~to~~ some provision be elaborated limiting the power of ^{coastal} States to redefine their national jurisdictional limits with regard to the Authority. It is also suggested that ~~Antarctica as defined in the Antarctic Convention be~~ → the sea-bed surrounding ^{land area of} Antarctica

35 1. In addition, of course, the oceans beyond national jurisdiction contain ^{substantial} living resources (about 10 percent of world fish catch) and could, perhaps, be used at some future date for a number of economic purposes. A common heritage regime for the oceans beyond national jurisdiction would facilitate international cooperation in the management of fish stocks, would facilitate development of international criteria for the accommodation of ocean uses and ~~could~~ ~~also~~ could have a number of other useful purposes.

36 2. ~~Only~~ Within the framework of the flexible criteria proposed in Part II of the single negotiating text.

be explicitly included in the international sea-bed area (1)

It is not clear what activities in the international sea-bed area are governed by the ~~proposed~~ ^{proposed} regime (2). It is suggested that the matter be clarified by changing the formulation of Article 6 (Part I) to read "all activities in the Area shall be governed. . . ." If political considerations require some activities to be excepted from the regime, these activities should be specifically enumerated.

The provisions on scientific research (Article 10, Part I) are in part not easy to reconcile with the corresponding provisions in ~~part the~~ Part III of the single negotiating text. It is suggested that the provisions contained in Part III be fully reconciled with those in Part I.

The provisions relating to the protection of the marine environment (Article 12, Part I) do not ~~provide any~~ mention the proposed Authority. It is ~~proposed~~ suggested that this article be amended to provide a specific environmental protection role for the Authority.

It is noted finally that none of the specific ~~act~~ activities mentioned in Articles 10-16 ^(and 19) Part I are meaningfully implemented in that part of the single negotiating text dealing specifically with the future International Sea-bed Authority.

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- 37 1. The area contains ~~is~~ considerable resources which could be developed for the benefit of mankind,
 - 38 2. In particular, there is no reference to the ~~proposed~~ living resources of the sea-bed.

Archipelagos

Comments, -

The concept of archipelagic waters seeks to accommodate the desire of certain archipelagic States to exercise sovereignty over ~~the waters~~ the waters within an archipelagic with the interests of other nations and the common interest of the world community. In fact the only world community interests which the single negotiating text seeks to protect are navigation and overflight. Unhindered passage is guaranteed only in sea lanes and ~~also~~ air routes which may be changed by the archipelagic State. The single negotiating text attempts a careful balance with regard to ~~passage in~~ navigational and air passage through other areas of archipelagic waters → Innocent passage is provided for in archipelagic waters and an attempt is made to guarantee unhindered passage (archipelagic sea lanes passage) in sea lanes and air routes through the archipelago by ~~the~~ careful

new page

①

Settlement of disputes

Comments and suggestions,

No detailed comments are offered on this section of the single negotiating text despite its critical importance due on the one hand to the complexity of the subject which ~~would~~ ^{would} require ~~an~~ extensive ~~considerable~~ ~~and~~ treatment and, on the other hand, to recognition that, on the whole, the proposals contained in the negotiating text are difficult to improve upon in view of existing political realities.

It is only desired to ~~stress~~ ^{underline} a very few points:

(a) ~~in~~ ^{the subject of} the approach and treatment by the single negotiating text of settlement of disputes ~~arising~~ which may arise under the proposed law of the sea convention.

First, ~~First~~ The single negotiating text ^{attributes great importance to} ~~stresses~~ (dispute avoidance through exchange of information and consultations between Contracting Parties which may have differences. The purpose ~~here~~ is to avoid that differences escalate into disputes. Consultations between parties to a dispute must be renewed whenever any stage of the dispute settlement process is unsuccessfully terminated.

Secondly, ~~the dispute settlement system proposed~~ ^{proposed} is flexible. ample latitude is ^{places} ~~stresses~~ informal dispute settlement procedures over formal dispute settlement procedures on the theory that ~~these~~ ~~but~~ ~~promote~~ many problems cannot be solved on the basis of strict law and that informal ~~pro~~ procedures promote accommodation of interests and solutions far better than formal judicial procedures.

Thirdly, the ~~single~~ single negotiating text ~~it~~ gives an unusual degree of importance to fact-finding and to

(2)
participation (without vote) in the judicial process of ~~the~~ persons with special technical qualifications.

Fourthly, the single negotiating text stresses flexibility in the dispute settlement process: States are permitted a wide choice of dispute settlement ^{mechanisms, including tribunals,} ~~procedures~~ and the system proposed combines in a novel way functional elements in the chapter on special procedures (Annex II) with a comprehensive system. It is hoped in this way ~~to~~ to encourage States to accept binding dispute settlement procedures and it is hoped to achieve a settlement of disputes which is both adapted to different categories of problems and a wide measure of uniformity in the interpretation of the law of the sea.

Fifthly, the single negotiating text ^{(before attempting judicial settlement,} makes clear that conciliation procedures, while always voluntary, should normally ~~be~~ have been ~~extended~~ terminated without any settlement of the dispute: judicial settlement is the last resort. The ^{establishment of an} manner in which the conciliation commission is constituted is interesting international list of conciliators is an interesting proposal.

Finally ~~Sixthly~~, the dispute settlement system envisaged contains a number of interesting ^{and important} innovations (Arbitral Tribunal, method of elections of the ~~judges~~ members of the Law of the Sea Tribunal, provision for the ~~const~~ establishment within the Tribunal of chambers for dealing with particular categories of disputes, and the obligation of the Tribunal to establish a chamber empowered to determine disputes by summary procedure; provision for access to the law of the Sea Tribunal of natural and juridical persons and entities which are not States, etc) which ~~so merit~~ ^{merit} ~~extended~~ ^{provisions on} detailed analysis.

Despite the excellence of the ^{provisions on} dispute settlement in the single negotiating text there are some points which

(3)

Warrant careful consideration. Among these are the following:

1. The provisions in Part I (Articles 32 and 33, 57-63) ^{of the negotiating text} should be ~~be~~ brought into conformity with the provisions in Part IV (document A/CONF.62/WP.9);

with the reference to applicable law, 2. Careful attention should be given to the question of whether it is really necessary to retain in article 16(1) of Part IV the clause "other rules of international law".

3. Part IV, Article 18 seriously circumscribes the competence ~~of the~~ scope of the dispute settlement provisions envisaged. While realizing the differences of opinion at the conference, the

3. While realizing ~~that~~ ^{exist} the existence of strong differences of opinion at the conference, Article 18 of Part IV contains such wide limitations to the scope of the dispute settlement procedures envisaged as to seriously reduce their usefulness. No right is a legal right unless it is subject to some form of legal review. Measures taken in the exclusive economic zone are not → The manner in which the authority of the coastal State is exercised in the exclusive economic zone cannot be the sole concern of that State, the interests of others are often indeed usually affected, particularly in regions where States have rather short coastlines. ^{in regions} ~~Two~~ ^{three} changes are consequently suggested:

a) to require the coastal State ^{concerned} to make a specific declaration

a) Article 18(1). The State concerned should

a) to revert to the formulation of article 17 of the working group ~~is~~ of dispute

a) ~~the~~ It is consequently suggested that consideration be given to adopting the formulation of Article 17 ^(a) or replacing article 18(1)

by the Resolution contained in Article 17 of document
 S.D. 9p/2 Session/No. 1/Rev. 5⁽¹⁾ (b) adding to Article 18(2)(a)
 the words "except in cases involving an abuse of power or
 failure to have due regard to the rights of other States or to
 international community interests." (c) deleting the words "or all" in
 line 2 of ~~paragraph~~ ^{Article} 18(2). The changes would ensure
 that some dispute settlement procedures, even if not ~~compa~~
 binding, are available in the great majority of foreseeable
 disputes ~~under~~ ^{with regard to} the interpretation and application of the proposed
 law of the sea convention.

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1. This document was submitted by the working group on dispute settlement to the President of the Conference.