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THE STATE OF DEMOCRATIC YEMEN

AND

THE INTERNATIONAL LAW OF THE SEA

BY

FARES FADHLE AL-SALLAMI

WORLD MARITIME UNIVERSITY
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SWEDEN

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THE STATE OF DEMOCRATIC YEMEN AND
THE INTERNATIONAL LAW OF THE SEA

by


FARES FADHLE AL-SALLAMI

Democratic Yemen

A paper submitted to the Faculty of the World Maritime University
in partial satisfaction of the requirements for the award of a

MASTER OF SCIENCE DEGREE
in
GENERAL MARITIME ADMINISTRATION.

The contents of this paper reflect my personal views and are not
necessarily endorsed by the University.

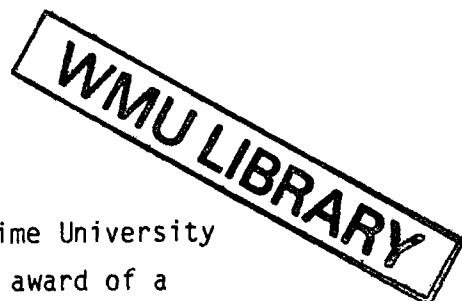
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Professor



اهداء
الى روح المرحوم
والدي
تحية وعرفانا

DEDICATION

TO THE SOUL OF
MY FATHER WITH
PROFOUND GRATITUDE.

A C K N O W L E D G E M E N T S

All the thanks and gratitude belong to the the one and only Almighty God.

Deepest gratitude and profound respect to Professor A.D. Couper, my supervisor and course professor for his kindness, supervision and guidance during my studies.

Special thanks and appreciations are due to my wife for her encouragement, prayers, and patience which enabled me to successfully fully fulfil my studies.

I end with my thanks and prayers of gratitude to the Almighty God to whom I submit my work and from whom will be the reward.

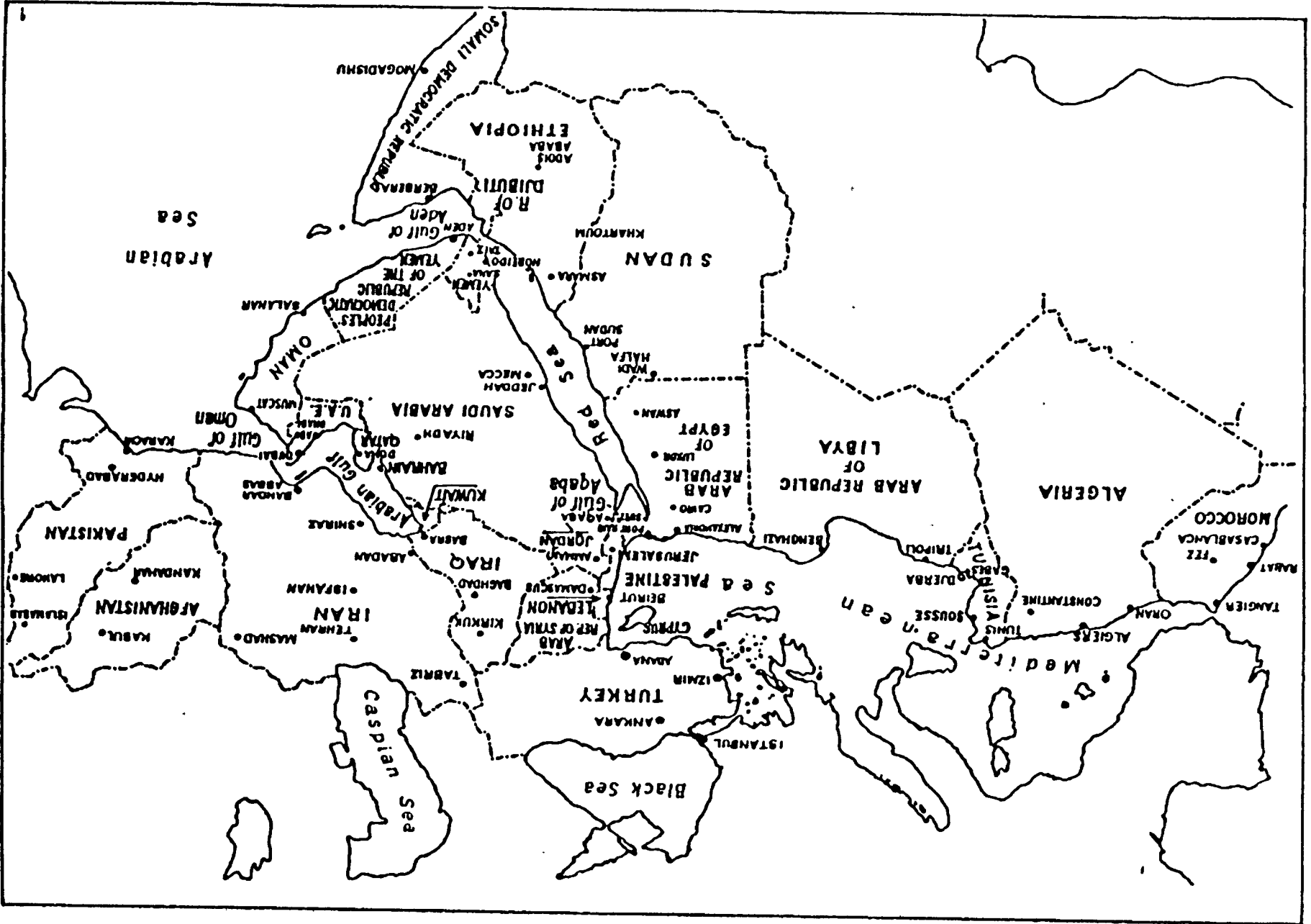
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I N T R O D U C T I O N

The ocean of the world have captivated the interest of intrepid navigators in previous centuries.

The Phoenicians, the Vikings, and the Arabs, ventured upon the sea in quest of undiscovered lands. To these courageous adventures, the oceans were a means of passage for voyages of unknown duration and dangers to unknown shores. However, in the sixteenth century Ferdinand Magellan's hazardous voyage led to the circumnavigation of the globe, and in the eighteenth century, Captain James Cook's successful exploration of the Pacific Ocean resulted in the charting of the ocean's vast realm, covering approximately two-thirds of the surface of the planet Earth. Subsequent expeditions were initiated to gain knowledge of the sea itself.

Nevertheless, through the advances of science and technology the world community has become more aware of the urgency of establishing a generally agreed regime which will ensure that the sea and its resources are used and developed fairly, rationally and peacefully for the benefit of all mankind. *

The need for radical reconsideration of the traditional law of the sea was emphasised by the decision of the twenty-fifth session of the General Assembly to convene in 1973, a comprehensive third U.N. Conference on the Law of the Sea. So far the conference had held seven sessions and had made substantial progress on most aspects.

The significance of the law of the sea to the state of the People's Democratic Republic of Yemen hardly needs emphasis. Furthermore, its coasts, enormous and diversified, embrace the heart of world communications.

Continuous and uninterrupted, its shores start from the Red Sea through the Straits of Babel-Mandeb into the Gulf of Aden which

opens into the Arabian Sea.

The Sea to Democratic Yemen is of vital importance for the economic and social progress. Besides in the coastal areas of Democratic Yemen, especially the Red Sea, the Gulf of Aden and the Arabian Sea, there are valuable fish resources, which need to be safeguarded and developed prudently. Again, the coasts of Democratic Yemen are vulnerable to pollution, especially from oil and therefore need adequate protection against such dangers. Moreover, like developing countries, Democratic Yemen still lacks the technology and know-how necessary for the exploitation of sea resources and so require the co-operation and assistance of the appropriate United Nations Agencies and of the technologically advanced countries. Furthermore, while some states such as Saudi Arabia have considerable natural resources others such as Democratic Yemen are more or less barren and, for that reason, has a paramount interest in the establishment of an international regime which would ensure that the natural resources of the seabed beyond the limit of national jurisdiction are used and developed for the benefit of all mankind.

In brief, this work is an attempt to explore and analyse the practice and policies of the State of Democratic Yemen with regard to certain aspects of the International Law of the Sea.

CHAPTER I

HISTORICAL BACKGROUND

CHAPTER I

HISTORICAL BACKGROUND

The People's Democratic Republic of Yemen (South Yemen) lies on the southern shore of the Arabian peninsula, with the Yemen Arab Republic to the north-west, Saudi Arabia to the north, and Oman to the east. It has an area of about 116,000 square miles (297,000 square kilometers).

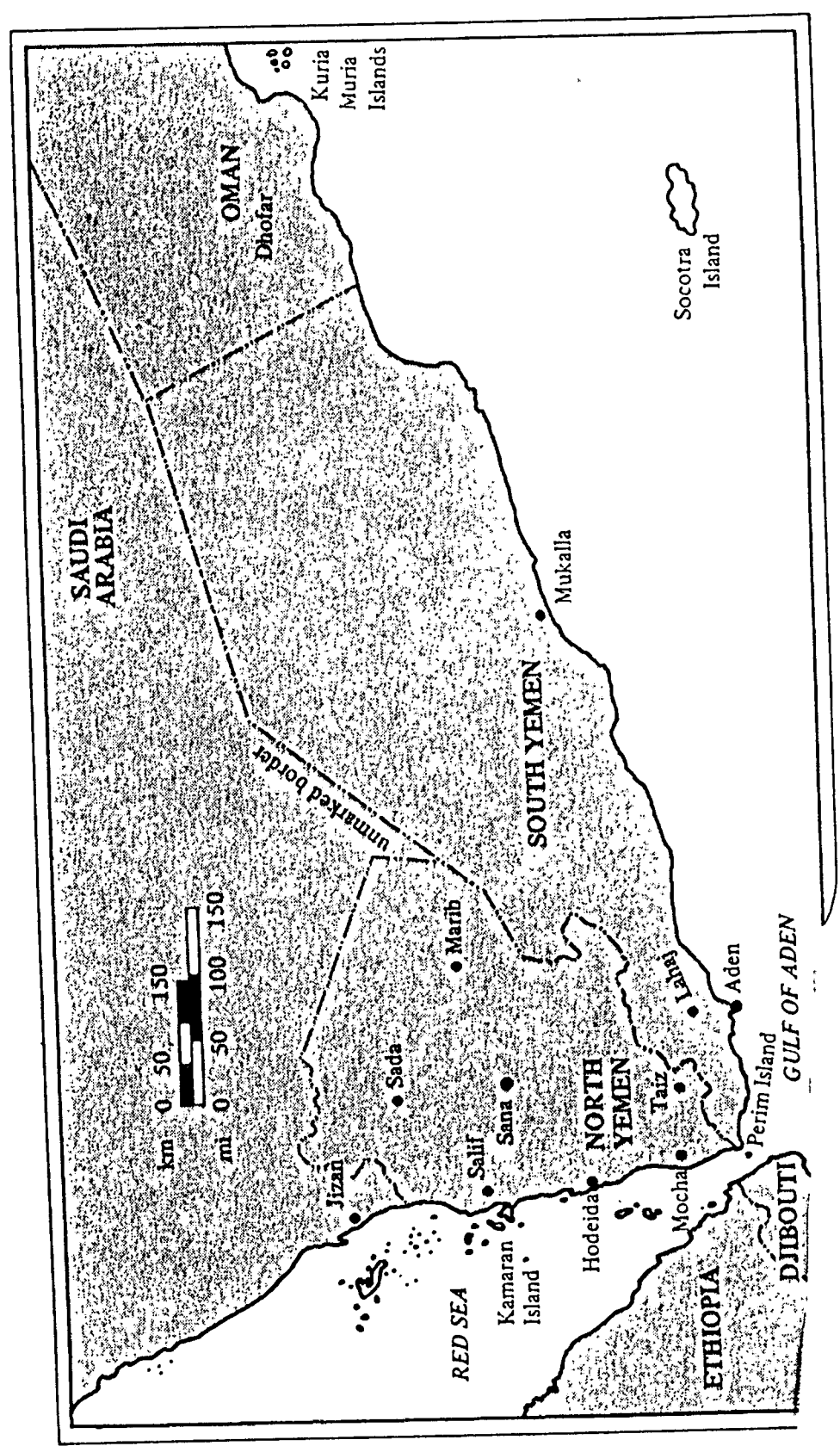
Democratic Yemen has three islands of strategic importance Kamaran, in the Red Sea, off the coast of North Yemen and under the latter's occupation since 1972 (1); Perim in the strait of Bab al-Mandeb, and Socotra, in the Gulf of Aden. The population of some 1,749,000 consists mainly Muslims.

Until 1967 the country was sustained by the position of Aden in the main shipping route to Europe from the Far East, India, and East Africa via the Suez Canal. The shipment of oil from the Arabian Gulf to Western Europe, which developed mainly after World War II, considerably enhanced the port's importance and led to the construction of the British Petroleum Refinery, completed in 1954, which became the focus of industry and trade of the area. (2)

Throughout history Aden has been a port of commercial importance, as it served as a meeting point for ships coming from the Red Sea, from India, from the Arabian Gulf, and from East Africa. In 1513 the Portuguese, tried to capture the town. The Ottoman Turks, wishing to exclude the Portuguese from the Red Sea seized Aden in 1538, but soon their control over the area slackened and the effective power in Yemen passed into hands of the local chieftains.

(1) See Chapter II for further details.

MAP NO. 1 - DEMOCRATIC YEMEN



The discovery of the cape route to India had diminished Aden's commercial importance, but during the Napoleonic campaign in Egypt (1798), Aden assumed strategic importance. Britain occupied the island of Perim in 1799 in order to prevent Napoleon from passing through Bab-al Mandeb (1). However, the British left the island, and moved its forces to the mainland where friendly relations were established with the local Sultan of Lahej, who captured Aden in 1839, and included it in the British Empire by the Peace Treaty of 1857. Perim Island was ceded in the same year. The Kuria Muria Islands had already been acquired in 1854 from the Sultan of Muscat (now Oman).

Aden's importance grew with the opening of the Suez Canal as a supply station for fuel and fresh water, so Britain initiated several treaties to place the local chieftains and rulers of the town's hinterland under varying degrees of British protection. In 1866 the island of Socotra came within the British protectorate and finally Aden became a Crown Colony in 1937.

With the decline of its empire, Britain sponsored the establishment in 1959 of the Federation of Arab Emirates of the south, later re-named Federation of South Arabia, with a view to grant independence at a later stage.

The Federation was gradually joined by many members of the western and eastern protectorates, and in 1963 by Aden.

In the same year, however heavy disturbances broke out, because nationalist organizations refused to recognize the federal regime which, in their eyes, reflected in its structure the interests of the local sultans. The Federation was soon defeated by the nationalist organizations. (2)

(1) The Red Sea and the Gulf of Aden Ruth, 1982, pp 67

(2) Ibid

Upon British withdrawal in 1967, the nationalists proclaimed the establishment of the People's Republic of Southern Yemen on 30th November 1967 and later called the People's Democratic Republic of Yemen.

Since the People's Democratic Republic of Yemen is a littoral state of Bab-al Mandeb and has sovereignty over Perim Island, it completely controls the strait, which gives her a substantial strategic advantage.

Democratic Yemen has no port on the Red Sea itself, but Aden, situated on the gulf bearing her name, commands the southern entrance to the Red Sea.

As already mentioned the port has played an important role throughout the history of the Red Sea. After 1850 it was a free port, but that status was abolished after independence, although it still provides a free zone for transit trade. Formerly Aden handled part of the traffic to and from North Yemen and Saudi Arabia, but the development of Hodida in North Yemen and Jizan in Saudi Arabia has reduced transit through Aden. The closure of the Suez Canal was a hard blow for Aden; the number of ships that called at her port fell from 6,200 in 1966 to 1,100 in 1968. The re-opening of the canal in 1975 has increased traffic in Aden by 50% but not as much as the 400% that had been expected.

Democratic Yemen, together with North Yemen, Sudan and Somalia, participated in the 1977 Taiz meeting which declared the Red Sea to be a "zone of peace". In press communique delivered on 7 July 1978 by the Minister for Foreign Affairs, and circulated as a United Nations communication, the People's Democratic Republic of Yemen declared that "the Red Sea should remain a zone of permanent peace and security and should not be subject to any foreign influence or domination".

Moreover, with regard to the strait of Bab-al Mandeb, the government

of the People's Democratic Republic of Yemen confirms its respect for the freedom of maritime and air traffic of ships and aircraft of all coastal and non-coastal states, without prejudice to the sovereignty, integrity, security and independence of the Republic.

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CHAPTER II

THE TERRITORIAL SEA

CHAPTER II

THE TERRITORIAL SEA

2.1 DEFINITION:

The territorial sea is the area of water which extends from the coastline (accepted generally as the low water line) to a distance from the shore which is commonly fixed at twelve nautical miles, according to the 1982 Convention on the International Law of the Sea.

Furthermore the coastal state has full sovereignty over its territorial sea, and this sovereignty extends to the air space, as well as to its bed and subsoil.

Prior to the drawing up of part two of the mentioned Convention on the Territorial Sea and the Contiguous Zone, it was universally agreed that a coastal state had the right to exercise exclusive control over the waters and sea-bed adjacent to its coastline. There was some differences of opinion over the question whether these rights were rights of sovereignty or merely a bundle of jurisdictional rights. However this matter has been determined by Article 1 of the Convention which affirms a right of sovereignty in the coastal nation over its adjacent territorial waters including the subjacent sea-bed and subjacent air space, subject however to a right of innocent passage of vessels of foreign states through such territorial sea.

2.2 THE PROVISIONS OF THE 1982 CONVENTION ON THE INTERNATIONAL LAW OF THE SEA:

On 10 December 1982 the United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica.

This marked the culmination of over 14 years of work involving participation by more than 150 countries representing all regions of the world, all legal and political systems, all degrees of socio-economic development, countries found in the sea-bed, coastal states, states described as geographically disadvantaged with regard to oceans space, archipelagic states, island states and land-locked states. These countries convened for the purpose of establishing a comprehensive regime dealing with all matters relating to the law of the sea, bearing in mind that the problems of oceans space are closely interrelated and need to be considered as a whole.

With regard to the territorial sea, the convention allowed for the establishment of a territorial sea of up to 12 nautical miles in breadth, providing various methods for determining baselines and for distinguishing between territorial waters and internal waters.

The traditional right of innocent passage through territorial waters is recognized, and some specifications as to what kind of activities will contravene innocence of passage is included. In the case of the waters of states bordering straits, the concept of transit passage was introduced, which draws more from the concept of necessity than does innocent passage and somewhat more liberal. The concept of archipelagic waters was introduced for the case of archipelagoes, whereby sovereignty may be recognized over the waters within an island group, and the conditions and modalities for establishment of baselines in such cases are specified.

Furthermore, the convention allows the creation beyond territorial waters, of an exclusive economic zone of up to 200 nautical miles, in order for coastal states to gain economic benefit from areas further from their shores.

Nevertheless, in 1987 Democratic Yemen adopted the 1982

Convention which is not yet in force as it so far has not reached the required signatures to bring it into force.

The convention is due to enter into force twelve months after the deposit of the sixtieth instrument of ratification or accession. In the meantime, it stands as testimony to the way in which the international community would like to structure its relations regarding ocean space, however the adopted convention provides a model, establishing the framework within which states may act, and the package persists.

2.3 EXISTING NATIONAL CLAIMS TO OFFSHORE JURISDICTION

Claims to offshore or maritime zones of jurisdiction vary from state to state, and current state practice exhibits such a variety of claims and such a lack of stability that identification of an effective list of types of jurisdiction is not practicable.

However, five traditional jurisdiction zones may be distinguished.

In the first two zones, internal waters and the territorial sea, the predominant principle is that of sovereignty but, already in the territorial sea, the existence of a right of innocent passage reflects the land ward reach of the principle of the freedom of the seas. In the next two zones, the various functional zones and continental shelf, the position is reversed; the basic principle is that of the freedom of the seas but certain limitations on that freedom reflect the seaward extension of sovereign rights. Finally, in the zone beyond the continental shelf, in the high seas, the reach of territorial sovereignty is practically exhausted and jurisdictional claims are in the main limited to quasi-territorial jurisdiction over national vessels.

In so far as the territorial sea and functional zones are concerned, it may be observed that, at the present time while some states are asserting traditional territorial sea claims, supplemented by claims to various functional zones, others have dispensed with such refinements and are making comprehensive territorial sea claims of very considerable dimensions. Others again are experimenting with new compromise formulae such as "the patrimonial sea" or the "exclusive economic zone" which are being discussed at the Third United Nations Conference on the Law of the Sea.

In this chapter the present legislation of the State of Democratic Yemen, where it exists, in relation to the first four of the above mentioned five jurisdictional zones will be analysed. but since the basic question in relation to the zone of internal waters relates to the rules governing the outer limits of these waters, that is the base line from which the breadth of the territorial sea is measured, discussion of this question will be incorporated with that concerning the territorial sea zone.

A final introductory note: as will be seen Democratic Yemen has adopted domestic territorial sea and continental shelf legislation, and has also claimed contiguous or supervision zones beyond the territorial sea, furthermore Democratic Yemen has made laws for the purpose of marine pollution control and also actual claims to exclusive fishing zones of considerable extent.

2.4 THE TERRITORIAL SEA OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN

The Act No. 45 of 1977 Article (4) defined the territorial sea of the Republic as an area of water which extends beyond the internal waters of the People's Democratic Republic of Yemen, to a distance of 12 nautical miles seaward, measured from the

straight baseline or from the low-water line along the coast.

2.4.1 Breadth of the Territorial Sea

Through out the development of the law of the sea, the breadth of the territorial sea has been one of the most controversial questions, but at the present time it would seem that there is consensus among the majority of states for a general agreement on a twelve-mile territorial sea.

In February 1970 the People's Democratic Republic of Yemen officially claimed a twelve-mile territorial sea (this law was rescinded by a new law adopted in 1977 which also claimed the same limit, measured from the straight baseline or from the low-water line along the coast.

2.4.2 The Measurement of the Territorial Sea

The principles governing the baseline from which the territorial sea is measured, or the outer limit of internal waters are now fairly well established and, as formulated in Part Two, Articles 7 to 15 of the 1982 Convention, they are probably generally accepted even by non-parties to the Convention. (1)

According to these rules the normal base line from which the width of the territorial sea is measured in the low-water line, but in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining

(1) The Middle Eastern States and the Law of the Sea, Ali El-Hakim, page 8.

appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured. (1)

In this regard the legislation of Democratic Yemen has adopted detailed provisions which conform to the rules established in 1982 Convention on the Law of the Sea.

However, it will first be noted that this legislation contain provisions defining the internal waters and others for the determination of the baseline for the determination of the baseline for the measurement of the territorial sea although both provisions have practically the same effect. According to these provisions the base line of the territorial sea is shifted out to the fringe of islands and shoals within twelve miles of the coast.

It is also provided that, where there is an island group which may be connected by lines not more than twelve nautical miles long, lines may be drawn along the shore of all the islands of the group if the islands form a chain, or along the outer-most islands of the group if the islands do not form a chain.

Moreover, each of the laws in question includes a provision to the effect that in cases where the measurement of the territorial sea according to the provisions of the legislation concerned leaves behind a region of high seas surrounded by the territorial sea from all sides and extending not more than twelve nautical miles in any direction such a region will form part of the territorial sea. (2)

-
- (1) The 1982 convention, Article 7, Part II.
(2) The Middle Eastern States and the Law of the Sea, Ali El-Hakim, page 8.

Furthermore, according to the legislation of Democratic Yemen, a bay whose waters may be included in the internal waters, includes any islet, lagoon or other arm of the sea. (1)

Thus a "bay" does not have to meet the simicircularity requirement or the twenty-four nautical miles closing limit of Article 10, Paragraph 5 of the 1982 Convention.

2.4.3 Innocent Passage Through the Territorial Sea

The legislation of Democratic Yemen, claims that its sovereignty over its provisions of international law as to the innocent passage of foreign vessels through the territorial sea of the Republic. Such passage is innocent so long as it is not prejudicial to the security, integrity and independence of the Republic.(2) However this legislation made a distrincitn between merchant and military vessels in the innocent passage, whereby the entry of foreign warships, including submarines and other underwater vehicles into and their passage through the territorial shall be subject to prior authorization from the competent authorities in the Republic. (3)

In this regard, the 1982 Convention on the Law of the Sea is absolutely clear that warships have the same rights of innocent passage through the territorial sea as merchant ships, (4) but if any warship does not

-
- (1) See Article 1, Act No. 45, 1977 of P.D.R.Y.
(2) See Act No. 45 of 1977 Article 6, (a) of Democratic Yemen.
(3) See Act No. 45 of 1977.
(4) See 1982 Convention on the Law of the Sea.

comply with the laws and regulations of the coastal state concerning passage through the territorial sea and disregards any request for compliance there with which is made to it, the coastal state may require it to leave the territorial sea immediately. (1)

2.4.4 The Legal Status of Perim, Kamaran and Kuria Muria

Perim and Kamaran are two strategically situated islands belonging to the People's Democratic Republic of Yemen. The former lies within the narrow straits of Bab el-Mandeb, the southern entrance to the Red Sea whereas the latter lies about four miles off the coast of the Yemen Arab Republic. However, there has been some controversy about the legal status of these two islands. The Kuria Muria Island, which lies in the Arabian Sea and belong to the Sultanate of Oman at the present.

The 30th of November 1967 was the date on which the territory became independent after 129 years of British rule. On the same day a "consensus" on Aden was adopted by the United Nations General Assembly which, wished peace and prosperity to the Territory on its accession to independence, and affirmed the unity and territorial integrity of the whole territory, including all islands as prescribed in the General Assembly Resolution 3183 (XXI) of 12 December 1966. The latter resolution indicated that the Territory of Aden includes, in addition to Aden, the Eastern and Western Protectorates and the Islands of Perim, Kuria Murai, Kamaran and other offshore islands.

(1) See 1982 Convention, Article 30.

However, on 30 November 1967 the United Kingdom informed the General Assembly that:

".... In view of the negative reaction of the United Nations to the proposal for the internationalisation of Perim, the British had consulted the people who had confirmed their wish to remain with South Arabia, accordingly, Perim would be part of the new Republic. The people of Kamaran had decided to unite with Aden and accordingly, it too would be part of the new state. However, the people of Kuria Muria had made it clear that they wished to be returned to Muscat and Oman, to which they had previously belonged. Therefore, sovereignty over these islands would be transferred to the Sultan of Muscat and Oman."

The Kuria Muria Island

An agreement for the cession of the Kuria Muria islands (Halaanee, Jibleea, Soda, Haski and Ghurzoud) to Muscat and Oman was concluded between the United Kingdom and the Sultan of Muscat and Oman and took effect on 30 November 1967. The treaty noted that the five islands known as Kuria Muria islands were ceded in 1854 to Queen Victoria by Saud-bin Sultan, Sultanate of Muscat and Oman. Although the Preamble to the treaty acknowledges that the act of cession was the result of the express wish of the inhabitants, Article 1 of the treaty asserts that the Britannic Queen ceded her "sovereignty" over the Kuria Muria Islands. It is therefore, arguable whether the act was a cession of British legal sovereignty or merely British jurisdiction and control.

During the adoption by the General Assembly of the "consensus" on Aden referred to above, many Arab States expressed their concern at the "separation" of Kuria Muria from the new Republic of Southern Yemen. And on 30 December 1967 the first President of Southern Yemen said that Britain had "no right" to cede Kuria Muria to the Sultan of Muscat and Oman, adding that the Republic of Southern Yemen had the legitimate right to recover its sovereignty over every inch of the territory, including the Kuria Murias, Perim and Kamaran. On 1 December 1967 the President of Yemen appointed a Governor for Perim, Kamaran and Kuria Muria Islands.

However, in February 1974 the Sultan of Muscat and Oman affirmed that the Kuria Muria islands were under the sovereignty of his Sultanate.

The Kamaran Islands

Kamaran which includes the island of Kamaran and its adjacent islets, lies in the Red Sea, about four miles off the coast of the Yemen Arab Republic and more than two hundred miles to the north of Perim island. When under British rule, Kamaran was administered from Aden by a Commissioner as a protectorate under the Foreign Jurisdiction Act of 1890. However, as noted above, on 30 November 1967 the crown's power and Jurisdiction in Kamaran were terminated and the territory became part of the Republic of Southern Yemen.

In 1956 the Government of Northern Yemen protested to the British Government against the granting of oil exploratory concessions in Kamaran, on the grounds that the island formed part of Northern Yemen. The Secretary of the State for the colonies replied that the Government of Northern Yemen:

"... have been informed that Her Majesty's Government are unable to accept that the King of Yemen has any claim to Kamaran Island, and that accordingly Her Majesty's Government see no reason why the concession should be cancelled."

The Northern Yemeni claim does not appear to have been raised again, though in 1967 it was observed that when the British administration was withdrawn from Kamaran it appeared that Yemen would be confronted by the South Yemen Republic as an adverse claimant of the island.

But, in 1972 tensions between Sanaa and Aden increased and serious fighting broke out on the border. In the course of these hostilities North Yemen occupied the island of Kamaran which is situated off the North Yemen coast but had been under the domination of South Yemen.

Perim Island

Perim island is located at the narrowest point of the straits of Bab el-Mandeb, the southern entrance to the Red Sea. Its area is about five square miles. It has a population of approximately 500, mostly fishermen, and has a small harbour and an airfield. As shown earlier, Perim divides the main strait of Bab el-Mandeb in one large strait and one small strait. It is separated from the Arabian coast - Democratic Yemen and the Yemen Arab Republic - by a small strait, which is about three miles long and varies in width from three to one and a half miles. From the African coast, Ethiopia and the Republic of Djibouti, it is separated by the large strait which is about ten miles long with a general width of about ten and half miles.

Furthermore, the island was first occupied by France in 1738 and later in 1799 it came into the possession of the British, who occupied it for the purpose of preventing the French in Egypt from establishing communication with the Indian Ocean through the Red Sea.

It was reoccupied by the British in January 1857 and used as a coaling station. The island was administrated as part of the Indian Empire until 1937, when it became part of the British colony of Aden.

During the debate on the Aden, Perim and Kuria Muria Islands Bill in the House of Commons in June 1967, proposals were made to exclude Perim from the Bill and place it under United Nations administration, because of its strategic location and because it was thought that the Yemen Arab Republic might claim sovereignty over this island.

However, on 30 November 1967, the Foreign Secretary told the House of Common that he had received confirmation from the United Nations that the proposal for the internationalisation of Perim "would not be entertained because it was contrary to the latter and spirit of the United Nations Resolution (on Aden)." He informed the House that after consultations with the inhabitants, the latter had adopted in favour of remaining with South Arabia. Eventually Britain relinquished sovereignty over the island under the Aden, Perim and Kuria Muria Act, 1967, and the island became part of the new Republic of Southern Yemen.

The Contiguous Zone

The conception of the "contiguous zone" described in

the 1982 Convention, is to give the right to the coastal state to exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. This zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

However, Democratic Yemen claimed a contiguous zone of a distance of 24 nautical miles from the nearest point of the baseline.

One interesting observation in relation to the contiguous zone claim of the State of Democratic Yemen legislation is that, it refers to security matters. As indicated above the 1982 Convention does not recognise special security rights in the contiguous zone.

In this regard the author recommends to remove the term "security" from the respective Act No. 45 of 1977 Article 12, Paragraph (A). (1)

It is considered that the extreme vagueness of the term "security" would open the way for abuses and that the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safe guard the security of state. in so far as measures of self-defence against an imminent and direct threat to the security of the state are concerned, the commission refers to the general principles of international law and the charter of the United Nations. (2)

(1) The Contiguous Zone of Democratic Yemen.
(2) See II, Yearbook of ILC (1956), page 295.

Marine Pollution Control

The Red Sea and the Gulf of Aden, are relatively clean areas because industrial wastes and domestic sewage are still limited due to lack of intensive urbanization along the coast. There is, however, great danger of pollution by oil from tankers because of the increase of the carriage of oil as a result of the re-opening and deepening of the Suez Canal. (1) Moreover, due to its configuration and the considerable danger of pollution by oil as well as pollution by garbage from ships in accordance with the 1973 International Convention for the Prevention of Pollution from Ships.

Despite this, few steps have so far been taken by Democratic Yemen, at national, regional and international levels, to establish legal requirements for the control of marine pollution.

A. National Level

Act 45 of the 1977 Section 1 defines "pollution of the marine environment" as:

"The introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities."

(1) See, the Red Sea and the Gulf of Aden, Ruth 1982, page 18.

However, this act makes it illegal for any person to cause any pollution detrimental to human health or to the living resources of the marine environment in the internal waters, territorial sea or the exclusive economic zone of the Republic. (1) Nevertheless, there are other provisions in this act dealing with such matters relating to punishment, civil liability for costs and damages. (2)

B. Regional Level

In January 1976 Democratic Yemen participated in a conference held in Jeddah, Saudi Arabia, at the invitation of the Arab League Educational, Cultural and Scientific Organisation (ALECSO), to study the issue of scientific research on, and the preservation of the marine environment of the Red Sea basin and the Gulf of Aden. Furthermore, the participants in this conference were Egypt, Ethiopia, Jordan, Somalia, Sudan, Saudi Arabia, and the Yemen Arab Republic. (3)

The Conference adopted the action plan for the conservation of the Marine Environment and Coastal Areas in the Red Sea and the Gulf of Aden together with the following two legal agreements: (4)

-
- (1) See Act 45 of 1977, Section 7, Article 22.
 - (2) See Act 45 of 1977, Section 7, Article 23 and 24.
 - (3) See the Middle Eastern States and Law of the Sea, Ali El-Hakim, p. 23.
 - (4) See the UN Environment Programme, Regional Convention, p. 3 (introduction).

1. Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment.
2. Protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency.

Finally, Democratic Yemen adopted the mentioned regional convention and the protocol concerning regional co-operation. (1)

C. International Level

Democratic Yemen is party to the International Convention for the Prevention of Pollution of the Sea by Oil, 12 May 1954, as amended 13 April 1962.

Even though, Democratic Yemen did not adopt the International Convention for the Prevention of Pollution from Ships, 1973.

(1) See the UN Environment Programme, Regional Convention, p. 5.

CHAPTER III

THE EXCLUSIVE ECONOMIC ZONE

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THE EXCLUSIVE ECONOMIC ZONE

3.1 THE CONCEPT OF THE EEZ

The 1982 UN Convention on the Law of the Sea has formalized the international legal concept of the exclusive economic zone. (1) This sea area is officially designated in the convention as the "exclusive economic zone".

The term "exclusive" makes it possible to assume that we are dealing with an exclusive national zone of the coastal state in which it exercises exclusive rights or exclusive jurisdiction. However, in actual fact this sea area is, under the Convention, part of the high seas with certain exceptions favouring the coastal state. (2)

Nevertheless, all the economic rights of the coastal state in its economic zone are exclusive, because under certain circumstances, other states retain the right to fish, and other activities including scientific research and the preservation of the marine environment. ✓

One should also point out that the elements of the exclusive economic zone have long been known and recognized in the international law of the sea and in the legislation of individual countries. These elements include, the sovereign rights to the resources of the seabed and its subsoil in areas ✓

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- (1) See Article 55 of the 1982 UN Convention on the Law of the Sea.
(2) See the International Law of the Sea.
(3) See Articles 61, 62, 69 and 70 of the 1982 Convention.

adjacent to territorial waters, and the exclusive rights to the living resources of exclusive fisher zones recognized by states as customary norms of the international law of the sea.

However, the living and mineral resources are concentrated within the 200 miles latorial sea belts, and these zones also account for over 90% of the world's total catch.

The scientific and technological revolution has made it possible to harvest living resources and mine minerals far from the shore and at great depths. So the concept of the exclusive econmic zone was formulated to substantiate the claims of the coastal states to these resources as a whole. However, it provided a legal framework for the developing countries striving to assert their sovereign rights to the living and mineral resources of 200-mile zones. This would enable the developing nations to explore and exploit these resources on their own.

The 1982 Convention on the Law of the Sea regards this zone as part of the high seas with certain exceptions favouring the coastal state. Under Article 55 of the Convention, the exclusive economic zone is a special area beyond the limits and adjacent to the territorial sea, therefore, the sovereignty of the coastal state does not extend to it. Nevertheless, all states enjoy the freedoms of the high seas in the exclusive economic zonem i.e., freedom of navigation, the laying of underwater cables and pipelines and other related uses of the sea authorized under International Law of the Sea, and compatible with other provisions of the 1982 Convention, such as uses connected with the operation of ships and aircraft, and the underwater cables and pipelines. (1)

(1) See Article 87 of 1982 Conventon.

Furthermore, the coastal states may promulgate only such laws and regulations for preventing, reducing and controlling pollution from ships as correspond to the general acceptable international standards and rules. (1)

The exclusive economic zone can be defined as an area of the high seas up to 200 nautical miles wide subject to the regime based on the freedoms of the high seas. The coastal state is granted a scope of rights and jurisdiction clearly defined in the 1982 UN Convention on the Law of the Sea.

3.2 THE LEGAL REGULATION OF MARITIME TRAFFIC

With regard to the maritime traffic in the exclusive economic zone, all states whether coastal or landlocked, enjoy the freedom of navigation. (2) This freedom therefore applies to the exclusive economic zone in the same way and on the same scale as it does to the rest of the high seas. However, the freedom of navigation is exercised in the economic zone by merchant vessels and by warships.

Despite the recognition of the coastal state's sovereign right to the natural resources of the exclusive economic zone, the 1982 Convention does not restrict the navigation of fishing vessels in this zone. However, the right of fishing and research vessels to freely navigate in this sea area, does not mean that they can fish or conduct research, without permission from the coastal state.

Nevertheless, the 1982 Convention imposes certain obligations

(1) See Article 211, Paragraph (5) of 1982 Convention.

(2) See Article 58 of the 1982 Convention.

on the coastal state in connection with its use of living resources in the economic zone, as well as delimits its sovereign rights to these resources.

The duty of the coastal state to promote optimum use of living resources in the economic zone implies its obligation to ensure the access of other states to the remaining part of the allowable catch.

There are certain limits to the jurisdiction of the coastal state in ensuring compliance with its laws and regulations relating to the exploration and exploitation of living and non-living resources in the exclusive economic zone. Furthermore, the coastal state may apply such measures as inspections and arrest of foreign ships and legal procedures with regards to them if these measures are necessary for securing compliance with relevant laws and regulations.

With regard to the Article 69, (1) landlocked states have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus in the exclusive economic zone of the coastal states of the same subregion or region.

3.3 LEGAL REGULATION OF MARINE SCIENTIFIC RESEARCH AND MARINE ENVIRONMENT PROTECTION

The coastal state has a jurisdiction over marine scientific research and has the right to regulate such research allowing other states and competent international organizations to engage in it. The coastal state is to be guided by the relevant provisions of the Convention and may not make the

(1) Of the 1982 Convention on the Law of the Sea.

regime of research in its exclusive economic zone more stringent. (1) Furthermore the coastal state has an exclusive jurisdiction over the protection and preservation of the marine environment in its economic zone. (2) However, the rights of the coastal state in the exclusive economic zone with regard to the marine environment protection are, under the 1982 Convention, more limited than its rights in other spheres. This is particularly clear from the Article of the Convention that deals with prevention of marine pollution from ships. According to the 1982 Convention, a coastal state may, in respect of their economic zones, adopt laws and regulations to prevent pollution from ships only if these laws and regulations conform or give effect to international rules and standards. (3)

The control of marine pollution, at the Third UNCLOS and the question of marine pollution control, were discussed with reference to both the area within the limits of national jurisdiction, i.e. the exclusive economic zone, and the area beyond these limits, the high seas and the international seabed area. Three main sources of marine pollution have been considered: vessel-source pollution, pollution from seabed exploitation, and pollution from land-based sources. As regards the latter, which is considered the major source of marine pollution, the developing countries insisted that any international standards should take into account their economic capacity and their need for economic development.

If this concern was taken into consideration, the developed countries felt that it would permit double standards. It has,

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- (1) See Article 56, Para (1)(b)(II) 1982 Convention.
 - (2) See Article 56, Para (1)(b)(III) 1982 Convention.
 - (3) See Article 211 of 1982 Convention.

therefore, been generally accepted that it would suffice to include in the proposed treaty some general obligations to encourage states to take national and regional measures to prevent and control land-based pollution.

3.4 THE EXCLUSIVE ECONOMIC ZONE OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN

The Republic has an exclusive economic zone, the breadth of which extends up to 200 nautical miles from the base line used to measure the territorial sea. However, in this zone, including its seabed and subsoil and the superjacent water column, the Republic has exclusive sovereign rights for the purpose of conserving, exploring, exploiting and managing its renewable and non-renewable natural resources, including the production of energy from the waters, currents and winds. ✕

Nevertheless, the term "sovereign rights" defines the functional character of the area and the functional character of the rights themselves for exploring and exploiting natural resources.

With regard to the exploitation of resources within a certain sea area the scope of the rights exercised by the State of Democratic Yemen approaches the scope of the rights it exercises as a sovereign state within its national territory, and the limited nature of the rights of the State of Democratic Yemen, since in this case we are dealing with individual sovereign rights in relation to definite economic objectives, and not with national sovereignty which means "territorial command".

However, Democratic Yemen has been granted sovereign rights over the living resources of the economic zone, which means without its consent, other countries cannot use these resources even if Democratic Yemen is not exploiting them itself.

With regard to the jurisdiction over the exclusive economic zone, Democratic Yemen has an jurisdiction in its economic zone over other activities related to economic exploration and exploitation of the zone, such as power production through the use of water, and sea currents or winds. Democratic Yemen also has exclusive jurisdiction over the marine environment with regard to its preservation and protection and to the prevention, control and abatement of marine pollution, as well as to authorization, regulation and control of marine scientific research.

In addition, the Republic guarantees the freedom of navigation, overflight and laying of submarine cables and pipelines in its exclusive economic zone.

3.5 THE RESOURCES IN THE EXCLUSIVE ECONOMIC ZONE OF THE STATE OF DEMOCRATIC YEMEN

The geological formation of the bottom of the Gulf of Aden and the Arabian Sea and the temperature of its water appear to be favourable to a large extent for the growth of fish resources. (1)

In this regard the only problems of the State of Democratic Yemen in its exclusive economic zone are that;

- it did not promote optimum use of living resources in the economic zone, which implies its obligation to ensure the access of other states to the remaining part of the allowable catch.
- it still lacks the technical means for the necessary control and conservation of resources.

(1) See Chapter VI, Fisheries

- the limitation of beneficial cooperation from developing states.
- it did not take appropriate measures so that the maintenance of the living resources of the zone will not be endangered by over exploitation.

3.6 THE OFFSHORE PETROLEUM EXPLORATION

The Government of the People's Democratic Republic of Yemen intends to give priority to petroleum prospecting to the offshore petroleum exploration. For this purpose the government has offered very favourable terms to oil companies. Exploration agreements were first signed with companies from the German Democratic Republic and the USSR but western participation was also welcomed; a Canadian firm was awarded a concession in 1975. In 1977 Agip, the refining and distribution subsidiary of the Italian State Agency ENI, signed an offshore petroleum exploration agreement, and Siebens Oil and Gas began drilling in the Samaha offshore concession. In June 1979 ENI signed a long-term agreement for the exploration and production of petroleum and natural gas in an offshore zone covering 15,000 square Km. Agip was the first company that discovered reserves offshore, with a test-well producing 3,000 barrel per day and in the same year the company signed an agreement to extend its offshore concession in the Gulf of Aden to 5,000 square Km.

CHAPTER IV

THE CONTINENTAL SHELF

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THE CONTINENTAL SHELF

4.1 THE CONCEPT OF THE CONTINENTAL SHELF

The law on the continental shelf began with the development of technically feasible and economically justifiable means for the exploitation of the mineral and non-living resources of the seabed and subsoil of the submarine areas contiguous to the territorial sea. The fact is that the concept of the continental shelf was established by the generally known the "Truman Proclamation". (1) This proclamation "soon came to be regarded as the starting point of the law on the subject" of the continental shelf. However, a concomitant of unilateral claims laid later by several countries, secured this concept widespread support and was established as norm of international treaties in the 1958 Geneva Convention on the continental shelf. This Convention recognized the sovereign rights of the coastal state to explore and exploit the natural resources of the seabed and its subsoil in areas adjacent to the coast but lying beyond the territorial sea at a depth of 200 or more meters, that is up to the point where the exploration of such resources became impossible.

The international legal regulation of the activities of states to exploit the resources of the seabed in the offshore waters of the high seas on the basis of the continental shelf concept

(1) The need for new oil resources prompted the government of the United States to issue on 28 September 1945 a proclamation, generally known as the "Truman Proclamation". Nevertheless, the Truman Proclamation declared, inter alia, that, "the Government of the United States regarded the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States, subject to its jurisdiction and control."

was consistent with the needs to exploit the underwater resources of the world ocean, therefore, a positive assessment of the fact that international law developed norms to regulate the exploitation of the natural resources of the continental shelf.

The incorporation of the criterion of "exploitability" into the formula that delimited the rights of coastal states under the 1958 Convention was justified in that the issue of deep-sea mining beyond the shelf zone was not yet raised in practical terms during the first UN Conference on the law of sea. But the limitation of the rules on the continental shelf to the 200-meter isobath was at variance with the rate of scientific and technological progress in the exploration of resources found on the seabed and ocean floor. As the international law commission noted, the exploitation of the resources of underwater sea areas by the coastal state should not be confined to any definite limit in the future when exploitation at a depth of more than 200 meters becomes possible. (1)

According to the definition contained in the 1958 Geneva Convention on the continental shelf, the rights of states to the natural resources of the seabed were (as a rule and compared to other types of national jurisdiction) in force at the greatest distance from the shore; therefore, the task was to precisely delimit the outermost boundary of the continental shelf beyond which the seabed and the ocean floor would not be subject to national jurisdiction.

But, the emergence of the 200 mile economic zone concept which largely coincided with the continental shelf concept in what concerned the rights of coastal states to the mineral resources of the seabed - exerted a noticeable influence on

(1) See International Law of the Sea, Progress Publishers, Page 69 Soviet Authors, 1988.

the issue of the outer limit of the continental shelf. Advocating the establishment of an economic zone standard under international law, the proponents of such a zone in fact wanted the sovereign rights of states to the resources of the continental shelf to apply within a distance of 200 miles from the shore. However, it proved impossible to arrive at a mutually acceptable outer limit of the continental shelf virtually throughout the Third UN Conference on the Law of the Sea.

However, the only feasible solution to the problem of the continental shelf could be attained through ensuring an agreement which would help bring the opposite positions on this matter closer together through a reasonable compromise. An element of such compromise that, the coastal state would have the right to extend its jurisdiction to the continental shelf beyond the economic zone on condition that part of the benefits derived from the exploitation of mineral resources beyond the 200 mile zone be shared with the international community. (1)

With regard to the 1982 Convention on the Law of the Sea, the continental shelf of a coastal state comprises the seabed and subsoil thereof extending beyond its territorial sea through the natural prolongation of its land territory up to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to this distance. However, if the underwater edge of the mainland extends more than 200 miles from the coastline, the outer limit may not exceed 350 miles from the baseline of territorial waters or

(1) Third UN Conference on the Law of the Sea, Vol. II, Page 168, 1975, New York.

100 miles from the 2,500-meter isobath (the line connecting a depth of 2,500 meters). (1)

This convention solved the issue of the outer limit of the continental shelf in areas of underwater mountain ridges. The formula incorporated into the Convention maintains that underwater mountain ridges beyond the underwater edge of the main land cannot be regarded as part of the continental shelf.

Furthermore, the new definition in the 1982 Convention, of the continental shelf removes the vagueness of the 1958 Geneva Convention with regard to the outer limit of the continental shelf.

Nevertheless, the 1982 Convention, reaffirms the fact that the legal regime of the waters and air space above the shelf differs from the legal status of the shelf itself. There is a special indication that the exercise of the coastal state's rights and freedoms of other states or raise unwarranted obstacles to the exercise of these rights and freedoms.

4.2 THE CONTINENTAL SHELF OF DEMOCRATIC YEMEN

Democratic Yemen has claimed a continental shelf which extends throughout the natural prolongation of the Republic's land territory to the outer limit of the continental margin, or to a distance of two hundred nautical miles from base-lines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance. (2)

Under the Act No. 45 of 1977 Article 16 permission should be obtained for scientific research on the continental shelf by

(1) See Article 76, 1982 Convention on the Law of the Sea.
(2) See Act No. 45 of 1977 Section 1, title and Definitions.

foreign states. There is, however, a special provision stipulating that, the State of Democratic Yemen may, at its discretion, refuse to consent to the conduct of such research if it is of direct significance for the exploration and exploitation of the natural resources of the shelf, or if it implies drilling, the use of explosives, marine pollution or the creation of artificial islands, installations or structures.

With regard to the artificial island, installations and structures, the State of Democratic Yemen has the exclusive right to create, allow and regulate the creation, operation and use of the continental shelf of all artificial islands, installations or structures for the purposes of scientific research, exploration and exploitation of the resources of the continental shelf, as well as for other economic purposes and for the protection and conservation of the marine environment.

In this regard the author recommends the State of Democratic Yemen to establish 500-meter safety zones around such artificial installations and structures on the continental shelf, to insure the safety of both navigation and the artificial islands and structures.

CHAPTER V

THE INTERNATIONAL LEGAL REGIME
OF INTERNATIONAL STRAITS

CHAPTER V

THE INTERNATIONAL LEGAL REGIME OF INTERNATIONAL STRAITS

5.1 THE REGIME OF INTERNATIONAL STRAITS:

International law has long recognized that international straits are a category apart from other maritime straits. It is straits comprising intensive international navigation routes used for a sufficiently long period which are considered as "international straits". Such straits connect parts of the high seas and must be the only or the shortest way between such parts.

Of the many distinguishing features of international straits, their importance for international navigation is of cardinal significance.

Nevertheless, the principle of free passage through international straits, met the requirements of navigation during preparations for the 1958 UN Conference on the Law of the Sea and during the Conference itself.

Significantly, at that time most straits which were used for international navigation and which had no special regime established under treaties lay beyond the territorial waters of coastal states, consequently, passage or overflight could be exercised within the strip of the high seas within these straits.

This is why the 1958 Conference considered the question of

straits only in relation to passage through straits in which the territorial waters of the coastal states overlapped. However, since it was important to ensure unhindered and swift passage of ships through straits, the conference deemed it expedient to lay down a special provision ruling out a suspension of innocent passage through straits used for international navigation. (1)

The issue of international straits became quite topical when the intensity of international maritime traffic increased in the late 1960s and early 1970s. This made it necessary to ensure safe navigation in straits so as to minimize possible damage to coastal states while preventing interference with the transit of foreign ships through straits.

Furthermore, the solution of this issue was furthered by the elaboration, within the framework of the International Maritime Organization (IMO), of a traffic separation scheme for international straits with intensive navigation. Such schemes began to be applied in the strait of Bab el-Mandab, Hormuz, Gibraltar, and other international straits.

Nevertheless, the issue of international straits could not be solved without ensuring free passage under international law. This was due to the fact that in the 1960s many states moved to extend their territorial waters, therefore to extend their sovereignty and thus covering the entire area of international straits up to 24 miles wide. In the fact these coastal states wanted to control the passage of foreign ships through the straits.

Consequently, the existing principles and standards which

(1) See Article 16, Paragraph (4) of the 1958 Convention on the Territorial Sea and Contiguous Zone.

defined the regime governing the use of international straits essentially ceased to ensure unimpeded passage of foreign ships through them. However, a need arose for elaborating and adopting uniform treaty sanctioned standards that would reliably guarantee freedom of transit through straits and, at the same time, would give sovereign rights in the part of their territorial waters covering the area of the strait.

Nevertheless, it was evident that the regulation of passage through international straits on the basis of the innocent passage concept would not meet the interests of the overwhelming majority of states, because this would impose certain restrictions, objectively inherent in this concept, on the use of straits. The concept of innocent passage applies only to navigation and does not effect the sovereign right of states to decide on the use of straits. The concept of innocent passage applies only to navigation and does not affect the sovereign right of states to decide on the use of the air space above their territorial waters for the purposes of over-flight. If the concept of innocent passage was applied to straits as the only comprehensive method of regulating their use for transport purposes, this would mean that foreign aircraft could not fly over international straits. Until the territorial waters of the coastal states covered these straits completely, aircraft of all nations had been able to fly over straits unhindered in accordance with one of the freedoms of the high seas formalized in Article 2 of the 1958 Convention on the High Seas.

The extension of the innocent passage concept to international straits would change the regime which governed the passage of submarines through straits and which had existed before territorial waters covered these straits (submarines had to surface to exercise the right of innocent passage).

Since the innocent passage concept admits the possibility of

coastal states imposing certain restrictions on the passage of warships through their territorial waters, application of this concept to international straits would give a coastal state discretionary powers to either allow such passage or generally interfere with it for political reasons and under various pretexts having nothing in common with this coastal state's national security considerations.

However, the State of Democratic Yemen is interested in free passage through straits used for international navigation. Passage through the strait of Bab el-Mandeb is also essential for international maritime communications and also for great importance to the State of Democratic Yemen.

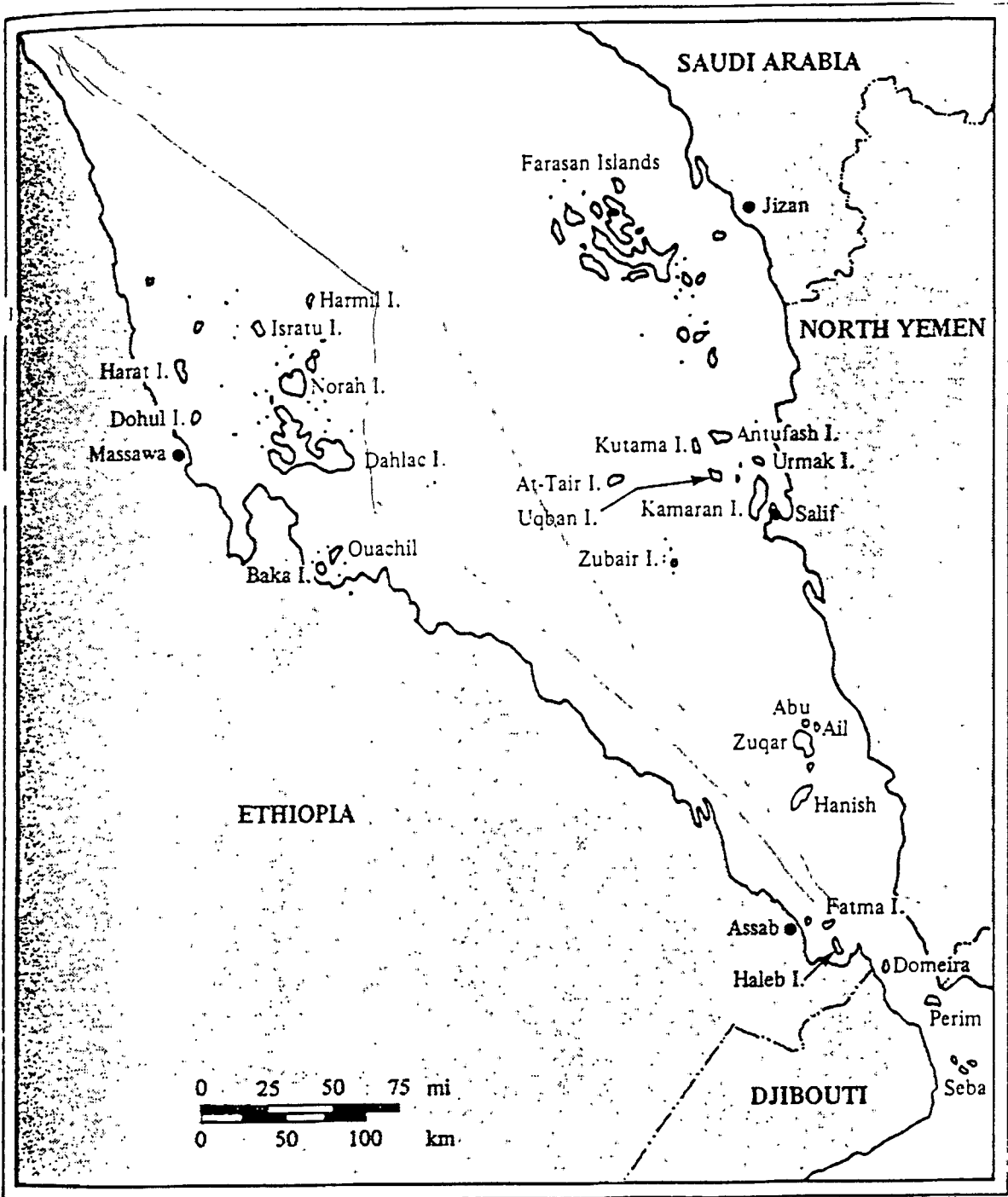
In the 19th Century, the Red Sea and the Gulf of Aden were a focus of rivalry between the two colonial powers, France and Britain. Both states were guided by the strategic necessity of securing their overseas communications. Britain was mainly interested in the route to India while France wished to safeguard the route to Madagascar and Indo-China. In the late 20th Century, the Red Sea and the Gulf of Aden were still the scene of rival politics by the Super Powers (1) in merchant shipping and sea power.

5.2 THE STRAIT OF BAB EL-MANDEB:

The strait of Bab el-Mandeb joins the Arabian Sea and the Gulf of Aden to the Red Sea. It is bordered on the east by the Yemen Arab Republic and by the People's Democratic Republic of Yemen, and in the west by the Republic of Djibouti. About 14 miles (22 Km.) farther north, where the strait is nearly 20

(1) The USA and the USSR

MAP NO. 2 - STRAITS OF BAB EL-MANDEB



miles (32 Km.) wide, lies the coast of Ethiopia. All the littoral states have claimed a territorial sea of 12 miles. In addition North Yemen claimed jurisdiction for certain purposes in contiguous zone of six miles, while Djibouti's and Democratic Yemen's similar claim extend over a 12-mile wide area. Moreover, both Democratic Yemen and Djibouti claim jurisdiction over an exclusive economic zone of 200 miles. (1)

On the eastern shore of the strait of Bab el-Mandeb lies the peninsula of Ras Bab el-Mandeb, which is about four to six miles (six to ten Km) wide. It consists of rocky, volcanic plains with several hills 600 - 900 feet (200 - 300 meters) high. The coast of Ras Bab el-Mandeb is surrounded by coral reefs with a width of up to 4,500 feet (1500 meters). The border between North Yemen and Democratic Yemen passes in the middle of Ras Bab el-Mandeb. The western, African shores of the strait are dry and barren plains, with several hills rising to a few hundred meters in the coral reefs several hundred meters wide.

Furthermore, at its narrowest point the strait of Bab el-Mandeb is divided by Perim, a hot, dry island which physically dominates the strait. It is a rocky, volcanic island of approximately five square miles (13 - 14 square Km) in area.

Perim was visited by the Portugese in 1513 and occupied by the French in 1738. The British landed there in 1799 in order to block the water way to India against Napoleon's navy. They returned in the nineteenth century and formally annexed the island in 1856. The island was incorporated to the former British colony of Aden in 1937. When Britain negotiated on

(1) See The Red Sea and the Gulf of Aden - Ruth Lapidot, page 130, 1982.

its withdrawal from Aden, Perim was claimed by and transferred to the people's Democratic Republic of Yemen in 1976.

The sea space between the Asian coast and Perim, called Small Strait about one and a half to three miles (two and a half to five Km) in width and a depth of about 33 - 72 feet so navigation is dangerous due to the strong currents.

The area between Perim island and the African coast, named Large Strait, is about 9.1/4 miles (16.5 Km) wide at its narrowest part is about 1020 feet (311 meters) deep in the middle and much less dangerous than the Small Strait for navigation. (1)

5.3 THE TRAFFIC SEPARATION SCHEME:

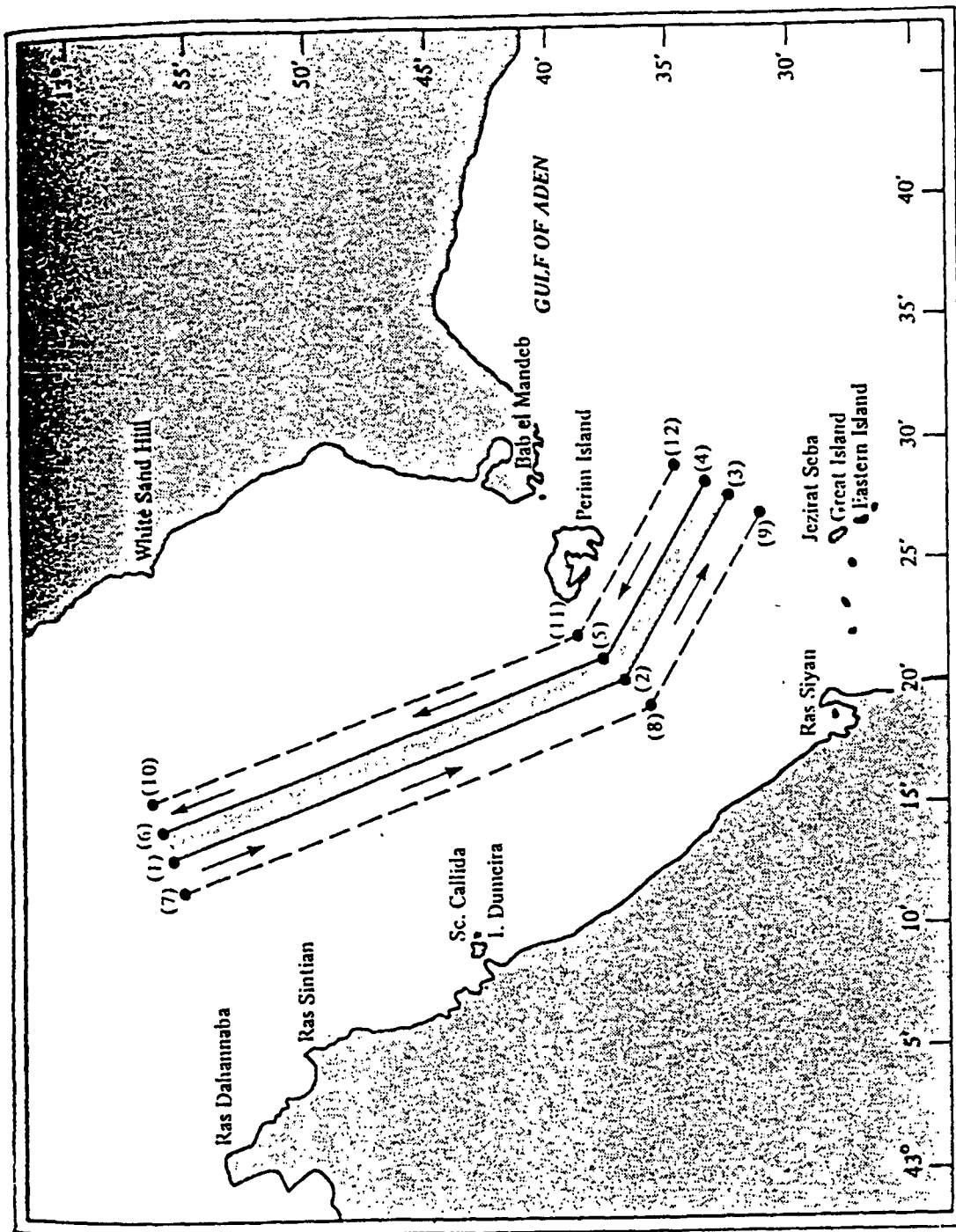
The International Maritime Organization (IMO) has dealt with the routing systems and traffic separation schemes for vessels have been utilized by governments in various maritime areas of the world in order to reduce the number of collision and strandings of vessels, which increased considerably in the 1960s and 1970s. (2)

As mentioned (IMO) dealt with this aspect of the Law of the Sea, and has approved a considerable number of traffic separation schemes, recommending them to governments for their observance. One scheme has been approved for the strait of Bab el-Mandeb. As shown on the map a mile-wide separation zone has been centred upon a line running west of Perim island. North-bound traffic is expected to sail between that zone and Perim, while south-bound ships are expected to stay

(1) See The Red Sea and the Gulf of Aden - Ruth Lapidot, page 32, 1982.

(2) See the Map No. 3.

MAP NO. 3 - TRAFFIC SCHEMES OF BAB EL-MANDEB



west of that zone. The Small Strait is recommended for coastal traffic in both directions.

5.4 THE LEGAL REGIME OF BAB EL-MANDEB:

The littoral states of the Strait of Bab el-Mandeb claimed a breadth of territorial sea up to 12 n miles, which in fact would not leave any space for the high seas. However, these claims are not opposed to other states who neither claim nor recognize such broad territorial waters. In so far as a broader territorial sea is or may become recognized not opposed to other states, the question will arise whether the regime of straits applies to the strait of Bab el-Mandeb. The answer is yes. First, this waterway links two parts of the high seas - the Red Sea and the Gulf of Aden. Second, the issue of international straits could not be solved without ensuring free passage under international law.

But, the existing principles and standards which defined the regime governing the use of international straits essentially ceased to ensure unimpeded passage of foreign ships through them. However, a need arose for elaborating and adopting uniform treaty sanctioned standards that would reliably guarantee freedom of transit through straits and at the same time, would give sovereign rights in the part of their territorial waters covering the area of the strait.

Moreover, the concept of innocent passage applies only to navigation and does not effect the sovereign rights of states to decide on the use of straits.

Thus Bab el-Mandeb would be subject to the regime of innocent passage for ships of commerce and war in times of peace and in

times of an intermediary status between peace and war. (1)

In 1973 Democratic Yemen has asserted its sovereignty over the strait, and its representative at the Third U.N. Law of the Sea Conference had stressed, during the deliberation on straits, the importance of the item under discussion to his country since its territorial sea extended to the strategic strait of Bab el-Mandeb, "innocent passage through which has always been guaranteed for all peaceful purposes." "However Democratic Yemen differentiated between commercial vessels, which should enjoy the right of innocent passage, and non-commercial vessels, including warships and submarines, which by their very nature had nothing to do with international trade. Such vessels should require prior authorization by the coastal state and should observe the rules and regulations of that state". With regard to over flight, the Democratic Yemen representative stated that his delegation believed that the air space covering the territorial sea, including the straits for international navigation, formed an insparable part of the territorial sea and was therefore under the exclusive jurisdiction of the coastal state. Democratic Yemen, believed therefore, that overflight over such waters should be regulated through bilateral agreement between the coastal state and other states concerned.

In a 1978 declaration, however, Democratic Yemen adopted a more liberal view, recognizing rights of both navigation and overflight.

"Being well aware of the great importance of the Strait of Bab el-Mandeb to all peoples and states of the world as an international waterway which had

(1) See Articles 37 to 39 of the 1982 Convention of Law of the Sea.

long been used for international navigation, and of its important strategic location as a link between the international traffic lines, and believing in the importance of keeping international navigation through this vital strait free for the benefit of all the peoples and states of the area in particular and the international community in general, the Government of the People's Democratic Republic of Yemen confirms its respect for the freedom of maritime and air traffic of ships and aircraft of all coastal and non-coastal States, without prejudice to the sovereignty, integrity, security and independence of the Republic."

In brief, the Strait of Bab el-Mandeb has been of the utmost importance to international trade in general and to the shipping of the littoral states in particular.

The Strait has been subject to the general regime of international straits, namely freedom of navigation and the regime of innocent passage in the territorial seas for all ships, without effecting the sovereign right of the littoral states of the Strait of Bab el-Mandeb.

CHAPTER VI

FISHERIES

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FISHERIES

Fishing is important to the economy of both lightly populated states, such as Norway and Iceland, as well as densely populated and developed states, such as the United Kingdom, the Soviet Union, and Japan. But in the former states, where other economic opportunities are not easily available, the contribution that fishing makes to export incomes and employment is considerable, whereas in the latter countries, the contribution is smaller and not as important to their total economy.

The world's increasing population has led to a growing demand for fish, while improved technical innovations in detecting fish shoals and fishing have helped to meet that demand. In fact, during the last 25 years or so, the world's fishing catch has increased by more than two fold to about 70 million tons (1) and the recent catch statistics of the world total catch of fish, crustacean and molluscs was 76,470,600 metric tons in 1983 (2), of which 74.3% was for direct human consumption, and certain states have attempted to prescribe conservation zones and measures to prevent overfishing and catching of immature fish.

Such conservation measures are necessary because of the several differences between land and sea resources. A mineral resource, once secured by a land boundary, is a permanent part of the state's assets. But maritime resources, such as the fish fauna, are mobile and renewable, unless harvested carelessly.

Furthermore, a maritime boundary therefore cannot entirely prevent a state's fish fauna from encroachment because not only can the fish

(1) FAO Yearbook of Fishery Statistics, V.40, Table A1, 1975, page 5.
(2) FAO 1984, see Table 4.

fauna leave the state's territorial or fishing zone but overfishing outside the borders can also effect the fish population within its boundaries. Hence, all coastal states are today vitally interested in the size of the catch made outside their borders, as overfishing leads to destruction.

Friction between states over fishing has arisen every now and then, especially when one state breaches the agreement limiting its catch or when fishing vessels encroach into another state's territorial waters or fishing zones. But the underlying basic cause of such disputes is the very uneven distribution is again related to the location of phytoplankton, the basic food source for fish. It is now well established that the rich phytoplankton pastures are within 200 miles of the continental masses, or over the continental shelves.

Although fishing disputes started as early as the seventeenth century or earlier, the current bout of disputes are related to factors that have emerged recently. (1) The competition for the rich localized fisheries has intensified and the occurrence and scale of disputes have become more serious in the last twenty five years. However, the intensification of the competition is due first of all to the increased number and size of distant fishing fleets, especially those of Japan and the USSR, which include factory ships. Furthermore, other developed countries also have distant fishing fleets and domestic fleets, whereas the developing countries rely mainly on domestic fleets accounting for 41% of all fish caught by the world's distant fleets and Japan 25%. That is why some countries are alarmed at the way their fish resources are being exploited by other states with technical know-how. Related to this is their concern over conservation and management of resources. They do not want to see over fishing in their water which may lead to destruction of fish stocks before they have even developed their

(1) See South-East Asia and the Law of the Sea, Lee Yong Leng, page 29.

own capacity to fish in their own waters with modern ships and technology. This has, in turn, led to an increasing awareness of the economic disparity between developed and developing countries. It is therefore not surprising to see that the situation has led to some measures of economic nationalism among the developing countries, aggravated perhaps by the process of decolonization.

Nevertheless, this has taken the form of extravagant claims for wider and wider territorial seas, fishing and exclusive economic zones.

Both the 1958 and 1960 Conference on the Law of the Sea failed to produce any agreement on the question of the exclusive fisheries jurisdiction, but the prospects in the Third Law of the Sea Conference seem good for general agreement on a 200 mile exclusive economic zone in which the coastal state would have sovereign rights with regard to the living and non-living resources, and jurisdiction with regard to other activities, including scientific research and the preservation of the marine environment.

The State of Democratic Yemen have claimed an exclusive economic zone up to 200 nautical miles measured from the base-line. This will at least protect some of the fisheries in the Gulf of Aden and the Arabian Sea until the State of Democratic Yemen could by itself be able to exploit the seas.

Nevertheless, the fishing grounds of the Arabian Sea are Democratic Yemen's greatest potential source of wealth. Most of the country's 10,000 fishermen work only in territorial waters, while their equipment is often poor, so efficient marketing of the catch is impossible with the present state of communications. In 1979, however, co-operatives were permitted to sell 40% of their catch directly to the market at a significantly higher price than that paid by the National Fish Marketing Corporation. Cuttlefish are important to the export market, while there is much potential for increased sales of mackerels and tuna to the domestic market. In

fact Democratic Yemen's exports of fish have taken a very encouraging turn since 1973, and several foreign countries are involved in developing the industry although it is still small. The total catch increased from 36,813 metric tons in 1975 to 64,143 tons in 1976, slumped to 48,053 tons in 1978, but recovered to 89,684 tons in 1980. It declined to 77,974 tons in 1981 and to 69,731 tons in 1983.

The national fishing fleet has 17 deepsea fishing boats provided by the USSR, Japan and the People's Republic of China.

Nevertheless, the local fishermen, who are organized into 13 co-operatives, operate smaller coastal vessels while independent fishermen fish in one-man boats. A Soviet Yemeni Company and two Japanese companies are currently fishing in Yemeni waters.

Furthermore, on the processing side there are two fish canning factories, at Mukalla and Shukra, a fishmeal factory (with another due to go into production) and a fish freezing plant at Mukalla.

There have been several developments in the fishing ports of the Republic, e.g. the Port of Hedjuff at Aden, fishing harbour at Mukalla and the new fishing port construction by a Danish firm at Nishtun.

Exports of fish and fish products are estimated to be worth about 20 million dinars per year.

Nevertheless, the problem now is not only how to develop the fishing activities by using traditional techniques to a commercial industry using modern boats and equipment, but also how to ensure that foreign distant fleets do not encroach into fishing zones or, if allowed to fish, do not overfish to the detriment of future fish population.

C O N C L U S I O N

Like states elsewhere, the State of Democratic Yemen looks to the seas and oceans as the new frontiers of mankind.

Much of the land area in Democratic Yemen was parcelled out and demarcated during the colonial times. Like other countries Democratic Yemen now follows the trends of claiming the large resources of the sea. The new frontiers are tempting because suddenly ocean space has become three-dimensional. Not only it is now used for surface navigation but the sea is also vital for its resources, as an area of pollution, and a field of movement for submarines; the seabed has also vast resources of energy and minerals and is suitable as a base for sophisticated naval devices. Hence, it is not surprising that states have already been nibbling at the margins of the high seas, resulting in not only wider territorial seas but also wider fishing and economic zones.

However, the twelve-mile territorial sea and the 200-mile exclusive economic zone has been enacted into law by the State of Democratic Yemen. At the same time, like most developing countries the State of Democratic Yemen has expressed its belief that the proposed international authority for the exploration and exploitation of the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, should be essentially an operating rather than a licensing authority.

However, in the case of the Strait of Bab el-Mandeb a large number of the required offshore boundary lines and the problems regarding islands of disputed sovereignty have definitively been settled.

The fast-changing law of the sea has to be considered in relation to the past, the present and the future, none of which can be treated in isolation. The past sometimes dictates the tone of the present and the present that of the future. In other words, present

attitudes may be a result of our past experiences, and our future attitudes may be the product of our present failures.

With regard to the past practice and policies of the State of Democratic Yemen in regard to the law of the sea, it can be seen that in view of its "recentness" in terms of the existence of Statehood, not much useful analysis can be gained from the previous conduct and legislation. Much of what could be said of the past is that, they subconsciously accepted the so-called customary international law.

During what may be called "the transition from the past to the present" the State of Democratic Yemen was plagued with a number of problems. Firstly, there was a great lack of international law personnel. Secondly, since the independence the State of Democratic Yemen has been engaged in constant, though sporadic, conflict. Lastly, it was economically weak.

In so far as the future is concerned, one can only speculate or make tentative forecasts, based firstly on the attitudes and intentions and secondly on the assumptions that the present, albeit shaky, "political" alignments will remain for as long as possible bearing in mind that political solidarity with North Yemen and also with all Middle Eastern States, is likely to alter with changes in economic and socio-economic circumstances. The future of the law of the sea may be of permanent duration only if the developed, industrialised states recognise that the aspirations of the developing countries, are not to be ignored, and if the developing countries acknowledge that political success is of little or no importance without the co-operation of the technologically advanced countries.

However, as the Arab region itself is concerned (including the State of Democratic Yemen) there is still a great deal to be done by way of pooling arrangements and regional co-operation, and utilisation of existing international bodies - for example, for scientific research and pollution control. In addition to multilateral

instruments, a need arises for the setting up of more effective regional treaties, based on agreement between all States in the region, irrespective of creed or political views, for the purpose of fish farming and marine education.

In conclusion, while there is much to be said for regional co-operation and agreements, it is to be hoped that a universally acceptable system of co-operation will supersede those regional arrangements.

VIII. THE TERRITORIAL SEA, EXCLUSIVE ECONOMIC ZONE,
CONTINENTAL SHELF AND OTHER MARINE AREAS OF
(SOUTH) DEMOCRATIC YEMEN, 1977,
AND COMMUNIQUE ON THE RED SEA, 1978

Act No. 45 of 1977

...

Section I

Title and Definitions

...

Coast	The continental and island coastlines of the People's Democratic Republic of Yemen facing the Gulf of Aden, the Bab El Mandab Strait, the Red Sea, the Arabian Sea and the Indian Ocean in accordance with the maps officially recognized by the Republic;
Island	A naturally formed area of land, surrounded on all sides by water, which is above the water level at high tide;
Internal waters	The waters on the side of baselines from which the territorial sea is measured extending towards both the continental and the island land territory of the Republic;
Continental shelf	The sea-bed and subsoil thereof extending beyond the territorial sea throughout the natural prolongation of the Republic's land territory to the outer limit of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance;
Contiguous zone	An expanse of water beyond the territorial sea of the Republic and adjacent to it as defined in article 11 of the present Act;
Bay	Any indentation or inlet or fjord or creek in the coastline or land protrusion in the sea;
Low tide elevation	A naturally-formed area of land which is surrounded by and above water at low tide but submerged at high tide;
Pollution of the marine environment	The introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
Nautical mile	One thousand eight hundred and fifty-two (1,852) meters.

SOUR oc. ST/LEG/SER. B/19, p. 21.

Section II
The Territorial Sea and Contiguous Zone

Article 3. The territorial sea, its bed and subsoil thereof as well as the air space above it, are subject to the sovereignty of the Republic.

Article 4. The territorial sea extends beyond the internal waters to a distance of 12 nautical miles seaward, measured from the straight baseline or from the low-water line along the coast as marked on large-scale charts officially recognized by the Republic.

Article 5. The baselines from which the territorial sea of the Republic is measured shall be as follows:

(a) Where the coast is wholly open to the sea: lines drawn from the low-water mark along the coast;

(b) In the case of islands situated on atolls or of islands having fringing reefs: lines drawn seaward from the low-water line of the reef;

(c) In case of a bay facing the sea: lines drawn from one end of the land at the entrance of the bay to the other;

(d) In the case of a port, or harbor: lines drawn along the seaward side of the outermost harbor installations or roadsteads and lines also drawn between the tips of these installations;

(e) Where there is a low-tide elevation at a distance not exceeding 12 nautical miles from the coast: lines drawn from the low-water line on such elevations;

(f) In localities where the coastline is deeply indented, curved or cut into, or if there is a fringe of islands along the continental coast: straight baselines joining appropriate points.

ARTICLE 6. (a) Foreign ships shall enjoy the right of innocent passage through the territorial sea of the Republic. Such passage is innocent so long as it is not prejudicial to the security, integrity and independence of the Republic.

(b) Passage of a foreign ship or submarine or underwater vehicle shall not be deemed innocent if in the territorial sea it engages in any of the following activities:

1. Any threat or use of force against the sovereignty, territorial integrity or independence of the State;
2. Any exercise or practice of any kind;
3. Any act aimed at collecting information to the prejudice of the defense or security of the Republic;
4. The launching, landing or taking on board of any aircraft or military device;
5. The embarking or disembarking of any currency, person or commodity contrary to the immigration, security, customs, fiscal or sanitary laws and regulations in force;
6. Any act of wilful and serious pollution prejudicial to human health, living resources or the marine environment;
7. Any act of exploration, exploitation, or drilling for renewable or non-renewable natural resources;
8. Any survey or research activities;
9. Any act aimed at interfering with any systems of communication or any other facilities, installations or equipment;
10. Any activity which is not related to passage or is designed as to hamper international navigation.

Article 7. (a) The entry of foreign warships, including submarines and other underwater vehicles into and their passage through the territorial sea shall be subject to prior authorization from the competent authorities in the Republic.

(b) Submarines and other underwater vehicles are required to navigate on the surface and to show their flag while passing through the territorial sea.

Article 8. Foreign nuclear-powered ships or ships carrying nuclear substances or any other radioactive substances or materials shall give the competent authorities in the Republic prior notification of their entry into and passage through the territorial sea.

Article 9. The competent authorities shall have the right to take all necessary measures in the territorial sea to prevent passage which is not innocent as well as to suspend the admission of all or some foreign ships to specified areas of the territorial sea should the public interest so require, provided that such areas shall be specified in a prior notification.

Article 10. Foreign ships exercising the right of innocent passage in the territorial sea shall comply with the laws and regulations in effect in the Republic, as well as with the rules of international law and, in particular, such laws and regulations relating to transport and navigation.

Article 11. The outer limit of the contiguous zone shall be the line every point of which is at a distance of 24 nautical miles from the nearest point of the baseline referred to in article 4 above.

Article 12. The authorities of the Republic have the right to impose, in the contiguous zone, the control necessary to:

(a) Prevent any infringement of its security, customs, sanitary and fiscal laws and regulations within its territory or territorial sea;

(b) Punish infringement of the above laws and regulations whether committed within its territory or within its territorial sea.

Section III

The Exclusive Economic Zone

Article 13. The Republic shall have an exclusive economic zone the breadth of which extends 200 nautical miles from the baseline used to measure the territorial sea referred to in Article 4 of this Act.

Article 14. In the exclusive economic zone, including its sea-bed and subsoil and the superjacent water column, the Republic has:

(a) Exclusive sovereign rights for the purpose of conserving, exploring, exploiting and managing its renewable and non-renewable natural resources, including the production of energy from the waters, currents and winds;

(b) Exclusive rights and jurisdiction with regard to the construction, repair, operation and use of artificial islands, installations, facilities and other structures necessary for the exploration and exploitation of the exclusive economic zone of the Republic;

(c) Exclusive jurisdiction over the marine environment with regard to its preservation and protection and to the prevention, control and abatement of marine pollution, as well as to the authorization, regulation and control of scientific research;

(d) Other rights recognized in international law.

Article 15. Without prejudice to the rights pertaining to it, the Republic guarantees the freedom of navigation, overflight and laying of submarine cables and pipelines in its exclusive economic zone.

Section IV *The Continental Shelf*

Article 16. The authorities of the Republic may, to the exclusion of others, in the continental shelf:

- (a) Explore, exploit, manage and conserve its natural resources;
- (b) Construct, maintain, operate and use artificial islands, installations, facilities and other structures necessary for the exploration and exploitation of the continental shelf of the Republic;
- (c) Regulate, authorize and control scientific research;
- (d) Preserve and protect the marine environment and control and abate marine pollution.

Section V *Marine Boundaries*

Article 17. (a) The demarcation of marine boundaries between the Republic and any State with adjacent or opposite coasts shall be effected, with regard to the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf, by agreement with that State;

(b) Pending agreement on the demarcation of the marine boundaries, the limits of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf between the Republic and any State with coasts adjacent or opposite to it, the coast of the Republic shall not be extended to more than the median or equidistance line every point of which is equal in distance from the nearest points on the baselines from which the breadth of the territorial seas of both the Republic and the other State is measured.

Section VI *The Island Territory*

Article 18. Each of the islands of the Republic shall have a territorial sea, contiguous zone, exclusive economic zone and continental shelf of its own, and all provisions of this Act shall be applicable to it.

Section VII *General Provisions*

Article 19. In exercising its sovereign rights and jurisdiction over the territorial sea, the exclusive economic zone and the continental shelf, the Republic shall have the right to take all necessary measures aimed at ensuring the implementation of its laws and regulations.

Article 20. Any foreign person, natural or juridical, shall be banned from exploring and exploiting the renewable and non-renewable natural resources of the territorial sea,

exclusive economic zone and continental shelf of the Republic, from conducting any prospecting, drilling or search operations, undertaking any scientific research or prospecting drilling, construction or maintenance of any kind of artificial islands, stations (marine installations), devices or structures, or from conducting any operational or maintenance work for any purpose, unless he has entered into a special agreement with the Republic for this purpose or obtained a special permit from its competent authorities.

...

Article 22. Any person causing any pollution detrimental to human health or to the living resources of the marine environment in the internal waters, territorial sea or the exclusive economic zone of the Republic shall be punished with a prison sentence of not more than one year or with a fine of not more than 5,000 dinars.

Should such pollution result in serious harm, the penalty shall be a prison sentence of not more than three years or a fine not exceeding 10,000 dinars.

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Press Communique of Muhammed Saleh Mute'i, Member of the Presidential Council and Minister for Foreign Affairs, (South) Democratic Yemen, Aden, 7 July 1978

The Government of the People's Democratic Republic of Yemen is following the course of current developments in our Arab area, which is witnessing efforts to expedite the implementation of the over-all imperialist design that is primarily aimed at liquidating the progressive national régime in our country and, consequently, the national régimes and national liberation movements in our area

. . . . Developments in this area cannot be separated from the comprehensive imperialist Zionist design which seeks to impede the growth and development of the peoples of the area and of its progressive national movements, and to reinstate and reinforce imperialist influence over it. Our Government is also fully convinced and has consistently shown, in its political and practical attitudes, that the proper method of solving any problems or differences that may arise among the peoples and States of the area, is one that is designed to avoid war, prevent recourse to violence and to observe peaceful means of settlement, through democratic dialogue and peaceful negotiations

With regard to these numerous direct and indirect imperialist attempts, the Government of the People's Democratic Republic of Yemen has been paying attention to the Red Sea, not because it is one of the littoral States but also because it overlooks the southern entrance to the Red Sea and because it is fulfilling its international duties in connection with ensuring and protecting international navigation through that Sea. It has always declared in all Arab and international fora, in the consultative Ta'ez meeting and in the press communiqué issued by the two Yemens, that the Red Sea should remain a zone of permanent peace and security and should not be subject to any foreign influence or domination. Our Government called, and is still calling, for co-operation among all States in the area to carry out this task and to exploit their resources, riches and sources of wealth for the benefit of their peoples.

Being well aware of the great importance of the Strait of Bab al-Mandeb to all peoples and States of the world as an international waterway which has long been used for inter-

SOURCE: U.N. Doc. NV/78/63, 12 July 1978.

national navigation, and of its important strategic location as a link between the international traffic lines, and believing in the importance of keeping international navigation through this vital strait free for the benefit of the peoples and States in the area in particular and the international community in general, the Government of the People's Democratic Republic of Yemen confirms its respect for the freedom of maritime and air traffic of ships and aircraft of all coastal and non-coastal States, without prejudice to the sovereignty, integrity, security and independence of the Republic.

. . . In view of its concern for fruitful co-operation among the States and peoples of the area in this connection, the Government of the People's Democratic Republic of Yemen believes in the importance of rapprochement among all States of the area bordering on this vitally important waterway, and in the need for those States and peoples to follow the example of Democratic Yemen in ensuring freedom of maritime and air navigation for the benefit of all peoples of the world and in the interests of stability, peace, progress and development in various fields of life.

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