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21 July 1982

Worldwide Report

LAW OF THE SEA

(FOUO 4/82)

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WORLDWIDE AFFAIRS

'MAINICHI' VIEWS UN SEA LAW CONFERENCE CONVENTION

OW170949 Tokyo MANICHI DAILY NEWS in English 15 May 82 p 2

[Editorial: "For New Ocean Order"]

[Text] The United Nations Conference on the Law of the Sea recently adopted an international convention establishing rules for the use and exploration of the seas and seabed. This is the first step toward establishing order in the oceans under the changed circumstances of the 20th century.

The convention which wound up nearly nine years of hard bargaining since December, 1973, contains some 320 articles and eight annexes covering, among others, seabed mining and the establishment of a 12-nautical-mile territorial sea limit and a 200-mile exclusive economic zone for coastal states with the right of innocent passage through territorial seas and narrow straits.

It is indeed heartening to note that the convention, although merely a draft pending the ratification of the countries concerned, received supporting votes from 130 countries including Japan, France and almost all Third World nations. The convention is to be signed in Caracas, Venezuela, in December this year, and will most likely go into effect in the latter part of the 1980s.

On the other hand, it is regrettable to note that the UN Conference on the Law of the Sea which originally sought the adoption of the convention by consent had to make a decision on it by vote. Four countries -- the United States, Israel, Venezuela and Turkey -- voted against it, while 17 nations, including the Soviet Union, Britain, West Germany and several Eastern European countries abstained. The absence of the two great powers, the United States and the Soviet Union, means great problems ahead for the convention.

Although the United States and the Soviet Union did not vote, it does not mean that they will stay out of the convention permanently. The Soviet Union abstained because it felt it was being discriminated against compared with the United States on the question of protection of advance investment in seabed development.

The Soviet Union, about the middle of this April, made a decision on its own development of seabed resources by a presidium decree. The decree is to be abolished if international agreement on this matter is concluded by 1988. Thus, the Soviet Union is likely to take part in the convention in the future.

On the other hand, the prospects for U.S. participation are rather dim under the present circumstances. In the ninth session in 1980, a draft convention was drawn up unofficially opening the way for early conclusion of the conference. However, the tenth session in 1981 and the 11th session this year encountered rough sailing mainly because the U.S. side changed its position and refused to comply with the general trend.

The Reagan administration which was inaugurated in 1981 made an about-face from the position of the Carter administration which agreed to a consensus process at the conference. The new regime demanded that the draft convention, especially with regard to the passage concerning seabed development, should be thoroughly reappraised.

The U.S. contended that it could not protect its national interests or those of private enterprises, nor could it obtain ratification at the Senate if the proposed convention were not rewritten.

In the 11th session, the United States made some concessions but eventually it voted against the convention, demanding that its adoption be decided not by consent but by vote. As it opposes the seabed development clause, there is a possibility that the United States may not participate in the convention at all.

The United States at present plays a very important role in development of the seabed. Its participation is, in a sense, considered essential. Especially at this time when the world depends on the United States for seabed development technology and necessary capital, its absence is likely to reduce the proposal of seabed development by an international organ to a mere pipe dream and, furthermore, damage the authority of the convention itself.

The United States, too, will suffer a great deal for failing to participate in the convention. Japan, a leading maritime nation, should call on the United States to exercise its wisdom and take part in the convention. We all have to exert our utmost to make the proposed convention the constitution of the sea in the true sense of the term.

CSO: 5200/2085

BRIEFS

DIVISION OF CONTINENTAL SHELF--Tunisians and Libyans will open talks on the division of the continental shelf at the end of the month of May. But with the three-month deadline to reach an agreement, set by the International Court of Justice (The Hague), expiring on May 24, an extension will certainly be imposed; moreover, such an extension was anticipated by the International Court of Justice. [Text] [Paris JEUNE AFRIQUE in French No 1115, 19 May 82 p 75]

CSO: 5200/5007

MAURITIUS

BRITISH SOVEREIGNTY OVER CHAGOS ARCHIPELAGO DISPUTED

Paris AFRIQUE-ASIE in French 10 May 82 pp 32-33

[Article by Jonathan M'Haruia: "Negotiations with a Trap in Them"]

> [Text] It's not just before the people of Saint-Malo that Great Britain flaunts its old colonial demons. Without mentioning Ireland, there are still numerous examples of the "confetti of the Empire" from which a savage beast could emerge. From the Chagos Archipelago, for example, with the scandal of Diego Garcia.

The status of the peoples of the Chagos Archipelago*, expelled from their islands between 1965 and 1973, was the subject of an agreement reached in Port Louis, Mauritius, on 27 March. On this date a multiparty Mauritian delegation--composed among others, of political figures, including Paul Berenger, secretary general of the MMM [Mauritian Militant Movement], and representatives of the Chagos Islanders Fraternal Organization [Comite Ilois-OF], led by Minister of Social Security Kailash Purryag--met with a delegation from the British Foreign Office, led by Sir Leonard Allinson, under secretary of state.

By the terms of this agreement, the Chagos Island community, members of which have for some years been called "the Palestinians of the Indian Ocean," is to receive 80 million rupees** from the British Government as a "final" settlement and 20 million rupees from the Mauritian Government in the form of land. That is to come into effect in June, after the new Mauritian parliament, elected in the same month, will have approved legislation concerning establishment of a special body created to manage this sum of money.

The difficult negotiations between the two parties--the final phase lasted for a week--were marked by a characteristic piece of blackmail on the part of the British. The latter included in the agreement a clause under which Mauritius, whatever its new government may be, could no longer claim sovereignty over the Chagos Archipelago once the settlement is paid.

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* The Chagos Archipelago includes, in particular, the island of Diego Garcia.
** One French Franc equals 1.7 Mauritian rupees.

At a certain moment, the british delegation even brought out the point that compensation would not be paid except on condition that this clause was approved. Faced with the categorical rejection of this clause by the Mauritian side and especially by the Chagos Islanders and a refusal to give in to this shameful and typically colonialist blackmail, the British delegation agreed, with London's approval, to separate the two aspects of the dispute; that is, Diego Garcia from Mauritian sovereignty over the Chagos Archipelago and compensation for the Chagos Islanders, toward whom Great Britain, which forced them into exile in 1965, has responsibilities and moral obligations.

It was at this stage of the negotiations that Paul Berenger asked the British delegation for a copy of the agreement which it was proposing. At several points the text made mention of the British Indian Ocean Territory (BIOT), a colony created by the British out of Mauritian and Seychelles territories annexed in 1965. Since then, the Seychelles claimed and obtained the return of their islands. The Mauritian delegation then insisted that the term BIOT be abolished, as its very mention could be interpreted as "de facto" recognition of the cession of the Chagos Archipelago.

After having brutally announced, and in the purest colonialist spirit, that "you must sign or we will take back the money offered," the British ended up by taking out the reference to the BIOT. However, they insisted that it appear at least once, in the absence of which, they alleged, the text of the agreement would have no validity before the British Parliament.

Two Mauritian amendments seeking to indure that "this agreement is without prejudice to the question of Mauritian sovereignty over the Chagos Archipelago" were subsequently rejected by the British. It was at this point that the latter began to use a shameful and unacceptable procedure in the old tradition of "divide and conquer." Addressing themselves to the representatives of the Chagos Islanders, the British held out to them an offer of 4 million pounds sterling, in this way going over the heads of the other Mauritian delegates.

At the same time the Mauritian Ministry of Justice informed the delegation that, from its point of view, the mention of the term BIOT in the agreement did not exclude an eventual Mauritian claim to the Chagos Archipelago. The Ministry also explained to the Mauritian delegation that there were three stages in the processing of an agreement of this kind: the delegations initial the agreement; the governments sign it officially; and it is subsequently ratified by the parliaments of the two countries.

The Mauritian delegation thus had to choose between initialing the agreement in the light of the advice of the Mauritian Ministry of Justice and then consulting other experts in the field of international treaties--particularly as the agreement could not enter into effect before the elections scheduled for 11 June--or asking the British to leave the draft text on the negotiating table while waiting for experts to examine it in detail.

Taking into account the impatience and even despair of the Chagos Islanders, which certain parties were beginning to utilize, the Mauritian delegation chose to initial the agreement.

Lastly, to insure that the agreement, as drafted, would not be prejudicial to an official demand before some international body and before the international community for the return of the Chagos Archipelago to Mauritius, the MMM, the Chagos Islanders Fraternal Organization, and the organizations supporting the islanders' cause first of all sought the views of an international lawyer, in this case Prof Andre Oraison, and called for an examination of the text by a group of experts from several countries, meanwhile asking the Mauritian Government to delay the official signature of the agreement.

Professor Oraison, author of a study on the Chagos Archipelago, in which he supports the view that Mauritius has the right to claim this archipelago, holds the view that the text of the agreement could be interpreted as "de facto" recognition by an independent Mauritius of the cession of the Chagos Archipelago during the colonial period.

Without the vigilance of the MMM, and principally of its secretary general, Paul Berenger, as well as a number of lawyers, would Mauritius have supported a second cession of the Chagos Archipelago, and this time on a permanent basis? This was the more possible, since the Mauritian Government alleged that the use of the term BIOT did not constitute an obstacle to a claim to the Chagos Archipelago.

Whatever the case, the British objective was, through this agreement as initially drafted, to permanently "muzzle" a future government formed by the MMM and the PSM [Mauritian Socialist Party], as the present government never sought to challenge the occupation of the Chagos Archipelago by the British. It is clear, to the British and, moreover, to the Americans, that the MMM and the PSM, in power tomorrow with a solid case and international solidarity already secured, will make the retrocession of the Chagos Archipelago and the dismantling of the base on Diego Garcia real objectives of struggle.

People of Saint-Malo? No, from the Chagos Archipelago

During the last 17 years the sufferings of 942 families of Chagos Islanders deported to Mauritius by the British have revealed the revolting and anti-patriotic attitude of the government under Prime Minister Sir Seewoosagur Ramgoolam toward these uprooted people. The present government has never had the interests of the Chagos Islanders at heart. Between 1965, when Great Britain detached the Chagos Archipelago from Mauritius at the request of the United States so that a military base might be built there, and 1973, the islanders were forced to move away.

In Mauritius there was simply no plan to welcome these "Palestinians of the Indian Ocean." A study carried out by Herve Sylva, a Mauritian teacher, at the request of the Mauritian delegation, makes it clear that since they were forced into exile the islanders have been housed under indescribable conditions. In the shanty town areas of Port-Louis, Roche-Bois, Cassis and Pointe-aux-Sables, for example, it was noted that up to 31 persons were living in 3 rooms, that 21 other persons lived in 2 rooms, that 14 others were in a

1-room efficiency flat, and that 8 families were living in camps set up for cyclone refugees. These figures clearly reflect the situation in which the whole Chagos Islander community lives.

There have been many cases of premature death, of suicide and even of insanity. A number of Chagos Islanders have been forced into prostitution to support their families, to say nothing of the situation of unemployment which affects many heads of families, with the usual consequences.

In 1972, or 7 years after the detachment of the Chagos Archipelago, the British Government granted compensation of 650,000 pounds sterling* for the rehabilitation of the Chagos Islanders over and above a sum of 3.0 million pounds sterling paid to the Mauritian state to compensate it for the loss of the archipelago. In view of the "good will" displayed by the government, it was necessary to have several demonstrations sponsored by the Chagos Islanders Fraternal Organization and a number of hunger strikes before the government of Prime Minister Sir Seewoosagur Ramgoolam agreed to pay part of this compensation to the Chagos Islanders in 1978.

A new hunger strike had to be organized in December 1980 to insure that the 582 adults and 727 children, who had received nothing, would also be compensated.

In view of the indifference displayed by the government eight Chagos Islanders women began a third hunger strike in April 1981. This was the longest (20 days) in the history of the Chagos Islanders movement. An agreement put an end to the hunger strike on 11 April 1981. On the one hand it provided for the payment of the second installment of compensation and, on the other hand, for the establishment of a multiparty Mauritian delegation charged with going to London to negotiate for the payment of 158 million rupees in additional compensation. The London negotiations, held in June and July 1981, were broken off, as we know, by reason of the attitude displayed by Great Britain and the gap between the Mauritian demand (158 million rupees) and the British offer (31 million rupees).

It should be emphasized that the Mauritian Government, which has the habit of playing on the misery of the people to make them swallow a long snake, as it were, had previously arranged secretly, and in complicity with Great Britain, for the visit of a British lawyer, Bernard Sheridan, for the purpose of persuading the Chagos Islanders to accept a sum of 1.25 million pounds sterling in exchange for renouncing any right to return to their native island.

It was the MMM which, in January 1980, denounced this scandal in which the government of Prime Minister Sir Seewoosagur Ramgoolam was involved and the purpose of which was to legitimize the abandonment of the Chagos Archipelago to the benefit of Great Britain and the United States, which are using Diego Garcia for military purposes.

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* In 1972 the British Pound was worth 12 French Francs.

Certain members of the government of Sir Seewoosagur Ramgoolam, who did not hesitate to claim in parliament and in the press that "Diego Garcia is British," did everything in their power to persuade the Chagos Islanders to renounce their rights to Diego Garcia. These ministers, who are more inclined to defend British interests than those of their own country, exploited the misery and despair of the Chagos Islanders by making them believe that the only chance of getting compensation from London was to renounce all their rights to Diego Garcia once and for all.

If it has become clear today that Sir Seewoosagur Ramgoolam was personally and directly responsible for the detachment of the Chagos Archipelago from Mauritian territory in 1965; it is still he and his government who bear the responsibility for the abject misery in which the people exiled from Diego Garcia now live.

Even if we consider that financial compensation, however substantial it may be, can never make up for the suffering which the Chagos Islander community has endured since 1965, the exiles from the Chagos Archipelago have been supported in their struggle to obtain compensation by the MMM and various other organizations.

The initiative taken by Sir Seewoosagur Ramgoolam to arrange for a resumption of the negotiations in London, after their breakdown in July 1981, can only be interpreted as a rescue operation undertaken in view of the elections in June, in which his government is seriously threatened.

5170
CSO: 5200/5656

USSR

SOVIET JURIST DISCUSSES FREEDOM OF THE SEAS

Moscow SOVETSKOYE GOSUDARSTVO I PRAVO in Russian No 3, Mar 82 pp 104-110

[Article by Doctor of Legal Sciences S. A. Gureyev, senior scientist, Institute of State and Law, USSR Academy of Sciences: "Freedom of the High Seas"]

[Text] The World Ocean now has enormous significance to the life of peoples on our planet. It is criss-crossed by marine routes handling cargo equivalent to about 80 percent of international trade. The World Ocean is also a "treasurehouse" of significant living and mineral resources making an important contribution to providing the populations of different countries with foodstuffs and their economies with minerals. This is why all states are devoting a great deal of attention to the proceedings of the Third UN Conference, which has the job of developing and adopting a new convention on the law of the sea. The draft convention on the law of the sea, which was drawn up at the conference,* developed the basic principle of international law of the sea--freedom of the high seas.

Formation of the Principle of Freedom of the High Seas

This principle evolved in the 15th-17th centuries during an acute struggle between the major feudal states of those times--Spain and Portugal, which had divided the seas between themselves on one hand and some states in which the capitalist means of production was undergoing development, mainly England and France, and later on Holland, which argued for recognition of freedom of the seas, on the other ((1), pp 8-24; (2) pp 45-56). The demands for development of worldwide economic ties between states on the basis of international division of labor in the interests of the bourgeoisie of all countries gradually led to increasingly broader recognition of the principle of the freedom of the high seas. It was conclusively confirmed as a conventional norm of international law in the second half of the 18th century ((1), p 16; (3)). As A. L. Kolodkin validly noted, "the principle of freedom of the high seas arose in the era of capitalism's maturation and rise to the top, in the period of decline of feudal claims to the right of ownership of the seas, and it was confirmed as a rule of international law as the result of establishment of the capitalist means of production, in the period of formation of the worldwide market and victory of bourgeois revolutions" (4).

*A decision was made at the 10th Session of the Third UN Conference on the Law of the Sea (1981) to make the previously developed unofficial text the official draft convention on the law of the sea.

The content of the principle of the freedom of the high seas did not remain constant. While in the beginning freedom of navigation and freedom of fishing were inherent elements of this principle which concurrently enjoyed independent significance, in the last third of the 19th century a new element of freedom of the high seas came into being in connection with the development of communication resources--the freedom to lay submarine cables and pipelines. "One of the consequences of the freedom of the high seas," notes D. Kolombos, "is the right of a state to lay submarine telegraph cables from its own shores to the shores of other states expressing their consent to establish communication" ((2), p 333). The laying of the first cable between Dover and Calais in 1851 and later on of the Atlantic cable between Europe and America necessitated international legal protection of submarine cables. It was with this purpose that the International Convention on Protection of Submarine Telegraph Cables was adopted in 1884.

Development of aviation in the late 19th and early 20th centuries served as the cause for formation of the principle of the freedom to fly over the high seas. This principle arose out of a conflict between two theories: "freedom of the airspace" and extension of the sovereignty of a state to the airspace above its territory ((5), pp 51-64). Both conceptions were proposed for discussion during the diplomatic conference held in Paris in 1910.

Article 1 of the existing 1944 Convention on International Civil Aviation states: "Every state has full and exclusive sovereignty over the airspace above its territory." The order of granting permission to foreign aircraft to fly over state territory, including territorial waters, was also documented in international law of the air. Concurrently with recognition of the principle of a state's sovereignty over the airspace located above its territory, "freedom of the airspace" was limited to space located outside the limits of the territories of states, and the principle of freedom to fly over the high seas was confirmed in international law.

The principle of freedom of scientific research on the high seas became a conventional rule of international law, in my opinion, in the late 19th and early 20th centuries. Although scientific research on the World Ocean has a distant history, it did not transform into an independent form of man's activities on the seas and oceans until the late 19th century. Circumnavigations of the planet by Russian navigators--I. F. Kruzenshtern and Yu. F. Lisyanskiy (1803-1806) and F. F. Belingsgauzen and M. P. Lazarev (1819-1821)--laid the basis for fundamental scientific research on the World Ocean. But scientific research on the World Ocean began developing especially swiftly following World War II, in the era of the scientific-technical revolution. Major scientific research fleets are now appearing in many countries. Research is being conducted in both national and international programs. Not only scientific research vessels but also platforms, buoys, submersibles, oceanic data collection systems and other apparatus are being employed for this purpose. The Soviet Union is making a substantial contribution to scientific research on the World Ocean. A resolution of the UN General Assembly dated 21 December 1968 approved the International Decade of Ocean Research in 1971-1980.

In addition to the decisive contribution made by states to the development and confirmation of the principle of the freedom of the high seas, we should also mention the contribution made by individual scholars as well as by nongovernment and intragovernmental international organizations to development of the concept and content of this principle and to codification of international law pertaining to this area.

The content of the principle of the freedom of the high seas is revealed and its basic elements are spelled out in particular in a declaration drawn up by the Institute of International Law at one of its conferences in (Lozan) in 1927, and in the draft "Laws on Marine Jurisdiction in Peacetime," prepared in 1926 by the International Law Association. Later on the effort to codify international law on the regime of the sea was conducted by the UN Commission on International Law, which prepared drafts placed at the basis of the 1958 Geneva conventions on the law of the sea. In them, universally recognized principles and rules of the regime of the sea, to include the principle of freedom of the high seas were codified and developed further. The 1958 Geneva Convention on the High Seas clearly describes the essence of the principle of the freedom of the high seas: "The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty." Further on the convention indicates the inherent elements of the freedom of the high seas, which are organically interrelated and which, in their sum total, make up a single whole ((6), pp 62-68). The freedom of the high seas "comprises, *inter alia*: 1) freedom of navigation; 2) freedom of fishing; 3) freedom to lay submarine cables and pipelines; 4) freedom to fly over the high seas" ((6), pp 211-230). Thus this list is not exhaustive in nature, as is indicated in another provision of the Geneva convention, according to which: "These freedoms, and others which are recognized by the general principles of international law shall be exercised by all states..." (Article 2). They include, for example, the freedom of scientific research on the high seas (7,8).

Each of the elements listed here also has independent significance as a less-general principle in relation to the more-general--the freedom of the high seas. Thus it was validly noted in the Soviet legal literature that the principle of the freedom to fly in international airspace (this applies to all aircraft above the high seas and to civil aircraft above Antarctica) is one of the fundamental principles of international air law ((5), p 48), which is a subdivision of general international law.

The definition of the high seas rest upon, besides their legal characteristics (1--they are not under the sovereignty of any one state; 2--they are open to all states on an equal basis), a geographic characteristic--their location outside the limits of territorial waters.

Influence of the Principle of Freedom of the High Seas on Development of Other Principles and Rules Regulating the Regime of the Sea.

The principle of innocent passage of foreign vessels through the territorial sea came into being under the influence of the principle of the freedom of the high seas and achieved broad international recognition. Obviously without the right of innocent passage, all states would in fact be deprived of the possibility of exercising the freedom of navigation and developing normal worldwide economic ties and cooperation in other pursuits. The English lawyer J. Brownlee validly noted that from a historical standpoint, the right of innocent passage is associated with the provision that "the maritime regions are in principle the high seas, with some limitations in favor of the coastal states." "As a question of policy," he continues, "innocent passage is a sensible form of compromise between the need for marine communication and the interests of a coastal state" ((9) p 308).

The principle of the freedom of the high seas also had an influence on the development of the freedom of innocent passage of vessels through international straits connecting two parts of the high seas, and their overflight by aircraft ((10); (11), pp 119-136). From the standpoint of international law, the regime of navigating in straits connecting two portions of the high seas, in which the principle of the freedom of navigation and the freedom to fly is in effect, cannot be defined by any principle other than the freedom of passage through them by vessels and flight over them by aircraft.

International straits have tremendous significance to development of cooperation between states in foreign economic ties, and to ensuring the security of states. Documentation of the principle of the freedom of passage through such straits in the new convention on the law of the sea, developed at the Third UN Conference, is extremely important for the reason that most states have now expanded their territorial waters to the 12-mile limit. Under these conditions many of the most important straits are within the overlapping territorial waters of coastal states. A balanced and mutually acceptable solution to this important problem was reached in the draft convention on the law of the sea (12). The solution is based on the principle of combining the freedom of passage and the guarantees that states bordering on straits would be able to exercise rights accounting for their interests, thus ensuring both the safety of passage of vessels and flight by aircraft on one hand and the security of coastal states on the other. According to the draft all vessels and aircraft enjoy the right of transit passage through straits utilized for international shipping and connecting one region of the high seas (economic zone) with another region of the high seas (economic zone), and that no obstacles may be placed in the way of such passage. Transit passage is an exercise of freedom of navigation and flight solely with the purpose of continuous and swift transit through a state (articles 37 and 38 of the drafts). There must be no interruptions in transit passage (Article 44).

The principle of the freedom of the high seas, which includes the principle of the freedom of navigation, is having an influence on the development of the principle of archipelago passage through marine corridors and of flights through air corridors established by an archipelago state in archipelago waters (Clause 2, Article 53 of the draft convention on the law of the sea). Archipelago passage through such corridors is an exercise of the right of normal navigation and flight solely with the purpose of continuous, swift and unhindered transit from one portion of the high seas or economic zone to another portion of the high seas or economic zone. Such marine and air corridors cross archipelago waters and contiguous territorial sea, and they include all normal routes of passage used as routes for international shipping or flight over archipelago waters (clauses 3, 4 Article 53 of the draft). If an archipelago state does not establish marine or air corridors, the right of archipelago passage through marine corridors may be exercised on routes usually employed by international shipping. There must be no interruptions in archipelago passage (articles 54 and 44 of the draft convention).

Modern Trends in the Development of the Principle of Freedom of the High Seas

The problem of establishing the status of 200-mile economic zones is having a direct influence on development of the principle of the freedom of the high seas today. The Third UN Conference on the Law of the Sea revealed two opposing positions on this issue. The "territorialist" delegations voted for establishing a 200 nautical

mile limit for territorial waters or for bringing the regime of the economic zone as closely as possible in line with the regime of territorial waters. They asserted that an economic zone is not a part of the high seas, and that it is a zone *sui generis*, in which the rights of noncoastal states must be clearly restricted only by stricly defined freedoms.

Another sizeable group of delegations, including the USSR, voted in the conference in favor of recognizing the economic zone to be part of the high seas having exceptions favoring coastal states, ones which would be established by the new convention on the law of the sea (particularly in regard to sovereign rights on living and mineral resources). Inasmuch as this proposal, and others like it, were not reflected in the unofficial summary text to be used in the negotiations, the USSR delegation proposed including, in the draft convention, the provision that no state could subordinate any part of the sea within the limits of the territorial waters to its sovereignty. A similar proposal was made by the "Group of Fifty-Three"--that is, intracontinental countries enjoying a geographically disadvantageous position, and almost all sea powers. Despite the fact that the unofficial summary text for negotiations and the draft convention on the law of the sea do not directly foresee the appropriate provisions, we would have to agree with the West German lawyer G. Jaenicke that following the sixth session of the conference, a balance was reached between the rights of a coastal state and the rights of other states in an economic zone--that is, a certain compromise was reached on the issue of the economic zone's legal status ((13), pp 488-489, 491). Moreover the provisions on the status of the economic zone contained within recent drafts of the convention provide, in my opinion, the grounds for the conclusion that this zone is in fact interpreted as part of the high seas, with some exceptions in favor of the coastal state, as is evidenced by the following facts.

According to Article 55 of the draft convention on the law of the sea, an economic zone is a region which is within the limits of the territorial sea and is contiguous to it, and consequently to which the sovereignty of the coastal states does not extend. According to Article 58 of the draft convention, within an economic zone, "all states enjoy the freedoms, indicated in Article 87, of navigation and flight, of laying submarine cables and pipelines and of other forms of uses of the sea which are legal from the point of view of international law, which relate to these freedoms, such as those associated with the operation of vessels, aircraft and submarine cables and pipelines, and which are compatible with other provisions of this convention."

Of interest is the fact that this article contains a reference to Article 87, "The High Seas." Thus the freedoms that are exercised in an economic zone are unambiguously qualified as freedoms of the high seas. Jaenicke validly notes that "these freedoms, therefore, apply to the economic zone in the same quality and in the same volume as they apply to the high seas" ((13), p 490). According to Clause 2, Article 58 of the draft convention, articles 88-115 (that is, all of the basic provisions of Section VII, "The High Seas") and other corresponding norms of international law apply to the economic zone, inasmuch as they are not incompatible with Section V of the draft convention pertaining to the economic zone. Thus Article 89, which states that "No state has the right to purport to subject any part of the high seas to its soveriegnty," also applies to the economic zone. Thus we avoid the danger of "creeping jurisdiction" and gradual transformation of an economic zone into sea space under the sovereignty of a coastal state--that is, into territorial waters ((13), p 491).

According to the draft convention (Clause 2, Article 56) coastal states exercising their rights and performing their responsibilities according to the convention in an economic zone must account for the rights and responsibilities of other states in proper fashion. Nor should we fail to note that in distinction from the first drafts (for example the revised unified text for negotiations (14)), Article 56 of the draft convention on the law of the sea does not establish exclusive jurisdiction of a coastal state in relation to, for example, scientific research. It simply foresees jurisdiction in relation to scientific research and protection and conservation of the marine environment, and it cites the appropriate provisions of the draft. Article 56 of the draft thus does not have independent significance, and it must be applied to the issue of the extent of a coastal state's jurisdiction over a particular area only in combination with provisions concerned with a particular form of activity in the economic zone. In and of themselves, however, the concepts "sovereign rights," "exclusive jurisdiction" and "jursidiction" do have definite semantic meaning. Thus we could hardly agree with the West German lawyer L. Gundling, who sees only a difference in terms here, and not in meaning. In his opinion, the distinction made in Article 56 of the draft convention between the concepts "sovereign rights" and "jursidiction" does not exclude the notion that a coastal state also enjoys exclusive rights in relation to scientific research and control over pollution. In this connection he concludes that for practical purposes the unofficial summary text for negotiations (and consequently the draft convention on the law of the sea, which says the same thing in regard to this issue) did not alter the nature of the rights of a coastal state in comparison with the previous drafts of the convention, and that the compromise represented by the phrase "jurisdiction foreseen in the present convention" is only an apparent compromise ((15), pp 627,638,639).

Let us examine the trends in development of the basic freedoms of the high seas today.

a) Freedom of Navigation and Exclusive Jursidiction of a State Over Vessels Carrying Its Flag

The draft convention on the law of the sea affirms the provision according to which both coastal states and states without access to the sea enjoy the freedom of navigation on the high seas, including in economic zones. According to the 1958 Geneva Convention on the High Seas a vessel must sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties and in the convention itself, it is subject to its exclusive jurisdiction on the high seas. Exceptions to exclusive jurisdiction are, according to the convention, in particular: The right to pursue a foreign merchant vessel for violation of the laws and regulations of a coastal state; intervention in a vessel's acts of piracy and engagement in slave trade. All of these provisions have been carried over the draft convention on the law of the sea. Exceptions to the exclusive jurisdiction of a state over vessels of its flag on the high seas are established by all states on a voluntary, mutual and equal basis in the interests of developing cooperation between them in various areas, to include in international shipping.

It should be noted that additional exceptions to the exclusive jurisdiction of the state over vessels of its flag on the high seas, based on the freedom of navigation, are now undergoing formulation or have been formulated. Such exceptions may occur in the following cases: 1) accidents leading to pollution of the sea by oil and other harmful substances (see the existing 1969 international convention concerned with intervention on the high seas in cases of accidents leading to

pollution by oil, and the 1973 protocol supplementing it); 2) unsanctioned broadcasting from vessels on the high seas (Article 109, Subclause "c", Clause 1, Article 110 of the draft convention on the law of the sea); 3) violations of international rules and standards of preventing pollution, halting pollution and containing pollution by a foreign vessel in an economic zone, as a result of which a coastal state may subject such a vessel to inspection and even initiate pursuit, on the assumption that certain conditions are complied with (Article 220 of the draft convention).

b) The Freedom to Fly

The draft convention on the law of the sea carries over the provision of the Geneva Convention on the High Seas according to which freedom of the high seas includes the freedom to fly. This means that every state, be it coastal or noncoastal, has the right to fly its civil and military aircraft over the high seas, including economic zones, unhindered.

c) The Freedom to Lay Submarine Cables and Pipelines

This freedom of the high seas is also included in the list contained in Clause 1, Article 87 of the draft convention. Moreover it is qualified in the article that the freedom to lay submarine cables and pipelines is enjoyed by a state in compliance with the provisions of Section VI, "The Continental Shelf." The reference is primarily to Article 78 of the draft, according to which "the exercise of a coastal state's right in relation to the continental shelf must not infringe upon shipping and other rights and freedoms of other states foreseen by this convention, or cause any unjustified interference in the exercise of these rights."

We should consider, furthermore, Article 79, which indicates that all states have the right to lay submarine cables and pipelines on the continental shelf in accordance with the provisions of this article. These provisions include: 1) a coastal state may not impede the laying or maintenance of cables and pipelines, subject to its right to take reasonable measures for the exploration of the continental shelf, exploitation of the natural resources of the latter and prevention, containment and maintenance of control over pollution by pipelines; 2) the route for such pipelines on the continental shelf are determined with the consent of the coastal state. In my opinion this is the point of view from which we should interpret the provision of the draft convention according to which all states enjoy the freedom of laying submarine cables and pipelines in an economic zone (Clause 1, Article 58). Although according to Subclause "a" of Clause 1, Article 56 the regime of the economic zone extends to all natural resources, including nonliving resources on the sea bed and within its subsoil, the actual utilization of mineral resources is governed by the regime of the continental shelf.

d) Freedom of Fishing ((16), pp 659-707)

Examining the freedom of fishing today, we would first need to note that the action of this freedom is limited only to those areas of the high seas which are within the limits of 200-mile economic zones. In an economic zone, a coastal state enjoys the sovereign rights to explore, exploit and conserve living resources, and to control these resources (Subclause "a" of Clause 1, Article 56).

Thus regulation of fishing in economic zones is within the competency of coastal states (articles 61 and 62 of the draft). In this case the quite deliberate use of the term "sovereign rights" in application to living resources means, in my opinion, that a coastal state's rights pertaining to this issue are the broadest in comparison with its other rights in an economic zone. Second, we need to turn attention to the fact that because fishing gear is undergoing significant technical improvement, the responsibility of all states to seek ways to cooperate in the conservation of the living resources of the high seas is becoming an increasingly more important element of the principle of the freedom of fishing on the high seas. Existing in a close mutual relationship, the freedom of fishing and conservation of living resources are, in my opinion, elements of the single principle of freedom of reasonable and scientifically grounded fishing on the high seas.

Conservation of living resources on the high seas beyond the limits of economic zones is within the competency of states engaged in fishing. In this connection we need to turn attention to the statement in Article 87 that all states enjoy the freedom of fishing in compliance with the conditions spelled out in Section 2. This section, which is titled "Control of the Living Resources of the High Seas and Their Conservation," foresees that: 1) All states have the right to allow their subjects to engage in fishing in the high seas in compliance with a number of conditions (Article 16 of the draft); 2) all states implement measures found necessary to conserve the living resources of the high seas, or they cooperate with other states in the implementation of such measures in relation to their subjects.

e) Freedom of Scientific Research

The principle of the freedom of scientific research was stated for the first time (in universal international conventions) in the draft convention on the law of the sea among other fundamental principles composing the freedom of the high seas; this is an undoubtable merit of the draft. But at the same time it is important to consider that the action of this principle is limited to those areas of the high seas which are outside the limits of economic zones. In the latter, the coastal state exercises jursidiction in relation to marine scientific research. This jurisdiction is not exclusive for the following reasons. Coastal states exercising their jurisdiction have the right to regulate, grant permission for and conduct marine scientific research within their economic zone and on their continental shelf. Such research is conducted by other states and competent international organizations with the consent of the coastal state. But under normal circumstances the latter gives consent for marine scientific research exclusively for peaceful purposes and to expand scientific knowledge on the marine environment for the good of all mankind. At the same time a coastal state may refuse to give consent to another state or to a competent international organization to conduct scientific research, at its own discretion and in cases strictly established by the draft, and particularly if such scientific research has direct significance to the exploration and exploitation of living and mineral natural resources by the coastal state.

Despite this provision, coastal states cannot refuse to give consent for scientific research projects that are to be conducted on the continental shelf beyond the 200 nautical mile limit and outside those regions which coastal states may at any time officially declare to be regions of present or future--within reasonable time--exploitation or exploration of the natural resources (Article 246 of the draft convention on the law of the sea).

Such are the basic trends in development of the principle of the freedom of the high seas today, and of their realization in the draft convention on the law of the sea.

The USSR and other socialist countries are making a significant contribution to the proceedings of the Third UN Conference on the Law of the Sea. They are decisively in favor of preserving the universally recognized principles of the international law of the sea in the new convention, to include the freedom of the high seas and the freedom of passage of marine vessels through international straits joining two portions of the high seas, and of flights over them by aircraft; they are also in favor of a balanced and mutually acceptable solution to the issue as to the status of the economic zone and other fundamental problems of the law of the sea. The freedom of the high seas has exceptional significance to many developing states, which need to expand economic and commercial ties with other countries and which are developing their own national merchant marines.

The freedom of the high seas is a universally recognized imperative principle of modern international law. It is the most important legal means of ensuring peaceful coexistence among states with different socioeconomic systems, and development and deepening of their cooperation in different areas.

BIBLIOGRAPHY

1. Molodtsov, S. V., "Mezhdunarodno-pravovoy rezhim otkrytogo morya i kontinental'nogo shel'fa" [The International Legal Regime of the High Seas and the Continental Shelf], Moscow, 1960.

2. Kolombos, D., "Mezhdunarodnoye morskoye pravo" [International Law of the Sea], Moscow, 1975.

3. Kunz, J., "The Changing Law of Nations (Essays on International Law)," Ohio, 1968, p 35.

4. "Sovremennoye mezhdunarodnoye morskoye pravo. Rezhim vod i dna Mirovogo okeana" [Modern International Law of the Sea. The Regime of the Waters and Floor of the World Ocean], Moscow, 1974, p 26.

5. "Mezhdunarodnoye vozdushnoye pravo" [International Air Law], Book 1, Moscow, 1980.

6. Molodkin, A. L., "Mirovoy okean. Mezhdunarodno-pravovoy rezhim. Osnovnyye problemy" [The World Ocean. The International Regime. Basic Problems], Moscow, 1973.

7. Vysotskiy, A. F., "Pravovyye problemy svobody nauchnykh issledovaniy v Mirovom okeane" [Legal Problems in the Freedom of Scientific Research in the World Ocean], Kiev, 1974, p 160.

8. Calfisch, L., and Piccard, J., "The Legal Regime of Marine Scientific Research and the Third United Nations Conference on the Law of the Sea," ZEITSCHRIFT FUR AUSLANDISCHES OFFENTLICHES RECHT UND VOLKERRECHT, Vol 38, No 3-4, 1978, pp 848-901.

9. Brounli, Ya., "Mezhdunarodnoye pravo" [International Law], Vol 1, Moscow, 1977.

10. Barabolya, P. D., "Problems of International Straits," in "Sovetskoye gosudarstvo i mezhdunarodnoye morskoye pravo" [The Soviet State and International Law of the Sea], Moscow, 1977, pp 19-33.

11. Zhudro, A. K., and Dzhavad, Yu. Kh.," Morskoye pravo" [Law of the Sea], Moscow, 1974.

12. A/Conf. 62/L.78, 28 August 1980.

13. Jaenicke, G., "Die Dritte Seerechtskonferenz der Vereinten Nationen. Grundproblems im Uberblick," ZEITSCHRIFT FUR AUSLANDISCHES OFFENTLICHES. RECHT UND VOLKERRECHT, Vol 38, No 3-4, 1978.

14. A/Conf. 62/WP. 8/Rev. 1/Part II, 6 May 1976.

15. Gundling, L., "Die exlusive Wirtshchaftszone," ZEITSCHRIFT FUR AUSLANDISCHES OFFENTLICHES RECHT UND VOLKERRECHT, Vol 38, No 3-4, 1978.

16. Wolfrum, R., "Die Fischerei auf Hoher See," ZEITSCHRIFT FUR AUSLANDISCHES OFFENTLICHES RECHT UND VOLKERRECHT, Vol 38, No 3-4, 1978.

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