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International law does not exist in a vacuum; its development is closely connected with contemporary conditions. The most complex and difficult political-legal problem today is the drafting of a generally agreed-upon law of the sea convention. The sophistication and Western orientation of the Saudi position on the law of the sea, as well as Saudi Arabia's oil reserves and the wealth and power they confer, make it a worthy subject for examination.

SAUDI ARABIA AND THE LAW OF THE SEA

by

James P. Piscatori*

The Middle East, broadly defined, is penetrated by five bodies of water, the five "fingers" of the Mediterranean, Black, Caspian, and Red Seas, and the Persian Gulf. The Red Sea and Gulf have received particular attention in recent history. The significance of the Red Sea stems, first of all, from its connection to the Arab-Israeli conflict. Israel has one non-Mediterranean port, Eilat, which can only be reached through the Red Sea and then through the Gulf of 'Aqaba. Denial of entry to Israel through closure of the Straits of Tiran was considered a *casus belli* in 1967, and in 1973 a blockade of the entire sea was carried out at the Bāb al-Mandab Strait to support the war aims of the Arab front. Some strategists believe that in a long war similar action could offset the Israeli advantage in holding Sharm al-Shaykh.¹ Second, the

Red Sea is important as the gateway to the Suez Canal, which itself was economically and strategically significant prior to 1967, because it reduces by one-half the Gulf to London journey. The recently reopened canal probably will be highly significant again as it is widened and deepened to accommodate ships of the 150,000-ton range and eventually of the 270,000-ton range.² Finally, the Soviet base at Berbera in Somalia highlights the vulnerability of access to the sea itself.

Of far greater importance is the Persian Gulf. Indeed, the growing industrial dependence on oil, even more than the discovery and exploitation of the

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54 NAVAL WAR COLLEGE REVIEW

resource itself, has helped to move the Gulf to the economic, strategic, and political forefront of world politics. The oil imported by the United States from the Middle East as a whole, for example, constituted 15-17 percent of total American oil imports during the 1973 Arab-Israeli war. American imports from the region then were 877,000 barrels per day and during the first 6 months of 1976 the figures rose to 2,124,000 barrels per day.³ Though the increase is substantial, American oil imports from the Middle East do not yet rival the present 80 percent level of oil imports for Western Europe. This Middle Eastern connection is not surprising since the area as a whole contributes about half the total oil production in the world, with Persian Gulf countries in particular producing one-third of the total.⁴

Given the sudden changes in the price of oil fixed by the Organization of Petroleum Exporting Countries (OPEC), the revenues that are accruing to these states have no less suddenly increased. Iran is spending about \$69 billion and Saudi Arabia approximately \$140 billion in their current Five Year Plans to develop infrastructures and to provide new social services. Iraq is budgeting over \$3 billion per year for investment and development purposes. These ambitious plans have stimulated a flurry of activity by European and American businesses competing to provide the technical services and sophisticated equipment required. The wealth in the Gulf is also being used to build up national armories. In 1974 alone, Persian Gulf countries purchased over \$4 billion worth of arms from the United States, \$1 billion from France, \$500 million from Great Britain, and \$340 million from the Soviet Union.⁵ The trend is accelerating,⁶ and it is already clear that military sales in the Gulf, like commercial sales and services there, constitute big business. Gulf countries, in short, are amassing great fortunes

which also are converted into profits for the oil-consuming and technologically advanced countries.

This economic interdependence has added to the strategic importance attached to the Persian Gulf area since the British withdrew in 1971. The Soviet presence in the upper Gulf, symbolized by the 1972 Treaty of Cooperation and Friendship with Iraq,⁷ has been of concern to Western strategists. There is some evidence that Soviet influence was waning in Iraq,⁸ but recently there has been a strengthening of ties.⁹ In light of the lingering Soviet presence, regional cooperation to exclude all external powers is the American goal in the Gulf. Several factors overlap to account for the position of the United States: fear not only of a forcible interruption of the oil flow through the Strait of Hormuz but also of Soviet-inspired revolution against the traditional, pro-Western, regimes; knowledge that the American presence itself is limited to one command ship and two surface combatants, forming the Middle East Force at Bahrain,¹⁰ and sensitivity to the potential spillover effect naval competition in the Indian Ocean could have because of its geographical proximity. In light of this reliance on friendly, regional policemen—mainly Iran¹¹ but also Saudi Arabia to a lesser extent, American arms sales to the Gulf are seen as valuable in more than the economic sense.

It is against this background of intersecting interests—economic, political, and strategic—that law of the sea issues in the Persian Gulf and the positions of Gulf States on those issues assume importance. Maritime disputes affect regional stability, and, moreover, several of the littoral states wield such economic and potential military might that their views may influence the direction of the developing law. Saudi Arabia, at first glance, would seem unlikely to have any impact on the law of the sea. The predominantly desert character of

its landmass, the world's 13th largest, has given greater historical significance to the nomadic Bādū than to dhow-equipped sailors. And the Saudi Navy is small, though growing: 1,500 personnel, about 2,000 officers and men in training at the San Diego Naval Training Center, two naval bases, three fast patrol boats (FPB), one patrol boat, and several landing craft and mine counter measures (MCM) on order.¹²

There are, however, three reasons why the Saudi position deserves attention. First, Saudi Arabia's stature in world politics has dramatically increased. With one-quarter of the world's producible oil reserves, the Kingdom possesses twice the reserves of the Western Hemisphere and twice those of the Soviet Union.¹³ In addition, Saudi Arabia, providing 25 percent of American oil imports today as compared to 10 percent before the 1973 war, represents the principal Middle Eastern supplier of oil to the United States. The wealth of natural resources has been translated into political influence as the West generally and the United States particularly have realized that their economic well-being is in large measure due to the goodwill of the Saudis. This wealth has also allowed Saudi Arabia to exert considerable impact on Arab states, especially on Egypt which seems incessantly in search of a financial backer. That the Saudis themselves are aware that their political role has expanded is seen by the recent rapprochement with Iraq and the People's Democratic Republic of Yemen, both of which have long been hostile to the "conservative" Saudi monarchy. International law and politics are intertwined, and for no other reason, Saudi Arabia's position on the law of the sea should be examined because the Kingdom itself is potentially on the level of world politics a major power, and actually within the Middle Eastern subsystem, a great power.

the scene of disputes over the delimitation of offshore boundaries, several of which have involved Saudi Arabia. Disagreements persist between Iran and Iraq, and Iran and the United Arab Emirates. Additionally, there are boundary and territorial differences between Iraq and Kuwait, over Būbiyān and al-Warba islands, and between Qatar and Bahrain, particularly over the status of the Howār Islands.¹⁴ Saudi Arabia represents a Gulf state that has directly negotiated agreements with its neighbors, Bahrain and Iran, and that is presently dealing with Qatar and Kuwait in regard to outstanding problems.

Finally, Saudi Arabia, by virtue of its location, is able to exert some control over another important maritime area—the Gulf of 'Aqaba. Although Saudi Arabia is not a "confrontation" state in the Arab-Israeli conflict, its legal stance on this question of passage through straits has contributed to the general hostility and complicated the search for a *modus vivendi*.

Law of the Sea Positions. Saudi Arabia prides itself on its Islamic heritage and its policy is often shaped around principles of the faith. While the daring exploits of Arabic sailors are historically well-known, the sea, however, has been a comparatively less important consideration to the largely land-based Arab Muslims. The Qur'an itself displays an ambivalence on the subject with one passage indicating that men should be thankful for the livelihood, food, and riches the waters yield (XVI:14) and another suggesting that the devil inhabits the sea (XVIII:62). The Prophet Muhammad had little to add save perhaps that Muslims who die in a seaborne *jihād* will be doubly rewarded in the afterlife. The rules of naval warfare were developed through *givās* or analogy and hardly differ from those of land conflict. They incorporate certain moderate principles: an enemy ship in distress is to be issued an *amān*

56 NAVAL WAR COLLEGE REVIEW

or safe passage into coastal waters, and in keeping with general practice, vessels bearing diplomatic envoys are thought to possess a special status.¹⁵ It is clear that the Shari'ah or basic law does not address itself to the controversial law of the sea issues of the 20th century. Lacking traditional guidance, therefore, Saudi Arabia has generally adopted a course not far different from that which is outlined in the international conventions.

Breadth of Territorial Sea. From the earliest days of the country, concern with the waters closest to the coast has been pragmatic in nature as evidenced by the fact that the first references are found in the fishing and Coast Guard regulations. The fishing rules defined the "coastal waters" of the then Kingdom of the Hijāz, Najd, and Dependencies as the area within 4 miles of the coasts not including gulfs and inlets.¹⁶ The *Regulations for the Coast Guard Directorate and its Divisions* were primarily concerned with the "customs line" that was identical with the outer limit of Coast Guard control and that extended to 4 miles off the shore and 10 miles within. This limit was not equivalent to the breadth of the territorial sea because of Article 49 (b) which allowed the sea patrol in the performance of its duties to "go beyond the customs line within the boundaries of the Saudi Arab Kingdom when pursuing boats and smugglers."¹⁷ The outer boundaries were unspecified, but the assumption can be made, on the basis of the permission to go beyond the customs line, that territorial jurisdiction was seen as extending beyond the 4-mile zone mentioned in both the fishing and Coast Guard regulations.

The Saudi government reminded its neighbors in 1933 that no precise sea boundaries had been agreed upon and that no rule of international law existed to facilitate the delimitation of territorial waters.¹⁸ It was not until Royal

Decree 6/4/5/3711 of 2 Sha'bān 1368 (28 May 1949) that the term "territorial waters" was employed and precisely defined. These waters encompassed the inland waters of bays, shoals, and those between island and the mainland and between islands themselves, in addition to the "coastal sea" which extended outside the inland waters to a distance of 6 miles. This definition departed from the text of the original fishing rules in that it applied to all coasts of the Kingdom unified under the Saudi title in 1932—the Red Sea, Gulf of 'Aqaba, and Persian Gulf.¹⁹ In relying on a 6-mile limit, Saudi Arabia chose to follow the earlier examples of the Ottoman Empire, Syria, and Iran.²⁰ Saudi Arabia however, led the way when it changed the relevant terminology to "territorial sea" and extended its boundaries to 12 nautical miles in a 1958 royal decree.²¹ The effect was immediate as the two other major powers in the Gulf, Iraq and Iran, soon thereafter extended their limits to 12 miles.

In the explicit designation of territorial waters and seas, the two decrees, particularly the second, went far toward bringing Saudi Arabia into the mainstream of the international law of the sea. In contrast to early regulations, the 1949 proclamation of King 'Abd al-'Azīz expressly declared that Saudi sovereignty extends to the territorial waters, the air above, and the soil and subsoil below. Another and significant indicator of Saudi Arabia's growing sophistication was the general invocation of international law and the specific reference to the principle of innocent passage as the sole limitation on its sovereignty in the 1949 decree. The 1958 decree was more general in its provision that Saudi sovereignty is limited by existing rules of international law (Article 2). Herbert Liebesny's conclusion, though specifically directed to the 1949 decree, is also relevant to the later proclamation: "The Saudi decree

SAUDI ARABIA—LAW OF THE SEA 57

on territorial waters is a very carefully drawn document which is more detailed than many similar decrees and embodies modern theories of international law on the subject."²² The comment would be of no interest were it not for the fact that Saudi Arabia often is accused of a medieval mentality.

The 1958 decree in particular was designed to put Saudi Arabia on an equal footing with other states at the first Law of the Sea Conference. The Saudi delegation chairman, Ahmad al-Shuqayrī, Minister of State for United Nations Affairs, specifically pointed out that Saudi Arabia's change of words to "territorial sea" put it in line with the draft convention and was made to avoid the misleading impression that territorial waters are limited only to inland waters. The delegate also took an uncompromising stand on what has become the standard Saudi commitment to a 12-mile territorial sea. Al-Shuqayrī, particularly critical of the United Kingdom's defense of the 3-mile limit, argued that the political and economic demands of the present age require a wider belt. He denied, moreover, that the 3-mile limit was never uniformly accepted and pointed to a number of Western scholars in support of his position that states have determined their boundaries for a variety of reasons apart from the 3-mile example.

Saudi Arabia thus suggested that states be allowed to set their own limits within a 12-mile maximum in order to provide some flexibility in the parameters sanctioned by (1) security needs, (2) new economic and technical developments, (3) state practice, and (4) a new legal consensus. In this sense, al-Shuqayrī made the point that the debate is political and economic as well as juridical, yet he was not so attuned to the politicization of the debate that he could accept U.S. Representative Dean's speculation that the price of transporting Saudi oil would increase as the territorial sea widens.²³

There was strong Saudi opposition to the American proposal for a 6-mile breadth. Al-Shuqayrī, invoking the International Law Commission's opinion that the territorial sea may be legitimately extended to 12 miles, pledged that his country would not become a party to a convention that adopted the American draft. Ironically for so anti-Communist a state as Saudi Arabia, its position echoed that of the Soviet bloc. Saudi Arabia specifically joined forces with Burma, Colombia, Indonesia, Mexico, Morocco, the United Arab Republic, and Venezuela in sponsoring a draft calling for a territorial sea of 12 miles with a contiguous fishing zone of an extra 12 miles. None of the proposals gained the necessary two-thirds majority,²⁴ and Saudi Arabia did not become a party to the 1958 Convention on the Territorial Sea and Contiguous Zone, nor to any of the other conventions for that matter.

By the 1960 conference, the Saudi position seems to have hardened on the importance of the territorial sea question. The success of the regime of the sea by then was predicated on the resolution of this one issue. As a result, al-Shuqayrī advanced the central thesis that the law of the sea is indivisible—either there is a complete law with the territorial sea settled or there is no law at all. In almost sacrilegious rhetoric for a Saudi, he intoned this warning: "Without an acceptable formula for the determination of the territorial sea, these conventions of ours will remain outside the sacred temple of international law."²⁵

The Kingdom was persistent in advocating the 12-mile rule, and it is interesting to note that the manner of argument was entirely a-Islamic. Al-Shuqayrī based his presentation on an appeal, *inter alia*, to state interests, the position of the polyculturally legitimate International Law Commission, Moore's *Digest of International Law*, the British High Court of Justice, and nowhere was Islam

58 NAVAL WAR COLLEGE REVIEW

invoked. Despite the Western-based rationale, Saudi Arabia clearly felt, at that time, that its identity should be tied to the Third World, which was believed to be rising up to reject the colonial legacy and to assert the equality and sovereignty of every state. The anti-imperialist sentiment is somewhat surprising for a state that escaped colonial masters: "We have emancipated our land, and the time has come to emancipate our sea."²⁶

If Saudi Arabia was then aligned against the major Western states and with the developing ones, by the Third Law of the Sea Conference it has found that it is aligned with the vast majority of states. The change, however, is not due to a position shift by the Saudis; to the contrary, they have remained consistent in advocating a 12-mile territorial sea while an international consensus has solidified around the figure. Saudi Arabia, along with Arab League states, has not objected to the demands of the archipelagic states with regard to the territorial sea, provided that lanes of international navigation are kept open. Saudi Arabia has also joined the majority of states in the present negotiations in advocating a 200-mile economic zone beyond the territorial sea,²⁷ but its commitment must be viewed as more a matter of principle than active concern when it is realized that the Persian Gulf at a maximum is 160 miles in width and that the Red Sea has a maximum width of 190 miles. What is important for Saudi Arabia is the more limited area of the contiguous zone beyond the territorial sea, although, as will be mentioned later, the country has seemingly endorsed the merging of the contiguous and economic zone concepts. Currently, the Kingdom is the only state in the Persian Gulf that has explicitly claimed the right of surveillance over an adjacent 6-mile zone in order to protect laws concerned with navigation, security, fi-

Saudi Arabia has been the leader in the Gulf in establishing the 12-mile rule, and it has also been one of the leaders in advocating the universal adoption of the rule. In the region, Iraq, Iran, Kuwait, and Oman have followed the Saudi lead, but Bahrain, Qatar, and the United Arab Emirates have yet to follow suit. It is not likely that there will be any regional disputes since, as Richard Young points out, the 12-mile approach seems destined to be the Persian Gulf norm.²⁹ It is possible that there will be some tension over the contiguous zone, but to date this matter has not emerged as a significant issue. What is significant is that Saudi Arabia's consistent position undoubtedly influenced the positions of other littoral states in the Gulf and contributed to the emergence of the general consensus.

Offshore Boundary Disputes. As early as 1949, the Saudis also showed that they were capable of keeping pace with new international law of the sea developments. The Truman Proclamation of 1945 on the continental shelf inspired the 1949 royal decree on the submarine areas contiguous to Saudi Arabia's Persian Gulf coasts. Despite the fact that a continental shelf does not exist in the geological sense in the Gulf, the Saudi government, mindful of the natural bounty below the waters off its shores, wished to control its conservation and development in line with the unilateral declarations of states that could precisely lay claim to a continental shelf. The Kingdom claims that it should exercise control over the submarine areas contiguous to its zone because (1) the natural resources, in the first place, are capable of being exploited by modern technology; (2) the state can act in the interests of proper usage and conservation of the resources; (3) the resources can only be effectively developed and conserved, at any rate, with state involvement and help; (4) activities off Saudi Arabia's coasts

SAUDI ARABIA—LAW OF THE SEA 59

naturally involve its security; and (5) "various other nations" have already done so.³⁰

The Saudi decree echoes the Presidential proclamation, except in the important respect that jurisdiction and control are asserted over the subsoil and seabed itself, as Pakistan and Great Britain have also asserted, and not merely over the natural resources as in the American document. In contrast to the Kuwaiti constitutive reference to the region's "becoming" a part of the state, the Saudi wording like the American is declarative of an inherent right of jurisdiction.³¹ In addition, the Saudi decree follows American and British practice, and rejects Latin American claims of extensive control, by asserting that the waters above the contiguous seabed and soil are not subject to national interference. It should be noted, parenthetically, that Saudi Arabia has relied, in the absence of a proper shelf, on the idea of contiguity. This concept, however, is equivalent to the idea of the submerged mass next to a state's shores, and it should not be confused with the contiguous zone itself over which activities are regulated. Although relying on contiguity, Saudi Arabia has not defined its extent. Rather, like the American proclamation on the continental shelf, the Saudi decree provides for negotiations with neighboring states in accordance with "equitable principles" in order to determine the precise boundaries of the contiguous "shelf."

The call to negotiation was taken up in 1958 when an agreement was reached between Bahrain and Saudi Arabia on the delimitation of the "underwater areas belonging to both countries." It might be noted that the actual delimitation between the two states is dependent not on "equitable principles" per se, but on principles agreed upon by the participant governments. Vice President Kuretsky of the International Court of Justice in the *North Sea*

Continental Shelf Case pointed out that Saudi Arabia allowed for this qualification in the 1949 proclamation, yet there is resort to a standard concept in the Bahraini-Saudi case.³² The first clause of the bilateral agreement indicates that the division is to be based on the median line, a principle of equidistance that at least one student of Islamic law, Muhammad Hamidullah, finds enshrined in the classical sources as a valid means of settling boundaries.³³ It is also a principle incorporated in Article 6 of the Geneva Convention on the Continental Shelf.

The Bahrain-Saudi Arabia agreement deviates from strictly equal sharing in the second clause in which a special area is set aside for Saudi oil exploitation "in accordance with the wish of H.H. the Ruler of Bahrain." This grant may well reflect an appreciation by the Bahraini government of greater Saudi experience in the oilfield, since Bahrain is to receive half of the revenues from the area. Yet Saudi administrative control and sovereignty are specifically emphasized—an indicator, perhaps, that fraternal Islamic relations are not always stronger than national interests. The agreement is notable as the first Persian Gulf effort to settle conflicting claims over the subsurface of what is termed the "regional waters."

A second, more important effort to resolve Gulf differences is the Saudi-Iranian agreement of 1968 in which the disputed islands of al-'Arabiyya and Farsi were apportioned to Saudi Arabia and Iran respectively. Consistent with both states practice since 1958, each island is given a 12-mile territorial sea. The principle of equidistance was employed to demarcate the boundary between the overlapping territorial seas of the islands, and the agreement also delineated the boundaries of the submarine areas appertaining to both countries in which each has sovereign rights over the seabed and subsoil.³⁴ Without going into great detail, we may say that the

60 NAVAL WAR COLLEGE REVIEW

agreement as a whole has gone far towards eliminating tension in the strategic waterway between its two most important littoral states.

Another Gulf dispute remains largely unresolved, though its conflict potential is slight. It involves the status of the Neutral Zone lying between Saudi Arabia and Kuwait that was delimited in the Uqair Convention of 1922. Although the agreement is silent on the extent and position of maritime boundaries and though no bilateral arrangements existed until 1965, it is clear that Saudi Arabia has for all practical purposes held that at least a portion of the sea off the Neutral Zone belongs to it. However, Saudi Arabia and Kuwait agreed, on 7 July 1965, to demarcate the overlapping jurisdictions off the Neutral Zone. The crucial Article VII, whose language itself is curious and reflective of the divergent regimes of the sea, provides that the two countries have the same rights over those portions of the territorial sea adjoining their sectors of the Neutral Zone and that a precise boundary is to be determined at a later time.³⁵ The major, still unresolved, obstacle to agreement is due to the fact that Saudi Arabia has decreed a 12-mile territorial sea whereas Kuwait has chosen to leave the breadth of its sea unspecified.

There is a compromise agreement in the second paragraph of Article VII which refers to a 6-mile zone for the purpose of natural resource exploitation. Its specific reference is to the seabed and subsoil next to the zone which is to be annexed to the land portion of the zone. Two points are notable: (1) The article makes a clear distinction between the waters and resources of the zone—the limits of the former are unspecified whereas those of the latter are indicated. This distinction is a clear deviation from the Saudi position in the 1949 and 1958 territorial waters decrees and is thus an indicator of both the special position of

the zone and the differences outstanding with Kuwait. (2) The article makes a distinction between territorial waters over which each country can exercise rights consistent with its portion of the zone and an undivided natural resource area that is attached to the zone as a whole. Once again, the extraordinary status of the zone is seen with its ambiguous if not confused division of rights alternately on a national and joint basis.

The 1965 agreement, differing from the regular Saudi decrees which are declarative of existing rights, is clearly constitutive of a new maritime regime off the Neutral Zone. The difference is understandable given the unsettled character of this zone. Indeed, the case represents an extraordinary concession by Saudi Arabia that its sovereignty is limited; the bitter pill, however, is made sweeter by the fact that Kuwait's sovereignty is also restricted, despite the energetic denials of that country's legal adviser.³⁶ To date, the boundary between the territorial seas has not been settled nor has the ancillary dispute concerning sovereignty over Qarū and Umm al-Maradim Islands been resolved.

One somewhat related development should be noted. In a 1968 royal decree, the Saudi government asserted its claim to the hydrocarbon resources of the Red Sea. The pronouncement is odd in that it applies to a zone which lies adjacent to the continental shelf; it is not clear what the zone exactly entails.³⁷ There is no precedent in terms of a similar claim in the Persian Gulf, nor, it should be noted, can the proposed area in the Red Sea be clearly delimited until the continental shelf itself of that sea is delineated, or even claimed. Arguing negatively, we may conclude that the zone was not meant to be identified with the contiguous zone since the decree does not assert control over security, immigration, and sanitation matters there; furthermore, the idea of the proposed zone cannot be

equated with either the "hovering," customs zone or pollution control zone concepts since the decree does not mention the governable activities subsumed under those categories.³⁸ The primary Saudi concern in the 1968 decree is ownership and exclusive exploitation of the natural resources of the seabed, and in this regard, the new, evolving economic zone may be relevant.

This concept, it would be well to note, has been controversial even within the bloc of developing states, the Group of 77.³⁹ Disagreement has centered on the extent of the zone, but there has been broad agreement on the character of the zone. For example, two declarations of the Organization of African Unity and two endorsements by the League of Arab States, both in 1973 and 1974, assert that coastal states have sovereign rights over the mineral as well as biological resources of this zone. The Egyptian delegate to the Third Law of the Sea Conference concluded in 1974 from these declarations that the continental shelf is included in this new category,⁴⁰ and in this sense perhaps Saudi Arabia, by its 1968 decree, helped to advance the thought that it is permissible to claim resources in the continental shelf and the seabed beyond. The claim is still curious since the Saudi Kingdom has not clarified its understanding of the economic concept other than to join with other Arab states, Iran, Honduras, Mexico, India, and Liberia to suggest, in effect, that the contiguous and economic zones are largely synonymous.⁴¹

Until there is further clarification, the decree may be considered, in the manner of the British Institute of International and Comparative Law,⁴² as dealing with continental shelf-type matters. While there is no clause allowing for negotiation on the basis of equitable principles in case of dispute with neighboring states, there is a suggestion that joint exploration and

exploitation of the resources are possible in a "common zone" when recognized by the Saudi government. The assumption that common zones are determined by negotiation is reasonable. No disputes appear likely since no major exploitation of valuable resources is underway, but it is a measure of Saudi Arabia's interest in the potential oil, heavy metal, and gypsum resources of the sea that it has made its claim known in advance of possible trouble.

Passage Through Straits. Having tentatively recognized the right of innocent passage as early as the fishing regulations of 1932, Saudi Arabia strongly objected to the particular right of passage through straits as described in Article 16 (4) of the Convention on the Territorial Sea and Contiguous Zone. The article reads: "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas of the territorial sea of a foreign State."⁴³ The basic Saudi position, as developed at the United Nations conferences on the law of the sea, is that innocent passage is a right of way that is fully subject to law. That is, the Kingdom argued that an aggressor has no right of way in law generally at the expense of his victims, and that those states deemed in violation of international law and the United Nations Charter have no right of innocent passage through the territorial sea of states they have injured. In short, aggression suspends the right of innocent passage.⁴⁴ It is clear that Israel is considered the case in point.

In the course of specific deliberations, Saudi Arabia wished to amend the American draft definition of innocent passage with the proviso that passage is not innocent when contrary "to the present rules or to other rules of international law." The Saudi delegate, al-Shuqayri, also wondered why another

62 NAVAL WAR COLLEGE REVIEW

proposal, which was eventually adopted by close vote, deleted the International Law Commission's condition that states are to respect the right of innocent passage through straits normally used for international traffic and why it extended the range to straits connecting the high seas to a territorial sea. When Article 16 as a whole was adopted by a wide margin in a 1958 plenary session, Saudi Arabia abstained because it believed that subparagraph 4 is designed to satisfy a unique case and is a "mutilation" of international law. Al-Shuqayrī ominously concluded: "Saudi Arabia would take the necessary steps to protect its national interests against the interpretation and application of paragraph 4."⁴⁵

For the most part, Saudi Arabia relied on the philosophical position that the maritime laws of war are different, and it even went so far as to propose a subtitle indicating that the Convention on the Territorial Sea applies only in peacetime. Once again, its defense was based predominantly on western sources that have distinguished between the two states of war and peace: the Corfu Channel Case, the 1926 draft convention of the International Law Association, and the law of the sea draft treaty of the International Law Commission.⁴⁶ The Saudis, in effect, advanced the position of the realists in the study of international politics and law that, since the persistent reality of conflict is obvious, it would behoove the international community to develop specific regulations to handle and to limit violence rather than to try vainly to abolish it.

Despite the rationale, Saudi Arabia's opposition to innocent passage through straits is clearly designed to cover Israeli access to the strategic Straits of Tiran. This opposition, it should be noted, does not relate to the Strait of Hormuz, since the interconnected waters there are parts of the high seas through which unimpeded innocent passage is con-

sidered unquestionable. Al-Shuqayrī was explicit at least once in his reference to the Straits of Tiran, when he argued that under the Palestine Armistice Agreements, Israel was given no juridical standing in the Gulf of 'Aqaba which is under Saudi, Egyptian, and Jordanian sovereignty.⁴⁷ Saudi Arabia was united with all the Arab states, save one, in arguing the line and in accordingly refusing to sign the Convention on the Territorial Sea, and even with Tunisia that did sign but expressly declined to be bound by Article 16 (4).

In the Third Law of the Sea Conference, Saudi Arabia affirmed its position that there is a right of innocent passage through straits that connect parts of the high seas only. In espousing that end, it joined Algeria, Bahrain, Iraq, Kuwait, Libya, Qatar, Syria, Tunisia, and the United Arab Emirates in proposing a definition of "straits used for international navigation" whereby the high seas connection and customary usage of the straits for international navigation become central. In 1974, Kuwait, speaking on behalf of Saudi Arabia and others, complained that the Convention article on straits had been politically inspired.⁴⁸ It is in light of this complaint and in view of Saudi Arabia's strong antagonism towards the state of Israel that one should question the earlier assertion that the Kingdom was acting only on behalf of general principle and not "regional policies or transient situations"⁴⁹ when opposing Article 16 (4).

Closely connected to this position is the Saudi concern over automatic passage for warships through the world's straits. In the 1958 Conference, Saudi Arabia opposed the British proposal which would allow unhindered access for warships on the ground that there are different types of straits. The "territorial straits" are inseparable from territorial waters, the Kingdom's delegate argued, and consequently the coastal state possesses the authority to regulate passage of warships for its own security.

SAUDI ARABIA—LAW OF THE SEA 63

Al-Shuqayrī invoked such authorities as Oppenheim and Colombos to buttress the identification of straits and territorial waters, but Sir Gerald Fitzmaurice of the United Kingdom, himself a noted legal authority, found the references irrelevant since the question of territoriality is conceded by the very nature of innocent passage. Undaunted, al-Shuqayrī turned to another great legal authority and judge of the International Court of Justice, Philip Jessup, for support of the contention that warships can no more sail through a state's territorial waters without permission than can a foreign army march across its soil.⁵⁰

When a draft provision requiring prior authorization for the passage of warships through the territorial sea as a whole was deleted, Saudi Arabia voted against the entire article along with 23 other states, thereby depriving the article of the needed two-thirds majority for adoption. Al-Shuqayrī said in explanation that responsible sovereignty demands prior authorization before a warship can pass through territorial waters, since warships may not be regarded as inherently peaceful; unauthorized passage, therefore, is a violation of sovereignty and equivalent to aggression.⁵¹ This emphasis on sovereign control contrasts somewhat with that of the 1933 Coast Guard regulations which prohibit the levying of taxes and the boarding by marine patrols of foreign warships in its jurisdiction. The only specific article on warships adopted by the 1958 Geneva Conference, Article 23, is acceptable to Saudi Arabia since it emphasizes that they are subject to the coastal state's rules of passage through its waters. The Convention, nevertheless, is objectionable because the gist of draft Article 24 (1) allowing unauthorized warship passage through straits is embodied in Article 16 which applies to "all ships" and which absolutizes the right of unimpeded innocent passage through straits. As late

as 1974, the Democratic Republic of Yemen voiced similar opposition to treating warships and merchant vessels in the same manner, especially when passage through straits is concerned.⁵² This stance, it should be noted, is not limited to Arab states or to Middle Eastern straits; Canada recently has endorsed the principle of prior authorization, and Indonesia and Malaysia actually require such notification and authorization before transit is allowed through straits they control.⁵³ The United States, however, does not officially recognize the necessity of such notification.

Fishing. Saudi Arabia is less concerned with fishing than with other maritime issues, but it has objected to the Convention of the Living Resources of the High Seas which does not consider fishing rights in the territorial sea. The country strongly argued in the 1960 Geneva Conference that the coastal state possesses sovereignty over the fish in its waters and so must grant authorization before foreign fishermen can operate within its limits. The Saudi delegate criticized particularly the British and French for claiming that such a rule would create an economic hardship for the maritime states that depend on farflung fishing catches. His response was a general accusation of neo-imperialism, but it reflected Saudi sensitivity to fishing by outsiders in the abundant waters of the Red Sea and Persian Gulf: "You catch my fish from coasts, you transport it in your fleets, you can it in your factories, you carry it again in your fleets to be exported to my country, and the only thing I have to do is to pay the bill—and how heavy the bill is."⁵⁴

The representative's solution, however, was conciliatory because he suggested a sharing within or outside the U.N. framework of the advanced technology of the great maritime states and the fishing catch of the coastal states.

64 NAVAL WAR COLLEGE REVIEW

Although Saudi Arabia has not asserted its right to control fishing in a wider area, it should be noted that when it claimed a contiguous zone in the Persian Gulf, it specifically stated that the existence of the zone is not to be construed as affecting Saudi fishing rights. The disclaimer, intended to avoid the conclusion that such rights are limited to the zone, is compatible in theory with one of the main components of the economic zone concept. Given the strident voices that are often heard in advancing the new economic zone, the Saudi offer of cooperation with regard to fishing exploitation is at least refreshing.

Conclusions. Although it is difficult to make concrete conclusions, some general points can be stressed.

(1) Saudi Arabia accepts several principles that are part of the developing regime of the sea, even though it has not become a party to any of the legal conventions. There are several reasons why it has not signed the Geneva conventions. First, Saudi Arabia holds that maritime law is not part of international law until it is whole. The law of the sea is not likely to be complete until it incorporates a definition of the breadth of the territorial sea, a division of rules on innocent passage according to states of war and peace, and a clear statement of control over the fish of the territorial sea. Secondly, the Convention on the Territorial Sea incorporates the objectionable rule that all straits are open without limit to the passage of all ships, thus precariously ignoring the specific character of the straits, the types of the ships involved, and the disposition and intent of the state whose vessel is transiting. Finally, as one Saudi lawyer pointed out, the reluctance to sign may be a function of the traditional Saudi caution induced by historical isolationism.⁵⁵

Despite Saudi Arabia's nonadherence to the conventions, it has accepted

several principles that are part of the emerging international consensus: sovereignty over a 12-mile territorial sea, control of certain activities in the contiguous zone, sovereignty over the adjacent submarine area or continental shelf and its natural resources, reliance on the median line and equidistance to delineate offshore boundaries, the openness of the high seas beyond the territorial sea and continental shelf and the basic right of innocent passage. In the most recent negotiations in the Third Law of the Sea Conference, it has also indicated its support of the economic zone concept and of the idea that ocean bed resources are the "common heritage of mankind," both of which are now part of the new growing consensus. There has not yet been a clear Saudi position on the character of the proposed international seabed authority other than the bland statement that it should respect the rights of all states and be fair in distribution.⁵⁶ The general point is clear, however, that Saudi Arabia in practice accepts many of the maritime standards which are found in legal texts it chooses not to endorse.

(2) The Saudi position is not seriously at odds with the Western position generally and the American position particularly. Part of the reason for the coincidence of views is the fact that in the absence of Islamic guidance, Saudi Arabia has relied heavily on predominantly occidental treaties, diplomatic notes, court cases, and scholars to elucidate the legal norms. While it is true that the Saudis may have differed with the United States and Great Britain frequently in the past, it is also true that by the time of the present negotiations, they were largely in accord with those states and differing with many of the developing ones. It is interesting to note that in the one area, passage through straits, where Saudi Arabia and the West disagree strongly, the Kingdom's position may partly be influenced by its adamant belief that Israel's most

grievous sin has been to occupy the holy city of Jerusalem. In general, however, we may conclude that culture has not affected Saudi Arabia's maritime policy and that it has acted, like any modern state, to advance its national interests and to legitimize them by invocation of the standard sources of modern international law.

(3) Saudi Arabia's behavior is bifurcated. On its western shores, it has acted to support the claim that Israel has no legitimate right of transit to Eilat. This stance is mitigated by the fact that the navigable channel through the Straits of Tirān lies in Egyptian, not Saudi, waters, but Saudi Arabia's growing might, its clear antipathy for Israel, and its strong support of Egypt suggest that the legal position cannot be discounted as contributing to the general tension. On the other hand, Saudi Arabia has indicated a willingness to cooperate and negotiate in matters concerning the Persian Gulf. Evidence can be found in the agreements with Bahrain, Iran, and Kuwait. The Kingdom, moreover, has committed itself in principle to the equitable distribution and exploitation of sea resources off both shores. The attitude of compromise at sea is heartening at a time when resources on land are being depleted rapidly.

Saudi Arabia may not be in the leadership of the developing states nor is it a substantial naval power, but it is a state with significant resources at its disposal. Its wealth is the main underpinning of its foreign policy which has generally sought to preserve the status quo rather than to foster systemic transformations.⁵⁷ Caution and pragmatism, indeed, mark the Saudi approach to international politics and international law. Political caution has recently been confirmed by its firm opposition to the

Soviet naval base in Somalia⁵⁸ and pragmatism by its continuing efforts to avoid direct military struggle with Israel. Legal caution is evidenced by its hesitation in becoming a party to specific multilateral covenants and pragmatism by its factual compliance with the law nonetheless. Since the "wide common" of Mahan⁵⁹ is troubled in these days of exorbitant national claims and naval rivalries, it is important to note that neither Saudi Arabia's aloofness from the conventions nor its generally strong commitment to Islam has made it unsympathetic to the West. But Saudi Arabia's maritime policy is really two tales of the sea. In one case the antagonism towards Israel has determined the Saudi resolve to oppose part of the law, but in several other cases the perception of state interests has led both to the moderate assertion of control over nearby maritime zones and to the willingness to negotiate conflicting claims in accordance with the broad legal framework most states accept. The Saudi example in the Persian Gulf at least is reassuring, and it is hoped that *this* example will be influential.

BIOGRAPHIC SUMMARY



After he earned his Ph.D. at the University of Virginia, Professor Piscatori was an International Fellow to Saudi Arabia where he studied Saudi attitudes towards international law. Afterwards, he was a Leverhulme Visiting Fellow to the United Kingdom. He is now a member of the faculty in the Department of Government and Foreign Affairs at the University of Virginia, where he is also working on a book, *Culture and International Law*.

66 NAVAL WAR COLLEGE REVIEW

NOTES

1. See, for example, *Strategic Survey*, 1973 (London: International Institute for Strategic Studies, 1974), p. 25. I have tried to employ precise transliterations of Arabic names, except the names of states themselves.

2. "Egypt," *The Times* (London), 5 November 1975, special section, p. V.

3. R.K. Ramazani, "Reflections on American Policy in the Middle East," *Foreign Policy Papers* (Beverly Hills, Calif.: Sage, forthcoming).

4. Emile A. Nakhleh, *Arab-American Relations in the Persian Gulf* (Washington: American Enterprise Institute for Public Policy Research, 1975), p. 60; D.L. Price, "Stability in the Gulf: The Oil Revolution," *Conflict Studies*, May 1976, p. 14.

5. Edward M. Kennedy, "The Persian Gulf," *Foreign Affairs*, October 1975, pp. 14-15.

6. See *The Middle East Monitor*, 15 September 1976, p. 1.

7. For the treaty text in English, see *Current Digest of the Soviet Press*, 3 May 1972, p. 12.

8. After the Iraqi-Iranian settlement in March 1975 concerning aid to the Kurds, the Soviet Union halted arms shipments to Iraq. Also, economic deals have recently been concluded between Iraq on one hand and the United States, France, and Italy on the other. See *Strategic Survey*, 1975 (London: International Institute for Strategic Studies, 1975), pp. 86-87.

9. There has been a report of a new secret agreement concluded between Iraq and the Soviet Union on 17 August 1976, whereby Iraq is to receive \$3 billion worth of sophisticated military equipment over the next few years, the Soviets are to increase their presence in Iraq, and the two countries are to coordinate their policies towards the Persian Gulf. See *Kayhan* (Weekly International Edition), 23 October 1976, p. 3.

10. International Institute for Strategic Studies, *The Military Balance, 1975-1976* (London: 1975), p. 7.

11. See generally, Rouhollah K. Ramazani, "Iran's Search for Regional Cooperation," *The Middle East Journal*, Spring 1976, pp. 173-186.

12. *The Military Balance, 1975-1976*, p. 37, *The Washington Post*, 12 December 1976, p. A20.

13. *International Petroleum Encyclopedia* (Tulsa: Petroleum Publishing Co., 1975), p. 76.

14. See Richard Young, "The Persian Gulf," in Robin Churchill, K.R. Simmonds, and Jane Welch, *New Directions in the Law of the Sea, Collected Papers*, v. III (Dobbs Ferry, N.Y.: Oceana, 1973), p. 233.

15. This discussion is derived from Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955), pp. 109-116. For a general discussion of the ancient and modern Arab and Islamic views on maritime law, see Muhammad Sa'id Muhammad al-Khatib, *Al-wad' al-qānūnī lilbahr al-iqlīmī ma' darāsa lilbahār al-iqlīmīyya al-'arabiyya wa al-'ajnabiyya li al-Qānūn al-dawūī* (al-qāhira [Cairo]: Dār al-nahda al-'arabiyya, 1395 [1975]).

16. Kingdom of Saudi Arabia, *Fish and Shell Fishing Regulations Applicable to the Coasts of the Red Sea, Umm al-Qura*, No. 397, 18 Rabi' I 1351 (22 July 1932), translated by J.C. Stewart (Dhahran: Arabian-American Oil Company, 29 September 1948).

17. Kingdom of Saudi Arabia, *Regulations for the Coast Guard Directorate and Its Divisions, In Sanction of These Regulations High Decree Has Been Issued on Muharran 29, 1353 or May 13, 1934 Under No. 218/318*, translated by Aramco (Dhahran: Arabian-American Oil Company, n.d.).

18. Mohammed Zayyan al-Jazairi, "Saudi Arabia: a Diplomatic History, 1924-1964." Unpublished Doctoral Dissertation, University of Utah, Department of History, Salt Lake City, Utah: 1970, pp. 66-67.

19. Kingdom of Saudi Arabia, Decree No. 6/4/5/3711, *Umm al-Qura*, No. 1263, 2 Sha'ban 1368 (29 May 1949), translated in *The American Journal of International Law*, July 1949, *Official Documents*, Supplement 3, pp. 154-156. Another translation in *The Middle East Journal*, January 1950, pp. 96-98.

20. Richard Young, "Saudi Arabian Offshore Legislation," *The American Journal of International Law*, July 1949, p. 530.

21. Text of 1958 decree in al-Jazairi, pp. 274-278.

22. Herbert J. Liebesny, "Legislation on the Sea Bed and Territorial Waters of the Persian Gulf," *The Middle East Journal*, January 1950, p. 95.

23. United Nations, Conference on the Law of the Sea, *Official Records*, v. III: First Committee on Territorial Sea and Contiguous Zone (Geneva: 24 February-27 April 1958), pp. 35-37, 134-136, 186. Note that in the exact title, "Conference" refers to the first conference; the numerical designation will be used in brief entries.

SAUDI ARABIA—LAW OF THE SEA 67

24. United Nations, Conference on the Law of the Sea, *Official Records*, v. II: Plenary Meetings (Geneva: 1958), pp. 36, 39, 116, 134-136.

25. United Nations, Second Conference on the Law of the Sea, *Official Records*, Committee of the Whole (Geneva: 17 March-26 April 1960), p. 3. The numerical designation here is part of the precise title.

26. *Ibid.*, pp. 6-10, 12, 385-399, quote at p. 398.

27. United Nations, Third Conference on the Law of the Sea, *Official Records*, v. I (New York: 1975), p. 144; v. II, p. 268.

28. See Article 9 of 1949 decree and Article 8 of 1958 decree. See notes 19 and 21 *supra*.

29. Young, "Persian Gulf," p. 232.

30. Kingdom of Saudi Arabia, *Royal Pronouncement Concerning the Policy of the Kingdom of Saudi Arabia With Respect to the Subsoil and Sea Bed of Areas in the Persian Gulf Contiguous to the Coasts of the Kingdom of Saudi Arabia*, Umm al-Qura, 1263, 2 Sha'ban 1368 (29 May 1949), translated in *The American Journal of International Law*, July 1949, *Official Documents*, Supplement 3, pp. 156-157. Another translation in *Middle East Economic Survey*, 18 January 1963, pp. 9-10. In a separate opinion, Judge Ammoun briefly mentioned, on the basis of a *Le Monde* report of 30 October 1958, that Saudi Arabia would extend the continental shelf doctrine to the Red Sea. See *The North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. The Netherlands)* in *International Law Reports*, 1970, p. 122.

31. See Liebesny for Kuwaiti declaration, p. 95. The Truman Declaration may be found in Wolfgang Friedmann, Oliver J. Lissitzyn, and Richard C. Pugh, *International Law: Cases and Materials* (St. Paul: West Publishing Co., 1969), pp. 557-558.

32. Text of agreement translated in *International and Comparative Law Quarterly*, July 1958, pp. 519-521. Also see Separate Opinion of Vice President Koretsky in *The North Sea Continental Shelf Cases*, *International Law Reports*, p. 164.

33. Muhammad Hamidullah, *Muslim Conduct of State*, 4th ed. rev. (Lahore: Sh. Muhammad Ashraf, 1961), p. 90.

34. *Agreement concerning Sovereignty Over Al-'Arabiyyah and Farsi Islands and Delimitation of Boundary Line Separating Submarine Areas between the Kingdom of Saudi Arabia and Iran*, 24 October 1968, in *International Legal Materials, Current Documents*, May 1969, pp. 493-496.

35. *Agreement between the State of Kuwait and the Kingdom of Saudi Arabia Relating to the Partition of the Neutral Zone*, 1 July 1965, unofficially translated in *The American Journal of International Law*, October 1966, pp. 744-749. It should be noted that the translation is not without controversy particularly since the commonly termed Neutral Zones is translated as the Partition Zone, a translation preferred by the Kuwaitis such as the translator himself.

36. Sayed M. Hosni, "The Partition of the Neutral Zone," *The American Journal of International Law*, October 1966, pp. 742-743. For the Saudi position, see Shaykh al-Yamani's comments in *The Middle East Economic Survey*, 13 March 1964, p. 1; Mohammad Talaat el-Ghoneimy, "The Legal Status of the Saudi-Kuwaiti Neutral Zone," *International and Comparative Law Quarterly*, July 1966, pp. 698-700. Also see J.Y. Brinton, "The Saudi-Kuwaiti Neutral Zone," *International and Comparative Law Quarterly*, July 1967, pp. 820-821, and el-Ghoneimy's rejoinder, pp. 821-823. And, finally, see Husain al-Baharna, "A Note on the Kuwait-Saudi Arabia Neutral Zone Agreement of July 7, 1965, Relating to the Partition of the Zone," *International and Comparative Law Quarterly*, July 1968, pp. 733-734.

37. Kingdom of Saudi Arabia Decree No. M-27 dated 9/7/1388 Hegira, translated as *Saudi Arabian Decree Relating to Ownership of Red Sea Resources*, in S. Houston Lay, Robin Churchill, and Myron Nordquist, eds., *New Direction in the Law of the Sea*, v. I (Dobbs Ferry, N.Y.: Oceana, 1973), p. 119.

38. For a discussion of "hovering laws," see William W. Bishop, Jr., *International Law: Cases and Materials*, 2d ed. (Boston: Little, Brown, 1962), pp. 521-522. The Saudi concern with pollution has been expressed in the general statement at the Third Conference on the Law of the Sea, *Official Records*, v. I, p. 144. Also note that Saudi Arabia has acceded to the International Convention for the Prevention of Pollution of the Sea by Oil, the text of which may be found in *United Nations, Treaty Series*, no. 4714 (1959), pp. 4-25.

39. See Evan Luard, "The Law of the Sea Conference," *International Affairs*, April 1974, p. 270; *Keesing's Contemporary Archives*, 25 June 1976, p. 27798.

40. Third Conference of the Law of the Sea, *Official Records*, v. II, p. 154.

41. The proposed draft on the economic zone lists the same activities as in the contiguous zone over which control can be exercised. See Third Conference on the Law of the Sea, *Official Records*, v. III, p. 239.

42. See listing in *New Directions in the Law of the Sea*.
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68 NAVAL WAR COLLEGE REVIEW

43. The texts of the four Geneva conventions may be found in U.S. Congress, Senate, Committee on Foreign Relations, *Four Conventions and an Optional Protocol Formulated at the United Nations Conference on the Law of the Sea*, 86th Congress, 1st sess. (Washington: U.S. Govt. Print. Off., 1959).

44. First Conference on the Law of the Sea, *Official Records*, v. III, pp. 35-37.

45. *Ibid.*, pp. 84-85, 93, 96, 100. First Conference on the Law of the Sea, *Official Records*, v. II, p. 65.

46. First Conference on the Law of the Sea, *Official Records*, v. III, pp. 2-3.

47. *Ibid.*, p. 37.

48. Third Conference on the Law of the Sea, *Official Records*, v. I, p. 144; v. II, p. 139; v. III, p. 221.

49. First Conference on the Law of the Sea, *Official Records*, v. III, p. 156.

50. *Ibid.*, pp. 129-130.

51. First Conference on the Law of the Sea, *Official Records*, v. II, pp. 67-68.

52. Third Conference on the Law of the Sea, *Official Records*, v. II, p. 142.

53. Luard, pp. 269-270.

54. Second Conference on the Law of the Sea, *Official Records*, pp. 401-402.

55. Interview in Riyāḍ, 6 July 1975.

56. Third Conference on the Law of the Sea, *Official Records*, v. I, p. 144.

57. See Robert Sullivan, "Saudi Arabia in International Politics," *Review of Politics*, October 1970, pp. 436-460.

58. The Saudi English daily, *Arab News*, reported on 7 May 1975 that Saudi Arabia and Somalia, during a state visit by Somalia's president, agreed to exclude foreign powers from the Red Sea. The Saudi opposition to Soviet bases in the area is clear from the strong emphasis on Islam in the communique and in the daily editorial, pp. 4, 8.

59. See, generally, Chap. 9 of Ken Booth, *Navies and Foreign Policy* (New York: Crane Russak, 1977).

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