The United Nations Convention on the Law of the Sea in Southeast Asia : Problems of Implementation

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THE UNITED NATIONS CONVENTION on THE LAW OF THE SEA IN SOUTHEAST ASIA: PROBLEMS OF IMPLEMENTATION

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PREFACE

As we are about to enter the 21st Century, increased attention will be paid to the sea owing to pressures of population growth and the need for additional food, raw materials, transportation and many other commercial opportunities.

The new sea regime thus must be essentially a delicate balance between national and international interests. Many of the issues are of a political nature- such as boundary making, national security, innocent passage through and over territorial seas, sovereign rights within exclusive economic zones, etc. Overlapping claims need to be resolved in an atmosphere of good will. Cooperation must be stimulated on bi-lateral, regional and sub-regional levels to ensure the successful implementation of management policies in terms of living and non-living resources; protection and preservation of the marine environment; and marine scientific research.

After almost 15 years of extraordinary efforts, the Third U.N. Conference on the Law of the Sea (UNCLOS III) was successfully concluded in December 1982. The negotiated outcome, the 1982 U.N. Convention on the Law of the Sea, is generally viewed as the most important global accomplishment in the modern history of international law and diplomacy. Its implications for the future of ocean development and management around the world can hardly be overstated. In other words, now there are standards to be followed as guidelines. Nonetheless, since it is a result of compromise, it is prone to variable interpretations. Legislation is gradually being changed by states who are comparing their laws with the guidelines presented in the Convention.

For the many coastal states and territories of Southeast Asia and adjacent ocean areas, it should be a matter of national and regional priority to support the new law of the sea, as reflected in the 1982 Convention. In most cases it may be expected that support for the Convention itself will be forthcoming in the traditional form of resort to ratification. Even more important, the states of the region should now proceed to implementation in various appropriate modes: through the incorporation and adaptation of entitlements under the new law of the sea; the enactment of national laws and regulations; the taking of other national"measures"; the application of prescribed criteria and formulas for specific purposes; the discharge of certain financial obligations; and above all, the taking of diplomatic and organizational initiatives with a view to effecting various forms of cooperative action.

In February 1983, the Southeast Asian Project on Ocean Law, Policy and Management (SEAPOL) was initiated with funding from the International Development Research Centre (IDRC) of Canada. Under the directorship of Professor

Douglas M. Johnston and me, SEAPOL is administered at the Institute of Asian Studies of Chulalongkorn University in Bangkok. The primary purpose of SEAPOL has been to develop a network of Southeast Asian specialists in the law of the sea and related sectors of ocean development and management. SEAPOL Associates are drawn both from government service and the academic community.

In Phase I of SEAPOL (1983-1987) emphasis has been placed on the problems associated with implementation of the 1982 United Nations Convention on the Law of the Sea in Southeast Asia. Several workshops have been held to facilitate research in the participating countries (namely, Indonesia, Malaysia, the Philippines, Singapore and Thailand) and national studies have been prepared for circulation under SEAPOL auspices on the basis of these studies. A synthesis was made by SEAPOL Associate, Douglas M. Johnston and published by SEAPOL in April 1987 in monograph form.

This part of research on "Singapore and Malaysia: The problems of the Implementation of The U.N. Law of the Sea Convention" undertaken by the national teams of Singapore and Malaysia was conducted under Mr. Chao Hick Tin of Singapore and Mrs. Heliliah Yusof of Malaysia who are both closely involved with the problems of the law of the sea of their countries and with the resource development and management in Southeast Asia and the world. It is certainly our privilege to have benefited greatly from these two national studies, listed as series No 2 of SEAPOL Studies. Their analyses of the implications of the important sea law issues facing Southeast Asian countries as a whole; and the roles of their countries in the implementation of the new law of the sea; as well as their future directions towards ocean resource development and management will certainly be useful for government officials, scholars or even politicians who are policy makers in the law of the sea; and thus will lead to favorable solutions to the problems of the implementation of maritime jurisdiction among the Southeast Asian countries.

Finally, it is clearly understood that the opinions and responsibility for facts expressed in this publication rest exclusively with the authors. Their interpretations do not necessarily reflect the views or opinions of SEAPOL or its supporters.

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The views expressed in this paper are entirely those of the author and do not necessarily reflect the views of the Singapore Government or the Department to which he belongs.

PAPER ON SINGAPORE: LAW OF THE SEA

INTRODUCTION

The adoption of the new Convention on the Law of the Sea on 30 April 1982 was a monumental achievement. It was the culmination of more than a decade's efforts. The Convention is undoubtedly the most complex international instrument that has been negotiated and drawn up on a global basis. Its adoption marked a milestone in the promotion and development of international law and cooperation.

The implications of the Convention for most countries, if not all, are immense. How each State views the Convention depends very much on geography and its level of economic and technological developments. However, geography would seem to be more important than the other factors. This was borne out by the course of negotiations during the Conference. The various interest groups that were formed during the Conference cut across the traditional lines of separation between the developing and developed countries, because both were represented in each group. Examples were the coastal States group, the broad-shelf States group, and the land locked and geographically disadvantaged States group. The only issue on which it became a confrontation between the developed and developing States was on the deep seabed mining regime.

For Singapore, this Convention is of special significance because it affects her in many ways. A glance at a map easily explains why the sea is so important to her. Singapore is a nation that borders on two of the busiest straits in the world, the Malacca and Singapore Straits, and she is also dependent on international shipping and trade for her economic development.*[1] Thus, the extended jurisdiction which the new Convention grants to coastal States is a matter of considerable concern to her. Not only will her navigational and fishing interests be affected, but also other activities she could carry out on the ocean under the high seas principle.

Therefore, from Singapore's perspective, the new Convention is not entirely satisfactory, because in a number of instances the provisions of the Convention are far from precise and do not meet her expectations. Many provisions are worded in a fashion which leave room for subjective interpretation and possible contention. Although such a result is inevitable in a situation where the interests involved may come into conflict, if there is to be any agreement at all, the Convention represents a series of compromises and trade-offs.

Notwithstanding its very obvious shortcomings, it must be conceded that this was the best that could be achieved under the circumstances. However, it is far from ideal. Indeed, it is not even satisfactory. Nonetheless, the alternative would have been chaos. For most countries, it is probably better to have arrived at some rules than having none at all. For small countries such as Singapore, they would have the most to lose if the law of the jungle were to prevail.

This paper seeks to identify those provisions in the Convention which are of importance to Singapore and to highlight the laws and practices of Singapore relating to those matters. Nonetheless no new law has been enacted by Singapore consequent to the adoption of the Convention. In fact, Singapore has yet to ratify the Convention.

SINGAPORE'S MARITIME JURISDICTION

Singapore is still one of the small group of countries that adheres to the three mile territorial sea limit. Its law on this is governed by the Territorial Waters Jurisdiction Act, 1878, of the United Kingdom. This Act was applied to Singapore because she was previously a British Colony. Since her independence in 1965, this Act still stands owing to the fact that Singapore has not enacted any new law to replace it. Under the Act of 1878, the territorial waters of Singapore extend from the low water mark up to a distance of one marine league. However, the Government of Singapore has accepted the concept of the twelve-mile territorial sea, in principle. This is set out in a Government statement issued on 15 September 1980. However, no new law has been enacted.

Under the new Convention, a coastal State is entitled to extend its territorial waters limit up to a maximum of twelve nautical miles. In addition, a State could also, geography permitting, claim a further area up to a breath of 200 nautical miles as its Exclusive Economic Zone (EEZ). In view of her enclosed situation, there is very little scope for Singapore to claim any extended area as her territorial sea or EEZ.

Article 15 of the new Convention governing the delimitation of the territorial sea between opposite States

states:

"Where the coasts of the two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the base lines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply,

however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

The provisions governing the delimitation of the EEZ are set out in Article 74 as follows:

"1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statue of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period or time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement".

Thus, the first step to be taken is to negotiate with one's neighbours to delimit common boundaries. Singapore had embarked on that course even before the adoption of the Convention. In the statement of 15 September 1980, Singapore reiterated her desire to delimit common boundaries through negotiation in accordance with international law.

The boundary to the north of Singapore with Malaysia is governed by an agreement signed on 19 October 1927 between the United Kingdom and the Sultan of the State of Johore. Under that agreement the boundary between the two countries is an imaginary line following the centre of the deep water channel in the Johore Strait. As the agreement does not lay down a precise boundary line, the two Governments have taken steps since 1980 to determine the deep water channel in order to demarcate precisely a boundary line which will be valid in the future, irrespective of a subsequent shift in the deep-water channel. A hydrographic survey of the Strait has been carried out and Negotiations are being pursued to demarcate such a boundary.

To the south of Singapore, a boundary agreement with Indonesia was concluded in 1973. While a number of methods were employed in drawing up this boundary, the median line rule was applied most frequently.

In terms of Singapore's maritime jurisdiction, what remains to be done is the boundary at the eastern and western entrances to the Singapore Strait and the boundary for the Horsburgh. For all these locations a tripartite negotiation will be necessary between Indonesia, Malaysia, and Singapore. Owing to the fact that these areas are relatively small, the author does not foresee that there should be any major difficulty in reaching an agreement. There is, however, one problem. This arises out of a map issued by the Malaysian authorities in 1978 where the Horsburgh is considered as Malaysian territory. The author believes that this was due to a technical error, and that it will be resolved soon.

NAVIGATION THROUGH THE STRAITS

The question of unimpeded transit rights through the Straits for all vessels, irrespective of their flags, is of fundamental importance to Singapore. With the extension of the territorial sea limit from three to twelve miles, this question becomes very critical. As early as 1974 Singapore's representative and many others had made it quite clear that this was a key issue for the Conference, and a satisfactory solution must be found if the Conference were to conclude successfully.

The regime of transit passage as set out in articles 37-44 of the Convention does go a fair way in meeting the concerns of Singapore and other States interested in unimpeded navigation. "Transit passage" was compromise solution between those who wanted freedom of navigation and those who advocated for innocent passage. Article 38 provides that all ships and aircraft "enjoy the right of transit passage, which shall not be impeded." Transit passage means the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the Strait. It should be noted that the new concept encompasses the right of aircraft to overfly. Certain duties and responsibilities are placed on ships and aircraft while in transit, among which is the duty to comply with internationally accepted rules and regulations regarding safety including compliance with properly designated sea lanes and traffic separation schemes.

As early as 1971, the three littoral States bordering the Straits of Malacca had come together in order to work out certain standards concerning safety of navigation in the Straits. In 1977 they agreed on a scheme of traffic separation. This scheme involves the introduction of traffic separation in three critical areas, namely, the One Fathom Bank area, the main Straits and the Philip Channel, and off Horsburgh Lighthouse. It also prescribes that all vessels passing through the Straits must maintain an under-keel clearance of at least three and a half metres at all times. It also requires that all tankers and large vessels navigating through the Straits be adequately covered by insurance and compensation schemes.

This agreed traffic separation scheme for the Straits of Malacca and Singapore was presented by the coastal States to the Maritime Safety Committee of IMO (formerly IMCO) in November 1977. The scheme was adopted by IMO in that year. It should be noted that the procedure that the three coastal States had resorted to in order to promulgate the scheme set a useful precedent which is reflected in article 41 of the Convention.

In line with the provisions of Article 43 of the Convention, the three coastal States, with the assistance of Japan, have established a revolving fund in order to combat pollution caused by vessels. Japan has also assisted in the provision and maintenance of navigational aids. Through these tripartite consultations they have established a working mechanism whereby continuing dialogues are being held on various aspects of navigation in order to ensure that both the interests of the coastal States, as well as those of the user States, are not in any way adversely affected.

The user States and the coastal States have also reached an understanding on a related issue. This concerns the application of article 233 of the Convention. In a statement, presented by the President of the Conference, the parties involved declared that if a vessel fails to observe the three and a half metre under-keel clearance, that breach will be deemed to have caused or threatened major damage to the marine environment of the Straits within the meaning of article 233. The author believes that this precedent established an excellent working relationship which will further promote cooperation and understanding between the coastal States and the user States. It demonstrated a willingness on both sides to meet the concerns of the other. It also showed how a multilateral issue could be resolved in a practical manner.

EEZ, FISHERY AND OTHER USES

The incorporation of the Exclusive Economic Zone concept (EEZ) in the Convention marks a significant development in the Law of the Sea. For Singapore this development has three main implications. Firstly, there is the question of navigation and overflight and laying of submarine cables and pipelines. Secondly, is the question of fishing rights. Thirdly, is the question of other activities that States may carry out in, on or above, the marine areas which were previously considered as the high seas.

In so far as navigation and overflight are concerned this is clearly set out in article 58 wherein is reaffirmed that all States enjoy in the EEZ the freedoms of navigation and overflight and of the laying of submarine cables and pipelines. However, in exercising their rights in the EEZ, other States "shall have due regard to the rights and duties of the coastal State and shall comply

with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention". This obviously does not mean that any one party has any greater right over the other in the event that a conflict of interests should arise. In such circumstances, mutual consultation and adjustment would have to be made.

Concerning the question of fishing rights in the EEZ, the coastal State is given sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living. The coastal State is also granted the power to determine the allowable catch of the living resources in its EEZ. One question that arises here is this: in exercising such a power, is the coastal State required to take into account available objective scientific evidence. Remembering the fact that other States (for example, Articles 62, 69 and 70) have an interest in the allowable catch, it stands to reason that such a decision should not be taken in an arbitrary manner; it must be based upon objective scientific evidence at hand. The coastal State is to determine its capacity to harvest the living resources of the EEZ, and where it does not have the capacity to take advantage of the entire allowable catch, it should allow other States access to the surplus.

Article 70 sets out the rights of Geographically Disadvantaged States (GDS). Singapore falls within this category. In accordance with Article 70, a GDS shall have the right to participate on an equitable basis in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of coastal States of the same subregion or region. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements. However, where the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its EEZ, the coastal State and a GDS shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for the participation of the GDS in the exploitation of the living resources of the EEZ of the coastal States of the subregion or region.

It is still too early at this stage to foresee the way in which coastal States, as well as GDS, will interpret and apply these provisions of the Convention. Of course, all States should bear in mind the cardinal principle of good faith in international law. For Singapore, some bilateral or subregional arrangements may be necessary in due course. Suffice it to say that, the provisions lay down a general framework for the parties to work out the details. In any event, coastal States have just acquired new rights over their EEZs. They will need time to access their position and to acquire the technical knowledge and data regarding the resources of their EEZs.

There should not be any insurmountable difficulty if there is a need for a bilateral or subregional arrangement with Singapore concerning fishery, in reference to what was stated in the last two paragraphs. Singapore is a small fishing State. Her fishermen have traditionally fished in the waters outside the territorial sea of the coastal States in both the South China Sea and the Indian Ocean. In 1984 the total fish landed in Singapore was 117,733 tons, of which only 25,467 tons were landed by her own fishermen. The rest was imported. Also in 1984 there were only 1446 fishermen manning 483 fishing vessels in Singapore. The main types of fishing gear used by the fishermen are trawl, long-line, gill-net and trolling.

As regards the third aspect, namely, other uses of the sea, the rights of other States in the EEZ are set out in Article 58(1) which provides that they enjoy, in addition to freedom of navigation and overflight and of laying submarine cables and pipelines, "other internationally lawful uses of the sea related to these freedoms, **such as those associated with the operation of ships, aircraft and submarine cables and pipelines**". Article 59, on the other hand, provides that in cases where the Convention does not attribute rights or jurisdiction to the coastal States or other States within the EEZ, and in the event that a difference arises between their interests, "the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole".

The wording of Article 58 is not as clear or precise as one would wish. Nonetheless, it was the result of intense negotiations. While one could visualize the possible grey areas, it is also apparent that there are a number of activities which fall exactly within the Article.

For Singapore, the question of what other activities may be carried out in the EEZ is of direct interest to her. In view of her limited territorial sea and the limited EEZ which she could claim, it is essential that the existing uses of the sea should still be open to her. Singapore is, for example, a major ship building and ship repairing centre. As a consequence of such activities, it is necessary that ships be put on trial runs. Bearing in mind the phrases of the Article underlined above, it is clear that an activity, such as the conducting of trial runs in the EEZ, is a lawful use of the sea associated with the operation of ships, and is therefore permitted under the Convention.

Another activity which Singapore is also engaged in relates to scientific research. Concerning this, Article 246 provides that the coastal States have the right to regulate, authorise and conduct marine scientific research in their EEZs. Other States that wish to conduct scientific research in the EEZ

must obtain the consent of the coastal State, although in normal circumstances the coastal State is expected to grant its consent. A researching State may proceed with the research if, within six months after application (with full particulars), it does not hear from the coastal State concerned (see article 252). The consent regime **per se** as set out in article 246 does not appear to be unreasonable. If these provisions are applied with good faith, as they should be, there should be little room for controversy. In addition, under article 254, as a GDS, Singapore is also entitled to request an opportunity to participate in marine scientific research projects which are to be undertaken by other States or by relevant international organisations.

Two other activities which are presently being carried out on or over the sea and which are of importance to Singapore are naval and air exercises and search and rescue operations. Both of these kinds of activities involve the operations of ships and aircraft, and they also unquestionably come within the scope of Article 58(1).

ARCHIPELAGOES

Singapore is surrounded by two Archipelagoes, both of Indonesia and the Philippines. The Indonesian Archipelago is of more direct concern as it is close to Singapore. Under Part IV of the Convention an archipelagic State may draw straight baselines connecting the outer boundaries of the outermost islands so that the waters enclosed within will become archipelagic waters. There are, however, a few objective criteria with which an archipelagic State must comply. Firstly, the ratio of the water area to the land area must be between one to one and nine to one. Secondly, such baselines should not exceed 100 nautical miles in length, except that up to three percent of the total number of such baselines may exceed that limit up to a maximum length of 125 nautical miles. Thirdly, the drawing of such baselines must not depart to any appreciable extent from the general configuration of the archipelago.

Singapore is concerned about the archipelagic concept in three different aspects. The first relates to navigation and overflight. The second relates to fishing, and the third relates to other lawful activities which may be carried out in on or over the archipelagic waters.

On the first point of navigation and overflight, Article 53 provides for the right of archipelagic sea lane passage for ships and aircraft of other countries. This is an entirely new concept and appears to provide a reasonable safeguard for third States. The essential characteristics of this right are very similar to those applicable in the regime of transit passage for straits. An archipelagic State is expected to designate sea lanes and air routes for the passage of

foreign ships and aircraft through the archipelago. If it does not do so, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Article 51(1) (which was inserted at the request of both Indonesia and Singapore) recognises the traditional fishing rights of an immediately adjacent neighbouring State in areas falling within archipelagic waters. In addition, the archipelagic State must also recognise other legitimate activities of such immediate neighbours. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply shall, at the request of any of the States concerned, be regulated by bilateral agreements between them.

There will probably be consultations between Singapore and its adjacent archipelagic States to work out the details regarding these rights. However, it is not essential that there must be a formal arrangement. This depends on the wishes of the parties concerned. The author does not foresee any great difficulty in reaching agreement between Singapore and her neighbours.

POLLUTION OF THE MARINE ENVIRONMENT

Under the Convention there is a general obligation for all States to protect and preserve the marine environment. In addition, it also requires that measures be taken by States to prevent, reduce and control pollution of the marine environment from all sources, for example, land-based, from vessels, seabed exploration and exploitation, dumping and the atmosphere. Because of the indivisible nature of the marine environment, joint and co-operative action is necessary by all States in a region or subregion in order to effectively combat and prevent pollution. Indeed, many provisions of Part XII of the Convention request States to harmonize their policies in this regard and to co-operate on a global and regional basis.

However, the obligation of States to take measures to prevent, reduce and control pollution is subject to this qualification: "using for this purpose the best practicable means at their disposal and in accordance with their capabilities". Obviously in particular circumstances this qualification could be the cause of dispute. A State whose waters have been seriously polluted by substances that emanate from the marine environment of another State or from activities carried on in the territory of the latter State may not accept the contention that it is beyond the capability of the other State to do anything else. How far this kind of difficulty is resolved by article 194(2) is certainly a moot point. This article requires States to take all "necessary measures to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by

pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights".

Singapore has always taken a strict view about pollution and the measures needed to prevent it. She has adequate laws to deal with the problem, such as the Prevention of Pollution of the Sea Act enacted in 1971. There is, at present, no problems between Singapore and its neighbours concerning pollution, there is in fact close cooperation between them. As regards pollution caused by vessels traversing the Straits of Malacca and Singapore, the three coastal States - Indonesia, Malaysia and Singapore - have already taken joint action to deal with the problem. This has been dealt with above. In any case, with the changed pattern of movement of oil, what were critical issues several years ago are no longer so today.

Concerning marine pollution from exploration and production platforms and coastal refineries, the ASEAN Council on Petroleum (ASCOPE) has already adopted an action plan which is now in operation. Under this plan a member-country is to notify neighbouring countries which are likely to be affected by any oil pollution of significant magnitude. When requested, other member-countries shall provide assistance to the affected country. ASCOPE is presently working on an instrument to provide for equal right of access and non-discrimination for damage claims relating to transfrontier pollution resulting from offshore operations.

REGIONAL ARRANGEMENTS

The South China Sea is very much a semi-enclosed sea. Problems and tension could arise unless concerted actions are taken by all States in the region as many marine questions are transnational in character, e.g., fishery, pollution, shipping, etc. Article 123 urges (as it uses the word "should" instead of "shall") the States in a semi-enclosed sea to cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention, particularly in the following areas - management, conservation and exploitation of the living resources, preservation of the marine environment and marine scientific research.

ASEAN is one existing body that could promote regional cooperation and action. Although its membership is limited to only six countries of the region, and while Cambodia, China, Laos and Vietnam are not part of it, ASEAN is nevertheless a useful mechanism which could serve this purpose.

ASEAN is already in the process of working out a contingency plan for pollution. Furthermore, under the UNEP Regional Sea Programme, the formulation of an action plan by the ASEAN countries is underway.

On fishery, there are a few institutions in existence in the region which are dealing with aspects of fisheries management, but none or in a position to monitor all components of fisheries management. The Indo-Pacific Fishery Commission (IPFC) of the FAO has a very wide area under its jurisdiction and in view of its budgetary constraints has not been totally effective in promoting management and conservation. The South China Sea Programme established in 1974 with financial assistance from both UNDP and the Canadian Institute for Development Assistance used to conduct work mainly on data acquisition and analysis. Mention may also be made of the International Center for Living Aquatic Resources Management (ICLARM) and the Southeast Asia Fisheries Development Center (SEAFDEC), both of which are doing excellent work of a technical nature.

For a regional approach to fisheries to be successful, the States concerned must appreciate the need and benefits that could be accrued therefrom. The work done and results obtained by those organizations mentioned in the preceding paragraph will be useful in persuading governments to take cooperative action. However, considering the nature of things, it would be unrealistic to expect rapid results. Coastal States need time to ponder over the alternatives. Of course, they do not wish to commit themselves unless they see the advantages in adopting a regional approach. ASEAN is therefore an excellent forum which could provide the impetus.

For example, and as indicated above, the ASEAN Council on Petroleum (ASCOPE) is currently looking at the question of pollution from offshore operations. In view of the number of offshore wells operating in this region, this is a problem which requires urgent action. In Europe there is the Offshore Pollution Liability Agreement, 1974 (OPOL). Under OPOL an operator, who is a party, will accept strict liability for damage and clean-up costs for an oil pollution incident arising from his operation up to a limit of US$25m.

There are two practical problems regarding regional arrangements that must be addressed. The first relates to funding and how costs are to be shared. This is very important. With the proliferation of international and regional institutions, States are generally wary of establishing additional institutions because of the costs that would arise therefrom. Secondly, there is a general concern to ensure that regional arrangements will not necessarily mean more rhetoric and less action. Of course, much depends on the political will of the countries in the region and how they view particular issues and the way they should be handled.

Apart from the ideological differences between some countries in the region (e.g., Cambodia, China, Laos and Vietnam on the one side, and the rest of Southeast Asian countries on the other) there is one major difficulty blocking effective regional action. This is the question of conflicting territorial claims on certain important island groups in the South China Sea.

In the short and medium term, the author does not foresee any regional action being taken where all the countries bordering the South China Sea will be involved. However, at the ASEAN level, with regard to pollution, the current efforts may be intensified further. As regards fishery, this is certainly a matter which requires more time before the ASEAN members could agree to any form of joint action on management, conservation and allocation. Co-operation on this will have to be accomplished step-by-step, starting with learning about the fish stocks and their environment.

It is the writer's belief that it would be in the interest of all States in the region, including Singapore, to participate in joint actions on the transnational issues identified above. In this way maximum benefits will accrue to the States concerned, and the possibility of tension or conflict will be minimized, if not removed.

Note : *1 See Statement of the Singapore Representative at the Conference on 9 July 1974 in the Official Records of the Law of the Sea, Vol.1, p. 135.

PAPER ON MALAYSIA: THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA IN SOUTHEAST ASIA

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PAPER ON MALAYSIA: THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA IN SOUTHEAST ASIA

INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (the 1982 Convention) has been hailed as a comprehensive legal instrument which seeks to regulate almost every aspect of human activity upon and beneath the oceans. The basic aim of the Convention is spelt out in its preamble namely, the establishment of "a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment".[1]

The 1982 Convention, while incorporating further specific detail of the principles set out in the 1958 United Nations Convention on the Law of the Sea (the 1958 Convention), also contains concepts which have been described as "evolutionary" or "revolutionary" and "innovative". The Secretary-General of the United Nations has observed in his report that the comprehensive approach to marine affairs adopted in the Convention, as well as the emphasis placed in the Convention on the fact that "the problems of ocean space are closely interrelated and need to be considered as a whole (third paragraph of the preamble) has wide ranging implications for State policy legislation".[2]

Likewise in an earlier report it is aptly observed that in "adjusting to the new legal regime for the oceans, States may have to redefine over-all objectives, formulate general and specific policies and develop the requisite legal framework and the administrative and organizational mechanisms to implement those policies. The need for information, advice and assistance in this connection will have to be assessed by every State taking into account many factors essentially outside of the ambit of the Convention since marine policy has to be defined within the broader framework of economic and social development. Those needs will also be determined in varying degrees by the geographic characteristics of different States, whether they are islands, developing States, States with long coastlines, States with only narrow outlets to the sea, States with limited resources near their coasts, or States with no coast at all, and by the priority attached to the different uses of ocean space.

As a consequence of a new legal regime, States may undertake or may have already undertaken varied activities as a step towards policy formulation or implementation. Those activities may be legislative, regulatory, administrative or co-operative in nature.

For instance, at the time of writing this paper, Malaysia is continuing the process of appraising the provisions of the convention with a two-fold object, namely, (a) to identify national priorities, and (b) to attain a framework of implementation which is co-ordinated. Therefore, this paper does not constitute an exhaustive enumeration of the problems that may be attendant upon implementation if and when the Convention enters into force. Each of the four topics selected by SEAPOL by itself involves complex issues which could be legal, political, administrative, economic and social. Whatever issues are outlined and discussed in this paper represent some of those that could arise in the Malaysian context. No solutions or recommendations are proffered.

EXCLUSIVE ECONOMIC ZONE: THE LIVING RESOURCES

The impact of the establishment of a zone of 200 miles under the new Convention, over which States have "sovereign rights" and "jurisdiction" will vary from country to country. The interests of States are not the same, particularly in terms of the respective fishery policies, which in turn would be largely postulated by overall national policies and developments. Examples of these varied interests have been identified in a Report prepared by the Commonwealth Secretariat.[3]

The new provisions on fishery regulations spell out "two separate sets of rights ..., namely, those enjoyed exclusively by the coastal State and those that may be exercised by all States. The division is by activity, not by area or ship". Moreover, in Article 56(2) of the new Convention there is also a reminder that each is required to ensure that its rights are exercised with "due regards" to the rights and duties of the other.

In Malaysia an extract of the Malaysian Economic Report 1984/85 reflects some of the problems of the fishing industry. The Report contains, **inter alia,** the following statements in relation to fishery matters "the modernisation of fishing facilities and techniques, marine fish landings in Malaysia in 1984 is estimated to increase by only 1% to reach 725,700 tons as compared with 719,640 in 1963. The marginal increase is due to the depletion of fish resources as a result of over exploitation within the 12 miles coastal limit and particularly in the Straits of Malacca". It is also stated that depleting "marine resources in the inshore waters has hindered further development in the fishing activities and

it could no longer be a livelihood for all fishermen. To counter this the Government had taken steps ... and at the same time encourages fishermen to go offshore".[4] Concern has also been expressed over the occurrences of piracy where Malaysian fishermen have been robbed and of encroachments by foreign fishermen equipped with larger fishing vessels.[5]

It would appear that one of the steps taken is the enactment of legislation pertaining to the exclusive economic zone which has been brought into force. This legislation was preceded by a Proclamation made by the King on 25th April, 1980.

The Proclamation cites, **inter alia**, that -

"WHEREAS international law and practice now recognise that a coastal State may establish an exclusive economic zone in an area beyond and adjacent to the territorial waters up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters is measured.....

WHEREAS a number of States have taken action in pursuance of the existing law and practice and have made declarations in regard to the exclusive economic zone".

The Proclamation further states that the Federation of Malaysia shall have the following:

(a) sovereign rights, for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction with regard to:

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

(ii) marine scientific research;

(iii) the preservation of the marine environment in the exclusive economic zone which is hereby established and that such exclusive economic zone shall extend to 200 nautical miles from which the breadth of the territorial waters is measured.

The Exclusive Economic Zone Act 1984[7] (EEZ Act 1984) may generally be described as a composite legislation which incorporates and deals with several concepts pertaining to fishery. There are ten parts, including those related to the limits of the exclusive economic zone, fisheries, protection and preservation of the marine environment, as well as enforcement.

Part II of the EEZ Act 1984 which deals with the exclusive economic zone in general terms provides the following:

(a) a provision that states that the exclusive economic zone as proclaimed extends to a distance of two hundred nautical miles from the baseline from which the breadth of the territorial sea is measured;

(b) a provision regarding delimitation agreements and the limits of the EEZ;

(c) a prohibition of activities to the effect that no person shall in the EEZ or on the continental shelf explore or exploit natural resources whether living or non-living unless authorised under the Act **or** any other written law.

Although Part III relates to living resources, it should be read in conjunction with other legislation namely, the Fisheries Act 1985 (the 1985 Act).[8] The nexus between the two is provided in Part III of the EEZ Act 1984, namely:

"6. The seas comprised in the exclusive economic zone shall be part of Malaysian fisheries waters.

7. The Minister charged with responsibility for fisheries shall also be responsible for fisheries in the exclusive economic zone.

8. Except as otherwise provided in this Act, any written law relating to fisheries shall be applicable in the exclusive economic zone and on the continental shelf with such necessary modifications or exceptions as may be provided in an order made under section.42".

When the Fisheries Act 1985 is brought into force, fishery matters in the Malaysian EEZ will therefore be regulated by the Act. However, some of the immediate effects of having an EEZ legislation include:

(a) delimitation of maritime boundaries will have to be undertaken; and

(b) limits of the EEZ will have to be published.

The concept of "conserving" and "managing" the living resources as provided in the Convention is translated in Part III of the Act as follows:

" 6. (1) The Director-General shall prepare and keep under continual review fisheries plans based on the best scientific information available and designed to ensure optimun utilization of fishery resources, consistent with sound conservation and management principles and with the avoidance of overfishing, and in accordance with the overall national policies, development plans and programmes. (2) Each plan and each modification or revision thereof shall be implemented after approval by the Minister. (3) All development within the fisheries industry shall conform generally with the management and conservation policies described in the fisheries plans".

Section 6 mirrors the language of the Convention by stipulating that the fisheries plan should be based on "the best scientific information available, and the requirement to ensure optimum utilisation of fisheries resources". This section is to be read with section 61 of the Act where the Minister charged with the responsibility for fishery matters is also empowered to make regulations specifically or generally for the "proper conservation, development and management of maritime fishing".

More subsidiary legislation is therefore to be expected to complete the implementation of the Act. It has been stated that under the Convention two levels of exploitation have to be established - "the allowable catch which seems (although this is not stated) to be the optimum sustainable yield and the harvesting capacity of the coastal state". As has also been pointed out no country has gone far in specifying the product of the equation that is rendered under the Convention to arrive at "the maximum sustainable yield" required under the Convention.[10]

While the assessment aspects of fishery management are dealt with in the aforementioned sections 6 and 61, allocation and control of the living resources are assumed to be achieved largely by the regulatory mechanism of licences.[11] Licensing is required not only for local fishing vessels, but also in respect and of fishing stakes, fishing appliances, fish aggregation devices and marine culture systems. In issuing licences the Director-General of Fisheries[12] is empowered to "impose such conditions as he thinks fit". Apart from conditions that are to be imposed, subsidiary legislation will also be introduced to regulate various aspects of fishing activities. These include regulations[13] relating to the following :

(a) conditions to be observed by local fishing vessels within Malaysian waters;
(b) limitations on the quantity, size and weight of fish caught and retained or traded;
(c) methods of fishing;
(d) collection of statistics and the supply of such information as may be required;
(e) the licensing, regulations and management of a particular fishery;
(f) to improve the collection of statistics and to require any person engaged in fishing, marketing, processing or aquaculture to supply such information as may be required.

With regard to the obligation to give other States access to surplus as stated in Article 62(2), it has been indicated that it is to be made subject to "agreements or other arrangements" and "pursuant to the terms, conditions and

regulations" stipulated in Article 62(4). The coastal State is also entitled to take into account, **inter alia**, "all relevant factors, including the significance of the living resources of the area, the economy of the coastal state concerned and its other national interests". Therefore, the negotiations of agreements for allocation in relation to foreign fishing could raise "issues of general political and economic relations affecting the duty of allocation".

In the Fisheries Act 1985 allocation and control of EEZ resources in relation to foreign fishing is assumed to be achieved by prohibiting foreign fishing vessels from fishing or attempting to fish in Malaysia's EEZ or to conduct any techno-economic research or survey of any fishery, "unless authorised so to do under an international fishery agreement in force between the Government of Malaysia and the Government of the country, or between the Government of Malaysia and the international organisation to which such vessel belongs or in which such vessel is registered ...."[14] A permit is also required by the foreign fishing vessel.

The Director-General of Fisheries who is empowered under the Act to consider an application for a permit in respect of foreign fishing is also to take into account several matters including the needs of Malaysia and the provisions of the fisheries plan which are referred to above. Yet another factor to be taken into account is the extent of co-operation given and the contribution made by the relevant country or international organisation towards fishery research, identification of fish stocks, as well as the conservation, management and development of fishery resources within Malaysian fisheries waters.

The Act also stipulates that any application to the Director-General for a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters "shall be made through a Malaysian agent"[15] who shall undertake legal and financial responsibilities for the activities to be carried out by such vessel.

Any permit issued under the Act is to be valid for a period of one year[16] and shall be subject to conditions[17] and the payment of such sum of money as may be specified. The conditions include, **inter alia**, the following matters:

(a) the areas and period within which fishing is authorised;
(b) the species, age, length, weight and quantity of fish that may be retained on board the foreign fishing vessel, landed in Malaysia or shipped out;
(c) statistical and other information required to be given by the foreign fishing vessel to the Government of Malaysia including statistics relating to its catch and fishing effort and regular reports as to the position of the vessel;

(d) the training of Malaysians in the methods of fishing employed by the foreign fishing vessel and in other related fields; the employment of Malaysians on the foreign fishing vessel and the transfer to Malaysia of appropriate technology relating to fisheries;
(e) the installation on the foreign fishing vessel and the maintenance in working order of transponder for the identification and ascertainment of the location of the vessel;
(f) the composition and nationality of members of the crew of a foreign fishing vessel; and
(g) fees, royalties, charges or any other payments by the foreign fishing vessel.

The extension of the fisheries jurisdiction of Malaysia has generally increased responsibilities from the point of view of enforcement. Under the Fisheries Act 1985 the Minister is empowered to specify, by an order, persons or class of persons to be "authorised officers".[18] A similar provision is also found in the EEZ Act 1984. The authorised officers are given specific powers[19] for the purpose of ensuring compliance with the provisions of the Act. These powers include stopping, boarding and searching any vessel within Malaysian waters and to make any enquiry, examination and inspection concerning the voyage and seaworthiness of that vessel, its crew, equipment, fishing equipment or fish carried on board that vessel.

Where any authorised officer has "reason to believe" that an offence has been committed under the Act, certain other powers are also conferred which include entering and searching any place without a warrant, as well to take samples of fish found in any vessel or to seize any vessel including its gear, furniture, stores and cargo, vehicle or equipment, which he has reason to believe has been used in the commission of any offence.

As a result of the extension of jurisdiction, the EEZ Act 1984 also envisages that Malaysia would enter into bilateral or regional agreements for the purpose of going in hot pursuit in the exclusive economic zone of another State.[20]

A primary fisheries management tool is effective enforcement. In a speech in Parliament during the passage of Exclusive Economic Zone Bill, the Minister in the Prime Minister's Department stated, **inter alia**, that measures would be undertaken to improve surveillance, communications and patrol equipment for the purpose of maintaining an effective surveillance and enforcement system. The Minister also stated that a National Maritime Co-ordinating Centre has been established with a view to co-ordinating the surveillance activities of three agencies in Malaysia, namely, the Marine Police, the Navy and the Air

Force.[21] The primary task of the Centre is to co-ordinate the inter-agency activities in relation to the enforcement of the Exclusive Economic Zone legislation as well as the fisheries legislation.

The Minister also referred to certain limited patrolling activities with a neighbouring State to curb offences. However, it is obvious that an effective surveillance and enforcement system would entail high costs, including sophisticated equipment. Suffice it to say that Malaysia is still defining and evaluating the overall objectives of monitoring and surveillance. Certain studies such as cost/benefit analysis are still being undertaken.

Both the EEZ and fisheries legislation are in the embryonic stage and it remains to be seen how the implementation of the legislation will develop.

PROTECTION OF THE MARINE ENVIRONMENT

The text of the 1982 Convention has been described as having been "refined to reflect some of the environmental expectations of the international community".[22] Part XII of the Convention represents, for the first time, provisions relating to the protection and preservation in an attempt to frame a legal regime that establishes on a global and comprehensive basis the obligations, responsibilities and powers of States in all areas of marine environmental protection.[23]

The overall obligations are enunciated in Articles 192 and 194. Five forms of marine pollution have been distinguished in the Convention on the basis of the source of the pollution.[24] They are :

(a) land-based sources
(b) vessels/ship generated pollution
(c) dumping
(d) pollution from the exploration and exploitation of the sea-bed
(e) pollution from the air

In all the above there is a duty "to adopt laws and regulations to prevent, reduce and control pollution from the particular source". But in each case the contents and extent of the laws and regulations to be adopted differ since they are not precisely specified by the Convention. Different standards are applied. For example, under Article 207(1) the requirement is to "take into account internationally agreed rules, standards, and recommended practices and procedures". As opposed to this, the dumping regulations must be "no less effective... than the global rules and standards". As has been pointed out, the Convention does not maintain a single uniform approach to the regulation of all sources of pollution. Land-based and atmospheric pollution, are still subject to

a State's discretion, with an obligation only "to take account of internationally agreed rules". This is not the case for the other sources of pollution, particularly those from vessels.

Up to the present, Malaysia has some legislation pertaining to measures that can be taken in order to reduce pollution. The most notable one is the Environmental Quality Act, 1974. However, its application is limited to territorial waters. With the advent of the 1982 Convention, additional measures will have to be considered to improve regulatory control over the sources of pollutants.

However, with the fishing industry constituting an important source of livelihood for the coastal population and the efforts to upgrade the tourist industry, as well as the occurrence of the "Showa Maru" incident, and grim reminders from the "Amoco Cadiz" and the "Tanio" attention towards vessel/ship generated pollution tends to over-shadow other sources of pollutants.

In a paper presented at the Seminar on Maritime Matters organised by the Ministry of Transport in October 1984, an officer of the Department of Environment, Malaysia,[25] has summarised in a nutshell the problem of marine pollution:

> *" Malaysia is located in a region of intense oil exploration and development activities and lies across the main oil transport route between the oil exporting countries in West Asia and the oil importing countries such as Japan in East Asia. The Straits of Malacca is also one of the busiest waterways in the world. Traffic statistics for 1982 vessels passing through the One Fathom Bank in the Straits indicate that the monthly average was 2000 vessels, of which about 25 percent were oil tankers of varying sizes.*
>
> *In the course of their passage or stoppage, vessels are known to discharge their bilges and ballast waters. Collisions and groundings are also the main causes of oil spills in Malaysian waters. Marine oil pollution may also be attributed to the increased oil production activities which began in the early 1970's encouraged by the success of oil exploration in the offshore areas and the transportation of crude oil to refineries or exporting terminals.*
>
> *Land-based sources of pollution include the utilization of petroleum related products such as lubricating oils for transportation and industrial activities; the direct discharge of untreated municipal and industrial wastes containing many refined and partly weathered oils through sewers and rivers; and the discharge of effluents generated in the production and processing of oil (e.g. at the refineries)".*

The question of the protection of the marine environment has also been raised more than once in the Houses of Parliament Malaysia.[26] The question normally relates to the measures that have been undertaken to prevent, reduce or control pollution. Although these questions have arisen in the context of oil discharge and oil spills in the Straits of Malacca, it is clear that those concerns are not just confined to the Straits as such.

However, if one were to pose a specific question such as what are the laws and regulations that can be directed to prevent, reduce and control pollution of the marine environment from vessels, the answer is not simple.

Although the Convention contains provisions which are regarded as standard, there are different approaches. In particular, the provisions regarding pollution from vessels are extremely complicated. Part XII of the Convention specifically deals with the question of pollution from ships. It was observed that the real debate at the conference on extending coastal state jurisdiction over vessels was **not** about whether coastal states should have authority over a wider area, but about **who** should be entitled to set applicable regulations and **what** these rules and standards should include.[27]

Firstly, in the territorial sea although coastal states may exercise their sovereignty to establish anti-pollution laws and regulations (Article 21(1)), there are important qualifications. One is that these laws are not to apply to the design, construction, manning or equipment of foreign ships unless "they are giving effect to generally accepted international rules or standards (Article 21(2))". Another qualification is that these laws and regulations are not to hamper, deny or impair the right of innocent passage (Article 24 and Article 211 (4)). Thirdly, vessels causing pollution will only cease to be in innocent passage if the pollution is "wilful and serious". This may exclude operational discharges, but they may not be serious.

With regard to the exclusive economic zone, a coastal State is given jurisdiction "as provided for in the relevant part of this convention" concerning the protection and preservation of the marine environment. However, in the relevant part of the Convention in Part XII, the regulatory competence in respect of vessel pollution is circumscribed to the application of international rules for enforcement purposes. Moreover, the regulations for the control of pollution from vessels are required to conform and give effect "to generally accepted international rules and standards established through the competent international organisation or general diplomatic conference". A view has been given that such a formulation not only leaves no discretion to the coastal State, but it is also not entitled to set more onerous rules or to apply lower standards, as this could result in those rules not "conforming to" the international rules.[28]

Under the Convention it is still the flag state which is given the primary duty to adopt laws and regulations.[29] Apart from the limited competence given to a coastal State as described above, States in general are empowered to establish international rules and standards as provided in Article 211 (1).

The new Convention is said to permit the regulation of navigation through Article 211 (1), although the Article is also described as being "very tortuous".[30] The Article specifies:

> *"States, acting through the competent **international organisation** or general diplomatic conference, shall establish **international rules and standards** for the prevention, reduction and control of pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of **routing systems designed** to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary".*

The first difficulty encountered with this Article is that the competence of "States" is limited in that they have to act through "the competent international organisation" or general diplomatic conference. Secondly, the regulations to be introduced are "international rules and standards". These expressions are not defined precisely. Thirdly, the Article refers to the adoption of routing systems.

The expression, "the competent international organisation" is said to refer "quite obviously to the International Maritime Organisation" (IMO, or formerly IMCO). Nonetheless, the following has been stated:

> *" At the same time, it must be remembered that the organisation is simple the servant of its membership which, despite its large number, is still heavily influenced by the major maritime powers. Accordingly, IMCO's most effective approach to ship safety and pollution control, achieved by international convention, is also its greatest weakness, since, on average, an IMCO convention takes 5 years before entering into force. Many conventions, depending upon the stringency of their contents and complexity or importance of issues involved, take much longer. Until coastal states see some improvement in the willingness of maritime states to quickly implement new, improved IMCO methods, they will look for alternative safeguards for their fragile coastal environments. An important key appears to be contained in the expression "routing systems" as set out in* Article 211".[31]

Apart from examining the role of IMO, another problem is the expression, "international rules and standards" and various similar expressions, which

are recurrent in the provisions of the Convention, are vague. An oral proposal in the Drafting Committee of UNCLOS III for an attempt to frame some definitions for these expressions was not seriously considered owing to the constraints of time.

It has been explained that "the overriding idea is to create a minimum level of international rules and standards to be more or less binding upon individual States in enacting their national laws or regulations on marine pollution".[32] Although the matter is not clear, it seems that this minimum level will fall short of being customary international law: rather it will be some kind of minimum of "conventional law". Gr. J. Timagenis discusses further the concept of "international rules".[33]

> *" To put it in a different way, the question is: When does a rule become international for the purpose of the Articles on marine pollution, thus obliging States to enact national laws no less stringent, or no less effective, or taking these rules into account?*
>
> *At the outset it should be noted that the term used in the drafts is international rules and not rules of international law, which would include customary law and conventions so far as parties are concerned. At the same time, however, this difference in language does not necessarily denote a difference in substance. Four possible meanings of the term could be envisaged, which correspond to four steps in the development of a convention rule. Thus:*
>
> (a) The first step in the development of a convention rule is its adoption by a diplomatic conference or other appropriately authorised international body;
>
> (b) The second step is when this rule enters into force through, say, ratification by a certain number of States;
>
> (c) The third step is when the rule is ratified not only by the minimum number of States required for its entry into force but by a greater number of States, thus obtaining a wider acceptance without, necessarily becoming customary law.
>
> (d) The fourth step in the development of a conventional rule is when it becomes **stricto sensu** binding upon a particular State either through ratification by that State or by the passage of the rule into customary law".

It is argued that the choice must be made between the second and third possibilities with the latter being suggested as "the most sensible solution". However, in the case of IMO Conventions the problem of "wider acceptance" by maritime powers is still not obliviated.

Article 211(1) also refers to routing systems to minimise the threat of

accidents which could result in marine pollution. A "Routing System" has been defined as follows:

> *" Any system of one or more routes and/or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two way routes recommended, tracks, areas to be avoided, inshore roundabouts, precautionary areas and deep water routes".*[34]

Annex V of Resolution A 375(X) of the Assembly of IMO adopted on 14th December 1977 and as subsequently amended in November 1981 incorporates the Rules for vessels navigating through the Straits of Malacca and Singapore. The adoption of the resolutions constitute the culmination of the joint efforts of the three coastal States of Indonesia, Malaysia and Singapore to introduce a routing system in the Straits of Malacca and Singapore. The scheme involves areas which are not only within the territorial waters of Malaysia, but also that of Indonesia and Singapore.

The effectiveness or otherwise of such a routing system depends to a large extent on the manner in which it is being implemented. For example, Malaysia has enacted legislation[35] incorporating the aforementioned Annex V which sets out the traffic separation scheme in specified parts of the Straits of Malacca. In order to complement and implement the scheme, Malaysia has also introduced legislation which incorporates in **pari materia** the International Regulations for Preventing of Collisions at Sea 1972 as amended in 1981.[36] These regulations include Rule 10 which specifically relates to traffic separation scheme. In addition, a Notice to Mariners (NOTAM) was issued publicising details of the routing system.[37]

To a coastal State such as Malaysia, the success of the traffic separation scheme will depend on the co-operation of user States and the establishment of an effective monitoring and surveillance system. In addition to observation of movements, identification of vessels, particularly "rogue" ships, will be difficult without a sophisticated system established to observe and monitor the movement of vessels, for example, those that have been carried out in the Dover Straits.

Apart from these measures which have been adopted by IMO, the status of the other Conventions will still depend on the willingness of States to give effect to them. Although wider powers may have been given under IMO Conventions, they also tend to circumscribe the exercise of enforcement authority. There are still jurisdictional questions which are ambiguous.

Whatever limited rights and obligations there are relating to the control of the pollution of the marine environment under the Convention are also

balanced against restricted enforcement powers and a whole section containing safeguards.[38]

With regard to enforcement powers, the duties of flag States are further strengthened. The powers of coastal States are extended only in certain limited aspects as follows:

(a) Basically, the coastal State retains some powers to investigate, arrest and prosecute vessels in the territorial sea for violation of pollution laws (Article 220(2)) subject to the right of innocent passage as mentioned above;

(b) In the exclusive economic zone the powers[39] vary according to the degree of harm threatened, that is:

(i) if there is at least "substantial discharge" causing or threatening "significant pollution", the coastal State may only inspect the vessel;

(ii) in the limited context when pollution causes or threatens "major damage" to the coastal State, the coastal State may undertake, arrest and prosecute;

(iii) in the absence of those conditions mentioned above, the power of the coastal State is reduced to requiring information about the identity, the last and next port of call of the vessel.

These are some ports situated on the west coast of Peninsular Malaysia, one port on the east coast of Peninsular Malaysia, as well as two other ports being developed in Sabah and Sarawak respectively.

Under the Convention, the port States, in what has been described as a novel development[40] may investigate and prosecute any violation of applicable rules in its own territorial sea or economic zone.[41] In addition however, it may investigate and prosecute pollution discharge violation on the high seas or within the jurisdictional zones of other States. However, in respect to violations within the coastal waters of another State, the port State can only do so if requested by the coastal or flag State concerned.[42] In the Straits of Malacca it remains to be seen whether these new provisions could be implemented. Moreover, this power is subjected to an important qualification in that the flag State has the right of pre-emption.[43]

Articles 192, 194 and 198 give rise to general obligations under the Convention, especially the latter where States are required to notify each other of the likelihood that they will be affected by pollution damage of which they become aware. It still remains to be seen to what extent the breach of these obligations would give rise to responsibility or liability. It has been observed[44] that there are certain decisions which appear to put States under an obligation

not to use or permit the use of their territory which might cause loss or damage to another State, and it has been argued that this principle would also be applicable to damage caused by marine pollution emanating from the States or the activities under another State's control or jurisdiction. Presently however, there is little information of State practice on this.

One of the issues which would be difficult to ascertain is the standard of liability to be applied. It has been argued[45] that it is highly important to the protection and preservation of the marine environment that liability follows upon mere demonstration of casualty of injury rather than only upon proof of intention to harm or some other wrongful behaviours. For a State like Malaysia with a coastline fronting the Straits this would be important. However, international law on such an issue and other issues, such as who is to be held liable against natural or juridical persons or a State, is not clear at the moment. Much also remains to be seen with regard to the development of liability under international conventional law.

PASSAGE

The 1982 Convention incorporates two regimes of passage namely, innocent passage and transit passage. Since there are differences between the two, the implications of implementation will vary.

With regard to the notion of innocent passage as provided in the Convention, the view has been expressed that the UNCLOS text "updates and strengthens the regime for innocent passage through the territorial sea."[46] Much concern relates to the expression "innocent passage" itself namely, whether it is to be understood in a purely subjective sense or in an essentially objective sense. The expression is said to be complex, that is "if there is intention to harm then innocence is lacking, but the problem is one of knowledge of intention". Again it is observed that "in the effort to make the test of innocence of passage objective it is then possible for innocence to depend upon observance of local regulations, so eliminating the essential distinction between the right to proceed and regulations with respect to the manner of proceeding".[47]

Concern has also been expressed about the explicit linking of the notion of innocence with the list of subject matters within the competence of the coastal State. It is contended that the provision of Article 19 paragraph 2 through paragraph 2(a) could lead to "a broadening of the range of effects that can be determined to be non-innocent".[48] While the 1958 Convention is silent on the definition of innocent passage, the regulatory competence of coastal States is expected to be clarified.

Only subsequent State practice will furnish evidence whether the problems of objective or subjective intention will again emerge since one of the objectives of having the new provisions is to attain a more definitive scope to the regime of innocent passage.

However, if there is indeed a trend towards intensifying the coastal State's control over vessels in the territorial sea in relation to the notion of innocent passage as asserted, the same cannot be said concerning the regime of transit passage.

Under the Convention four categories of Straits have been identified, but those that are governed by the provisions of Articles 37 and 38(1) would be governed by the regime of transit passage. A view has been expressed that the terms "straits" used for international navigation is not clearly defined. For example,

> *" The English Channel and the Straits of Gibraltar, through which hundreds of ships pass daily, are clearly straits used for international navigation, but the legal status of many less frequently transited straits could be doubtful. Indeed even the legal status of heavily used straits may be contested. It is surprising that the drafters of the convention did not take the opportunity to clarify the legal status of many straits by adding an annex to the convention enumerating those straits that are considered to be used for international navigation, as has been done for living resources of the sea considered highly migratory. It also would have been useful to include in the convention an article providing for compulsory and binding settlement of disputes over whether a particular strait is used for international navigation".*[49]

In a statement delivered at the signing of the Final Act of the United Nations Conference on the Law of the Sea, in Montego Bay, Jamaica on 9th December, 1982 the then Minister of foreign Affairs for Malaysia stated that the Convention represented a **delicate balance of interests among nations confronted with different problems**. Towards the conclusion of his speech the Minister referred to "a new concept in relation to straits used for international navigation, namely the concept of transit passage".

In the 1958 Convention a reference to straits which is used for international navigation may be found in Article 16(4), as follows:

> *" There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State".*

It has been opined[50] that Article 16(4) appears to be legislative rather than codificatory. It is further stated that the "situation achieved by Article 16(4) satisfied neither the maritime powers, that became apprehensive of the implications of territorial sea passage in straits, nor a group of states abutting upon international straits, who, for reasons partly ideological and partly conservational wished to assert a greater degree of control over passage through straits than territorial sea passage would allow".[51]

Under the 1982 Convention the affirmation of the breadth of territorial sea of 12 nautical miles has now been "traded off" with the concept of transit passage. The differences in approach between the concepts of innocent passage and of transit will raise different considerations.

Certain views have been expressed in relation to the scope of the provisions of the Convention with regard to transit passage. These views, if accepted, would emplace States bordering Straits in respect of which transit passage applies in a less advantageous position than States bordering Straits concerning which innocent passage applies.

The view expressed is that the "concept of transit passage is wider than that of innocent passage".[52] It is also because of this fact that it also limits the position of littoral states under the Convention. The features that establish transit passage as a "wider concept" were stated[53]:

> *" based on either a purely textualist or a broader contextual interpretation of the UNCLOS text, that the straits regime protects freedom of navigation through, over and under straits used for international navigation. Specifically for covered straits this protection includes:*
>
> *a right of overflight as a general right of oceans law;*
>
> *recognition of the separate needs of straits transit as opposed to passage through the territorial sea in general;*
>
> *a right of submerged transit;*
>
> *clear transit rights not subject to coastal state characterization of innocence or some other restrictive threshold standard;*
>
> *limited and balanced coastal state regulatory competence providing protection both for coastal States environmental concerns and the community's navigational freedoms;*
>
> *no discrimination against military vessels or aircraft; and*
>
> *freedom of navigation through, over and under archipelagic sea lanes".*

It has also been indicated that in comparison to the border competence accorded to coastal ships to regulate innocent passage under Articles 21 and 22, "the unilateral regulatory competence accorded Straits States under the Straits

chapter is carefully circumscribed. The only provision that creates any such right is Article 42". Likewise, substance Article 42 provides **only four instances** where coastal States are allowed to make laws and regulations pertaining to transit passage.

Even Article 41 of the Convention which deals with sea lanes and traffic separation schemes can be distinguished from Article 22 on the same subject in the innocent passage. Unlike Article 22 which requires States to **"take into account"** the recommendations of the competent international organisations in designating sea lanes and the prescription of traffic separation schemes, Article 41 requires that sea lanes or traffic separation schemes be internationally adopted before a Straits State is permitted to designate them.

In enacting laws and regulations under Article 42, Straits States must also bear in mind that there are four important safeguards. These safeguards are found in Article 42(2) which includes the requirement that laws and regulations (as enacted by coastal States) shall not have the practical effect of denying, hampering or impairing the right of transit passage. Article 44 includes the requirement that there shall be no suspension of transit passage. By implication, it is also argued[54] that Articles 31, 32, 42(4) and (5), and 233 and 236 read together "establish that such laws and regulations (enacted by Straits States) may not be directly applied to warships or other vessels or aircraft" entitled to sovereign immunity. The fourth safeguard is in Article 233 where by reference there are certain additional safeguards in relation to enforcement.

Yet another problem that relates to the implementation of the transit regime is the effect of Articles 39 and 40. The question has been posed whether non-compliance with any duties of ships and aircraft under these articles or any provisions governing the transit passage regime would necessarily render the passage "non-transit" and thus consequentially enabling States bordering Straits unilaterally to prevent or hamper passage. It has been contended that while a breach of any of the provisions of Article 19(2) could render passage as non-innocent under the innocent passage regime, in the case of transit passage the provisions of Article 39 are intended to confer rights and duties on user States and does not confer a correlative right on coastal States. The argument is developed thus:

> *" A ship or aircraft which commits a breach of duty during passage or carries out certain activities contrary to the provisions governing the transit passage within the meaning of Article 38. However, there may be some circumstances where a breach of duty, say, under Article 39, may result in passage not being one of transit, i.e. a non-transit passage.*
>
> *An example where a breach of duty under Article 39 may not result*

in passage being non-transit is where a ship, while effecting passage, commits an act of wilful and serious pollution contrary to Article 39(2) (b). It may still be exercising its right of transit passage within the meaning of Article 38(2). However, in the innocent passage regime such an act would have rendered the passage non-innocent under Article 19(2) (h), entitling the coastal state to prevent passage under Article 25(1).

But there may well be circumstances of non-compliance under Article 39 which may result in non- transit passage. Thus, for example, if the ship does not proceed without delay through the strait in accordance with Article 39(1) (a), the passage would not be continuous within the meaning of Article 38(2) and hence the passage would be non-transit. Can passage then be prevented or hampered?"

On the question whether Straits States can prevent or hamper passage which is non-transit, it is argued "that the Convention does not contain an express provision which permits a State to do so." Article 44 has been compared with Article 25(1) which expresses "in positive terms that coastal State may take the necessary steps to prevent passage which is not innocent". In conclusion it is therefore inferred that:

" Article 44 should be construed as meaning that States bordering Straits cannot hamper or suspend ***transit*** *passage and does not deal with the question of preventing or hampering passage that is non-transit".*

Koh Kheng Lian suggests that there are other remedies[55] but based on the text of the Convention, it is not known precisely what are the remedies.

Article 43 of the Convention also suggests that user States and States bordering a Strait should "by agreement co-operate" in respect of certain matters relating to the improvement of international navigation, as well as the prevention, reduction and control of pollution from ships. One view[56] that has been given seems to reflect the position that both user States and others have yet to explore and ascertain the manner in which co-operation is to be attained.

Should the Convention enter into force, an issue which could arise in relation to implementation is the position of states which continue to remain as non-parties to the Convention. This would consequently lead to the question of whether Straits States would enforce the provisions against non-parties and, as a corollary, whether those non-parties would secure rights and seek obligations to be observed under the provisions of the Convention. In this context the status of Part III, namely Straits used for international navigation have to be considered. One view has been given that "with or without a new Convention ..... the UNCLOS straits regime seems destined to serve as a powerful model for the

development of a new customary law of Straits transit."[57] Luke T. Lee, after examining certain distinctions between the Law of the Sea Convention and the Geneva Convention on Territorial Sea and the Contiguous Zone relating to rights of passages and discussions by others on the same topics, infers that these distinctions "make it clear that the Straits provisions of the former (i.e. the 1982 Convention) are not based on customary law as reflected in the latter, and that if the provisions of the latter continue to reflect the current status of customary international law, third States are not entitled to the same passage right, be it absolute or conditional, as that accorded to the State parties".[58] Mr. Lee also proffers the views that "by their willingness at the outset of negotiations to agree to a universal extension of the territorial sea to 12 miles, provided there was adequate agreement on free transit of Straits used for international navigation the United States and its allies conceded in effect that the Straits navigation provisions in the proposed Law of the Sea Convention were not then customary rules of international law".[59]

Another factor to consider in ascertaining whether provisions in the Convention can be applied to States not parties to the provision of Article 36 of the Vienna Convention on the Law of Treaties. However, in this Article, the principle criteria is the intent of the parties, which cannot be lightly presumed. The intention of the parties to a treaty is said to be ascertained **inter alia** from "travaux preparatoires".[60] For the purpose of Third States rights under the LOS Convention 1982, the intent may most appropriately be ascertained from official statements made by representatives of States participating in the Third United Nations Conference on the Law of the Sea, particularly those made during the final part of the 11th Session in Montego Bay, Jamaica, during December 6-10, 1982. The process adopted by the Third United Nations Conference on the Law of the Sea was on the basis of consensus. It has been stated that this nature of consensus process would raise special problems in relation to "travaux preparatoires".[61] The problem was stated:

> *" In the case of the LOS Convention the problem is exceptionally acute. The Convention is not quite in the happy position of the Treaty Establishing the European Economic Community, for example, which has no effective travaux at all and whose interpretation and application has been much assisted by their absence. Nor is it in the familiar position of leading codification treaties, such as the Vienna Convention on the Law of Treaties, where the four-stage travaux (ILC rapporteur's reports, ILC debates, ILC draft articles, conference papers and debates) are well known and their relevance well understood.*
>
> *Instead, in the case of the LOS Convention, there is already and there will increasingly accumulate an amorphous mass of material, including miscellaneous conference documents, together with contemporaneous and retrospective accounts purporting to describe the evolution*

of the texts. It should be understood here and now (before misunderstanding develops) that such material cannot be regarded as travaux preparatoires in the traditional sense (as used, for example, in Article 32 of the Vienna Convention on the Law of Treaties). With the possible exception of the successive published texts of the Convention, they do not have the objective character of negotiating facts, the actual material chain of causation of the resulting instrument, which is the essence of traditional travaux. The random and disorderly character of some of them and the partisan character of much of the rest mean that it would be wiser to regard them as a new kind of phenomenon, a physical manifestation of the decision-making process of consensus".

From the foregoing the statements and quotations, it would appear that the provisions of the Convention relating to the regime of transit passage are still unclear. The practice of States may vary and therefore remain to be seen. As has been observed, "it is possible for certain norm-creating provisions of the Law of the Sea Convention to evolve into customary international law or to acquire the status of constitutive or semi-legislative provisions of a treaty. It is impossible, however, to predict how long this metaphorsis may... take place."[62]

One issue that was not discussed in detail at the Third U.N.Conference on the Law of the Sea was the freedom of overflight that is recognised by Article 38 of the LOS Convention 1982. Various questions could arise whether States bordering Straits have any power to impose obligations on aircraft in transit or to restrict that freedom in some way. As has been pointed out, transiting "aircraft may considerably affect a littoral State's interests in regulating flight traffic, limiting dangerous or harmful activities such as flight exercises or refueling while in flight, and restricting military activities prejudical to the defense or security of the coastal State. Spain ... criticized the 1978 draft proposal for not specifying what activities were to be prohibited to aircraft".

The difficulty in ascertaining the scope of a littoral State's authority over aircraft in transit passage arises from the fact that the regulatory competence of littoral states as specified "in Articles 38-44 expressly differentiate between ships and aircraft, navigation and overflight". Article 34 does not change the legal status of the airspace above international Straits, as it provides that the regime of passage through Straits used for international navigation "shall not in other respects affect the legal status of the waters forming such Straits or the exercise by the States bordering the Straits of their sovereignty or jurisdiction over such waters, and their airspace ...". Paragraph 2 of Article 34 indicates that the sovereignty or jurisdiction is to be exercised **subject** to the provisions of Part III of the Convention and other international rules. Part of the difficulty lies in reconciling these two provisions.

When the other provisions of Part III are examined, it is found that Articles 41 and 42 (with the exception of paragraph 5) refer to the legislative powers of States in relation to the transit passage of ships. Even in paragraph 5 of Article 42 the reference to the "State of registry of an aircraft" does not reflect that the regulations adopted under this Article permits the regulation of aircraft in transit.

The duties of aircraft in transit are governed by Article 39. However, this Article does not answer the question whether a coastal State may adopt laws and regulations relating to transit passage of aircraft and whether a coastal state has the right to interfere with aircraft in transit not complying with its municipal law or the requirements under Article 39 itself".[63] However, since Articles 38-44 expressly differentiate ships and aircraft, it is therefore argued that the exercise of sovereignty or jurisdiction "in other respects" is not affected and aircraft in transit does remain subject to a coastal State's general municipal law. Nevertheless, the authority to do so is still circumscribed by Article 44 which includes the provision that there shall be no suspension of transit passage.

It is stated "that the Convention cannot be presumed to have barred all recourse to the use of enforcement measures in the airspace above international Straits. In a case covered by Article 39(1) (b), the inherent right of self defence is not impaired by the Convention. There is also for instance a need "for the protection of a coastal state's vital security interests".[64] It will not therefore be easy to identify the scope of sovereignty and jurisdiction stipulated in Article 34.

SETTLEMENT OF DISPUTES

On 24th February 1976 Malaysia became a signatory to the Treaty of Amity and Co-operation in Southest Asia. The fourth paragraph in the preamble to the Treaty provides that "the settlement of differences or disputes between their countries should be regulated by rational, effective and sufficiently flexible procedure, avoiding negative attitudes which might endanger or hinder co-operation". It is further enunciated in Article 2 of the Treaty that the High Contracting Parties shall be guided by certain fundamental principles which include **inter alia** settlement of differences or disputes by peaceful means.

Reference is made to this Treaty because, by analogy, the Law of the Sea Convention also proceeds from "the basic principle that the States which are parties shall settle any dispute between them concerning its interpretation or application by peaceful means in accordance with Article 2(3) of the United Nations Charter (Article 279), and goes on to provide that nothing in this part of the Convention impairs their right to settle such a dispute by any peaceful means of their own choice, (Article 280).

The Convention also provides some flexibility in that there is a choice of means. In the first instance emphasis is placed on the parties autonomy in the event of a dispute in that they are to "proceed expeditiously to an exchange of views" as to the means to be adopted (Article 283(1)). The combined effect of Articles 281 and 283 appear to be to enable parties by agreement in advance not to resort in the first instance to the settlement machinery in the Convention.

However, in the event parties are unable to agree upon a means of settlement or select a machinery which proves unsuccessful, it is only after an exchange of views obligated by Article 283 that the compulsory procedure laid down in section 2 Part XV is to be invoked.

Thus section refers to States which have to make a written declaration accepting that disputes maybe referred to one of the tribunals specified in Article 287.

While section 2 deals with matters that relate to the functioning of the system of obligatory settlement, section 3 deals with disputes on the assumption that certain disputes ought not to be subject to obligatory settlement. It is the details of section 3 that are closely interwoven with the substantive provisions of the Convention, and it is anticipated that it is in relation to section 3 that complex issues could arise.

The intricate procedure in section 3 is further highlighted by Article 298 which deals with three types of disputes which States may exclude from any or all of the procedures of section 2 by written declaration. These are:

(a) disputes involving sea-boundary delimitation of a historic bay or titles;
(b) disputes concerning military activities or law enforcement related to section 2; and
(c) disputes in respect of which the United Nations Security Council is exercising its functions under the Charter.

The first category may still be subject to compulsory conciliation and ultimately back to the procedures in section 2, but there is no corresponding requirement for disputes settlement in the other two categories.

It has been opined that the "intricate provisions of section 3 are an attempt to balance the desire to be a judge in one's own cause against the principle of binding third party settlement". It is also observed that the exclusion of certain types of disputes from the procedures of section 2 in Article 297 and the opportunity to exclude others provided by Article 298 reflect both "traditional sensitivities"[65] (e.g. territorial sovereignty and military activities) and the special concerns of developing States.

It is also noted that conciliation as a procedure for settlement of disputes has been given prominence in the Convention since it is not only singled out in section 1 of Part XV, but it is also obligatory for certain categories of disputes excluded in section 3. Detailed provisions on conciliation are also set out in Annex V.

Undoubtedly the integrated system of settlement of disputes under the Convention is a complex one. In the final analysis, the Convention represents "the first global treaty of its kind to require, without a right of reservation, that an unresolved dispute between parties concerning its interpretation or application shall be submitted at the request of either party to arbitration or adjudication for a decision binding on the other party"[66] although there are important exceptions to the rule. At this stage when the future of the Convention is still unknown, the problems that could be thought of may be speculative in nature. Instead, States will now have to acquaint themselves with procedures which hitherto may have been relatively unfamiliar. There is also a need to appraise the functions and procedures of the new tribunals which are to be established under the Convention.

In addition, Malaysia has yet to decide whether declarations are to be made under Article 287 for the choice of forum or under Article 297 which deals with complex issues of substance.

NOTES

Introduction

1. Document A/3/647 dated 16th November 1984, p. 7.
2. Document A/Conf.62/L.76 dated 18th August 1984, p. 13.

Exclusive Economic Zone: The Living Resources

3. COMMONWEALTH SECRETARIAT, Ocean Management, Chap. 8.
4. Malaysian Economic Report 1984/85, pp. 177-178.
5. (i) Parliamentary Debates, House of Representatives dated 19th Nov. 1985, p. 11 (unedited version).
   (ii) Straits Times, Friday, 30th August 1985, p. 4.
6. (i) Legal Notification No. P.U. (A) 115/80
   (ii) The Government of Malaysia has also requested FAO for advice on various aspects of management and exploitation of the living marine resources in Malaysian waters. FAO subsequently conducted a general review with general suggestions for possible courses of action. The Report of FAO is still in restricted circulation.
7. Act 311 Laws of Malaysia, brought into force on 1st May 1985.
8. Act 317 Laws of Malaysia, published on 30th May 1985 but not brought into force.
9. Ibid., p. 565.
10. Fisheries Act, 1985, s. 8, 11.
11. Ibid., s. 10.
12. Ibid., s. 61.
13. Fisheries Act 1985, s. 15.
14. Ibid., s. 19.
15. Ibid., s. 18.
16. Ibid., s. 19.
17. Ibid., s. 19(2).
18. Ibid., s. 19(4).
19. Ibid., s. 36.
20. Ibid., s. 46.
21. Ibid., s. 47.

Protection of Marine Environment

22. THOMAS S. BUSHA (1982), Ocean Yearbook 3, p. 120.
23. ALAN BOYLE (1985), "Marine Pollution", AJIL, Vol. 79, No.2, p. 350.
24. 1982 U.N.Convention on the Law of the Sea, Articles 207- 211.
25. HASHIM DAUD (1984), "Marine Oil Pollution in Malaysia", paper presented at the seminar on Maritime Matters organized by the Ministry of Transport, October 1984, p. 1.
26. For example, Report of Parliamentary Debates, House of Representatives, dated 22nd November 1984, p.2 (unedited version).
27. ALAN BOYLE (1985), op. cit., supra note 2, p. 358.
28. Ibid., op. cit., supra note 2, p. 359.
29. Article 211(2).
30. EDGAR GOLD (1982), "The Surveillance and Control of Navigation in the New Law of the Sea: A Comment", Ocean Yearbook 3, p. 128.
31. Ibid., supra note 10, p. 129.
32. GR.J.TIMAGENIS, "International Control of Marine Pollution", Vol.2, p. 604.
33. Ibid., supra note 12, p. 605-607.
34. Intergovernmental Maritime Consultative Organisation, "Ships Routing" 4th Edition (1978) Part A, p. 1.
35. Merchant Shipping (Collision Regulations) (Rules for Navigating through the Straits of Malacca and Singapore) Order 1984 P.U. (A) 439.

36. Merchant Shipping (Collision Regulations) Order 1984 P.U. (A) 438.
37. Notice to Mariners No. 15 of 1981, dated 25th March 1981.
38. Part XII, s. 7.
39. Convention Articles 220(5), 220(6), 220(3) respectively.
40. ALAN BOYLE, supra note 2, p. 365.
41. Article 220(1).
42. Article 218(1).
43. Article 228(1).
44. J.SCHNEIDER, World Public Order of the Environment, Chap.6, pp. 146-150.
45. Ibid., supra note 24, p. 163.

Passage

46. JOHN NORTON MOORE (1980). The Regime of Straits and the Third United Nations Conference on the Law of the Sea, AJIL Vol.74, p. 116.
47. D.P.O CONNELL, The International Law of the Sea, Vol.1, pp. 272-273.
48. JOHN NORTON MOORE, supra note 1, p. 117. This was stated in conjunction with the comments given by W.Micheal Reisman in The Regime of Straits and National Security: An Appraisal of International Lawmaking.
49. ARVID PARDO, An Opportunity Lost in Law of the Sea U.S. Policy Dilemma, p. 17.
50. D.P.O CONNELL, supra note 2, p. 316.
51. Ibid., p. 328.
52. KOH KHENG LIAN, Straits in International Navigation, p. 167.
53. JOHN NORTON MOORE, supra note 1, p. 120-121.
54. Ibid., p. 105-106.
55. KOH KHENG LIAN, supra note 8, pp. 156-157.
56. HORACE B. ROBERTSON, JR. Passage Through International Straits: A Right preserved in the Third United Nations Conference on the Law of the Sea. VJIL (1980) Vol.20 p. 835.

The writer also extolls the following view -

> Article 43(b) appears to spread among all user States the burden of controlling pollution, as well as the cost of compensating the coastal state. This could require user States to share in the many burdens now borne by the coastal state alone, or by the user who actually causes the harm, including expense of maintaining an inspection and monitoring service, pollution control research, and clean up costs in the event of an oil spill. Likewise paragraph (a) of the article seems to contemplate that coastal states will be able to pass on to user States a share of the cost of establishing and maintaining navigation aids, a cost traditionally borne by coastal states alone.

57. JOHN NORTON MOORE, supra note 1 p. 121.
58. LUKE T. LEE. The Law of the Sea Convention and Third States, AJIL (1983) Vol.77 p. 553-559.
59. Ibid., p. 559.
60. Ibid., p. 547.
61. PHILIP ALLOT, Power Sharing in the Law of the Sea, AJIL (1983) Vol. 77 p. 7.
62. LUKE T. LEE supra note 18 p. 566.
63. KAY HAIL BRONNER, Freedom of the Air and The Convention on the Law of the Sea, AJIL (1983) Vol.77 p. 495-496.
64. Ibid., p. 500.

Settlement of Disputes

65. J. G. MERILLS, International Disputes Settlement, p. 122.
66. BERNARD H. OXMAN, Law of the Sea, U.S. Policy Dilemma, p. 159.