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# The Exclusive Economic Zone: The Impact of the 1982 Law of the Sea Treaty on Worldwide U.S. Naval Operations

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THE EXCLUSIVE ECONOMIC ZONE: THE IMPACT OF THE 1982  
LAW OF THE SEA TREATY ON WORLDWIDE  
U.S. NAVAL OPERATIONS

BY

JOHN C. MEYER

A MAJOR PAPER SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENT FOR THE DEGREE OF  
MASTER OF MARINE AFFAIRS

UNIVERSITY OF RHODE ISLAND

1987

**MASTER OF MARINE AFFAIRS MAJOR PAPER**  
**OF**  
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**APPROVED:**

**Major Paper Committee**

**Major Professor** \_\_\_\_\_

**UNIVERSITY OF RHODE ISLAND**

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Abstract of  
THE EXCLUSIVE ECONOMIC ZONE: THE IMPACT OF THE 1982 LAW OF  
THE SEA TREATY ON WORLDWIDE U.S. NAVAL OPERATIONS

The focus of the Third United Nations Conference on the Law of the Sea (UNCLOS III) was on the development of an international legal regime for the peaceful use of the world's oceans. The maritime powers, particularly the United States, viewed this new regime in terms of preserving traditional high seas freedoms of navigation and overflight, and limiting expanding coastal state claims over their adjacent water and airspace. Developing countries, emerging from a period of decolonization, sought to enhance their security and gain economic benefit from this new legal regime, through the seaward extension of claims to jurisdiction over what had traditionally been high seas.

The emergence of a 200 nautical mile Exclusive Economic Zone (EEZ) from UNCLOS III represents a mixed blessing for the United States in terms of gains in sovereign rights and jurisdiction over the natural resources of a large portion of coastal "real estate," versus the potential loss of traditional high seas freedoms of navigation and overflight in the EEZ's of other coastal states. The sui generis nature of the EEZ represents a compromise between the

maritime powers and developing countries over the legal status of the zone, but is clearly not a final solution to a continuing debate. The impact on U.S. military interests of the legal regime for the EEZ will depend on individual interpretations of the 1982 Law of the Sea Treaty and evolving coastal state practice. Accordingly, such interpretation and practice deserve to be carefully followed.

## PREFACE

The 1982 Law of the Sea Treaty is not yet in force. Although the treaty was opened for signature and ratification in December 1982 with 117 countries signing the treaty, it has yet to receive the required 60 ratifications. The United States has not signed the treaty because of problems pertaining to deep sea mining provisions, but has proclaimed a 200 nautical mile EEZ. There are other countries that have asserted rights to an EEZ which are not signatories of or intend to become party to the treaty. Consequently, the bulk of the research for this paper covers the available literature since 1982, as interpretation of the treaty and state practice are the fundamental elements which will shape the legal status of this new juridical zone. However, the scope of literature covering this topic is extremely limited. This paper should be viewed as a first attempt to present the relevant aspects of this potentially complex issue. Further study will be required as interpretation of the Convention and state practice evolve and better define the status of the EEZ in juridical terms.

There are several other navigational issues being debated within the context of the 1982 Law of the Sea Treaty. This paper deals only with those issues which

inhibit, or potentially may inhibit, the exercise of navigation and overflight freedoms by the U.S. Navy within EEZs of foreign countries. The emphasis will be on peacetime/crisis naval operations as opposed to operations in a situation of general war.

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THE EXCLUSIVE ECONOMIC ZONE: THE IMPACT OF THE 1982 LAW OF  
THE SEA TREATY ON WORLDWIDE U.S. NAVAL OPERATIONS

CHAPTER I

INTRODUCTION

Background. The 1958 United Nations Conference on the Law of the Sea resulted in four treaties which dealt with fishing and conservation of the living resources of the high seas, the continental shelf, the territorial sea and contiguous zone, and the high seas.<sup>1</sup> These treaties, all ratified by the United States, formed the basis of modern international law of the sea. The Convention on the High Seas represented a codification of the rules of international law relating to the high seas, and the provisions adopted were regarded as generally declaratory of established principles of international law. In Article 1 of the Convention, the high seas are defined as meaning "all parts of the sea that are not included in the territorial sea or in the internal waters of a State." Article 2 stipulates that the high seas are "open to all nations," and that "no State may validly purport to subject any part of them to its sovereignty." Article 2 also states that the freedom of the high seas "comprises, inter alia, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas."

Finally, Article 2 states that these freedoms "shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas." <sup>2</sup>

At the time the Convention on the High Seas entered into force in 1962, the majority of territorial sea claims asserted by coastal states were under 12 nautical miles. This meant that the vast majority of sea lines of communications (SLOCs) and major straits remained outside coastal state jurisdiction. Consequently, this Convention did nothing to impede the ability of the U.S. Navy to conduct routine worldwide operations. These operations supported the foreign policy of the United States as it evolved after World War II, and were embodied in three assigned missions: strategic deterrence, sea control, and power projection.

The Problem. As Table 1 clearly illustrates, the number of coastal states, and the number of territorial sea claims of 12 nautical miles and beyond exhibited a dramatic increase in the intervening years between the 1958 and 1982 Law of the Sea Treaties. The maritime powers, especially the United States, fully recognized the potential impact of this "creeping jurisdiction" and sought, throughout the negotiations, to limit state authority over extended

maritime areas.<sup>3</sup>

Table 1

|            | Territorial Sea Claims |        |            |
|------------|------------------------|--------|------------|
|            | Under 12 nm            | 12 nm  | Over 12 nm |
| 1967 (86)* | 48/56%                 | 26/30% | 12/14%     |
| 1974 (118) | 40/34%                 | 56/47% | 22/19%     |
| 1984 (140) | 32/23%                 | 78/56% | 30/21%     |

\*Number of coastal state claims.

Source: David L. Larson, "Security Issues and the Law of the Sea: A general Framework," Ocean Development and International Law, v. 15, no. 2, 1985, p. 102.

These extended maritime claims were mainly a result of an effort on the part of developing countries, emerging from decolonization, to provide for two fundamental requirements: security and resource jurisdiction. The major problem associated with this effort, from the perspective of the maritime powers, was the protection of the freedom of navigation. It was feared that the developing countries, unwilling to accept the traditional law of the sea that had evolved over the centuries, would expand jurisdiction through unilateral action to meet the needs of their security and resource interests in ways that would adversely impact navigation.<sup>4</sup> This was a point of concern for the U.S. and other maritime states in negotiations at UNCLOS III.

Ultimately, a compromise between the maritime powers and developing countries manifested itself in the establishment of the Exclusive Economic Zone, whose provisions are new to international law. This is a

transitional zone, interposed between the territorial sea and the high seas which, if universally adopted, would encompass thirty-six percent of the physical area of the world's ocean.<sup>5</sup> Virtually all of the major sea lines of communication, the Mediterranean Sea, the Caribbean, the Black Sea, the Red Sea, the Persian Gulf, and the Sea of Japan would be included in this new juridical zone.<sup>6</sup>

A major part of the debate between the maritime powers and the developing coastal states during UNCLOS III centered on the legal status of the EEZ. The maritime powers argued that the EEZ must have high seas status. The developing countries argued that the EEZ belonged to the coastal state, but that high seas freedoms were allowed within their EEZs. The sui generis nature of the EEZ that emerged from UNCLOS III represents a compromise of these two positions. Several high seas freedoms are included in the Article 58 provisions governing the EEZ, such as: the freedom of navigation and overflight; the laying of submarine cables and pipelines; and other internationally lawful uses of the sea, such as those associated with the operation of ships, aircraft and submarine cables and pipelines. Additionally, Articles 88 to 115 of the Convention dealing with the high seas also apply to the EEZ as long as they are not incompatible with the EEZ provisions of the Convention. However, the coastal state retains certain rights which, if very broadly interpreted,

could significantly restrict the ability of the U.S. Navy to conduct operations in and through foreign EEZs.

Even though the 1982 Law of the Sea Treaty is not yet in force, the 200 nautical mile EEZ is rapidly being incorporated into customary international law. The future status of the traditional high seas freedoms of navigation and overflight in the EEZ hinges on individual interpretations of the treaty and the impact of evolving coastal state practice.<sup>7</sup> It will also hinge, however, on the response by the United States to any imposed navigational restrictions which inhibit the U.S. Navy from carrying out its assigned missions on a worldwide basis.

Purpose of the Paper. This paper will examine the issue of U.S. Naval operations in foreign EEZs within the context of the 1982 Law of the Sea Treaty. The applicable articles from the treaty pertaining to the EEZ will be used as the framework for the discussion of first, the position of the United States in terms of its stated ocean policy and interpretation of the treaty; and second, the opposing positions of coastal states based on their interpretations of the treaty, proclamations, and available national legislation. Challenges to the exercise of freedom of navigation in the EEZ will be explored, and several methods to meet those challenges will then be evaluated with respect to the role the U.S. Navy plays as an instrument of U.S. foreign policy.

## CHAPTER II

### THE LEGAL REGIME OF THE EEZ AND ITS EXTENT

Definition. The legal regime of the EEZ is embodied in Part V of the 1982 Law of the Sea Treaty, which is included in this paper as Appendix 1.<sup>8</sup> The EEZ is defined in Article 55 as "...an area beyond and adjacent to the territorial sea...under which the rights and jurisdiction of the coastal state and the rights and freedoms of other states are governed by the relevant provisions of this Convention." The EEZ cannot "...extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." The sui generis nature of the EEZ and a statement of legal rights and duties are embodied in Articles 56, 58, and 59, whose interpretation will govern coastal state practice regarding high seas freedoms of navigation and overflight.<sup>9</sup> It is important at this juncture to examine these articles in order to lay a foundation for further discussion.

The Rights of the Coastal State. Article 56 attributes to the coastal state certain rights with respect to the natural resources of the EEZ. Specifically, the coastal state has been given "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-



living..., and with regard to other activities for the economic exploitation and exploration of the zone...." The coastal state has also been given jurisdiction with regard to the construction and use of artificial islands and installations, marine scientific research, and pollution control. However, the Convention also charges the coastal state to exercise "...due regard to the rights and duties of the other states...." It is important to emphasize that the coastal state has been given sovereign rights in the EEZ, and not sovereignty over the zone, as is the case in the territorial sea. Sovereign rights, in this context, pertain to the jurisdiction and control over resource related activities within the EEZ. Sovereignty implies complete and continuous competence over the seabed, subsoil, water column, and airspace within the EEZ. This may appear at first glance as a subtle distinction, but it is absolutely critical to the manner in which the Convention is interpreted. If the rules and regulations adopted by coastal states to administer activities in the EEZ evolve into inhibitions resembling sovereignty over the EEZ, a new wave of "creeping jurisdiction" could be the result.

The Rights of Other States. Much of the debate over the EEZ during the Third UN Conference on the Law of the Sea centered on its legal status with respect to navigation rights. The maritime powers, led by the United States,

were concerned with ongoing "creeping jurisdiction" and argued for high seas status in the EEZ for activities which were not clearly defined as rights of the coastal state. On the other hand, developing countries argued for territorial seas rights for the coastal state over activities which were not clearly defined as rights of the non-coastal state within the EEZ. The result of this debate is reflected in the sui generis character of the EEZ (Article 55), and in Part VII of the Convention dealing with the high seas, which is included in this paper as Appendix II.<sup>10</sup> Article 86 states that:

The provisions of this Part [on the high seas] apply to all parts of the sea that are not included in the exclusive economic zone.... This article does not entail any abridgment of the freedoms enjoyed by all states in the exclusive economic zone in accordance with article 58.

Article 58 deals with the rights and duties of other states in the EEZ and is primarily concerned with the high seas freedoms outlined in Article 87 that are applicable in the EEZ. Under Article 58 all states are entitled to the Article 87 high seas freedoms "of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms...." The article also specifically references Articles 88 to 115 from Part VII, and other pertinent rules of international law, as pertaining to the rights and duties of other states in the EEZ, "...in so far as they

are not incompatible with this Part." The high seas freedoms from Part VII that are not included in the provisions governing the EEZ include: the freedom to construct artificial islands and other installations; the freedom of fishing; and the freedom of scientific research.

The last section of Article 58 requires states exercising their rights and performing their duties in the EEZ to:

have due regard to the rights and duties of the coastal state and shall comply with the laws and regulations adopted by the coastal state in accordance with the provisions of the Convention and other rules of international law in so far as they are not incompatible with this part.

Article 58 opens up the question of interpretation over the status of warships operating in an EEZ of another state. From the perspective of the U.S. and other maritime states, naval maneuvers in an EEZ are uses of the sea related to navigation, are internationally lawful, and are associated with the operation of ships and aircraft. From the perspective of many developing countries these activities, when occurring in their EEZs, are not related to navigation, internationally lawful, or associated with the operation of ships and aircraft. There are then two points of view with respect to this article.

One of these points of view is that naval maneuvers have historically been considered lawful in the waters outside the territorial sea and are included in high seas

freedoms. Bernard H. Oxman examined the quality and the quantity of rights in the EEZ. He observed that a major point made during the UNCLOS III negotiations, to clarify the quality of rights in the zone, was that full freedoms were being preserved in the EEZ, and that the application of existing international agreements and regulations relating to navigation, overflight, spacecraft, and submarine cables would remain unchanged.<sup>11</sup> The interpretation of paragraph 1 of Article 58 centers on the placement of the phrase "referred to in article 87" after "freedoms" as establishing the qualitative identity of the freedoms of navigation, overflight, and laying of submarine cables and pipelines, with those beyond the EEZ.<sup>12</sup> Except as specifically provided in the Convention, the coastal state has no more rights with respect to these freedoms within the EEZ than it does beyond the zone.

The quantity of rights in the EEZ, enumerated in paragraph 1 of Article 58 (i.e. freedoms of navigation and overflight, laying of submarine cables and pipelines, etc.) remains the right and responsibility of the flag state, just as it is on the high seas. The flag state must insure, under paragraph 3 of Article 58, that it exercises "due regard to the rights and duties of the coastal State" when it is exercising those rights listed in paragraph 1. The fact that the coastal state has enforcement rights in the EEZ, with respect to resource related activities, does

not effect the flag states responsibilities of "due regard" in exercising its navigation and other freedoms. In addition, the Article 88 reservation of the high seas for peaceful purposes applies to EEZ as well as the high seas. It does not specifically prohibit naval activities by the coastal state or others.<sup>13</sup>

The other point of view is that naval maneuvers in an EEZ are not internationally lawful in that they are not compatible with Article 88, which reserves the high seas for peaceful purposes.<sup>14</sup> In August 1983, the Nicaraguan Minister of Defense described the presence of four U.S. Navy vessels 15 miles off shore as a sign of "the aggressive policies of the U.S. against the Sandinista revolution".<sup>15</sup> Taken in this context, the perceptions of the coastal state with respect to the presence of foreign naval vessels in its EEZ, may contribute substantially to how the Convention is interpreted.

Residual Rights. The framers of the Convention realized that there would emerge unforeseen classes of uses in the EEZ that could be regarded in three separate ways: (1) as freedoms to be enjoyed by all; (2) as prohibited to all; and (3) as not strictly prohibited, but regulated by the coastal state exercising special rights over the particular use. Since there was no way to accurately determine, in advance, how to resolve conflicts that might arise over these unforeseen uses, a residual rights clause

was included in the Convention.<sup>16</sup>

The purpose of Article 59 is to resolve "conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone." This article does not provide specific guidance on how these conflicts are to be adjudicated, rather it provides a general formula for attributing rights in cases "where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone...".

Conflicts are to be resolved:

on the basis of equity and in light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

This article, with its vague wording, has the potential to pose a significant threat to the exercise of traditional high seas freedoms in the EEZ by the U.S. Navy. A full range of interpretations of this article is possible as coastal states exercise what they consider to be their residual rights in the EEZ and attempt to resolve conflicts "on the basis of equity and in the light of all the relevant circumstances."<sup>17</sup>

Returning to Article 56, the coastal state has sovereign rights over the exploration and exploitation of the resources of the EEZ, but the Convention does not specifically stipulate under what conditions the EEZ or high seas regimes would be applied with respect to those

activities which are not covered by Article 56(1)(a). The Convention is not altogether clear whether the coastal state's jurisdictional rights over the EEZ are limited to those listed in Article 56 (1)(b). The sui generis nature of the EEZ has left unresolved a number of questions. Will Article 59 be sufficient to determine the legal rights in the EEZ, or will individual applications of the article by coastal states continue to cloud the issue? In circumstances unforeseen by the Convention, in which Article 59 would be applied, will coastal states exercise sovereign rights and jurisdiction under Part V, or will the principles of the high seas under Part VII prevail?<sup>18</sup>

## CHAPTER III

### THE UNITED STATES POSITION ON THE EEZ

U.S. Interests and the Role of the Navy. The United States, by virtue of its position as a global power, has involved itself in an array of global interests in which the Navy plays a major role. A national security strategy, promulgated by the President on May 20, 1982, in National Security Decision Document (NSDD)-32 identifies the Soviet Union as the main threat to those interests.<sup>19</sup> A brief overview of those interests, in priority order, will serve to illustrate how important the role of the Navy is in U.S. foreign policy.

North America is clearly the most important area to the U.S. in terms of defense, economic, and ideological interests.<sup>20</sup> In Europe, the strength of the Atlantic Alliance is vital to continuing the historic American guarantee of Western Europe's security. For both North America and NATO the fundamental strategy has and continues to be one of deterrence based on a capability of defense at all levels of conflict.<sup>21</sup> The Navy plays a vital role in the security of these vital interests with respect to: providing strategic deterrence with its ballistic missile submarine force; maintaining a continuous presence in and around our allies through forward deployment of naval



forces; and insuring that vital sea lines of communications (SLOCs) between the U.S. and Europe remain open for trade and the resupply of Europe in time of war.

In South America, Central America, and the Caribbean, the primary U.S. objective is to maintain the security of North America and the Caribbean basin. The proximity of the countries in this region, and the close ties that have historically been enjoyed, make the security of this area a high priority.<sup>22</sup> The continuing influence of the Soviet Union, through its Cuban proxy, constitutes an ever present threat to this security. The Navy's role in this region has historically been one of continued presence and protection of the vital SLOCs which emanate from the Panama Canal and Gulf of Mexico.

The Middle East and Southwest Asia have been a major part of U.S. policy since the late 1940's. The basic elements of that policy have been to: deter Soviet gains in the region; protect the security of Israel and the territorial integrity of other regional states; ensure the unimpeded flow of oil and other raw materials; and to find a lasting solution to the Arab-Israeli problem.<sup>23</sup> The role of the Navy in this region has been to act as a deterrent force through its continuous presence, react quickly to regional crises, and to insure freedom of navigation through the Persian Gulf and major straits of the region.

East Asia and the Pacific are rapidly developing into

and increasingly vital area to the U.S. Four U.S. states border the Pacific; a fifth, Hawaii, lies in the center of this enormous ocean; the U.S. territories of Guam and American Samoa occupy strategic positions in the western and southern Pacific; and more than 2,000 other Pacific islands are under U.S. administration. Over 30 percent of U.S. trade is conducted with the nations of East Asia, and five of our eight mutual security treaties link us with East Asian countries.<sup>24</sup> The Navy's role in this region is to help provide for the security of U.S. territory, provide a strategic deterrent to Soviet aggression, provide for the defense of the SLOCs and strategic straits through which regional trade depends, and assist in the fulfillment of our treaty commitments with our allies.

In Africa, the principle objectives of U.S. policy is to support the stability of friendly governments, preserve access to strategic mineral resources, and deny the Soviet Union further access into the region.<sup>25</sup> The Navy supports this policy through presence operations in the waters of friendly countries, and by insuring that the flow of raw materials to the U.S. remains unimpeded.

It can be seen from the above synopsis that the interests of the U.S. are indeed global in nature and largely dependent on the Navy and its unique ability to contribute to deterrence, promote alliance solidarity, and ensure unimpeded free communication upon the seas in

support of national objectives.

Traditional Maritime Claims. The United States has traditionally viewed freedoms of navigation and overflight as fundamental requirements for furthering its military and commercial interests around the world, and the interests of its allies.

Since the American Revolution, the United States has relied on its seapower to support and protect vital interests at home and abroad. Through two world wars, the industrial and military capability of the country was mobilized and decisively brought to bear as a direct result of maritime supremacy. Today, the economic well-being of the U.S. is increasingly more dependent on overseas trade and concomitantly more vulnerable to foreign political developments. The U.S. Navy faces a rapidly expanding and modernizing Soviet Navy that has established a presence in every major international strait and choke point in the world.<sup>26</sup> The interruption of trade, particularly crude oil from the Persian Gulf, would place a tremendous burden on not only the U.S., but also the economies of our NATO allies and Japan. There has never been a time when the maintenance of the freedoms of navigation and overflight have been more important to this nation.

Consequently, maritime claims made by the United States have historically been conservative in nature. This has been done, in part, to demonstrate leadership and to

elicit similar conservative claims by other coastal states. As an example, the United States maintains a 3 nautical mile territorial sea, in light of the generally accepted 12 nautical mile territorial sea adopted in the Convention. The U.S. has also decided not to avail itself of adopting the straight baseline regime or of claiming large historic bays, which would increase the area under United States jurisdiction. In addition to the international implications, there are domestic legal and political reasons for these decisions as well. This has been a consistent policy that opts for the maximum amount of the waters off the coast of the United States to be designated as high seas in return for reciprocal consideration in the waters of foreign coastal states.<sup>27</sup> The U.S. proclamation of a 200 nautical mile EEZ does nothing to abridge this traditional policy.

The Presidential Proclamation of 1983. The decision not to sign the 1982 Law of the Sea Treaty left the United States in a potentially disadvantageous position in preserving the high seas freedoms of navigation and overflight (particularly in international straits and through archipelagos) it had fought so hard to maintain throughout the negotiations for the new treaty.

On March 10, 1983 the President announced new guidelines for U.S. ocean policy that were designed "to promote and protect the oceans interests of the United

States in a manner consistent with those fair and balanced results in the Convention and international law".<sup>28</sup>

First, the U.S. would accept and act in accordance with the balance of interests relating to traditional uses of the oceans and would:

...recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States would:

exercise and assert its navigation and overflight rights and freedoms on a world-wide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

And third, the President proclaimed:

an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast.

The president did not, however, change the breadth of the territorial sea. Territorial sea claims of other states, in excess of 3 nautical miles to a maximum of 12 nautical miles, would be respected consistent with the provisions of the Convention.

United States Ocean Policy. In addition to proclaiming an EEZ, the President's proclamation also established ocean policy for the United States. The

fundamental elements of this policy are based on the premise that the articles of the Convention relating to navigation and overflight codify existing customary international law and are binding on all nations. Those customary laws recognize the waters seaward of the territorial sea as beyond the territorial sovereignty of any coastal state, and in which the high seas freedoms of navigation and overflight, and other internationally lawful uses of the sea, apply to the international community as a whole. Consequently, coastal states cannot restrict or impede the non-resource related exercise of those freedoms in the EEZ by any ship or aircraft, including warships and military aircraft.

The President's Ocean Policy Statement clearly states that the United States will challenge excessive maritime claims through diplomatic channels and by the continued exercise of navigation and overflight freedoms, beyond the territorial sea whose maximum breadth is 12 nautical miles. The unimpeded commercial and military navigation and overflight are critical to the national interest. Failure to continuously exercise these traditional freedoms would appear as acquiescence to excessive claims and, over time, would result in their eventual loss.<sup>29</sup>

A U.S. Perspective of the EEZ Articles. Bernard H. Oxman was the Vice-Chairman of the U.S. Delegation to the Third U.N. Conference on the Law of the Sea. His study of

the regime of warships in the EEZ provides a perspective that most closely embodies the spirit and intent of the President's proclamation, and will serve, for the purposes of this paper, to represent the U.S. view of the EEZ articles of the Convention.<sup>30</sup>

There is nothing in Part V of the Convention that specifically prevents naval operations in the EEZ. The only question is whether such activity can be conducted in keeping with the "due regard" obligation of Article 58. Naval operations involving weapons exercises that cause serious damage to a natural resource being exploited by a coastal state in its EEZ could be considered a violation of the flag state's "due regard" obligation. However, a coastal state desiring to avoid the presence of a foreign warship in its EEZ for political or military reasons cannot use its resource related rights under Article 56 to require a foreign warship to leave its EEZ by invoking the "due regard" obligation of the flag state.<sup>31</sup>

Article 58, paragraph 1, outlines the high seas freedoms "referred to in article 87" that are applicable in the EEZ. They include the freedoms of navigation, overflight, and the laying of submarine cables and pipelines. The freedoms listed do not include the article 87 term inter alia, nor is there any reference to the freedoms of fishing, scientific research, and the construction of artificial islands and installations.

However, article 58 does include a reference to "other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention." Oxman's view is that this clause, as far as warships are concerned, is the functional substitute for the "inter alia" in article 87.<sup>32</sup>

Article 58, paragraph 2, strongly reinforces the high seas nature of the rights and duties of warships by including articles 88 to 115 into the regime of the EEZ, so long as they are not incompatible with the EEZ provisions. It is not apparent that these articles (refer to Appendix II) which deal with the nationality and administration of ships, the complete immunity of warships from the jurisdiction of any state other than the flag state, the duty to render assistance, the prohibition of the transport of slaves, the duty to cooperate in the repression of piracy, the duty to cooperate in the suppression of narcotic drug trafficking, the right of visit, and the right to lay submarine cables and pipelines, are in any way incompatible with the provisions of part V of the Convention.<sup>33</sup>

The article 58, paragraph 3, stipulation that states "shall comply with the laws and regulations adopted by the coastal State" in its EEZ, relates to activities for which



the coastal state exercises sovereign rights and jurisdiction under the provisions of Part V of the Convention relative to the EEZ. Those activities are economic in nature and are not applicable to the conduct of warships in the coastal state's EEZ.<sup>34</sup>

Article 59 deals with activities that do not fall directly under the provisions of either Article 56 or 58. The key to the application of this article lies in an examination of the specific use of the EEZ in question, that is not addressed in Articles 56 or 58, and not in a question of the conceptual status of the EEZ under the jurisdiction of the coastal state. A conflict that may arise over a specific use of the EEZ would have to relate back to the rights and duties afforded the coastal state and other states in articles 56 and 58. The status of the EEZ in juridical terms is not clearly open to debate under this article.<sup>35</sup>

It would appear from the above discussion that, in principle, warships of all nations are free to carry out their assigned missions in the EEZ as long as they observe the following criteria: (1) refrain from the unlawful threat or use of force; (2) exercise due regard for the rights of other nations to use the sea; (3) exercise due regard for the rights of the coastal state in the EEZ; and (4) observe the rules of international law and obligations under other treaties.<sup>36</sup> These criteria are also in keeping

with the President's proclamation and ocean policy statement.

## CHAPTER IV

### COASTAL STATES AND UNCLOS III

The Status of Maritime Claims to EEZ's. By September 1986, 159 countries had signed the Convention. However, it had only received 31 of the 60 ratifications required to bring it into force.<sup>37</sup> The principal obstacle to widespread ratification appears to be existing national legislation. Changes to domestic laws can be difficult to achieve, particularly when it requires the state to relinquish previously established claims.<sup>38</sup> There is concern that the treaty may never receive the required number of ratifications. Yet, there is a body of coastal state practice which is reflective of a general move toward parts of the Convention emerging as customary international law. An examination of available national legislation and proclamations also points out potential problems relating to the future of high seas freedoms of navigation and overflight.<sup>39</sup> It is important then to examine the available body of domestic legislation, proclamations, and maritime claims to gain an understanding of how the Convention is being interpreted and adopted.

There is no requirement in the Convention for a state to claim an EEZ. Article 57 of the Convention simply states that the EEZ "shall not extend beyond 200 nautical

miles from the baselines from which the breadth of the territorial sea is measured." Indeed, EEZ claims have not been universally asserted. As of 1 January 1987, 69 of 139 coastal states had asserted claims to a 200 nautical mile EEZ (Table II).

Table II

| EEZ Claims         |                  |                        |
|--------------------|------------------|------------------------|
| Antigua/Barbuda    | Honduras         | Portugal               |
| Bangladesh         | Iceland          | Qatar                  |
| Barbados           | India            | St. Kitts/Nevis        |
| Burma              | Indonesia        | St. Lucia              |
| Cambodia           | Ivory Coast      | St. Vincent/Grenadines |
| Cape Verde         | Kenya            | Sao Tome/Principe      |
| Colombia           | Kiribati         | Seycheilles            |
| Comoros            | Korea, North     | Solomon Islands        |
| Costa Rica         | Madagascar       | Soviet Union           |
| Cuba               | Malaysia         | Spain                  |
| Djibouti           | Maldives         | Sri Lanka              |
| Dominica           | Mauritania       | Suriname               |
| Dominican Republic | Mauritius        | Thailand               |
| Egypt              | Mexico           | Togo                   |
| Equatorial Guinea  | Morocco          | Tonga                  |
| Fiji               | Mozambique       | Trinidad/Tobago        |
| France             | New Zealand      | United Arab Emirates   |
| Gabon              | Nigeria          | United States          |
| Grenada            | Norway           | Vanuatu                |
| Guatemala          | Oman             | Venezuela              |
| Guinea             | Pakistan         | Vietnam                |
| Guinea-Bissau      | Papua New Guinea | Western Samoa          |
| Haiti              | Philippines      | Yemen(Aden)            |

Source: Lewis Alexander, Navigational Restrictions within the New LOS Context Geographical Implications for the United States, Defense Supply Service Contract MDA-903-84-C-0276, Washington, D.C., 1986, p. 87.

Of the states claiming an EEZ only Djibouti, Cambodia (Kampuchea), Madagascar, the United States, and Venezuela had not signed the Convention as of January 1985.<sup>40</sup>

Authors who have extensively examined national legislation have determined that states enacting EEZ claims have acted independently, and that no clear consensus has arisen regarding the exact limits of jurisdiction that coastal states are exerting over their EEZs.<sup>41</sup> William T. Burke found in his examination of national legislation that many coastal states acted in their own self interest with little regard for the rights of other states. Even though there were provisions for the continued exercise of the freedoms of navigation and overflight in the legislation examined, it was often followed by the phrase "subject to the rights" of the coastal state in the zone.<sup>42</sup> Excerpts from India's legislation serves to illustrate this point. Any law in force in India can be applied to its EEZ "as if the exclusive economic zone or the part thereof to which it has been extended is a part of the territory of India." Additionally, India claims the right to regulate "the conduct of any person in the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone, or any other maritime zone of India." Guyana, Mauritius, Pakistan, Seychelles and Barbados have very similar provisions in their legislation.<sup>43</sup>

Lawrence Juda discovered in his examination of the national claims to an EEZ of 54 coastal states, that the language in the claims of 20 states did not clearly distinguish the EEZ as "an area beyond and adjacent to the

territorial sea..." as stated in Article 55 of the Convention. He concluded that without that clear distinction, coastal states may begin to assume that the rights they enjoy in the territorial sea, also apply throughout the EEZ.<sup>44</sup>

Challenges to Naval Operations in the EEZ. There are other examples of claims that have disturbing implications with regard to navigational freedoms in general and naval operations in particular. At the Convention signing, Brazil, Cape Verde, and Uruguay declared that, under the Convention, they did not consider military exercises, maneuvers, or weapons testing as being permitted within the EEZ, without the consent of the coastal state.<sup>45</sup> Claims of jurisdiction over security in the EEZ have been made by Bangladesh, Burma, Cambodia, Haiti, Pakistan, Sri Lanka, Vietnam, and the People's Democratic Republic of Yemen.<sup>46</sup> The EEZ proclamations and/or laws of the following states do not specifically recognize the freedoms of navigation and overflight in the EEZ:<sup>47</sup>

|               |               |
|---------------|---------------|
| Bangladesh    | Kenya         |
| Cape Verde    | Malaysia      |
| Colombia      | Mozambique    |
| Comoros       | New Zealand   |
| Cook Islands  | Oman          |
| France        | Sri Lanka     |
| Guinea-Bissau | Togo          |
| Iceland       | Vanuatu       |
| Indonesia     | Vietnam       |
| Kampuchea     | Western Samoa |

In addition, the EEZ proclamations and/or laws of Guyana, India, Maldives, Mauritania, Mauritius, Nigeria, Pakistan,

Seychelles, and the Soviet Union specifically permit their governments to regulate foreign vessel navigation in the EEZ.<sup>48</sup> Excerpts from national proclamations and/or laws pertaining to navigational restrictions in the EEZ are included in Appendix III.

A separate issue, yet closely related to navigational restrictions in the EEZ, is that of the existing claims to territorial seas in excess of 12 nautical miles. As of September 1986, 24 coastal states continued to claim territorial seas of greater than 12 nautical miles; 14 of which were 200 nautical mile claims.<sup>49</sup> It remains to be seen whether these coastal states will bring their claims within the guidelines of the Convention, or somehow incorporate them into assertions of an EEZ.

It is clear from the foregoing discussion that the high seas freedoms of navigation and overflight are being challenged by a significant number of coastal states irrespective of the provisions of the new law of the sea treaty. William T. Burke predicted in 1981 that "inhibitions on distant water naval activity will continue to grow regardless of law of the sea developments."<sup>50</sup> Those inhibitions could take the form of controlling access in EEZs through designated sea lanes. Likewise, coastal states may require "prior notification" before allowing naval vessels access through their EEZ's, as is the case in several territorial sea claims.<sup>51</sup> A coastal

state could conceivably purport to ban U.S. Navy vessels from its EEZ for security reasons by interpreting the ban as a case of unattributed rights under Article 59 of the Convention.

A coastal state strategically situated, such that a U.S. Navy aircraft carrier battle group had to pass through its EEZ enroute to a crisis involving a neighboring coastal state, could find itself under intense regional political pressure to invoke such a ban to demonstrate regional solidarity. The U.S. would be forced then to decide either to honor the ban, which would have serious implications for future operations, or risk the escalation of the crisis.

Another form of regional solidarity could manifest itself in a declaration by a group of coastal states which inhibited the free passage of foreign military vessels through their collective EEZs. For example, the movement to make the Indian Ocean a "Zone of Peace" in the early 1970's could be reborn in the interpretation of the EEZ articles of the Convention. The 1971 UN General Assembly resolution declaring the 'Indian Ocean as a Zone of Peace' represented the culmination of a process started by the littoral and hinterland states of the Indian Ocean after World War II and continued through their period of decolonization. The aim of this movement was to restrict the rights of the superpowers and former imperial powers with respect to maintaining a naval presence off their



shores.<sup>52</sup> The littoral and hinterland states met in July 1979 and adopted principles of agreement for implementing the 1971 declaration. These principles included:

(1) a general definition of the zone; (2) a call for the elimination of great power military presence/bases; (3) a declaration of a nuclear weapons free zone for the region; and (4) a call for regional cooperation among the littoral and hinterland states.<sup>53</sup> The movement has not progressed significantly since 1979 due to a variety of internal and external conflicts, and the diversity of the geostrategic and geopolitical make-up of the region.

Given the similarity of some of the national legislation and proclamations made by the Indian Ocean littoral states relative to the Convention, and the impact of these countries in the Law of the Sea negotiations, it is not beyond the realm of possibility to envision the day when the "Zone of Peace" is embodied in the 200 nautical mile boundaries of the littoral states of the Indian Ocean.

The impact of such a development in the Indian Ocean would have significant ramifications for not only the superpowers, but the NATO alliance and Japan as well. The Indian Ocean is the third largest ocean in the world and covers over 28 million square miles. It includes the Red Sea, the Persian Gulf, the Arabian Sea, and the Bay of Bengal. In addition, there are seven major access routes into and out of the Indian Ocean. Persian Gulf oil equates

to about 55 percent of the world's resources, and is vitally important to the industrial powers of the West and Japan. The entire region possesses rich minerals and other potentially strategic natural resources for which both the East and West compete. There are important sea lines of communications (SLOCs) which pass through vital "choke points" such as the Straits of Malacca, Bab el-Mendeab, and Hormuz.<sup>54</sup> The marriage of the "Zone of Peace" and the 200 nautical mile boundaries of the Indian Ocean littoral states could represent a major obstacle to world trade and a serious inhibition to the implementation of U.S. foreign policy by the navy.

Another potential challenge to naval operations in the EEZ was noted by Lewis Alexander, former Geographer of the Department of State, who suggested that: "The passage of potential polluters, such as nuclear-powered vessels, vessels carrying nuclear or other hazardous cargoes, and ammunition ships, through the EEZs of some coastal States may in time be jeopardized, treaty or no treaty. The writing is on the wall for ships of war. Warships, in some sense are the ultimate potential polluters."<sup>55</sup>

Dispute Settlement. Part XV of the Convention is devoted to the "Settlement of Disputes." There are 21 articles that deal with this issue, but it must be kept in mind that the provisions of these articles cannot be invoked until the treaty comes into force, and then only by

states that are party to the Convention. The status of non-party states is unclear with respect to the extent the Convention is a codification of customary international law. The ability of non-party states to seek relief under Part XV of the Convention, for dispute settlement, is the subject of some debate.<sup>56</sup>

Under Article 298 a state may elect to exempt itself from third party dispute settlement if the dispute involves military activities. This military activities clause can be viewed as a two edged sword. On the one hand, the U.S. Navy can continue to exercise its traditional high seas freedoms of navigation and overflight in any state's EEZ, regardless of coastal state practice that might ban such activity, and avoid any resulting dispute settlement procedures by taking the military activities exemption under Article 298. On the other hand, if a coastal state decides to limit access through its EEZ for naval vessels, it could conceivably invoke Article 298 (if it used its naval forces to enforce the ban) to attempt to avoid compulsory dispute settlement procedures.

Failure to achieve dispute settlement through the remedies provided for in the Convention leaves only avenues of diplomacy and bilateral or multilateral treaties as the remaining peaceful methods available to resolve disputes arising from these navigational issues. However, none of the remedies discussed are timely, and they cannot prevent

the sudden shift in policy by a coastal state regarding navigational freedoms. Even if the provisions of the Convention were universally adopted as a codification of customary law, dispute settlement would still be cumbersome and difficult to achieve, given: (1) the nature of the establishment of the EEZ as a zone sui generis; (2) the question of residual rights under Article 59; (3) current state practice and interpretations of the Convention; and (4) the military activities exemption under Article 298.

## CHAPTER V

### PROSPECTS FOR THE FUTURE

The Role of the U.S. Navy. Regardless of the future of the 1982 Law of the Sea Treaty, the U.S. Navy will continue in its role as a principal means of protection of U.S. security and foreign policy interests. Traditionally, U.S. naval forces have been used to: demonstrate support of allies, warn enemies, exert influence, counter Soviet deployments to a region, and demonstrate resolve.<sup>57</sup> Recent examples of the use of naval power include: (1) stationing ships off the coast of Lebanon as part of a U.N. peacekeeping force; (2) increasing the number of ships deployed to the Indian Ocean in response to the Soviet invasion of Afghanistan; (3) stationing ships in the Persian Gulf/Straits of Hormuz to insure the continued free communication of shipping through this strategically vital region; (4) landing troops and supporting the operations in Grenada; and (5) as a viable counter to state sponsored terrorism.

Expanding coastal state claims of jurisdiction which relate to traditional high seas freedoms of navigation and overflight, and uncertain dispute settlement mechanisms, could potentially jeopardize the way the Navy is utilized to implement U.S. foreign policy. Challenges to these

traditional high seas freedoms already exist in the national legislation and proclamations of several coastal states.

Meeting the Challenges. The options available to the U.S. in meeting these challenges are essentially threefold. First, the U.S. can continue to exercise its navigational freedoms in the waters beyond 12 nautical miles of a coastal state as outlined in the President's 1983 ocean policy statement. U.S. naval forces routinely enter the Gulf of Sidra to demonstrate that high seas freedoms of navigation and overflight still apply, despite Libya's claim to an historical bay. This type of action may be of diminishing utility to the United States. The number of extended claims of jurisdiction is growing as developing countries claim greater rights to the exploitation of the ocean, and demand a larger say in ocean affairs. The United States' historical approach to navigation and overflight has little meaning to this community of nations whose independence from colonial rule has been gained only within the last 20 years. From their perspective, repeated incursions into their waters by U.S. naval forces, demonstrating freedom of navigation rights, could be seen as superpower "bullying."

Another issue to be considered with this type of action is the growing capability of many coastal states to enforce laws through the use of military force. The advent

of modern patrol boats with potent missile systems has allowed new and small naval forces to develop into powerful instruments of state policy. These missile patrol boats cost about as much as a missile frigate, but carry the firepower of a large destroyer. The success of the French Exocet missile during the Falklands War illustrates the vulnerability of modern warships when pitted against anti-ship missiles.<sup>58</sup> By the end of 1984, 27 countries had ordered over 2400 Exocet missiles for their navies. Among those countries placing orders were Argentina, Belgium, Brazil, Brunei, Chile, Ecuador, France, W. Germany, Greece, Iraq, Malaysia, Morocco, Oman, Peru, and the U.K.<sup>59</sup> It is important to point out that the Exocet is just one example of a wide variety of modern cruise missiles being sold on the international arms market.

Today, there are about 50 countries (excluding the U.S. and the Soviet Union) operating over 4,200 warships and over 350 attack submarines. There are an additional 350+ warships and submarines proposed and/or under construction for the navies of those countries.<sup>60</sup> This militarization of the world's oceans poses a significant threat to reserving the high seas "for peaceful purposes," and could potentially result in a naval engagement in an EEZ of a coastal state through which the U.S. Navy is exercising and asserting navigation and overflight rights and freedoms in support of U.S. ocean policy.

The second option available to the U.S. is to accept, as inevitable, extended coastal state claims and not directly challenge jurisdiction over military activities in the EEZ. Adoption of this course of action is totally inconsistent with the foreign policy objectives of the U.S., its associated worldwide commitments, and the missions of the U.S. Navy in the implementation of national policy. The naval component of the national military strategy, the maritime strategy, is designed to fully support the fundamental strategy of the U.S. which is deterrence of war. The U.S. Navy's role in this deterrence strategy is to maintain worldwide peacetime operations, and react quickly in crisis situations to prevent escalation. Should deterrence fail the U.S. Navy is in position to provide "forward defense" and cooperation with allies in order to bring about "war termination on favorable terms."<sup>61</sup> Acquiescence to jurisdictional claims over navigation and overflight in the EEZ would seriously jeopardize the National Military Strategy and is an unacceptable course of action.

The third option open for consideration is to negotiate bilateral or regional agreements to insure naval passage through critical EEZs. All treaties are negotiated on the premise that the agreement represents a quid pro quo. It is difficult to imagine that a reciprocal offer of access through the EEZ of the U.S. would be attractive to



many developing countries. The President's 1983 Ocean Policy statement already guarantees that "...within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight."<sup>62</sup> On the other hand, it would be equally difficult to imagine the U.S. negotiating agreements for rights and freedoms it already legitimately enjoys through customary international law, and as codified in the 1982 Law of the Sea Treaty.

If the U.S. did find itself in the position of negotiating these types of agreements, it could create competition between the U.S. and the Soviet Union over securing navigation rights through strategically located EEZs.<sup>63</sup>

Each of the three options presented is fraught with a certain amount of risk, and all are capable of exacting a very high cost to U.S. foreign policy. Clearly, the first option, as expressed in the President's Ocean Policy Statement, is the option of choice in the near term. It is doubtful that course of action can survive the pitfalls explained above, unless the majority of coastal states accept as fact that rights and freedoms of navigation and overflight pertain to the EEZ, and include naval operations and maneuvers.

## CHAPTER VI

### CONCLUSION

The Third United Nations Conference on the Law of the Sea opened the door for expanding coastal state claims of jurisdiction out to 200 nautical miles. Although the United States, as an active negotiator, was successful in maintaining the traditional high seas freedoms of navigation and overflight, the articles that pertain to the EEZ represent a compromise between the developing countries' desire to control the waters adjacent to their coasts, and the maritime powers desire for unrestricted freedom of navigation. Although developing countries recognize that the freedoms of navigation and overflight exist in the EEZ, there are some states that are also quick to point out that there are restrictions to those freedoms that do not exist in the high seas, and that the exercise of those freedoms must be compatible with their laws and regulations.

Whether or not the Convention is ever ratified and placed into force, a clue to how the language of Articles 56, 58, and 59 will be interpreted and incorporated into national legislation can be found in evolving state practice. For example, does the sui generis nature of the EEZ rule out the possibility of the zone coming under

national sovereignty? The increasing use of the world's oceans with the accompanying political, economic, and social pressures may cause coastal states to increase control within their EEZs.

For the U.S. Navy, this means that there will be challenges to the freedoms of navigation it has historically enjoyed by coastal states which are rapidly developing the means to enforce and defend their jurisdictional claims. The challenge that faces the U.S. Navy in the 1990's and beyond is to continue to carry out its primary missions of strategic deterrence, sea control, power projection and naval presence, in light of these expanding jurisdictional claims.

APPENDIX I

PART V OF THE DRAFT FINAL ACT OF THE THIRD UNITED  
NATIONS CONFERENCE ON THE LAW OF THE SEA  
EXCLUSIVE ECONOMIC ZONE

Article 55

Specific legal regime of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56

Rights, jurisdiction and duties of the coastal State in  
the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:
  - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
  - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
    - (i) the establishment and use of artificial islands, installations and structures;
    - (ii) marine scientific research;
    - (iii) the protection and preservation of the marine environment;
  - (c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

#### Article 57

##### Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

#### Article 58

##### Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 and 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

#### Article 59

##### Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict

arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Article 60

Artificial islands, installations and structures in the exclusive economic zone

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structure not entirely removed.

4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 meters around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

#### Article 61

#### Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

#### Article 62

#### Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and



may relate, inter alia, to the following:

- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught;
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programs and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) the placing of observers or trainees on board such vessels by the coastal State;
- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (i) terms and conditions relating to joint ventures or other co-operative arrangements;
- (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
- (k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations.

#### Article 63

#### Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal State, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.
2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

#### Article 64

#### Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.
2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

#### Article 65

#### Marine mammals

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate

international organizations for their conservation, management and study.

Article 66  
Anadromous stocks

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.

2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measure for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.

3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, State concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.

(b) The State of origin shall co-operate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.

(c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.

(d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.

4. In cases where anadromous stocks migrate into or through the water landward of the outer limits of the exclusive economic zone of a State other than the State of

origin, such State shall co-operate with the State of origin with regard to the conservation and management of such stocks.

5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67  
Catadromous species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.

2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.

3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68  
Sedentary species

This part does not apply to sedentary species as defined in article 77, paragraph 4.

Article 69  
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

- (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
- (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
- (d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other State to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

#### Article 70

##### Right of geographically disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

- (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
- (b) The extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any

single coastal State or a part of it;

- (d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.

5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participated in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

#### Article 71

#### Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

#### Article 72

#### Restrictions on transfer of rights

1. Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly

transferred to third States or their nationals by lease or license, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.

2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

#### Article 73

##### Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channel, of the action taken and of any penalties subsequently imposed.

#### Article 74

##### Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

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

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



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

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

#### Article 75

#### Charts and lists of geographical co-ordinates

1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Source: The Draft Final Act of the Third United Nations Conference on the Law of the Sea, as contained in U.N. Document A/CONF. 62/121 of October 21, 1982.

APPENDIX II

PART VII OF THE DRAFT FINAL ACT OF THE THIRD UNITED  
NATIONS CONFERENCE ON THE LAW OF THE SEA  
HIGH SEAS (ARTICLES 86 TO 115)

Article 86

Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgment of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88

Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.

Article 89

Invalidity of claims of sovereignty over the high seas

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90

Right of navigation

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91

Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92

Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 93

Ships flying the flag of the United Nations, its specialized agencies and the International Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article 94

Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

- (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
- (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
- (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95

Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96

Immunity of ships used only on government  
non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 97

Penal jurisdiction in matters of collision or any  
other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or license shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which it them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 98

Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

- (a) to render assistance to any person found at sea in danger of being lost;
- (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him:

- (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

#### Article 99

##### Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

#### Article 100

##### Duty to co-operate in the repression of piracy

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

#### Article 101

##### Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102

Piracy by a warship, government ship or government aircraft whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.



Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 108

Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall co-operate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

Article 109

Unauthorized broadcasting from the high seas

1. All States shall co-operate in the suppression of unauthorized broadcasting from the high seas.

2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:

- (a) the flag State of the ship;
- (b) the State of registry of the installation;

- (c) the State of which the person is a national;
- (d) any State where the transmissions can be received;  
or
- (e) any State where authorized radio communication is suffering interference.

4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article 110  
Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
- (b) the ship is engaged in the slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is without nationality; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply mutatis mutandis to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Article 111  
Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

- (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis;
- (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

#### Article 112

##### Right to lay submarine cables and pipelines

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.

2. Article 79, paragraph 5, applies to such cables and pipelines.

Article 113

Breaking or injury of a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offense. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114

Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115

Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Source: The Draft Final Act of the Third United Nations Conference on the Law of the Sea, as contained in U.N. Document A/CONF. 62/121 of October 21, 1982.

### APPENDIX III

#### NATIONAL PROCLAMATIONS AND/OR LAWS PERTAINING TO NAVIGATION IN THE EEZ

Angola: Signed the Law of the Sea Convention in December 1982 and declared the right to interpret the Convention in the context of "Angolan sovereignty and territorial integrity" in a manner to be announced upon ratification.

Brazil: Signed the Law of the Sea Convention in December 1982 and declared that the Convention does not authorize states to conduct military exercises in the EEZ of another state without consent.

Burma: In Law No. 3 of April 1977, claimed authority to subject freedom of navigation and of overflight to broad restrictions.

Cape Verde: Signed the Law of the Sea Convention in December 1982 and declared that non-peaceful uses of the EEZ, including exercises with weapons, are excluded therein.

Guyana: The President may declare any area of the EEZ to be a designated area and make provisions he deems necessary with respect to "entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of Guyana." [article 18(a) and (b) (vi)]\*

India: The government may provide for regulation of entry, passage through designated area "by establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India." [article 7(b) (Explanation)]\*

Maldives: In Law No. 32/76 of December 1976, established EEZ, and affirmed only right of innocent passage.

Mauritania: In Law 78,043 established EEZ and fishing zone; provided freedoms of navigation and overflight would not be restricted unless they adversely affected jurisdiction over scientific research, installations/devices, preservation of the environment, or the security of the state.

Mauritius: The Prime Minister may provide in designated areas of the EEZ or continental shelf necessary provisions with respect to "the regulation of entry into and passage of foreign ships through the designated area" and "the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interest of Mauritius." [article 9(a) and (b) (vi) and (vii)]\*

Nigeria: The government "may, for the purpose of protecting any installation in a designated are...prohibit ships...from entering without its consent such part of that area as may be specified." [article 3(2)]\*

Pakistan: The government may declare any area of the EEZ to be a designated area and make provisions as it deems necessary with respect to "the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interest of Pakistan." [article 6(a) and (b)(vi)]\*

Portugal: In Act No. 33/77 of May 1977, acknowledged only "innocent passage," as well as overflight, within the EEZ.

Seychelles: The President may declare any area of the continental shelf or EEZ to be a designated area and make provisions as he considers necessary with respect to "the regulation of entry into and passage of foreign ships through the designated area [and] the establishment of fairways, sealanes, traffic separation schemes or any mode of ensuring freedom of navigation which is not prejudicial to the interest of Seychelles." [article 9(a) and (b)(vi) and (vii)]\*

Uruguay: Signed the Law of the Sea Convention in December 1982, and declared that rights under the Convention will be applied on the basis of reciprocity and that it purports to exclude military exercises within the EEZ.

U.S.S.R.: "In connection with certain specifically bounded regions of the economic zone of the U.S.S.R. in which, for technical reasons connected with oceanographic and ecological conditions, as well as for the use of these regions or for the protection of their resources, or because of the special requirements for navigation in them, it is necessary that special obligatory measures shall be taken to prevent pollution from vessels, such measures, including those connected with navigation practices, may be established by the Council of Ministers of the U.S.S.R. in regions determined by it. The borders of these special regions should be noted in 'Notification to Mariners'." [article 13]\*

Sources: Appendix entries with an asterisk at the end are taken in their entirety from Table 8 of Lawrence Juda, "The EEZ: Compatibility of National Claims and the UN Convention on the Law of the Sea," Ocean Development and International Law, v. 16, no.4, 1986, p. 34-35. The remaining Appendix entries are taken from the draft Maritime Claims Reference Manual, DOD 2005.1-M, pp. 2-9, 2-48, 2-52, 2-88, 2-268, 2-274, 2-345, 2-501.



## NOTES

1. Gerhard von Glahn, Law Among Nations, MacMillan Publishing Co., Inc., New York, 4th edition, 1981, pp. 358, 377, 384.

2. Convention on the High Seas, Final Act of the United Nations Conference on the Law of the Sea, which was certified by the Legal Counsel, for the Secretary-General of the United Nations, 1958, p. 1.

3. David L. Larson, "Security Issues and the Law of the Sea: A General Framework," Ocean Development and International Law, v. 15, no. 2, 1985, p. 101.

4. John R. Stevenson and Bernard H. Oxman, "The Preparations for the Law of the Sea Conference", The American Journal of International Law, v. 68, no. 1, January 1974, p. 16.

5. R.R. Churchill and A.V. Lowe, The Law of the Sea, Manchester University Press, 1983, p. 126.

6. Elliot L. Richardson, "Power, Mobility, and the Law of the Sea," Foreign Affairs, LVII, Spring 1980, p. 906.

7. Lawrence Juda, "The EEZ: Compatibility of National Claims and the UN Convention on the Law of the Sea," Ocean Development and International Law, v. 16, no. 4, 1986, p. 2-3.

8. Throughout this paper the 1982 Law of the Sea Treaty will be referred to as either UNCLOS III or simply the Convention. The Draft Final Act of the Third United Nations Conference on the Law of the Sea, as contained in U.N. Document A/CONF. 62/121 of October 21, 1982, is used as the source of all references to the Convention.

9. Churchill, p. 129-130.

10. Ibid.

11. Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1977 New York Session," American Journal of International Law, v. 72, no. 1, January 1978, pp. 69.

12. Bernard H. Oxman, "The Regime of Warships Under the United Nations Convention on the Law of the Sea," Virginia Journal of International Law, v. 24, Summer 1984, pp. 837.
13. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1977 New York Session," p. 73.
14. Churchill, p. 134.
15. Ken Booth, Law, Force and Diplomacy at Sea, London, 1985, p. 153.
16. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1977 New York Session," p. 69.
17. For a further discussion of these articles, see Elliot L. Richardson, "Law of the Sea: Navigation and Other Traditional National Security Considerations," San Diego Law Review, v. 19, no. 3, April 1982, pp. 568-575.
18. Kay Hailbronner, "Freedom of the Air and the Convention on the Law of the Sea," American Journal of International Law, v. 77, no. 3, July 1983, pp. 503-504.
19. Linton F. Brooks, "Naval Power and National Security: A Case for the Maritime Strategy," International Security, v. 11, no. 2, Fall 1986, p. 61.
20. Dr. Donald E. Nuechterlein, "National Interests and National Strategy: The Need for Priority," Foundations of Force Planning, Naval War College Press, 1986, p. 186. Dr. Nuechterlein puts U.S. national interests in priority order, in terms of geographic areas and specific countries, using a national interest matrix as a guide. The matrix is used to define the intensity of interest from survival, vital, major, to peripheral.
21. Casper W. Weinberger, "Regional Objectives and Strategies," Foundations of Force Planning, Naval War College Press, 1986, p. 203.
22. Ibid., p. 204.
23. Ibid.
24. Ibid., p. 205.
25. Ibid.
26. Soviet Military Power, 1986, U.S. Government Printing Office, 1986, pp. 123-141.

27. John D. Negroponte, "Who Will Protect Freedom of the Seas?," Current Policy, no. 855, 1986, p. 3.

28. Excerpts from the March 10, 1983 statement by the President, reproduced from the Weekly Compilation of Presidential Documents, v. 19, no. 10, March 14, 1983, pp. 383-385.

29. Ibid.

30. Oxman, "The Regime of Warships Under the United Nations Convention on the Law of the Sea," pp. 804-864.

31. Ibid., p. 838.

32. Ibid., p. 837.

33. Ibid., pp. 838-839.

34. Ibid.

35. Ibid., pp. 847-848.

36. Ibid., pp. 837-838.

37. International Legal Materials, 1367, v. 25, September 1986, p. A111-2.

38. Jonathan I. Charney, "The EEZ and Public International Law," Ocean Development and International Law, v. 15, no. 3/4, 1985, p. 258.

39. William T. Burke examined the domestic legislation of 39 of 50 states claiming an EEZ as of 1980 in "National Legislation on Ocean Authority Zones and the Contemporary Law of the Sea," Ocean Development and International Law, v. 9, no. 3/4, 1981, pp. 289-327. Lawrence Juda examined the legislation of 54 of 60 states claiming an EEZ as of January 1985. Both authors commented on the difficulty of gaining access to domestic legislation and emphasized the importance of continued examination of coastal state practice to determine how the Convention will be interpreted and eventually adopted.

40. Juda, p. 46

41. Charney, p. 240. See also Burke, p. 295 and Juda, p. 2.

42. Burke, p. 299.

43. Ibid., p. 296.

44. Juda, p. 11. See Table 4.
45. A.V. Lowe, "Some Legal Problems Arising from the use of the Seas for Military Purposes," Marine Policy, v. 10, July 1986, pp. 179, 181.
46. Ibid.
47. Juda, p. 34.
48. Ibid., pp. 34-35. See also Appendix 1 of this paper.
49. Notice to Mariners, 39/86, p. III-2.28-III-2.30.
50. Burke, p. 139.
51. Ibid.
52. Barry Buzan, "Naval Power, the Law of the Sea, and The Indian Ocean as a Zone of Peace," Marine Policy, July 1981, p. 194.
53. Chandra Kumar, "The Indian Ocean: Arc of Crisis or Zone of Peace?," International Affairs, Spring 1984, pp. 242-244.
54. William L. Dowdy and Russell B. Trood, "The Indian Ocean: An Emerging Geostrategic Region," International Journal, 1983, p. 451.
55. Lewis M. Alexander, "The Ocean Enclosure Movement: Inventory and Prospect," San Diego Law Review, v. 20, no. 3, 1985, pp. 585-586.
56. Lowe, p. 181.
57. Richardson, p. 906.
58. Frank Barnaby, "Military use of the Oceans," Impact of Science on Society, no. 3-4, 1981, p. 429.
59. Ronald T Pretty, ed. Jane's Weapon Systems, Jane's Publishing Company Limited, 1986, p. 81.

60. Captain John Moore, RN, FRG, ed. Jane's Fighting Ships, 1986-1987, Jane's Publishing Company Limited, 1986, p. 148. In the Forward to the 1986-1987 edition, Captain Moore examines the question of how the various navies of the world should be structured. "In the case of the smaller navies the protection of their immediate national interests - their Exclusive Economic Zones (EEZ) including their off-shore assets and their fisheries - must be paramount". p. 111. The Indian Navy is evaluated as having "the capability of disrupting the trade and the affairs of any of the Indian Ocean littoral countries were the government in New Delhi so disposed". p. 127. An example of the warship construction that is ongoing throughout the world, Brazil has plans for 49 ships, which include a 35-40,000 ton aircraft carrier, a 15,000 ton helicopter support carrier, 6-8 submarines, destroyers, frigates, patrol craft, mine countermeasures vessels, river flotilla and amphibious ships. p. 51

61. Admiral James D. Watkins, USN, The Maritime Strategy, U.S. Naval Institute, 1986, pp. 16-17.

62. President's Proclamation of March 10, 1983.

63. Richardson, p. 910.

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