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LAW OF THE SEA

Report of the Secretary-General

Progress made in the implementation of the comprehensive 1982

regime embodied in the United Nations Convention on the
Law of the Sea

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I. INTRODUCTION

1. The present report is submitted to the General Assembly in response to its resolution 46/78 of 12 December 1991, in paragraph 22 of which the Assembly requested the Secretary-General:

6. Of the 52 States which have established their consent to be bound, 26 belong to the group of African States, 11 to the Asian group and 13 to the group of Latin American and Caribbean States. The two remaining States are European.

7. Practically all of the 52 States which have established their consent to be bound by the Convention are developing States. The industrialized States

Convention, particularly in view of the world economic situation that has changed fundamentally since the early 1980s. In 1990, in an effort to achieve universal participation in the Convention, the Secretary-General took the initiative to convene informal consultations aimed at addressing issues of concern to those States. On the basis of the results of the first series of six consultations held among a restricted number of Governments, a second round of consultations, with open-ended membership, took place in June 1991.

11. The main focus of the review is the practice of States from 1982 to 1992. However, as much legislation was adopted during the Third United Nations Conference on the Law of the Sea, such legislation has also been taken

2. Right of innocent passage

15. The 1982 Convention has reconfirmed the right of innocent passage as provided for in the Convention on the Territorial Sea and the Contiguous Zone of 1958. It has, however, further clarified that right. These clarifications protect the positions of both coastal and flag States in the exercise of the right of innocent passage.

16. The legal status of a key provision in the Convention relating to innocent passage was considered by the International Court of Justice in the

Case concerning Military and Paramilitary Activities in and against Nicaragua

in 1986. The Court found that article 18, paragraph 1 (b) "does no more than codify customary international law" as part of the freedom of

17. As a whole, the provisions of Section 3 of Part II concerning innocent passage in the territorial sea can be said to have had a greater impact on the

carrying such wastes from entering their territorial sea. 11/ The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal provides that the Convention shall not affect, inter alia, the sovereignty of States over the territorial sea and the exercise by ships of all States of navigational rights "as provided for in international law and as reflected in relevant international instruments" (art. 4 (12)). This compromise formula prompted Portugal to declare that it required the notification of all transboundary movements of such wastes across its waters, and several Latin American States, including Mexico, Uruguay and Venezuela, to declare that, under the Basel Convention, their rights as coastal States were adequately protected. Germany, Italy, Japan and the United Kingdom, on the other hand, declared that nothing in the Convention requires any notice to or

C. Straits used for international navigation

23. The Convention has established a special regime, called transit passage, for unimpeded navigation and overflight through straits which are used for international navigation and connecting one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. At the Third United Nations Conference on the Law of the Sea, the question of straits used for international navigation was inextricably linked to that of the maximum permissible breadth of the territorial sea, which, in turn, was linked to the question of the extent of the exclusive economic zone. It constituted one of the fundamental elements of the "package

deal". The regime of transit passage has been widely accepted in general terms by the international community and has become part of the practice of States, both of States bordering straits as well as of shipping States.

24. For example, on 2 November 1988, the Governments of France and the United Kingdom of Great Britain and Northern Ireland adopted a joint declaration 15/ concerning the delimitation of the territorial sea in the Straits of Dover that followed closely the concept of transit passage as provided for in the Convention. And on 27 December 1988, the United States declared on 27 December 1988 that all countries enjoy the right of transit passage "in accordance with international law, as reflected in the applicable provisions" of the Convention. 16/

25. The Convention stipulates that transit passage shall not be suspended ~~(para. 44)~~ when Indonesia announced the temporary closing to all ships of the

Straits of Sunda and Lombok, the 12 member States of the European Community, Australia, Japan and the United States, considering those straits as qualifying for transit passage, lodged formal protests with the Government of Indonesia. 17/

26. Several treaties have taken account of the regime to be applied to straits used for international navigation. Examples are the 1978 bilateral ~~treaty between Venezuela and the Netherlands concerning the delimitation of~~

D. Archipelagic waters

27. The Convention for the first time recognizes the concept of "archipelagic States" (art. 46) and "archipelagic waters" (art. 49). An archipelagic State is defined as a State constituted wholly by one or more archipelagos, and may include other islands. Archipelagic waters are defined as comprising sea areas enclosed by archipelagic straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, which also must satisfy the requirements set forth in article 47 of the Convention. Through those waters, ships of all States enjoy the right of innocent passage similar to that enjoyed in the territorial sea (art. 52). The Convention also recognizes a right of archipelagic sea lanes passage for ships through

sea related to these freedoms, are maintained for all States.

31. Eighty-six States have proclaimed exclusive economic zones within the limit of 200 miles from the baselines from which the breadth of the

and the high seas, has led to a series of problems in different parts of the world. Those problems are linked to the question of the regime of fisheries on the high seas. Regional organizations have not always been successful in finding solutions to the outstanding problems. As a result, the question was considered by the United Nations Conference on Environment and Development in June 1992, which recommended the convening of an intergovernmental conference under United Nations auspices "with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks". 25/ It further recommended that "the work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on

42. Pursuant to article 60, paragraph 3, a set of guidelines for the removal of offshore installations were adopted in 1989 by the International Maritime Organization (IMO). ^{33/} On the basis of article 60, paragraph 6, IMO also adopted in 1987 "Measures to Prevent Infringement of Safety Zones Around Offshore Installations or Structures". ^{34/}

F. Continental shelf

43. While the definition of the continental shelf contained in the 1982 Convention has significantly changed from the definition given by the 1958 Geneva Convention on the Continental Shelf, its legal regime has been hardly modified and is firmly rooted in customary international law. The significant

H. Delimitation of maritime boundaries

47. Numerous bilateral agreements have been concluded for the delimitation of maritime boundaries between States, 36/ the majority of which were concluded before the adoption of the Convention in 1982.

48. With the acceptance by the international community of the concept of the
[REDACTED] a large number of States have already utilized the

limit. Those problems have been taken up in regional fisheries organizations, such as the North Atlantic Fisheries Organization. In addition, the problems were reviewed in several forums, including the International Conference on Responsible Fishing, held in Cancun from 6 to 8 May 1992. The Conference adopted the Declaration of Cancun, containing agreement "to promote, within the legal framework provided by the United Nations Convention on the Law of

~~Soviet Union. The question of access to the sea has been a significant factor.~~

in relations among States, in particular between India and Nepal and between

sources, six on dumping, two on seabed activities subject to national jurisdiction, and two on pollution from or through the atmosphere. In [redacted] [redacted] and protocols have been adopted on [redacted]

that any mining activity will commence during the remaining part of the present century.

68. The General Assembly's call, repeated every year, for achieving a universal participation in the Convention, has prompted the Secretary-General ~~to convene a meeting aimed at addressing outstanding issues concerning~~

Part XI. So far, the discussions have permitted States to identify the issues and some areas of general agreement, but have not yet yielded practical results. Furthermore, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea has completed most of its work relating to the establishment of those institutions and has started to prepare provisional final reports on the work accomplished during its 10 years of existence.

IV. GLOBAL COOPERATION

69. At the global level, a number of cooperative measures have been taken, particularly by international organizations of a universal character, in respect of, or on the basis of, the 1982 Convention.

70. Every year since the adoption of the Convention, the General Assembly has ~~to convene a meeting aimed at addressing outstanding issues concerning~~

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78. In the field of environmental protection, a number of new conventions have been added to existing ones, notably in such regions as the North Sea and the Baltic. It is also particularly noteworthy that, as mentioned above, for the first time the Black Sea States have recently adopted a comprehensive convention on protection of the marine environment, and the States bordering the Arctic have approved a common strategy for the protection of the Arctic environment. The Regional Seas Programme of UNEP launched new initiatives in several new regions, including the Mediterranean, the Caribbean, the Gulf region, the Red Sea and the Gulf of Aden, West and Central Africa, East

82. Progress in implementing the regime embodied in the Convention, however, has been slow or lacking in certain areas, such as the new criteria for defining the continental shelf, access to resources in the exclusive economic zone, ~~control of certain types of pollution, and the~~

Notes (continued)

3/ The Law of the Sea: National Claims to Maritime Jurisdiction
(United Nations publication, Sales No. E.91.V.15), p. 11. Subsequent to that
publication, Belize and Qatar have extended their territorial sea to 12 miles.

Notes (continued)

16/ The Law of the Sea: Current Developments in State Practice. No. 11

(United Nations publication, Sales No. E.89.V.7), p. 83.

17/ T. Treves, "Codification du droit international et pratique des etats dans le droit de la mer", Recueil des cours, vol. 223 (1990-iv), p. 134. See also the American Journal of International Law, vol. 83 (1989), 17, p. 559.

18/ The Law of the Sea: Current Development in State Practice, vol. I (United Nations publication, Sales No. E.87.V.3), pp. 192-206.

19/ Protocol concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1990, art. 5(2) (c).

20/ For the relevant legislation of most of these States, see The Law of the Sea: Practice of Archipelagic States (United Nations publication, Sales No. E.92.V.3).

21/ Limits in the Seas, op. cit. p. 45.

22/ American Journal of International Law, vol. 83 (1989), p. 561.

Notes (continued)

32/ E. Ulfstein, "The conflict between petroleum production, navigation

Notes (continued)

47/ For a list of such conventions, see A/44/461 and Corr.1, annex and A/CONF.151/10.

48/ See Arctic Environmental Protection Strategy, adopted on 14 June 1991 by the eight Arctic countries (International Legal Materials, vol. XXX (November 1991), p. 1624).

49/ See the Final Declaration of the Third International Conference on the Protection of the North Sea, 1990, (LDC.13/INF/6).

50/ An attempt at standardization of the forms for seeking consent and for granting permission to conduct research in areas of national jurisdiction is contained in The Law of the Sea. Marine Scientific Research: A Guide to the Implementation of the Seabed Provisions of the United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.91.V.3).

51/ For example, the Baltic Marine Environment Protection Commission adopted a recommendation urging the Parties to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area to apply certain simplified procedures for research activities to be conducted in the areas under national jurisdiction. Discussions on a possible harmonization and simplification of procedures are also under way within the European community.

52/ Report of the FAO World Conference on Fisheries Management and Development, Rome, 27 June-6 July 1984 (FAO, 1984), p. 12.

53/ "Implications of the United Nations Convention on the Law of the Sea, 1982, for the International Maritime Organization (IMO)" (IMO document