CONTEMPORARY ISSUES OF THE LAW OF THE SEA: MODERN RUSSIAN APPROACHES
Foreign Translation Program

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The inaugural volume in this Program is a comprehensive treatise by a distinguished Russian specialist on the law of the sea, the first major work on the subject in the post-Soviet era analyzing the 1982 United Nations Convention on the Law of the Sea against the background of Russian maritime policies, treaty practice, and legislation.

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**CONTEMPORARY ISSUES OF THE LAW OF**  
**THE SEA:**  
**MODERN RUSSIAN APPROACHES**

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This monograph by Professor A. A. Kovalev is based on his lectures delivered during the past decade at the Diplomatic Academy of the Ministry of Foreign Affairs of Russia, as well as at the All-Russian Academy of Foreign Trade, the Egyptian maritime academy, and universities in New Zealand.

The principal emphasis is placed upon the legal status and legal regime of sea expanses and the regulation of State activities in those spaces. The author proceeds on the premise that from the standpoint of international law the expanses of the seas and oceans are subdivided into those under the sovereignty of States and comprising part of the territory of each, and those to which the sovereignty of no State extends.

The international law of the sea is increasingly complex and the quantity of relevant laws and regulations emanating from national States grows daily. It is therefore impossible to underestimate the value of Kovalev’s monograph in offering a cohesive, well-organized account of these developments and regimes. Circumstances are set out in this book which may or may not be well-known to the reader. An awareness of them will certainly assist the reader in better understanding the problems encountered by States and international organizations in regulating the regime of the World Ocean and coastal waters.

The Russian edition of this book was intended for civil servants involved in formulating and executing maritime policies of their country, legal scholars, and teachers and students at law faculties and institutions offering training in marine sciences.

We have no doubt a similar audience abroad will find the English version of interest and are grateful to Professor William Butler for his initiative in making this study accessible to a broader readership around the world.

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Editor’s Introduction

Four decades have elapsed since I first addressed Soviet approaches, as they then were, to the law of the sea. By the mid-1960s the Soviet Union had become a mighty sea power in every sense of the word: naval fleet, merchant fleet, fishing fleet, scientific-research vessels, icebreakers. This was a transformation in maritime capability that, even during an era of intense political hostility and rivalry, made the Soviet Union profoundly aware of common interests shared with leading Western maritime powers in developing an agreed international legal regime for the seas and oceans on a scale never previously contemplated in all of Russian history. Perhaps no other forum was as influential in generating a working relationship among the Great Powers than was the Third United Nations Conference on the Law of the Sea and all of the preliminary negotiations leading to the convening of that Conference.

In the Third Millennium the scene has changed drastically in some respects. The massive Soviet Navy is no more, and safely dismantling the nuclear reactors that powered its ships is a new challenge to modern technology. The merchant fleet was divided among the former republics of the USSR and much of it sold off; the fishing fleet was likewise dispersed and made significantly redundant by the exclusive economic zones introduced by coastal States. Scientific research continues to be of interest, although it enjoys lower priority than in the Soviet Planned Economy and experiences serious underfunding. On the other hand, the Russian continental shelf is being actively explored and exploited in the Arctic, Far East, Baltic, Black, and Caspian seas, attracting significant foreign interest and involvement. Climate conditions favor the Northeast Passage as a route more promising and less costly from Atlantic to Pacific than has been the case at any time previously.

After due deliberations, the Russian Federation ratified the 1982 United Nations Convention on the Law of the Sea and has to a considerable extent integrated its provisions into Russian legislation. Moreover, as a treaty ratified by the State Duma of the Russian Federation, the 1982 Convention enjoys the status conferred by the 1993 Constitution of the Russian Federation.

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(Article 15): the Convention itself is an integral part of the Russian legal system. Russia is represented on the International Tribunal for the Law of the Sea in Hamburg (Judge A. L. Kolodkin) and has acted as a Plaintiff in proceedings before that Tribunal. Pending ratification of the 1982 Convention by the United States, the Russian Federation is the most substantial maritime power to be a party to the treaty. Russia thus plays a central and influential role in world maritime policy, and Russian approaches can not fail to be of importance to anyone interested in the law of the sea.

For many readers this will sufficient occasion to consult this book – knowing what others think about the subject. While this is indeed important, the Editor’s labors are based on the conviction that this treatise is part of the larger subject of comparative approaches to international law. It addresses the interface between an important component of Russian foreign relations law and the international legal system. As such, it is part of the legal doctrine of public international law and of Russian law

This is a comprehensive treatise, structured in the classical mode, by a leading Russian authority on the subject. It covers all material aspects of the law of the sea, and is the first major Russian treatise on the subject in the post-Soviet era. Extensive attention is given to Russian practice. The author brings to his subject the experience of a seaman, the perspective of a diplomat, and the reflections of a legal scholar. Alexander Antonovich Kovalev graduated in 1960 from the Admiral Makarov Leningrad Higher Marine Engineering School, in 1969 from the Leningrad State University, and in 1979 from the All-Union Academy of Foreign Trade. He worked as navigator and then master on ships of the Baltic Shipping Company and from 1971 in foreign economic and diplomatic work. He has lectured since 1984 at the All-Union Academy of Foreign Trade and from 1993 at the Diplomatic Academy of the Ministry of Foreign Affairs. He also has held positions within the apparatus of the Government of the Russian Federation and has the rank of State Counsellor of the Russian Federation, Second Class. He has written widely on the law of the sea and is at present the Head of the Chair of International Law in the Diplomatic Academy.

The translation, based on the Russian edition, Современное международное морское право и практика его применения (Москва, Научная книга, 2003), is presented in full. Minor misprints have been corrected and where transcription is used, the short-form version of the Library of Congress system has been followed.

W. E. Butler
Stratton Audley Park
July 2004
Introduction

The legal claims of States – the principal subjects of international law on the high seas – to have access to the use of ocean expanses for recreational and communications purposes, to jurisdiction with respect to activities on the oceans, and also to living and mineral resources of the Oceans, are becoming more diverse, larger in scale, and more complex. The following factors may serve as an explanation of this process.

First, the scientific-technical revolution has enabled States to use the wealth of the oceans more actively and effectively for their own development. Second, specialists rather long since predicted an international crisis on the basis of scientific data by reason of the shortage of such natural resources as fresh water, soil suitable for cultivation, and marine bioresources. In the view of those specialists, the world anticipates a growing gap between demand and supply for natural resources.¹

According to forecasts of experts from the United Nations Food and Agricultural Organization (FAO), demand for marine bioresources in the twenty-first century will grow constantly and the gap between supply and demand for those resources at the moment is already not less than 10 to 15 million tons. In addition, under the conditions existing in the international law of the sea of the 200-mile exclusive economic zone, many stocks of valuable living marine resources have been artificially divided by the boundaries of national zones.

In this connection, and also taking into account the transition of the majority of States to market relations, competition is intensifying to take possession of bioresources on the high seas as an important component of food security for a particular State.

Since the global problem of the rational use of resources of the high seas affects the interests of all countries, inter-State conflicts are occurring in the world with regard to the use of those resources. Suffice it to note the ‘cod war’ between the United Kingdom and Iceland in the 1970s, the conflict

situation that arose in connection with competing rights to biological resources in the central part of the Bering Sea enclosed by the exclusive economic zones of the Russian Federation and the United States, and in connection with the use of resources in other enclaves of the high seas – the Norwegian and Greenland seas, the Barents Sea. These disputes have been repeatedly considered by the International Court of Justice.

In connection with the depletion of living marine resources by reason of their excessive exploitation and irrational use and pollution of their feeding environment, certain authors do not even exclude in the future the likelihood of war for natural resources in general and for living marine resources in particular. To this testify statements of the former President of the United States, Bill Clinton, when in one of his messages to the Congress and the people of the United States relating to national security strategy he stressed that “further competition between countries for the use of natural resources such as clean air, fertile land, fish stocks, and so on that previously were free represent a significant threat to the regional stability of the world”.

No less acute, from the standpoint of preservation of the bioresources of the high seas, is the problem of combining the efforts of States engaged actively in marine fishing with regard to pollution of the marine environment by all types of pollutants, the revision of existing international legal acts in this domain, and the adoption of new acts taking into account the possibilities of many States to develop shelf oil and gas resources.

Moreover, the struggle against pollution of the oceans is important from the standpoint of the constantly expanding use of its recreational potential, which enhances the economic significance of the expanses and resources of the high seas.2

The adoption in 1982 within the framework of the United Nations of a universal convention acceptable to all States on the law of the sea strengthened the role of the United Nations and proved to the international community that it was possible to come to an agreement on the most complex of issues. However, the norms of the law of the sea in that Convention do not provide an answer to all urgent questions connected with activities on the World Ocean. We mention only certain of these.

In connection with the changed geopolitical situation in the world, the reduction of stocks of marine bioresources on the high seas, the review by member States in certain intergovernmental fishery organizations (NAFA

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and NEAF, for example) of their charter documents, the Code of Conduct for Responsible Fishing adopted by the FAO in 1995, the application of principles of a restrained approach to commercial fishing on the high seas, and preservation of the ecosystem and natural feeding environment, the problem has arisen of applying prevailing norms affecting such complex sub-branches of the law of the sea as international fishing law. In our view it is necessary to review and make respective amendments to the principal Russian laws regulating activity in this domain. In particular, the question of fishing in enclaves of the high seas not regulated, as is well-known, by the norms of the 1982 Law of the Sea Convention requires detailed regulation. The 1995 Law of the Russian Federation on the Continental Shelf of the Russian Federation, the 1998 Law on the Exclusive Economic Zone of the Russian Federation, and the 1995 Law “On Fauna” especially need changes and amendments. In so doing the amendments to these and other laws should obviously be adopted so as not to worsen the operation of those laws.

Also needing regulation at the international level are issues connected with the regime of the Black Sea Straits following the introduction unilaterally in 1994 by Turkey of Regulations for passage of large tankers through those straits and in 1998 of Regulations for the carriage of dangerous cargoes, which in practice meant the introduction of an authorization procedure for the passage of such vessels through those straits. While sharing the concern of Turkey with regard to the safety of navigation, preservation of the marine environment, and suppression of terrorism, all the same it is essential to take into account the position of the 1982 Law of the Sea Convention, especially Article 35, which specially stipulated that the regulation provided for in the Convention does not affect the legal regime of straits, passage in which is regulated by international conventions in force which relate especially to such straits. The legal regime of the Black Sea Straits is regulated by the 1936 Montreux Convention, in force, establishing that the Black Sea Straits are open to navigation of all States. This question is, in our view, exceptionally important in connection with the commencement in 2004-2005 of the industrial recovery of oil in the Caspian and the transporting thereof for export from Novorossiisk through the Black Sea Straits.

International legal problems concerning the legal status of the Bering Sea await resolution. One problem is the delimitation of expanses between Russia and the United States in the Bering Sea. These questions are regulated at present by the Agreement between the USSR and the United States on the Line of Demarcation in the Bering Sea of 1 June 1990 in which the State territory of the two countries in the Bering Strait is demarcated, the waters of which overlap the territorial seas of Russia and the United States. Regrettably, during the euphoria of expanded links with the United States, according to data of the Committee of Russia for Fishing, when delimiting
the sea expanses of Russia about 20,000 square kilometers of expanses were conceded to the United States in which Russian fishermen traditionally caught about 150,000 tons of valuable species of fish.

The said Agreement has not as yet entered into force since, unlike the United States, Russia has not ratified it and accordingly from 1990 the Agreement is subject to temporary application. Since the period of temporary application clearly has dragged on and been repeatedly extended, and that Russia, having regard to the unequal character of the Agreement, does not intend to become a party, the problem is one of terminating the provisional application of this Agreement.

Acts of marine terrorism, and also the sad events of 11 September 2001, place before the international community the task of forming an international-legal base for anti-terrorist activity of States on the high seas. It is essential to take into account in so doing that marine terrorism has specific features in comparison with terrorist acts committed on land and in air space. This specific feature in particular is determined first of all by the peculiarities of activity on the high seas, one type of which is maritime navigation.

To date there is no precise regulation of navigation along the Northern Sea Route. The development of transport links and exploitation of hydrocarbon reserves in the Arctic regions by polar States and the internationalization of the Arctic require resolution of problems of navigation safety and preservation of the environment in the aquatory of the Northern Arctic Ocean, having regard to the priority interests of the polar States in the Arctic. In this connection the rights of States are regulated with inadequate precision, especially the rights of the Russian Federation to marine natural resources stipulated by the 1920 Paris Treaty on Spitzbergen. In connection with the arrests of marine fishing vessels in the area of the Spitzbergen archipelago it is necessary, in our view, to strive to fulfill the provisions of the 1920 Paris Treaty, and also to review the bilateral Russo-Norwegian treaty base for the rational use of marine bioresources in this area.

The problem arises in connection with the development of oil resources of the Caspian at full steam of determining the legal regime of the Caspian Sea and the signature of a multilateral treaty on the division of its seabed and surface. Without determining the legal regime of the Caspian and in the absence of an arrangement of the five Caspian States having various interests in the Caspian, one can hardly expect large investments in developing the natural resources of the Caspian.

The legal status of the Sea of Azov and the Kerchensk Strait also required determination.

Thus, proceeding from a brief indication of the urgent problems of the law of the sea one may conclude that prevailing norms of the law of the sea
do not provide an answer to all questions connected with the activities of States on the World Ocean. The author of the present work attempts to outline the existing problems in the international law of the sea and propose the legal resolution thereof by taking into account the general principles of international law.

At present the following basic concepts and institutions have been formed in the international law of the sea: internal sea waters; territorial sea; contiguous zone; archipelagic waters; exclusive economic zone; high seas; continental shelf; seabed beyond the limits of national jurisdiction; international straits; closed or semi-enclosed seas. All these institutions have been considered in this work from the standpoint of their legal classification and legal regime, and existing gaps in their legal regulation. In addition to the said institutions of the international law of the sea, considerable space is given in this monograph to an analysis of the legal regime of the Caspian Sea, Arctic, and Antarctic.

The greater legal capacity and dispositive legal capacity of States and larger group of subjects using the sea have preordained the need to consider in this monograph such important issues as how is the marine environment to be protected against harmful consequences of the use of the expanses and natural resources of the World Ocean.

When considering the legal regimes of basic sea expanses combined under the general term ‘World Ocean’, the author has proceeded from the fact that by ‘international legal regime of sea expanses’ is understood the aggregate of all rights and duties recognized for States by norms of the international law of the sea. The specific content of the rights and duties of States on the World Ocean depends above all on the types of marine expanses within whose limits a particular marine activity is effectuated.

By their legal status marine expanses, just as other expanses of the planet, are traditionally divided into two principal categories: (a) marine expanses in the common use of all States and to which the sovereignty of no State may extend; and (b) sea expanses under the sovereignty of the coastal State and comprising its State territory (internal sea waters and territorial sea).

The legal regime of the said principal categories of sea expanses are various. For example, despite the fact that internal sea waters and the territorial sea as part of State territory have an identical legal status, their legal regimes and the methods of regulation of those regimes are distinct from one another. The establishment of the legal regime of internal sea waters is the exclusive right of the coastal State. The legal regime of the territorial sea, also established by the coastal State, is to a significant extent different from internal waters and is regulated by international law. The regime of the territorial sea, in particular, with respect to determination of the breadth of the territorial sea (internal and external boundaries) and the right of innocent passage of foreign vessels, unlike in internal waters, is
effectuated on an international-legal basis, taking into account the interests of the coastal State. This distinction in the legal regimes of internal sea waters and the territorial sea, is a consequence of the objective requirements of States including coastal, for the development of international shipping and trade.

In the areas of the high seas adjacent to the territorial sea there extends a special jurisdiction of coastal States for determined purposes. Notwithstanding the fact that such jurisdiction has a limited functional character, the establishment thereof by a coastal State leads to the activities of other States in these areas either completely prohibited or under the control of the coastal State. With the development of technological and economic potential of States enabling the use of living and mineral resources of the World Ocean to be significantly expanded, the practice of establishing various zones on the high seas in which the special jurisdiction of the coastal State operates was widespread during the 1960s. Thus there occurred a sort of assault against the high seas, against its freedoms. With respect to such types of marine activity as fishing, exploitation and recovery of mineral resources, and scientific research, coastal States began to effectuate their jurisdiction on the high seas to a distance of up to 200 nautical miles from shore, establishing zones for the protection of fishery resources or exclusive economic zones, and declaring their right to the shelf. On the other hand, there was the aspiration of the large maritime States to possess maritime territories without limitation in connection with the development of foreign trade and the existence of pervasive international consortiums.

The expansion of national jurisdiction by coastal States has as a consequence a reduction of the aquatory of the World Ocean where the regime of the high seas operates and, consequently, led to a certain curtailment of the sphere of operation of the fundamental principle of the law of the sea – the principle of the freedom of the high seas.

An intensification of the use of the World Ocean at the end of the 1960s accompanied by a stronger trend towards a significant expansion of the jurisdiction of coastal States led to the arising of problems which might be resolved only by means of the further progressive development of the international law of the sea.

The 1982 Law of the Sea Convention devoted special attention to the legal regime of sea expanses. It provided for the regulation of the activities of States with regard to the use of expanses and resources of the World Ocean, and also relations arising between them in the process of those activities primarily according to the principle of territorial or zonal affiliation of marine expanses (territorial sea, contiguous zone, continental shelf, exclusive economic zone). Even such parts of the 1982 Convention on the Law of the Sea as “Protection and Preservation of the Marine Environment” and “Marine Scientific Research” containing norms of a functional
designation also to a significant extent were linked to territorial or zonal regulation of the activities of States on the World Ocean.

In preparing this monograph exceptionally constructive assistance was rendered on the part of A. L. Kolodkin, meritorious public figure of science, doktor of legal sciences, professor, Judge of the International Tribunal for the Law of the Sea; Professor, doktor of legal sciences M. I. Lazarev; Professor, doktor of legal sciences K. A. Bekiashev; Professor, doktor of legal sciences Iu. S. Romashev; and R. A. Kolodkin, candidate of legal sciences and Director of the Legal Department of the Ministry of Foreign Affairs – for which the author expresses sincere gratitude.
1. Internal Sea Waters

In accordance with the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone (Article 5) and the 1982 United Nations Convention on the Law of the Sea (Article 8), there are relegated to internal sea waters: (1) sea waters on the landward side of the straight baselines accepted to calculate the breadth of the territorial sea; (2) waters of bays, the breadth of the entry to which does not exceed 24 miles; (3) waters considered to be ‘historic’ gulfs, bays, inlets, seas, and straits even if the breadth of entry exceeds 24 miles; (4) waters of ports limited by a line passing through the most extended port installations seaward; (5) waters of seas deeply penetrating landward and enclosed by the territory of one State, called internal seas (for example, the White Sea).

Internal sea waters are an inalienable constituent part of the territory of a State and subordinated to its sovereignty.

The legal regime of internal sea waters as part of State territory is determined principally by the coastal State. Partially, however, the legal regime of internal sea waters also is regulated by international law. The 1958 Geneva Convention on the territorial sea and the 1982 United Nations Convention provide, in particular, that

where the establishment of a straight baseline … has the effect of enclosing as internal water areas which had not previously been considered as such, a right of innocent passage as provided in the Convention shall exist in those waters (Article 8(2), 1982 Convention).

It follows, as Bozrikov believes, that “the coastal State in such waters is obliged to take into account all norms of international law relating to the innocent passage of foreign vessels”.¹

These provisions of the 1958 Geneva Convention on the territorial sea and the 1982 United Nations Convention raise several issues. First, the es-

establishment of a straight baseline, that is, the line from which the breadth of
the territorial sea is calculated, always leads to the sea waters landward being
singled out as internal sea waters. Second, the very definition of the concept
of innocent passage through the territorial sea, as will be shown in Chapter 2
below, provides for navigation through the territorial sea for the purpose of:
(a) traversing that sea without entering internal waters or calling at a road-
stead outside internal waters; or (b) proceeding to or from internal waters, or
calling at such a roadstead. In other words, innocent passage always provides
for a coastal State having a territorial sea and internal sea waters.

Third, the institution of ‘innocent passage’ through the territorial sea is
directed first towards defense of the sovereignty and security of the coastal
State. Therefore, the suggestion of the coastal State taking into account all
norms of international law relating to the innocent passage of foreign vessels
in instances when “the establishment of a straight baseline leads to the inclu-
sion in internal waters of areas which were not previously regarded as such”
(even if this is theoretically permitted) makes no sense.

Fourth, as noted above, the legal regime of internal sea waters is estab-
lished by the coastal State, which issues necessary laws and regulations, and
determines the procedure for activities in those waters of juridical and natu-
ral persons, both of national and foreign States, which must be published in
Notices to Mariners. These rules are more ‘strict’, since their violation,
unlike a violation of the right of innocent passage, directly threatens the se-
curity of the coastal State.

It seems necessary in this connection in the future to review this norm of
the 1982 United Nations Convention, which only complicates the question of
the legal regime of internal sea waters.

Characteristic in this respect is legislation of the Russian Federation on
internal sea waters. In accordance with the 1998 Law of the Russian Federa-
tion “On Internal Sea Waters, Territorial Sea, and Contiguous Zone of the
Russian Federation” (Article 1), internal waters of the Russian Federation
are those waters situated landward of straight baselines from which the
breadth of the territorial sea of the Russian Federation is measured.

Internal sea waters are an integral part of the territory of the Russian Fed-
eration.

To internal sea waters are relegated the waters of:
— ports of the Russian Federation delimited by a line passing through
the furthest point seaward of hydro-engineering and other permanent
port installations;
— gulfs, bays, inlets, and reefs whose coasts belong entirely to the
Russian Federation up to a straight line passing from coast to coast at
the place of lowest ebb tide where seaward are first formed one or
several passages if the breadth of each does not exceed 24 nautical
miles;
— gulfs, bays, inlets, and reefs, seas and straits, the breadth of whose entry does exceed 24 nautical miles which historically belong to the Russian Federation, a list of which is established by the Government of the Russian Federation and published in Notices to Mariners.

The legal regime of fishing ports, and also of specialized ports of the Russian Federation, is uniform for all ports on the territory of the Russian Federation, irrespective of forms of ownership and departmental affiliation.

Seaports are declared to be open for foreign vessels on the basis of a decision of the Government of the Russian Federation.

The list of seaports open to foreign vessels is published in Notices to Mariners.

The official regulating the entry of vessels to a seaport (or departure from a seaport) and liable for navigation safety is the master of the seaport.

According to Article 6 of the Law, all foreign vessels except warships and other State vessels operating for noncommercial purposes, irrespective of their designation and forms of ownership, may enter seaports open to foreign vessels.

With respect to foreign vessels of States in which there are special limitations on vessels of the Russian Federation entering their ports, retaliatory limitations may be established by the Government of the Russian Federation.

Criminal, civil, and administrative jurisdiction of the Russian Federation extends to foreign vessels and passengers and members of the crew on board during the sojourn of the said vessels in seaports.

A foreign vessel departs from a port only with the authorization of the master of the port by agreement with officials of a specialized empowered federal agency of executive power for the border service and officials of customs agencies.

A distinctive feature of the legal regime of a port is the existence of so-called forced entry, which is regulated by Article 9 of the Law.

Forced entry of a foreign vessel, foreign warship, or other State vessel to the territorial sea, internal sea waters, and seaports is effectuated by reason of the following extraordinary circumstances:

— accident, natural calamity, or strong storm threatening the safety of the foreign vessel, foreign warship, or other State vessel;
— ice drift or ice conditions threatening the safety of a foreign vessel, foreign warship, or other State vessel;
— towage of a damaged foreign vessel, foreign warship, or other State vessel;
— delivery of rescued people;
— need to render urgent medical assistance to a member of the crew or passenger, and also by virtue of other extraordinary circumstances.
All foreign vessels, foreign warships, and other State vessels without discrimination enjoy the right of forced entry to the territorial sea, internal sea waters, and seaports in accordance with norms of international law.

The master of a foreign vessel, commander of a foreign warship, or other State vessel is, in the event of forced entry to the territorial sea, internal sea waters, or seaport, obliged immediately to notify the master of the nearest seaport thereof and thereafter to act in accordance with his instructions or the instructions of the commander of the warship, master of a sea-going or river vessel, or commander of an aircraft of the Russian Federation which has arrived to render assistance or to elicit the circumstances of the forced entry.

A communication concerning forced entry should contain the following information:

— the name of the foreign vessel, foreign warship, or other State vessel;
— flag State
— forename and surname of the master of the foreign vessel or commander of the foreign warship or other State vessel;
— type of engine (nuclear or ordinary);
— reason for forced entry;
— presence on board of nuclear or other substances or materials dangerous or poisonous by their nature;
— requirement for assistance and character thereof;
— proposed period for forced entry, and also other information.

Upon the termination of the circumstances which gave rise to the forced entry, the foreign vessel, foreign warship, or other State vessel is obliged to leave the seaport.

The right of forced entry may be refused to foreign vessels in distress, foreign warships, and other nuclear-powered State vessels or to foreign vessels carrying nuclear or other substances and materials dangerous or poisonous by their nature which may cause damage to the Russian Federation, its population, natural resources and environment significantly greater than the damage threatening the foreign vessel, foreign warship, or other State vessel in distress.

In accordance with Article 21 of the Law, the basic principles of economic relations when using natural resources of internal sea waters and the territorial sea are:

— payment for use;
— responsibility for violation of the conditions of economic activities;
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— compensation of damage caused to internal sea waters and the territorial sea, natural resources, environment, and monuments of history and culture;

— financial provision for measures connected with the restoration and protection of natural resources of internal sea waters and the territorial sea, environment, and protection of monuments of history and culture.

Payments for the use of living resources and of nonliving resources of internal sea waters and the territorial sea, the amounts of payments, the procedure for recovery thereof and receipt in the federal budget and the budgets of subjects of the Russian Federation whose territory is adjacent to the internal sea waters and territorial sea are determined by laws of the Russian Federation.

The procedure for the calculation and application of normative standards for payment for the use of living resources and the procedure for the calculation and application of normative standards of payment for the use of nonliving resources is determined by the Government of the Russian Federation.

In addition, the users pay other taxes and charges provided for by legislation of the Russian Federation in the domain of taxation.

In places where small groups of native peoples, ethnic communities, and other inhabitants of the North and Far East of the Russian Federation reside and engage in traditional economic activities, whose way of life, employment, and economies are traditionally founded on trade in living resources, the procedure and means for the use of natural resources of internal sea waters and the territorial sea ensuring the preservation and maintenance of necessary conditions for life is determined and established in accordance with legislation of the Russian Federation.

Another law establishing the legal regime of internal waters of the Russian Federation is the Law of the Russian Federation “On the State Boundary of the Russian Federation” of 1 April 1993, with subsequent changes and additions.

According to Article 5 of the said Law, there are relegated to internal waters of Russia:

(a) seaports landward from baselines used to calculate the breadth of territorial waters of Russia;

(b) waters of Russian ports delimited by a line passing through the points farthest seaward of hydro-engineering and other port installations;

(c) waters of gulfs, bays, and estuaries, whose coasts belong entirely to Russia up to a straight line passing from coast to coast at the lowest ebb tide where seaward are first formed one or several passages if the breadth of each does not exceed 24 nautical miles;
(d) waters of gulfs, bays, estuaries, seas, and straits historically belonging to Russia, a list of which is announced by the Russian Government;

(e) waters of rivers, lakes, and other waters whose coast belongs to Russia.


In the context of considering the legal regime of internal sea waters it is vitally important to investigate the question of so-called historic waters.

Historic waters (and historic bays as a variety thereof) are relegated to internal sea waters, the baselines passing along their outer edge (with regard to bays – the aforesaid description applies except that the principle of the 24-mile limit does not operate).

The problem of historic waters in the international law of the sea and, in particular, the legal criteria on whose basis a coastal State extends sovereignty to marine expanses, is one of the least developed in international law.

Underlying the divergence of opinion of States are two opposed trends: (1) expansion and strengthening of internationalist principles for use of the expanses and resources of the high seas, in particular, for the purposes of navigation; (2) aspirations to remove individual sea expanses having special significance for particular countries from the freedoms of the high seas, incorporating them within the sphere of territorial supremacy.²

Initially the possibility of establishing the status of historical waters was linked with the waters of gulfs, bays, inlets, estuaries, and other well-defined indentations into the coast which penetrate landward to such an extent that they contain waters enclosed by land and form something more than simply the sinuosity of the coast. Later ‘historic waters’ came to be advanced with respect to straits and small seas of the gulf-type on the grounds that certain seas of the gulf-type are fewer than the number of gulfs declared to be historic.

There is no uniform resolution in the national legislation of States as to whether historic waters relate only to the category of internal waters or not. Thus, the United States declared with regard to Chesapeake Bay, inter alia,

that from the moment of the effectuation of the right of the State the bay is regarded as territorial waters, and not internal.\(^3\)

Only the practice of a specific State may provide an answer to this question. If a coastal State acts as a sovereign with respect to historic sea expanses, enjoying the full plenitude of power, these expanses are relegated to internal waters where any exceptions from the legal regime thereof (for example, in favor of international navigation) may be made only at the discretion of this State. If in such space the right of innocent passage is traditionally or by virtue of treaty norms recognized, the legal regime thereof is identical to the legal regime of the territorial sea. In certain areas of historic waters narrower special rights of a coastal State may operate.

Although finally-agreed provisions by which one should be guided in recognizing the historic rights of States are absent in treaties, the Third United Nations Conference on the Law of the Sea offered an unofficial recommendation with the following list of requirements necessary to establish rights to historic waters: (i) effective exercise of sovereignty of the coastal State for a significant period of time, such exercise of sovereignty including the regulation of transit, fishing, and other activity of its citizens and foreigners and “should be based on the vital interests of the coastal State”, including defense and economic interests of the area; (ii) general consent of other States to the existing practice; the exercise of power must be uninterrupted, peaceful, and prolonged.\(^4\)

In confirmation of claims to sea expanses a State may refer to the opinion of authoritative scholars recognizing the existence of historic rights to the aid expanses. In Russian doctrine the following basic features of the conception of historic waters have been formulated:

1. in historic waters the coastal State must effectuate its rights for a lengthy period and without interruption, that is, a certain ‘national custom’ must be formed. These rights must be exercised in a manner obvious to other States. However, no official notification to other States is required about administrative rights in such expanses, publication by it of normative acts, publication of addresses and statements of officials or other public actions;

2. historic rights must be recognized by other States, that is, the ‘national custom’ must be transformed into an international custom. Such recognition need not obligatorily be clearly expressed; it may be simply assumed as a result of ‘general tolerance’ of other States with respect to the fact of the exercise of these rights by the State. Protests


of States having no direct relation to the particular geographic region or not within the category of States which are constant and material users of the sea need not be taken into account;

(3) historic waters must have a special geographic position: directly wash the territory of the particular State and be apart from international sea routes. Their declaration should not obstruct the effectuation of international navigation;

(4) the declaration of waters to be historic must play a material role from the standpoint of the economy and defense of the coastal State.

The practice of the USSR with respect to historic waters located in the Northern Arctic Ocean, the results of which the Russian Federation inherited, do not go beyond the framework of generally-accepted criteria and rules. In substantiation of its rights to historic waters of Russia references were made to exceptional climatic conditions of the Northern Arctic Ocean, and also to the location of these Russian historic waters outside international routes, the special economic and defense significance of the Arctic seas and straits, and also the duration of their actual affiliation to the Russian Empire (Russian Federation). Historic titles to the waters of the White Sea (south of the line connecting Cape Sviatoi Nos with Cape Kanin Nos), Cheshkskaia and Baidaratskaia Guby, and Penzhinskaia Guba (north of the line connecting the southern island from Cape Povorotnyi to Cape Dal’nyi had been established by way of legislation, being on the basis of the Decrees of the Council of Ministers of the USSR of 7 February 1984 and 15 January 1985 declared to be internal waters as historically belonging to the USSR. In addition, a Decree of the USSR Council of Ministers of 4 June 1957 was published, by which the aquatory of Peter the Great Bay was declared to be internal waters as waters of an historic bay (limited by the line joining the mouth of the Tumannaia River with Cape Povorotnyi). In this connection the following should be noted.

Certain authors\(^5\) expressed the view that such seas as the Kara, East-Siberian, and Chukotsk Seas also should be relegated to historic waters and in substantiation thereof the following was said (we note that this is similar to the position of Canada with respect to the Northwest Passage): the entire history of Arctic exploration knows extremely rare instances of the passage of foreign vessels through the waters of the Arctic States. Consequently, such waters may not be regarded as being used for international navigation and therefore there are no grounds to say that international navigation routes pass through this part of the World Ocean. The completeness of control over navigation, which may be enlarged in the future, conditioned by the exten-

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The extension of sovereignty of Russia to the waters of historic seas, bays, and straits adjacent to its Arctic coast enable the interests of international navigation growing in this area to be harmonized with the interests with ecological security. To this should be added the need to defend fiscal, trade, commercial, and other national economic interests of the Arctic States.

Foreign States, among which is first and foremost the United States, do not share this view concerning the extension of historic title to the entire Arctic seas of Russia.

Far from all Russian scholars share this approach to the legal regime of the seas washing the northern coast of Russia. In the view of certain scholars, which was expressed during the Soviet period, the classification of the Barents Sea as high seas is generally accepted (having in view that the regime of historic waters does not extend to it and its waters are not considered as a whole to be the internal waters of a State).

Controversial to this day is the question of the Kara Sea, the Laptev Sea, and the East Siberian Sea. To include these as internal historic waters the following grounds are found: these are seas of the bay-type remote from sea lanes and actually separated from the ocean by barriers of archipelagos and islands constituting a geographical extension of the land. The seabed of those seas is the continental shelf of Russia. Thus has the historic title of the East Siberian Sea, in particular, been substantiated by scholars.

One should bear in mind that if the waters of a sea wash the coast not of one, but of at least two, States, then in our view recognition of the waters as historic must have a treaty foundation. An example of agreements of this type already exists in international practice. Thus, in 1982 Vietnam and Kampuchea concluded an agreement on historic waters.

The legal regime of internal waters is characterized by the fact that the sovereignty of the State extends to them without any exceptions. A coastal State has the right to authorize or to prohibit the admittance of foreign vessels to its internal waters, and also to assess particular actions of foreign vessels and their crew and passengers from the standpoint of their lawfulness by proceeding from internal legislation and apply respective sanctions to offenders.

However, despite the fact that the legal regime of internal sea waters as part of State territory is principally determined by the coastal State, partially this regime, as noted above, is regulated by international law. For example, when determining the procedure for the effectuation of fishing in internal sea

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7 Московский журнал международного права [Moscow Journal of International Law], No. 4 (1993), p. 60.
waters a coastal State is obliged to also take into account the respective international-legal norms.

For the purpose of the protection of the State boundary of the Russian Federation maritime fishing is effectuated in internal sea waters of Russia with notification of the agencies and forces of the Federal Border Service of the Russian Federation. In so doing information is communicated concerning the places and times for effectuating fishing, survey, of other activity, the number of participants, the commercial and other vessels to be used for this purpose, and other means.

Persons effectuating the said activity without notification (or authorization) of agencies and forces of the Federal Border Service of Russia, and also with the notification (or authorization) thereof, but in violation of the conditions of such notification or authorization, bear the responsibility established by Russian legislation.

Since internal sea waters are fully under the sovereignty of the coastal State, foreign vessels are obliged when in internal waters to comply with legislation of this State and the rules and procedure for the effectuation of any activity in those waters. In particular, foreign vessels as a priority must comply with rules for radio communications, navigation, port, customs, sanitary, and other rules established for navigation and sojourn in internal sea waters.

Certain types of activities in internal sea waters may in accordance with the legislation of many coastal States be effectuated only by natural and juridical persons of that State. To such types of activity, as a rule, are relegated: cabotage carriage of cargo and passengers, pilotage, rescue operations, commercial fishing, and so on.

As noted above, the legal regime of sea ports is regulated by legislation of the coastal State. At the same time the regime of sea ports is also regulated by international law. Coastal States exercise their sovereignty in sea ports by taking world practice into account and international legal prescriptions directed towards facilitating the procedure for the putting in to and sojourn of foreign vessels in ports. In the interests of the development of maritime shipping and encouraging cooperation of States in the cause of simplifying formalities when foreign vessels enter ports the International Convention on the Facilitation of Maritime Traffic was adopted in 1965.

When incorporating the provisions of that 1965 Convention into their national legislation and following in essence a uniform approach to formalizing foreign vessels in their ports, States establish a similar quarantine regime and so on so as to facilitate the status of foreign vessels in ports, reduce the time of their sojourn therein, and promote international shipping.

The adoption of the 1965 Convention encouraged an expansion of treaty practice of States with respect to the legal regime of ports. The Convention provisions on simplifying formalities in ports, as a rule, are contained in bilateral treaties on maritime navigation (or trade and navigation, and so on).
Thus the interests of international cooperation in the domain of maritime navigation condition the need for a reasonable combining of national and international-legal regulation of the regime of internal sea waters.

Coastal States usually declare their ports and, consequently, respective areas of internal sea waters to be open for foreign vessels to put in. The declaration of some ports to be open is solely within the competence of the coastal State, which at its discretion in the interests of security or for other purposes may at any time close these ports and waters to foreign vessels. In open ports a coastal State must ensure that foreign vessels of all flags without any discrimination may enter. Vessels in distress or requiring the urgent putting ashore of a crew member may enter any port of a coastal State.

Foreign vessels may enter open ports in accordance with rules issued by the coastal State. These rules and the procedure for foreign vessels to enter ports have their peculiarities in various States. Certain States, in particular the Russian Federation, devote considerable attention to the regulation of foreign warships entering internal sea waters and ports. The legislation of these States, as a rule, provides an authorization procedure for foreign warships to enter ports.8

The legislation of certain States requires compliance with a determined procedure for scientific-research vessels to enter, as well as merchant vessels in those instances when their entry is not connected with the loading or unloading of cargo or the embarkation or disembarkation of passengers. According to the legislation of Belgium, scientific-research vessels, as well as vessels fulfilling work of a noncommercial character, must have authorization to enter Belgian ports requested through the Belgian Ministry of Foreign Affairs not later than a month before the date of proposed entry. Legislation of Denmark and Finland provides that foreign vessels not engaged exclusively in commercial (or trade) activity be equated to warships, and a respective authorization needs to be received for them to enter the ports of those States. Analogous norms are contained in the legislation of Norway, Morocco, and Sweden. Under Spanish legislation, authorization also is required for scientific-research vessels to enter the ports of Spain, the request for which must be sent not later than 20 days before the date of the proposed entry of the vessel to the port.

A refusal to admit or the introduction of limitations on the entry of scientific-research vessels or of State vessels fulfilling work of a noncommercial character (hydrographic, training, pilotage, rescue, and others) harms the interests of international navigation. The creation of any type of difficulties and the establishment by certain States of an authorization procedure for sci-

8 See in detail O. V. Bozrikov, “Правовые регулирование доступа военных кораблей в иностранные порты” [Legal Regulation of Access of Warships to Foreign Ports], Труды Союзморпроекта [Proceedings of Soiuzmorniproekt], (1971), вып. 31, pp. 95-110.
Scientific-research vessels to enter foreign ports cuts across the interests of the international community, above all in the domain of studying the World Ocean, and is contrary to the international law of the sea. The 1982 United Nations Convention (Article 255), entitled “Measures to facilitate marine scientific research and assist research vessels” provides that States shall endeavor to adopt reasonable rules, regulations, and procedures to promote and facilitate “… research … and, as appropriate, to facilitate … access to their harbors and promote assistance for marine scientific-research vessels …”.

In connection with scientific-technical progress in shipbuilding and navigation and the need for protection of the marine environment the special attention of coastal States is devoted to the regulation of access to their ports of nuclear-powered vessels as well as warships with nuclear weapons on board. Many States (New Zealand, Sri Lanka, the States of Northern Europe, and others) expressly prohibit in their legislation the entry of such vessels and warships to their ports.

Moreover, some jurists believe that even in the event of the forced entry into port of a damaged nuclear-powered vessel a coastal State has the right to refuse such vessel to enter if it considers that the entry of the vessel is connected with a threat to the life or health of its citizens, the harm which might be caused “exceeding the damage threatened to the vessel”.

The legal regime established in internal sea waters encompasses not only the rights of the coastal State in these waters, but also the rights and duties of a foreign vessel during its sojourn in such waters. This type of correspondence between the rights and duties of a foreign vessel and the coastal State lies in the fact that a vessel and its crew while sojourning in a port have the right to protection by the laws of the coastal State and respectively are obliged to comply with those laws.

With regard to many questions of the legal regime of internal waters (especially ports) international conventions exist that determine a unified administrative procedure for the sojourn of a vessel in port connected with customs, sanitary, and quarantine control of the coastal State, the procedure for sojourn in ports and entry of members of the crew on to the territory of the coastal State, passage across that territory, and so on.

In this respect the aforementioned 1965 Convention on the Facilitation of Maritime Traffic is of special significance, on the basis of which numerous bilateral agreements have been concluded on merchant shipping directed towards facilitating the status of vessels in ports and bringing administrative

requirements connected with the entry, formalization, and sojourn of vessels in ports towards a single international standard.

For the purpose of international legal regulation of questions connected with the passage of seamen across the territory of coastal States and their sojourn in ports an international convention on national identification cards for seamen was adopted within the framework of the International Labor Organization (ILO).

In recent years the question of the right of a coastal State to lay down various national requirements as a condition for admittance to their ports has taken on special urgency. This right of coastal States was provided for in the 1958 Geneva Convention on the territorial sea (Article 16[2]) and 1982 United Nations Convention (Article 25[2]). The 1958 Geneva Convention on the territorial sea provided that the “… coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject”. This provision, without any change of substance and incorporated into the 1982 Convention, means that a coastal State not only may lay down national requirements as a condition for access of foreign vessels to its ports, but even prohibit entry to the territorial sea of vessels not meeting such requirements. In providing for the adoption by the coastal State of laws and regulations affecting the safety of navigation, protection of the marine environment, and so on, the 1982 United Nations Convention (Article 21[2]) also establishes that such laws and regulations may not relate to the “design, construction, Manning, or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards”. This important provision, however, relates only to navigation in the territorial sea, without affecting the regime of navigation and sojourn in internal waters, in particular, in ports. The authors of this formulation evidently proceeded from the fact that the measures to be undertaken by a coastal State towards vessels proceeding to ports through the territorial sea and sent to ensure navigation safety and protection of the marine environment may ensure the safety and protection of the environment of the port which the vessel is entering.

Despite the fact that the aforesaid provision of the 1982 United Nations Convention does not expressly relate to the regime of internal waters, it in our view proceeds from the coastal State having the right to establish national requirements for foreign vessels putting in to its ports. This conclusion is confirmed, in particular, by Article 211(3) of this Convention, where it is said that:

States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization […]
The reference in this Article to the right of a coastal State to establish “particular requirements” testifies to the right of a coastal State to establish for vessels entering their ports more severe requirements than generally accepted international ones. There is no doubt that this right of the coastal State to establish conditions for the entry of foreign vessels to its ports has its limitations. The competence of a coastal State with respect to foreign vessels must be formed in accordance with generally accepted norms of international law; in particular, with the principle of nondiscrimination, and also with provisions affecting the rights of foreigners. A coastal State, for example, can not regulate questions of the labor and life of the crew of a foreign vessel, which is within the exclusive competence of the flag State. With respect to purely technical questions (design, construction, equipment of foreign vessels) the competence of a coastal State is limited by its obligations under special conventions expressly regulating such questions, as well as by membership in the International Maritime Organization (IMO), called upon to work out and adopt universal international regulations and standards.

Thus, the conclusion that the international law of the sea in principle does not prevent the coastal States from laying down certain national requirements as conditions for foreign vessels to enter ports should be regarded as merely interim since this possibility can not be considered without having regard to a series of international conventions containing respective norms and standards. Among such conventions, in particular, are the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the 1978 Protocol; 1974 International Convention for the Safety of Life at Sea; the 1978 Protocol to the 1974 Convention on the Safety of Life; the 1978 International Convention on Standard of Training, Certification, and Watchkeeping for Seafarers; and the 1966 International Convention on Load Lines. These conventions do not contain a direct prohibition against States-parties from laying down requirements for foreign vessels entering ports that are higher than international requirements, that may in principle lead to coastal States for the purpose of ensuring their security laying down national requirements for foreign vessels that do not coincide with those for design, construction, and equipment. This situation may not only create virtually insoluble tasks for the building and operation of vessels, but also exert a negative impact on navigation safety and protection of the marine environment.

In this connection the Assembly of IMO in 1981 and 1983 adopted a resolution on the procedure for control over ships directed towards strengthening control over the conformity of vessels to the provisions of the 1974 Convention for the Safety of Life at Sea and the 1966 Convention on Load Lines, in which the need was stressed to effectuate control with respect to the vessels of third countries in ports of States-parties to the conventions. The said resolutions of IMO in essence limit the coastal States in their right
to lay down more severe requirements for foreign vessels in ports than are provided in the aforesaid conventions.

The resolutions adopted by the IMO furthered the development of the cooperation of States on matters of control over the fulfillment by foreign vessels of rules and standards agreed at the international level, which is a true means for ensuring safety of navigation and protection of the marine environment. A clear example of such cooperation is the Memorandum of Understanding on Port State Control, adopted in 1982 at Paris by the representatives of fourteen States (Belgium, Great Britain, Portugal, Finland, France, Germany, Italy, Spain, Denmark, Greece, Ireland, Netherlands, Norway, and Sweden). This Memorandum provides for the exercise of control in ports of the said countries over all ships, including vessels of third countries, on the subject of their conformity to a number of universal treaties concerning safety at sea, protection of the marine environment, and the labor conditions and life of seamen. In so doing the Memorandum does not contain any additional rules and standards for foreign vessels besides those in the respective conventions. Having regard to the fact that the Memorandum was signed only by fourteen Western European States, the possibility remains in principle for the establishment of arbitrary and unjust specific conditions by any States that differ from international requirements with respect to the design, construction, and equipment and the crew of foreign vessels, which could lead to serious damage to the interests of international navigation.

In this connection, in our view, unification is necessary, and then codification, of the norms concerning control of foreign vessels in ports. To resolve these questions is essential not so much on the basis of a regional approach, as is provided in the 1982 Paris Memorandum, as on the basis of a universal approach, which would best ensure the interests of international navigation, protection of the marine environment, and safety at sea.

In addition, it is advisable also to return to the idea of concluding a special convention on the legal regime of vessels in foreign ports, the draft of which was published back in 1959 by the International Maritime Committee. The new draft of such a convention, submitted by the USSR in 1974 to the IMO and incorporated in the long-term IMO program, also has not received proper attention.  

2. Territorial Sea

1 Concept and Origin of Institution of Territorial Sea

The concept of the territorial sea (or territorial waters) arose and was consolidated in international law as a result of the aspiration of States to extend their sovereignty to the sea belt adjacent to their shores for the purpose of ensuring their security and economic interests.

The process of the origin of the international-legal institution of the territorial sea continued for several centuries. The question of the territorial sea acquired greater urgency from the second half of the nineteenth century, when as a result of the scientific-technical revolution in shipbuilding and the increase in the carriage of goods and passengers by sea the possibilities for States to use sea expanses grew sharply. The opportunity for disputes to arise between proponents of expanding the territories of coastal States at the expense of the sea and those who advocated the use of sea expanses, including coastal waters, on the basis of the principle of freedom of the seas, predetermined the need for the codification of norms of international law affecting the territorial sea.

The question of a comprehensive codification of norms affecting the legal status and breadth of the territorial sea arose for the first time at the 1930 Hague Conference on the Codification of International Law. However, in view of the unconstructive position of individual States who insisted upon a 3-mile limit as the sole admissible breadth of the territorial sea, the Conference did not adopt any treaty acts concerning the territorial sea.

The 1958 Geneva Conference on the Law of the Sea played a decisive role in the process of originating the international-legal institution of the territorial sea. At the Conference norms regulating the legal regime of territorial waters and the use of those waters by foreign States were basically codified, as well as norms establishing the principles for the delimitation of those
waters. A norm concerning the delimitation of territorial waters from internal waters in bays whose coasts belong to a single State were worked out and consolidated in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone at the Conference. The 1958 Convention provided, in particular, that

if the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters (Article 7(4)).

The 1958 Geneva Convention did not resolve, however, all aspects of the problem of the territorial sea. The most serious gap was that the 1958 Convention did not contain a norm on the breadth of the territorial sea.

The final stage of the process of codifying the norms affecting the legal regime of the territorial sea was the Third United Nations Conference on the Law of the Sea, which worked out and adopted the comprehensive 1982 United Nations Convention on the Law of the Sea.

The foundation of this Article of the 1982 United Nations Convention concerning the territorial sea are the provisions of the 1958 Geneva Convention on the territorial sea. On certain issues the 1982 Convention went farther, developing and clarifying a number of provisions applicable to contemporary conditions and agreeing questions on which the States could not reach agreement at the 1958 Geneva Conference.

An important innovation was, in particular, the adoption of an international legal norm on the 12-mile limit of the territorial sea, which was lacking in the 1958 Geneva Convention. The 1982 Convention provides (Article 3): “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention”.

For the first time by way of a convention an international norm on the maximum admissible breadth of the territorial sea was formulated which was legally substantiated and represents the optimal combining of the interests of coastal States, on one side, and the interests of the international community in using sea expanses, on the other.

The adoption by the Third United Nations Conference on the Law of the Sea of a norm on the 12-mile limit of the breadth of the territorial sea having the character of an imperative international-legal principle is exceptionally important since it enables the acts of certain States which unilaterally adopted acts to expand their territorial waters to vast expanses up to 200 miles from shore to be placed ‘outside the law’. The trend towards such a unilateral expansion of territorial waters intensified at the end of the 1960s, when a number of Latin American States having an extensive coastline issued legislative acts establishing a 200-mile territorial waters. Such acts
were issued, in particular, by Argentina in 1966, Ecuador in 1966, Uruguay in 1969, and Brazil in 1970. Certain African States (Angola, Liberia, Congo, and others) also declared an expansion of their territorial waters exceeding the limit of 12 miles.

Experts calculated that if all States followed the course of enlarging their territorial waters up to 200 miles, then 50% of the World Ocean would be transformed into territorial waters, and in the majority of seas, areas of high seas would cease to exist. The great majority of States at this time (more than 100) adhered to a 12-mile limit, which spoke of indirect recognition of that limit and served as a factor furthering the origin of the respective international-legal norm.¹

The establishment of an excessive breadth of the territorial sea by individual States undermined one of the foundation principles of the international law of the sea – the principle of reasonably taking into account the interests of other States in the use of the freedom of the seas – subverted the principle of the equality of States, and materially limited the possibilities for maritime navigation and fishing.

Significant harm also was caused to another principle of the international law of the sea – the principle according to which the establishment of limits of national jurisdiction on the World Ocean must be resolved on the basis of international law by agreement with other States. This principle found confirmation in the decision of the International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries Case of 18 December 1951. In that decision, in particular, it was said that the “delimitation of maritime spaces can not depend only on the will of the coastal State expressed in its national law”.²

Among the States whose legislation provides for the extension of sovereignty to a space whose breadth exceeds 12 nautical miles are: Angola, Argentina, Brazil, Benin, Gabon, Ghana, Congo, Liberia, Mauritania, Nigeria, Nicaragua, Cameroon, Panama, Peru, El Salvador, Uruguay, Chile, and Ecuador.

The majority of these States signed the 1982 Convention on the Law of the Sea and some have even ratified it. Benin, Congo, Nicaragua, Peru, and El Salvador, despite the fact that they signed the 1982 United Nations Convention, have not brought their national legislation affecting the regime of the territorial sea into conformity with the requirements of the 1982 Convention and, as before, extend their sovereignty beyond the limits of the treaty breadth of the territorial sea, which in accordance with the 1969 Vienna Convention on the Law of Treaties (Article 18) deprives the 1982 United

² Kalinkin, ibid., p. 40.
CONTEMPORARY ISSUES OF THE LAW OF THE SEA

The adoption by the 1982 United Nations Convention of a 12-mile limit of the territorial sea was one evidence of the unlawfulness of arbitrary actions by States which, as noted above, unilaterally adopted municipal acts to extend their territorial waters to vast expanses of the high seas up to 200 miles from shore. Having regard to the generally-recognized character of this conventional norm, which comprises in essence the foundation of the structure of the international law of the sea and has by virtue thereof the character of an imperative international-legal principle, national laws establishing the breadth of the territorial sea in excess of the conventional norm must be brought into conformity with the norms of the 1982 Convention. Otherwise, these legislative acts must be regarded as having no force under international law.

In accordance with the 1982 Convention, the outer boundary of the territorial sea is established by calculating the distance equal to the breadth of the territorial sea from baselines. The low-water line along the coast as specified on maritime charts officially recognized by the coastal State and duly published is such a baseline for measuring the breadth of the territorial sea. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, a coastal State has the right to apply the method of straight baselines, that is, to join the appropriate points of straight lines and measure the outer limit of the territorial sea from them.

The question of the length of straight baselines is not regulated in international law. When establishing such lines, the requirement should be taken into account that they should not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the internal side of these lines must be sufficiently closely linked to the land domain to extend the regime of internal waters to them.

Where the shores of a bay belong to one State and where the breadth of entry to the bay does not exceed 24 miles, the baseline for calculating the

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3 Proceeding from the content of these Statements one may suppose that the legislation of Brazil and Uruguay provides for the regime of innocent passage of foreign vessels within a 12-mile coastal belt with the retention of the freedom of navigation and overflight of aircraft and freedom to lay communications cables within the remaining part of the 200-mile coastal waters to which they extend their sovereignty. However, participation in the Convention requires not ‘compatibility’ of national legislation with it, but the bringing thereof into conformity with the Convention (Article 310).
breadth of territorial waters is the straight line joining the low-water marks of the natural entrance points to the bay.

In localities where because of the presence of a delta or other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest outward extent of the low-water line. Straight baselines are drawn to and from low-tide elevations only if lighthouses or similar installations permanently above sea level have been built on them or if the drawing of straight baselines to and from such elevations has received general international recognition.

Where the geographical conditions stipulated in the 1982 United Nations Convention are present, the special “economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage” may be taken into account in the process of establishing straight baselines.

The 1982 United Nations Convention contains a number of rules for determining straight baselines in the mouths of rivers flowing into the sea, in bays whose shores belong to one State, and in sea ports. Baselines may be established by using in turn any of such methods. The same Convention also establishes such fundamental rules for delimiting the territorial sea of States with opposite or adjacent coasts. In this event no State has the right unless an agreement to the contrary has been concluded between them to extend their territorial waters beyond a median line so drawn that every point thereof is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured. This provision does not apply if by virtue of historically-formed legal grounds or other special circumstances it is necessary to delimit the territorial sea of the two States otherwise.

Three types of boundaries of the territorial sea are distinguished: inner, outer, and lateral, and respective rules for calculating them. The inner boundary of the territorial sea is the baseline along the coast from which the breadth of the territorial sea is calculated seaward. The outer (maritime) boundary is the line parallel to the inner boundary of the territorial sea and separated from it by a distance of the breadth of the territorial sea. The lateral boundary is the line of delimitation of the territorial sea of two adjacent (or neighboring) States situated on one seacoast.

2 Legal Regime of Territorial Sea

The 1982 United Nations Convention did not make any changes in the legal regime of the territorial sea. Just as the 1958 Geneva Convention on the territorial sea, the 1982 Convention proceeded from the recognition of the sov-
ereignty of the coastal State to its territorial sea. In so doing it indicates that the sovereignty extends to airspace over the territorial sea, and also to the surface and subsoil of the seabed where the superjacent waters are within the territorial sea. Thus, inclusion of the territorial sea within State territory is from the standpoint of international law fully justified.

The legal status of the territorial sea, although under the sovereignty of the coastal State, differs in certain respects from the status of other parts of State territory. The concept of the territorial sea was formed by taking into account that the sea expanse historically has been used for international navigation and that the sojourn of vessels in foreign territorial waters required uniform international legal regulation. By virtue of these circumstances the sovereignty of coastal States over the territorial sea is effectuated in compliance with the right of innocent passage of foreign vessels through such sea. The right of innocent passage of foreign vessels is one of the major generally-recognized institutions of international law which has been consolidated as a treaty-law norm in the 1958 Geneva Convention on the territorial sea (Articles 14-23). Thereafter the basic provisions of the 1958 Convention became an integral part of the 1982 Convention, but were significantly augmented and clarified by taking into account the development of the international law of the sea, achievements in navigation, and changes in the conditions in which it was effectuated.

The 1958 Geneva Convention contained only the requirement to observe during innocent passage of foreign vessels through the territorial sea the “peace, good order, or security” of the coastal State. This formulation of the 1958 Geneva Convention is ambiguous, which may lead, on one hand, to a violation of innocent passage on the part of the coastal State or, on the other, to a violation of the security of the coastal State. It is doubtful, for example, that one may consider the presence of warships and submarines in the territorial sea, even though they fulfill the requirements of the Geneva Convention (with respect to raising their flag and being on the surface) to be innocent and not violating the security of the coastal State. In addition, the 1958 Geneva Conference left unresolved the question connected with the threat of causing harm to the coastal State and its economy in connection with accidents of foreign supertankers in the territorial sea.

Many States proceeded from the fact that the conception of innocent passage in the form in which it was set out in the 1958 Geneva Convention, despite the positive character thereof as a whole, was not in a position to defend the interests of States, ensure their security, or prevent a threat of pollution of sea waters and coasts connected with the scientific-technical revolution. Therefore at the Third United Nations Conference on the Law of the Sea principal attention was devoted to searches for mutually-acceptable ways of resolving the problems of innocent passage of certain categories of nonmilitary vessels and warships so as, on one hand, to maximally ensure
2. Territorial Sea

the interests and rights of coastal States, including the security thereof, and, on the other, confirm the right of innocent passage of all categories of non-military vessels and warships through the territorial sea without an authorization or notification procedure for such passage.

On the whole, the section of the 1982 United Nations Convention concerning the regime of innocent passage of vessels through the territorial sea (Articles 17-32) differs to a significant extent from the respective section of the 1958 Geneva Convention.

The 1982 United Nations Convention contains a more detailed regulation of mutual rights and duties of both coastal States and the States under whose flag a particular ship is effectuating the right of innocent passage through a foreign territorial sea. Various aspects of the right of innocent passage have been subjected to more detailed regulation.

First, the 1982 Convention defined the concept of passage through the territorial sea. In accordance with Article 18 of the Convention, passage means navigation through the territorial sea for the purpose of (a) traversing that sea without entering into internal waters or calling at a roadstead or port facility beyond the limits of internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility. When effectuating passage through the territorial sea, foreign vessels must follow the ordinary course or course recommended by the coastal State, and also sea corridors or traffic separation schemes established by the coastal State. Stopping of vessels in the territorial sea and/or anchoring is possible only in the event of distress or for the purpose of rendering assistance to vessels and seamen.

The provisions concerning the possibility of loading or unloading at roadsteads provided for the 1982 United Nations Convention (Article 18) are new and caused by the emergence of very large oil tankers, container-carriers, and lighters, which by reason of their large displacement, can not be loaded or unloaded in ports. In accordance with this, many port facilities have appeared recently which, in addition to ports in the traditional understanding of the word, are at outer roadsteads or specially-equipped marine terminals.4

The 1982 United Nations Convention (Article 19) contains a definition of the concept of ‘innocent passage’:

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and other rules of international law.

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In this Article it was determined which specific activity in the territorial sea is regarded as disturbing the peace, good order, or security of the coastal State. Among such types of activities are:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
(b) any exercise or practice with weapons of any kind;
(c) any act aimed at collecting information to the prejudice of the defense or security of the coastal State;
(d) any act of propaganda aimed at affecting the defense or security of the coastal State;
(e) the launching, landing or taking on board of any aircraft;
(f) the launching, landing or taking on board of any military device;
(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
(h) any act of willful or serious pollution contrary to this Convention;
(i) any fishing activities;
(j) the carrying out of research or survey activities;
(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
(l) any other activity not having a direct bearing on passage.

Thus, every vessel, every warship, performing a passage through the territorial sea must take into account the criteria that underlie the concept of innocent passage and not perform the enumerated actions when effectuating innocent passage through the territorial sea.

The said list, although much more extensive in comparison with the list contained in the 1958 Geneva Convention, is not exhaustive. In order to introduce an objective criterion for deeming the passage of a foreign vessel through the territorial sea to be innocent, the 1982 Convention points in Article 19(2)(l) to “any other activity not having a direct bearing on passage”.

The consolidation in the 1982 United Nations Convention of a list of actions which foreign vessels are prohibited to perform in effectuating the right of innocent passage through the territorial sea enables a subjective approach of coastal States to be avoided in refusing foreign vessels the right of passage through their territorial sea. In other words, in accordance with the norms of the 1982 Convention if a foreign vessel complies with all the requirements relevant to innocent passage, obstruction of the passage of a ves-
sel through the territorial sea on the part of the coastal State would be a violation of the international law of the sea.

However, the legislation of some States of the Baltic and Black Sea regions regulating the effectuation of the innocent passage of merchant ships and warships through their territorial sea does not take into account the respective provisions of the 1982 United Nations Convention. The laws of Lithuania and Estonia, for example, do not contain a list of types of activity whose performance deprives passage through the territorial sea of its innocent character. The legislation of Ukraine, in characterizing innocent passage through the Ukrainian territorial sea, confines itself merely to a provision that passage is considered to be such if it “does not violate the peace, and also the legal order or security, of Ukraine”. The passage of submarines through the territorial sea is regulated by an individual article of the 1982 United Nations Convention (Article 20), which prescribes that submarines and other underwater vehicles navigate on the surface and show their flag.

The provisions of the 1982 United Nations Convention (Article 21) on the right of a coastal State to adopt laws and regulations also correspond to the aims of ensuring ‘innocent passage’, treating such questions as:

(a) the safety of navigation and regulation of maritime traffic;
(b) the protection of navigation and other equipment;
(c) the protection of cables and pipelines;
(d) the conservation of living resources of the sea;
(e) fishing;
(f) the preservation of the environment and control of the pollution thereof;
(g) marine scientific research and hydrographic surveys;
(h) customs, fiscal, immigration, and sanitary questions.

In so doing the coastal State is obliged to duly publish such laws and regulations. Foreign vessels effectuating the right of innocent passage are obliged to comply with all laws and regulations adopted by a coastal State with regard to the questions enumerated above.

In connection with the right of a coastal State to adopt laws and regulations relating to innocent passage of foreign vessels through the territorial sea the 1982 United Nations Convention contains a provision of principle that such laws and regulations shall not apply to the design, construction, manning or equipment of foreign vessels unless they are giving effect to

generally accepted international rules or standards. The introduction of national rules on these issues by even a comparatively small number of States could lead to complicating the effectuation of the right of innocent passage, create legal grounds for unjustified interference of coastal States in international navigation, and more expensive construction and conversion of vessels. Only uniform rules and standards meet the aims of safety at sea and protection of the marine environment.

Besides the requirements concerning compliance with the laws and regulations of a coastal State relating to innocent passage through the territorial sea, the 1982 United Nations Convention contains a reference to the need to comply with all generally-accepted rules for the prevention of the collision of vessels. Such rules include the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs-72), with additions that entered into force in 1977, and recommendations of the IMO concerning navigation along sea lanes and traffic separation schemes.

Traffic separation systems for ships adopted by coastal States and approved by the IMO, bilateral routes, recommended routes in narrow places, areas which ships should avoid, coastal navigation zones, and areas of increased danger having the purpose to reduce the possibility of accidents are binding upon all vessels and warships insofar as the procedure for navigation is determined in the COLREGs-72. A violation of the established procedure determined in the COLREGs-72 “is equated to a violation of international legal norms”.

In speaking of the right of coastal States to establish lanes and traffic separation schemes for navigation the 1982 United Nations Convention obliged the coastal State to agree these rules with competent international organizations. The inclusion of this requirement in the Convention should, in our view, guarantee the interests of international navigation in the territorial sea and protecting foreign vessels against possible arbitrary actions of coastal States.

Considerable emphasis is given in the 1982 United Nations Convention on providing legal guarantees for defending the legal rights and interests of the coastal State in the event of the passage of a foreign warship through its

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territorial sea by way of innocent passage. In particular the 1982 United Na-
tions Convention contains a provision establishing the right of a coastal State
to take measures to prevent passage which is not innocent. A coastal State
thus has the right in accordance with the Convention (Article 30) to require
the warship to leave its territorial sea immediately if the last does not comply
with the laws and regulations of the coastal State concerning passage
through the territorial sea and disregards a request for compliance therewith.

The interests of a coastal State also are served by the provision in the
1982 United Nations Convention on the international responsibility of a flag
State for any damage or losses caused to the coastal State as a result of the
non-compliance by warship with the laws and regulations of the coastal State
concerning passage through the territorial sea, or provisions of the 1982
United Nations Convention, or other rules of international law.

There are no provisions in the 1982 United Nations Convention providing
for the many possible instances of regulation by a coastal State of the right
of passage of foreign warships and when these States might limit or prohibit
any aspects of such passage. This is understandable, for it is hardly possible
in principle to draw up an exhaustive list of such instances. Therefore, the
1982 Convention confines itself to merely the most widespread limitations
and prohibitions in the practice of States of the right of passage of warships.
At the same time, the 1982 Convention (Article 31) contains a provision
granting to a coastal State the right to take necessary measures at its discre-
tion to ensure the interests of its security in other instances when activities
are effectuated having no direct relevance to passage or which violate the
right of innocent passage.

On the whole, the codification of the international law of the sea reflected
in the 1982 United Nations Convention has made significant positive
changes in the institutions of innocent passage of foreign vessels through the
territorial sea. These changes are directed, on one hand, towards the defense
of sovereignty, security, and other vitally important interests of a coastal
State and, on the other, make the status of foreign vessels in the territorial
sea more definite. As Molodtsov noted, this “helps them avoid senseless or
negligent impingements on the interests and rights of a coastal State de-
fended by international law”.

At the same time, one must point out the difficulties of applying in prac-
tice the 1982 United Nations Convention provisions with respect to innocent
passage of foreign vessels through the territorial sea. The issue of ensuring
the fulfillment of laws and regulations which a coastal State may establish
with respect to foreign vessels in the territorial sea, for example, seems to be
complex. This question is of special significance for developing States in
general and for African States in particular both from the standpoint of en-

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9 Molodtsov, note 6 above, p. 46.
suring their security as coastal States (in so doing they favor expansion of the competence of the coastal State with respect to regulating innocent passage) and relative to activities in the domain of maritime navigation. The practice of these States with respect to measures directed towards not permitting non-innocent passage of a foreign vessel through their territorial sea is not distinguished by great diversity and comes down basically to granting to respective State agencies the possibility to apply enforcement measures for the purpose of maintaining legal order and subsequent punishment of the offender.  

Legislation of the majority of African States contains enforcement measures of a dual nature: sanctions to be applied by agencies of the State for the maintenance of legal order, prosecution and subsequent punishment of the offender as one of the varieties of enforcement measures in the event of the refusal of the guilty vessel to cease the violation. Thus, for example, according to the Décret-Loi No. 28 of the Republic of Equitorial Guinea (Article 2) of 17 October 1976, establishing measures of responsibility for a violation of innocent passage of the territorial sea of the Republic, any foreign vessel violating innocent passage of its territorial sea will be detained. According to the same Article 2, if the offending vessel offers resistance, it may be sunk. 

Sanctions for a violation of the rules of innocent passage of territorial waters are also provided for in the laws of other States of Africa. The Décret of the President of Guinea (Article 8), No. 336 (PRG), of 30 June 1980, for example, provided that a 

violation of the right of innocent passage through territorial waters by means of entry therein, catching fish, pollution of waters, photography, drawing up descriptions of a technical or strategic character for the purpose of aggression or espionage, carriage of toxic and dangerous substances are a grave infringement against the sovereignty of the State of Guinea and as a consequence of such criminal violation are to be punished in accordance with the Guinea Criminal Code. 

The adoption by African States of the said severe measures of administrative and criminal pressure on foreign vessels violating the rules of innocent passage through the territorial sea is conditioned, as indicated in the said laws themselves, by constant violations of national territory (including the territo-

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Territorial sea) by vessels of foreign affiliation entering the territories of these States with subversive aims.

Controversial issues may arise in practice in connection with behavior which is not contrary to innocent passage but nonetheless is linked with a violation of the laws and regulations of the coastal State relevant to foreign vessels effectuating such passage. This issue is important for ensuring navigation since certain States of Africa (the Congo, for instance) adopted legislative acts providing for the detention of a vessel and deprivation of freedom of the master of a vessel for any violations of laws and regulations of the coastal State that are contrary to the provisions of the 1982 United Nations Convention. The application in practice of the said legislative acts which are contrary to the 1982 Convention may lead to the illegal detentions of maritime vessels and arrests of their master and other crew members.

The 1958 Geneva Convention on the territorial sea contains no provisions directly relevant to these issues. Although the said Convention (Article 17) obliges foreign vessels to “comply with laws and regulations enacted by the coastal State”, it does not provide for any powers of a coastal State to ensure their fulfillment in the territorial sea. Despite the fact that specific rules on this question also are lacking in the 1982 United Nations Convention, it all the same contains certain provisions concerning the fulfillment of laws and regulations of the coastal State, in particular with respect to violations connected with pollution of the sea from vessels.

According to Article 220(2) of the 1982 United Nations Convention, where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during the passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction, and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7 (Guarantees).

This provision contains two important elements. On one hand, it grants to a coastal State the right to ensure the fulfillment of laws and regulations established by it with respect to foreign vessels in the territorial sea; on the other, it provides that ensuring the fulfillment of these laws and regulations must not prejudice the application of general rules of the 1982 United Nations Convention on innocent passage. Article 220(2), thus directly linked with the regime of innocent passage, means that any measures with regard to ensuring the fulfillment which violates the right of such passage also is a violation of this Article of the 1982 Convention.

Consequently, one may conclude: so that measures of a coastal State with regard to ensuring the fulfillment of its laws and regulations do not prejudice
the innocent passage of a foreign vessel, a coastal State should not impose requirements on foreign vessels which in practice may lead to a violation of this right.

In this connection a question raised by African States is legitimate concerning the true content of the Convention on innocent passage when correlated with the regime of ensuring the fulfillment by a coastal State of its laws and regulations. If one proceeds from the fact that a coastal State has the right to ensure the fulfillment of its regulations (for example, with regard to the struggle against pollution) with respect to foreign vessels effectuating innocent passage, can one distinguish legally between vessels whose passage is not innocent from the standpoint of Article 19(2) of the 1982 United Nations Convention and vessels whose passage continues to remain innocent, although linked with a violation of certain laws or regulations of the coastal State?

The 1982 United Nations Convention does not offer an answer to this question, although on this depends in practice the extent of powers of a coastal State with respect to a foreign vessel. If a vessel violates the regime of innocent passage through the territorial sea, the passage of such a vessel, as shown above, may be completely prohibited. In the event of a violation by a vessel of the regulations of a coastal State which does not affect the innocent character of the passage, a respective fine may be imposed evidently on this vessel or other measures taken. However, after settlement of the dispute, this vessel may not be refused the continuation of passage through the territorial sea. To avoid arbitrary actions on the part of coastal States this question should, in our view, be resolved as follows. Instead of drawing a distinction between the behavior of the vessel in the territorial sea making passage through it non-innocently and violating laws and regulations of the coastal State, in the very definition of innocent passage particular rules should be specified, a violation of which will be taken into account when deciding the question of whether passage is innocent or not. In so doing, by proceeding from the 1982 United Nations Convention (Articles 220 and 230), such regulations should above all concern the prevention of pollution of the environment. In this event the interference of the coastal State with respect to a foreign vessel will occur only when there is non-innocent passage. A violation of those regulations specified in the definition of innocent passage might entail only punishment for their violation (a monetary fine) when this vessel puts into internal waters or ports of the coastal State. If the vessel does not enter internal waters of the coastal State, the violation of its laws and regulations should be communicated to the flag State or international organization (for example, the IMO) for respective measures to be taken against the ‘offender’.

The concern of the African States with respect to the ‘weakness’ of the 1982 United Nations Convention norms regulating passage of warships
through the territorial sea is understandable, since warships of States conducting an aggressive policy under the cover of the right of innocent passage often demonstrate military power for the purpose of intimidating small countries, maintaining their power in colonies, and in recent times for provocations against sovereign States.\textsuperscript{13} It should be noted that the 1982 United Nations Convention (as indeed the 1958 Geneva Convention), in extending the right of innocent passage to warships, provides a mechanism which ensures reliable guarantees that such passage will not be used to harm the security of coastal States. Warships during innocent passage must comply with the laws and regulations of the coastal State relating to navigation and transport (Article 21[4]), and submarines, in addition, must navigate on the surface and show their flag (Article 20). If a warship violates the regulations of the coastal State concerning innocent passage and disregards a request addressed thereto to comply with them, the coastal State may request that it immediately leave the territorial sea (Article 30).

In addition, the realization by warships of the right of innocent passage of a foreign territorial sea depends upon national legislation, which is highly diverse. Some States provide for the need to receive the prior authorization for this through diplomatic channels, whereas others require merely notification in good time, and yet others authorize passage if foreign warships are not being sent to their internal waters or ports.\textsuperscript{14} Coastal States thus have the possibility to adopt in the absence of international regulation unilateral measures with respect to passage of warships through the territorial sea.

As regards the requirements of African jurists with respect to incorporation in the 1982 United Nations Convention of provisions regulating the responsibility of the flag State for damage caused to the coastal State as a result of a violation by a foreign vessel of innocent passage through the territorial sea, the following must be noted. First, such international responsibility of a State is provided with respect to any damage or losses caused to a coastal State as a result of non-compliance by any warship or other State vessel being operated for noncommercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea (Article 31). Second, the provision contained in the 1982 United Nations Conven-

\textsuperscript{13} Suffice it in this connection to name the violation by warships of the United States of the State boundary of the USSR in the Black Sea on 13 March 1986. See \textit{Известия}, 20 March 1986.

\textsuperscript{14} Thus, for example, in accordance with the 1977 Law of the Seychelles Republic, No. 15, on territorial waters, continental shelf, economic zone, and historic waters of the Seychelles, foreign warships, including submarines, may enter territorial waters or pass through them only after sending notification to the Chancellery of the President. See \textit{Сборник законодательных актов зарубежных государств по вопросам режима прибрежных вод} [Collection of Legislative Acts of Foreign States With Regard to Questions of Regime of Coastal Waters] M., 1980), III, p. 223.
tion that innocent passage must be effectuated not only in accordance with the Convention but also with other rules of international law (Article 19[1]) testifies to the fact that the international responsibility of States (both the flag State and the coastal States) for actions in the territorial sea must be regulated by general principles and rules of law in accordance with which States should not cause damage to one another, and any damage caused is subject to compensation. In addition, such responsibility of States is provided for in a number of international conventions on the public and private law of the sea, in particular, conventions regulating the safety of navigation, pollution of the marine environment, and also ‘atomic’ conventions regulating the carriage of nuclear substances. This conclusion finds confirmation in the fact that the 1982 United Nations Convention contains a separate rule concerning the responsibility of States for damage caused by a warship or State vessel. The said international conventions on the law of the sea, as a rule, do not apply with respect to warships and State vessels.

An analysis of the 1982 United Nations Convention concerning innocent passage convincingly shows that when working out and consolidating these provisions the participants of the Third United Nations Conference on the Law of the Sea, in consolidating the balance of rights and duties of the coastal State and the State under whose flag innocent passage is effectuated, pursued the path of fully taking into account the interests of the coastal State, protection of its sovereignty and ensuring of its security, emphasizing the creation of effective guarantees with regard to ensuring the rights and interests of the coastal State.

One aspect of the innocent passage of foreign vessels is the exercise by the coastal State and flag State of criminal and civil jurisdiction during the passage of such vessels through the territorial sea.

The 1982 United Nations Convention in essence reiterated the respective provision of the 1958 Geneva Convention on the territorial sea as regards instances of the exercise by a coastal State of criminal jurisdiction with respect to persons on board a foreign vessel. The general principle was confirmed, in particular, according to which criminal jurisdiction of a coastal State is not exercised on board a foreign vessel effectuating innocent passage through the territorial sea. At the same time, the 1982 Convention provides four exceptions from this rule, that is, instances when the arrests of a person or performance of an investigation in connection with a crime committed on board the foreign vessel during its passage through the territorial sea are possible. The 1982 Convention (Article 27[1]) relegates the following instances to such exceptions: if the consequences of the crime extend to the coastal State;

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if the crime is of a kind to disturb the peace of the country or the good order in the territorial sea; if the master of the vessel, diplomatic agent, or consul of the flag State applies to local authorities for assistance; and if this is necessary to suppress illicit trade in narcotics or psychotropic substances.

In addition the right is recognized in the 1982 United Nations Convention for a coastal State to effectuate an arrest or conduct an investigation on board a foreign vessel passing through the territorial sea after departure from internal waters. The possibility is thereby ensured for a coastal State to remove from a vessel and transfer to a court persons subject to criminal responsibility for crimes committed while a vessel is in the internal waters of this State.

The question of applying the civil jurisdiction of a coastal State to vessels effectuating innocent passage is resolved in the 1982 United Nations Convention by analogy with the 1958 Geneva Convention on the territorial sea. According to the 1958 Geneva Convention (Article 20) and 1982 United Nations Convention (Article 28), a coastal State may levy execution against or arrest a foreign vessel in its territorial sea with regard to a civil case only regarding obligations or by virtue of responsibility assumed by or incurred by the vessel itself during the passage through internal waters of the coastal State. An exception from this rule is an instance when the vessel is at anchor in the territorial sea or passes through it after leaving internal waters.

According to the 1982 United Nations Convention, these provisions are applicable both to merchant vessels belonging to a State and to privately-owned merchant vessels.

The 1982 United Nations Convention thus does not recognize the principle of immunity of sea-going vessels of any foreign State; measures of an enforcement character of another State may be applied to them (arrest, detention for the purpose of securing a suit, or execution of judicial decisions), which does not meet the interests of those States whose fleet is in State ownership. In essence this ignores the legislation of many States and doctrine and practice in this domain affirming the principle of immunity as a norm of international law.16

A coastal State, in addition to exclusive rights in its territorial sea, also has certain duties to the international community which are linked with the right of innocent passage. First, a State must be concerned for the safe and unobstructed passage through the territorial sea to its internal waters or ports and departure therefrom. In the event of any danger in waters which are used by foreign ships the coastal State is obliged to communicate this in the Notices to Mariners. Second, when a coastal State brings foreign vessels to responsibility in the event of a violation by them of the right of innocent pas-

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sage or exercises criminal jurisdiction in the territorial sea, it is obliged to ensure the right of recourse to local judicial agencies, provide procedural guarantees, and so on.

Additional Information

1. Article 10(4) of the 1992 Law of Lithuania “On the State Boundary of the Lithuanian Republic” provides that warships of States granting such right to foreign warships in its ‘territorial’ sea enjoy the right of innocent passage through the Lithuanian territorial sea. This provision does not correspond to the norms of contemporary international law, which does not condition the granting of the right of passage to foreign warships on any additional conditions.

2. Article 10(5) of the 1992 Law of Lithuania establishes that the Government of the Lithuanian Republic may establish sea lanes for “vessels carrying dangerous cargoes, tankers, and nuclear-powered vessels”. In addition, this Law permits the establishment of special rules with respect to such vessels, when international law (Article 23, 1982 United Nations Convention) provides that such precautionary measures may be established only by international agreements. In this connection the danger arises of a material limitation of the right of passage of certain categories of vessels by national legislation contrary to international law.

3. In accordance with Article 13(2) of the 1991 Law “On the State Boundary of Ukraine”, foreign nonmilitary vessels and warships during innocent passage must follow “ordinary navigation course or course recommended by competent agencies of Ukraine, and also sea lanes or in conformity with traffic separation schemes”. Thus, Ukrainian legislation somewhat worsens the regime of innocent passage established by the 1982 United Nations Convention on the Law of the Sea.
3. Contiguous Zone

In accordance with the contemporary international law of the sea, coastal States have the right to establish contiguous zones for the purpose of preventing violations on their territory of respective laws and regulations on the part of foreign vessels. A contiguous zone is an area of the high seas immediately adjacent to the territorial sea in which a coastal State enjoys rights of control having a strict special-purpose designation. In accordance with the 1958 Geneva Convention on the territorial sea (Article 24) and the 1982 United Nations Convention (Article 33), a coastal State may introduce control in this area necessary (a) to prevent infringement of its customs, fiscal (financial), immigration, (border) and sanitary laws and regulations by foreign vessels; and (b) to punish violations of the said laws and regulations committed within the limits of its territory or territorial sea.

The principal distinctive feature of a contiguous zone is that it is an area of the high seas and not part of the territory of the coastal State. Another peculiarity of a contiguous zone is that it can be of only four types: customs, fiscal, sanitary, and immigration. The rights of a coastal State in a contiguous zone are limited and characterized by a strict special-purpose designation.

Each type of contiguous zone is established in order to protect the specific interests of the coastal State. Depending upon the special-purpose designation of a zone, the legal regime thereof also is determined. For the purpose of the struggle against smuggling, customs zones are established. About 40 States have such zones. Fiscal zones established to prevent violations of financial laws of a State have been established in India, Syria, and a number of others. For the purpose of ensuring control over compliance with laws respecting entry and exit of foreigners into the country an immigration zone is used. This type of zone has been declared by Vietnam, India, Portugal, and other States. A sanitary zone, intended to prevent the spreading of infectious diseases, has been established in Argentina, Venezuela, Vietnam, Cuba, India, New Zealand, and other States.
Many States establish a contiguous zone to protect their interests in all four domains, simultaneously requiring the fulfillment in their zones of customs, immigration, fiscal, and sanitary laws and regulations.

In recent years the number of coastal States which have established a contiguous zone for the purpose of effectuating control over the said objects has significantly grown. In early 1999 there were 68 such States, including France, Spain, Portugal, Argentina, Mexico, Chile, Brazil, Canada, India, Sri Lanka, Pakistan, Iran, Australia, Japan, Mozambique, Egypt, Saudi Arabia, and others.

In accordance with the 1958 Geneva Convention on the territorial sea, the breadth of a contiguous zone may not exceed 12 nautical miles, and in accordance with the 1982 United Nations Convention, a contiguous zone may not extend beyond 24 nautical miles. In both instances the breadth of the contiguous zone is measured from the baselines from which the breadth of the territorial sea is measured. The identical base for calculating these two categories of water expanse testifies to the fact that the breadth of a contiguous zone proper depends upon the breadth of the territorial sea. If we have regard to the fact that the territorial sea is a maritime area to which the sovereignty of the coastal State extends, the maritime area with a rather limited extent of rights, which the contiguous zone is, practically commences from the outer boundary of the territorial sea. In other words, a contiguous zone is a maritime expanse which obligatorily must be ‘contiguous’ to the territorial sea. It must be stressed that the contiguous zone, despite the fact that a coastal State enjoys certain sovereign rights therein, remains an area of the high seas.

All States which have established contiguous zones comply with the requirements of the 1982 United Nations Convention with respect to the breadth of contiguous waters. Only Syria as of early 1999 had a contiguous zone whose breadth comprised 41 nautical miles.\(^1\)

In Russia a contiguous zone has been established by the 1998 Federal Law “On Internal Maritime Waters, Territorial Sea, and Contiguous Zone of the Russian Federation”. In accordance with Article 22 of that Federal Law, the breadth of the contiguous zone constitutes 24 nautical miles.

One can hardly concur in this connection with Gutsuliak, who on the basis of the expansion of sovereign rights and jurisdiction in maritime expanses, asserts that “the contiguous zone, traditionally considered to be part of the high seas, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea is no longer such”.\(^2\)

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\(^2\) V. N. Gutsuliak, “Актуальные проблемы современного международного морского права и тенденции его развития” [Urgent Problems of Contemporary International Law of
Other similar statements concerning the so-called obsolescence of the principle of the freedom of the high seas and the need to modify it have emerged in doctrinal writings.\(^3\)

In our view the increase in the extent of rights which States enjoy on the high seas is not contrary to the basic provisions of the international-legal regime of the high seas established in the 1958 Geneva Convention on the High Seas. That Convention (Article 2) precisely provided that “The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty”. The 1982 United Nations Convention (Article 89) reiterates the formula of the 1958 Geneva Convention on the High Seas.

The expansion of international ties, requirements of developing economies of individual States, and the achievements of the science and technology inevitably influence the further development of the conception of the high seas, on the basis of which the principles of freedom of the high seas rests. Accordingly, the extent of rights and duties of States is changing on the high seas. The 1982 United Nations Convention recorded the changes in the legal regime of the high seas, as a result of which five maritime zones arose where, together with the general legal provisions traditionally effectuated on the high seas, new norms and rules apply which, together with those retained, form a specific legal regime for each of them. The contiguous zone also has such a specific legal regime, remaining in so doing part of the high seas in the physical and legal senses.

Contiguous zones may not be established in straits used for international navigation whose breadth does not exceed twice the breadth of the territorial sea bordering the strait State(s) irrespective of whether the right of transit or innocent passage operates in these straits. No place remains for contiguous zones in such straits.

Contiguous zones also may not be established in international straits of more than 24 nautical miles in breadth in which beyond the limits of the territorial sea of the strait States recognized international sea routes pass. In accordance with the universally-recognized custom of international law taken into account in the 1982 United Nations Convention (Articles 60(7), 147(2), 261) the freedom of navigation is effectuated in such straits, and no State may cause any hindrances or obstacles to other States. The exercise of control which a coastal State may introduce in a contiguous zone would be in complete contradiction with the purpose that predetermined the establish-

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ment even in the territorial sea of transit passage within the strait, which must not be impeded and which may not be interrupted or suspended.3

As noted above, the rights of a coastal State in a contiguous zone come down to control, which has a dual designation: first, it is exercised to prevent violations of customs, fiscal, immigration, or sanitary laws and regulations within the limits of the territory or territorial sea of the coastal State and, second, to punish the commission of a violation of the said laws and regulations. The basic sense of these prescriptions is to prevent or punish a violation which foreign vessels or citizens attempt to commit or already have committed within the territory or territorial waters of a coastal State. Since the purpose of control of a coastal State in the contiguous zone is not to permit the violation of the established legal order, that is, ensure compliance with laws of the coastal State, the control function of this State presupposes coercion. Neither the 1958 Geneva Convention on the territorial sea nor the 1982 United Nations Convention contain a procedure for the effectuation of control in the contiguous zone. The coastal State thus should determine itself how it will effectuate this control.

Since control in general and control in a contiguous zone in particular are a preventive measure, the control of a coastal State comes down in essence to inspection (investigation, view, search, and so on) for the purpose of preventing a possible violation of law on the territory of the coastal State and, in priority, its territorial sea and internal waters. When a foreign vessel during its sojourn in the territorial sea or internal waters of a coastal State all the same violates its customs, fiscal, immigration, or sanitary laws and regulations, it may be detained and sent (when necessary, compulsorily) to the nearest port of the coastal State for punishment of those guilty of committing a violation of the said laws and regulations. A coastal State thus has the right in a contiguous zone for the purpose of defending its interests to stop a foreign vessel supposed to be an offender, make an inspection up to and including a search, and also punish an offender against the laws and regulations of the coastal State. In the event of an attempt by an offending vessel to evade responsibility and leave the contiguous zone, a coastal State has the right of pursuit beyond the limits of the contiguous zone. The right is provided for in the 1982 United Nations Convention (Article 111), which in particular says that

[...] 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 foreign ship is within a con-

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tiguous zone … the pursuit may only be undertaken if there has been a viola-
tion of the rights for the protection of which the zone was established.

The right of pursuit provided for by the 1982 United Nations Convention en-
ables an effective struggle to be waged against violations of the respective
laws and regulations of the coastal State, and also furthers the maintenance
of international legal order on the World Ocean.

Besides the four types of contiguous zone enumerated above as provided
by the 1958 Geneva Convention and the 1982 United Nations Convention,
certain States have established other so-called special zones. Safety zones,
for example, are relegated to this kind of zone.

The question of the lawfulness of the establishment of safety zones
within reasonable limits of the breadth thereof and the consolidation of such
a norm by treaty was raised by a number of States at the Third United Na-
tions Conference on the Law of the Sea. Proposals concerning the normative
consolidation of provisions on such zones were rejected, except for the adop-
tion of Article 60(4) of the 1982 Convention, which gives the right to States
effectuating the exploration and exploitation of natural wealth in an exclu-
sive economic zone to create safety zones around installations and structures
and take protective measures in such zones. These zones may extend to a
distance of not more than 500 meters around erected installations and other
structures, calculated from each point of their outer edge. Vessels of all na-
tionalities are obliged to comply with these safety zones.5 Other safety zones
of a breadth of up to 24 miles established, in particular, by Burma, Vietnam,
India, Cambodia, Pakistan, Saudi Arabia, Sudan, Sri Lanka, and others, do
not correspond to the norms of the contemporary international law of the
sea.6

5 See A. A. Volkov and K. A. Bekiashev (eds.), Морское
6 See A. P. Movchan and A. Iankov (eds.), Мировой океан
4. Archipelagic Waters

1 Concept of Archipelagic Waters


Archipelagic waters are the waters of an archipelagic State located within straight archipelagic baselines joining the outermost points of the outermost islands and dry reefs of the archipelago. The length of such lines, in accordance with the 1982 United Nations Convention, must not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing any archipelago may exceed that length up to a maximum of 125 nautical miles (Article 47[2]). When drawing such baselines a deviation from the general configuration of the archipelago is not permitted.

An archipelagic State is a State which consists entirely of one or more archipelagos and may include other islands. An archipelago means a group of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features comprise a single geographic, economic, and political entity, or which historically have been regarded as such. There are more than 30 archipelagic States in the world, the principal of which are: the Bahamas, Vanuatu, Indonesia, Comoran Islands, Maldives, Cape Verde Islands, Seychelles, Tonga, Fiji, Philippines, and others.

Whereas until the late 1960s the problem of archipelagic waters was considered in international law from the standpoint of the lawfulness of drawing baselines around an archipelago as an entity, at the end of the 1960s the question became one of the status of the waters between the islands. An analysis of the legislation of archipelagic States on this question enabled the approaches and problems to be elicited of regulating the navigation of for-
eign vessels in inter-island waters of archipelagic States, which had become the subject of consideration at the Third United Nations Conference on the Law of the Sea. In particular during the course of the Conference a number of archipelagic States, especially the Bahamas, Indonesia, Mauritius, Philippines, and Fiji, put forward a conception of the ‘inseparable link of the land, waters, and people’ since, in their view, the dispersedness of the islands threatened the unity, security, and territorial integrity of archipelagic States. The complexity was that, in essence, one was speaking of changing the legal regime of enormous expanses of water greatly exceeding in space the islands within the archipelagos.

For example, all the islands of Indonesia comprise about 1,800,000 square kilometers, whereas the sea expanses between the islands equal about 2,860,000 square kilometers. The sovereignty of Indonesia extends to all these spaces declared to be archipelagic waters. An analogous situation exists in other archipelagic States. Therefore ensuring international navigation within archipelagic waters, free passage through straits between the islands of archipelagos, and the demarcation of territorial and internal waters of States in archipelagos became a problem for the international community at the Conference. It was necessary to work out new norms encompassing the vast complex of issues connected with the establishment of the legal regime of archipelagic waters. Ultimately, the Conference recognized the special status of archipelagic waters of archipelagic States.

In characterizing this treaty-consolidated category of waters one may single out two elements: methods of delimitation and legal status.

Delimitation applicable to archipelagic waters, that is, establishment of the boundaries, is of great significance since within the very concept of ‘archipelagic waters’ lie strictly defined methods for establishing their spatial limits. As a specialist on these questions notes, the waters of an archipelago not delimited in accordance with the 1982 United Nations Convention (Article 47) “can not be classified as archipelagic waters. No other concept of the law of the sea is linked so closely to the methods of delimitation”.1

2 Legal Regime of Archipelagic Waters

A distinctive feature of the legal status of archipelagic waters is that this regime has a number of features which bring this category of waters close to other institutions of the law of the sea. Archipelagic waters in particular

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share common features with the territorial sea. This above all concerns the methods of delimitation and the duties of the coastal State in individual instances to grant the right of innocent passage to foreign vessels through archipelagic waters. In addition, an archipelagic strait in sea lanes approximates the status of these lanes to the status of international straits, although the purposes of establishing lanes in archipelagic waters and international straits do not coincide. Whereas strait States, as a rule, establish sea lanes and traffic separation regulations therein in order to ensure the safety of navigation and, correspondingly, their own safety, the archipelagic States establish lanes for the effectuation of the right of archipelagic passage by foreign vessels.

An important provision of the 1982 United Nations Convention is the article on the correlation between the area of the water and the area of the land, including atolls, when drawing baselines, which should be from 1:1 to 9:1 (Article 47[1]).

The system of baselines should not be applied by an archipelagic State so that the territorial sea of another State is cut off from the high seas or exclusive economic zone.

If part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighboring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected (Article 47[6]).

The breadth of the territorial sea, contiguous zone, exclusive economic zone, and continental shelf is measured from the aforesaid baselines.

The sovereignty of an archipelagic State extends to waters enclosed by the archipelagic baselines regardless of their depth or distance from the coast.

The practice of individual States with respect to the delimitation of territorial waters in archipelagos adjacent to them furthered the working out of respective provisions of principle in international law. These rules were consolidated in the 1958 Geneva Convention.

Of special interest is the practice of Norway, who by royal decrees of 12 June 1935 and 18 June 1952 determined the outer points for drawing baselines along the entire Norwegian coast in order to enclose its territorial waters.

These points are the farthest points of the coastal archipelago, some of them individual reefs farthest seaward covered or not by the tide. The decrees did not establish definite limits for the length of these baselines, which basically did not exceed 45 miles. On the whole these lines follow the general direction of the coastline. All waters between islands of the coastal archipelago between the mainland and baselines drawn from the side of the
high seas along the perimeter of the archipelago were deemed by the decrees to be the internal waters of Norway.²

An analogous system for delimiting coastal waters was established by the Fishing Regulations of Iceland, adopted 19 March 1952. The length of the individual baselines of Iceland extended up to 66 miles. The waters within the internal limits of the coastal archipelagos the Icelandic legislation declared to be internal.

In Denmark, in accordance with decrees of 27 January 1927 and 11 September 1938, as well as by a number of other acts, waters within coastal archipelagos are deemed to be internal Danish waters enclosed by the baselines of a belt of territorial waters. However, in accordance with Danish legislation all baselines were drawn so as not to exceed 10 miles.

Customs rules in Sweden of 7 October 1927 and a Royal Message of 4 May 1934 relegate the waters between islands of coastal archipelagos to internal Swedish waters. The baselines applied in Sweden formally are not confined to any limits, although in practice they are significantly shorter than the baselines of Norway. Many of them all the same significantly exceed the length of 10 miles.

An analogous system is applied in Finland, established by a law and presidential decree of 18 August 1956; however, the length of the baselines is confined to twice the breadth of the territorial waters, which in Finland are equal to 4 miles. Coastal archipelagos which are located at a distance of more than 8 miles from shore have, under Finnish laws, their own belt of territorial waters. Within that belt the waters are deemed to be Finnish internal waters.

The system of straight baselines is applied by Yugoslavia, which by a law of 1 December 1948 provided for calculating its territorial waters with the assistance of this method. The belt of territorial waters rims coastal archipelagos too. The law formally does not limit the length of the baselines; however, with respect to certain bays the length of the line is confined to twice the breadth of territorial waters, which is equal to 6 miles.

The United Arab Republic, in accordance with a Decree of 18 January 1951, delimits territorial waters from the coast with the assistance of straight baselines not exceeding 12 miles. All coastal islands which under the system of these baselines which prove to be within the baseline of territorial waters have been encircled by a common belt of territorial waters, and the waters between them are deemed to be internal.

The Great Galapagos Archipelago belonging to Ecuador should, in accordance with presidential decrees of 2 February 1938 and 22 February

² This brief survey of the legislation of Norway and other States is based on UN Doc. A/CONF13/18, Conférence des Nations Unies sur le droit de la mer, Documents officiels, I, pp. 296-300.
1951, be regarded as a unified territorial whole. Territorial waters of the archipelago are calculated with the assistance of straight baselines drawn between the points of outer islands farthest from the center of the archipelago. Territorial waters frame the entire archipelago as a whole. The length of individual baselines of the archipelago extends to almost 150 miles (the line between Darwin and Genovese is 147 miles). Ecuadorean legislation does not clarify the legal regime of waters within the belt of the territorial sea, establishing merely an express prohibition against fishing by foreign citizens.

Finally, the Government of Indonesia by a Declaration of 13 September 1957 declared the establishment of a 12-mile belt of territorial waters around the entire Indonesian archipelago and the extension of the full sovereignty of Indonesia to all waters between islands within the belt of territorial waters. It should be recalled that the governments of a number of western powers (United States, Holland, Australia, and others) declared their nonrecognition of the Indonesian decision. The Government of the USSR, on the contrary, recognized the decision of the Indonesian Government and declared that it would respect and comply with it.\(^3\)

The aforesaid enables certain conclusions to be drawn. First, one may say that the contemporary law of the sea allows islands comprising part of an archipelago and belonging to a single State to be regarded as a single territorial whole. The geographic position of the islands and the general configuration of the archipelago are of important significance for this. Quite material to such recognition is the existence of a close organic link between islands within the archipelago, as well as between the islands and the water expanses between them. Such a link is a natural consequence of the political, administrative, and economic unities of the islands of the archipelago comprising the territory of the State possessing them.

Second, the admissibility of drawing in archipelagoes a common belt of territorial waters around all of the lands and islands thereof should be acknowledged. Straight baselines drawn between respective points of islands within an archipelago are taken as the point of departure for calculating the territorial waters of the archipelago. When drawing such baselines no significant deviations should be permitted from the general direction of the coasts of the farthest islands of the archipelago with regard to the center of the archipelago.

Third, international law does not limit the length of straight baselines by any determined limits. Sometimes doubts are expressed with regard to their extension, but suggested limitations of the length of baselines are of a deliberate and arbitrary character. At the basis thereof lie legal considerations which are not weighty, but merely the aspiration for political reasons to complicate the demarcation of territorial waters in archipelagos in which

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3 Против [Pravda], 13 February 1958.
those States are interested who are accustomed, without having regard to the sovereignty of others, especially small States, to unceremoniously enter another’s waters.

Finally, the fourth conclusion which should be made is that water expanses between islands of an archipelago are recognized as the internal waters of the island or coastal State, where the sovereignty thereof operates without any limitations. This position arises directly from the recognition by international law as internal waters those expanses which are within the limits of straight baselines, a position that achieved final consolidation in the 1958 Geneva Convention on the territorial sea (Article 4).

The legal regime of archipelagic waters provides for the archipelagic State to ensure the right of archipelagic sea lanes passage, which consists of the passage of foreign vessels through its archipelagic waters and adjacent territorial sea along established sea lanes and the overflight of aircraft along air routes.

Such archipelagic sea lanes passage means the exercise of the right of normal navigation and overflight solely for the purpose of continuous, expeditious, and unobstructed transit between one part of the high seas or an exclusive economic zone to another (Article 53[3]). It is provided in so doing that such sea lanes and air routes include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters. During the archipelagic passage of vessels, the provision of the 1982 United Nations Convention must be taken into account that ships and aircraft in archipelagic sea lanes passage must not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane. In order to ensure safety of navigation archipelagic States may assign traffic separation schemes in such sea lanes. When necessary, on condition of due notification, an archipelagic State may substitute its sea lanes or traffic separation schemes.

When establishing or substituting sea lanes or traffic separation schemes the archipelagic State must refer its proposals with regard to these questions to the competent international organization with a view to their adoption (Article 53[9]). Here they have in view, above all, the International Maritime Organization (IMO). If an archipelagic State does not for any reasons establish sea lanes agreed with the IMO, the right of archipelagic sea lanes passage may be effectuated along sea routes normally used for international navigation (Article 53[12]).

During transit passage through archipelagic waters foreign vessels must: proceed through such waters without obstruction; refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of archipelagic States; refrain from any activity other than those
incident to their normal modes of continuous and expeditious transit, except instances when such activity is caused by circumstances of insuperable force or distress; comply with generally-accepted international regulations, procedures, and practices for safety at sea, including the 1972 Convention on International Regulations for Preventing Collisions at Sea; and comply with generally-accepted international regulations, procedures, and practices for the prevention, reduction, and control of pollution from ships.

Thus, transit passage established by the 1982 United Nations Convention in archipelagic waters does not differ from innocent passage through the territorial sea. Archipelagic States may adopt laws and regulations relating to archipelagic passage on the following issues: safety of navigation; prevention, reduction, and control of pollution; prohibition of fishing; and loading or unloading of any goods or currency, embarking or disembarking people in violation of customs, fiscal, immigration, or sanitary laws and regulations of archipelagic States.

In so doing the 1982 United Nations Convention provides (Article 42[2]) that such laws and regulations must not discriminate between foreign vessels, and their application must not in practice lead to a violation or impingement of the right of transit archipelagic passage.

In the event of the failure of foreign vessels to comply during archipelagic passage with the aforesaid rules and regulations of an archipelagic State and the causing of damage or losses to the archipelagic State, the flag State of the ship bears international responsibility for such losses or damage.

Archipelagic States, in turn, should not hamper transit archipelagic passage and accordingly should give publicity to any danger known to it for navigation in archipelagic waters (Article 44).

Additional Information

In 1949 England applied to the International Court of Justice with a request to establish the lawfulness of a decree of the King of Norway of 12 July 1935, in accordance with which the baseline for measuring the breadth of territorial waters and fishing zone was drawn along the perimeter of numerous rocky islands on the northern coast of Norway. According, thus, to that decree, Norwegian islands and waters between them turned out to be incorporated into the internal territory of Norway, who did not permit English fishing vessels to catch fish in these waters without the special authorization of Norway.

The position of England was based on the fact that the method of calculating the territorial sea from baselines joining the farthest points of islands furthest seaward, as provided in the decree of the King, was unlawful. The International Court of Justice, in discussing the admissibility of using the method of calculating territorial waters with the assistance of baselines,
comprehensively investigated also such issues, in particular, as the territorial waters of coastal or littoral archipelagos (that is, those in direct proximity with the mainland territory of a State) and the admissible length of the baselines themselves.

In its decision the International Court of Justice drew attention to the fact that “... if the method of straight baselines in certain instances is admissible, there exist no reasonable grounds to draw them only across bays ... and not between islands, islets, and reefs through the separating water spaces even if these spaces do not fall within the concept of a bay”. In addition, the Court pointed out that waters located between the islands of coastal archipelagos, that is, within limits drawn according to the example of baselines of an archipelago, must be regarded as internal waters of the State to which the archipelago belongs. Thus, the International Court of Justice, having decided that international law does not prevent the drawing of baselines along the outer limit of a chain of islands lying off its shore, confirmed the lawfulness of the decree of the King of Norway of 12 July 1935.

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5 Ibid.
5. Exclusive Economic Zone

1 Evolution of Conception of Economic Zone

The exclusive economic zone is one of the youngest institutions of the international law of the sea. The development of the legal institution of the exclusive economic zone began during the late 1940s with the proclamation by a number of Latin American States of their claims to rights with respect to waters beyond the territorial sea.

The concept of an ‘economic zone’ emerged in the early 1970s during the discussion in the Committee for the Peaceful Use of the Seabed and Oceans Beyond the Limits of National Jurisdiction. In advancing the concept of an ‘economic zone’, the members of that Committee (representatives of Kenya, Canada, Norway, and others) proceeded from the fact that in a determined area of the high seas beyond the limits of national jurisdiction certain rights of an economic character must be granted to a coastal State, in particular, rights connected with the exploitation of living marine resources. On the basis of this approach of the Committee, the zone beyond the limits of national jurisdiction with certain economic rights of the coastal State thereto received the name ‘economic zone’. This zone acquired the same name in the Concluding Document of a seminar of African States held in Yaoundé (Cameroon) in 1972.

The reasons for this conception arising, the authors of which are considered to be the African States, were several. First, it arose as a result of two basic factors of the contemporary social development of the scientific-technical and social revolutions that occurred in the twentieth century. Having received political independence during the 1960s, these States embarked upon the struggle for economic autonomy. Their demands received consolidation, especially, in the Program for the Establishment of a New International Economic Order (NIEC). Second, the prerequisite and, simultaneously, the cause of the conception of an economic zone arising was the con-
centration of the principal natural marine resources within 200-mile marine coastal zones. More than 90% of the world fish catch came from these expanses, and about 80% of all marine scientific research was conducted therein.\footnote{T. I. Spivakova, Право и природные ресурсы прибрежных зон [Law and Natural Resources of Coastal Zones] (M., 1978), p. 1.}

The scientific-technical revolution, which was one reason for the conception of the economic zone to arise, opened real possibilities for the recovery of various living and mineral resources far from the coast and at great depths. The conception of the economic zone was also formulated to substantiate and consolidate the claims of coastal States to these resources as a whole. It juridically formalized the aspiration of developing States to proclaim their sovereign rights to the resources of 200-mile zones, which would enable them either to themselves engage in the exploration and exploitation of these resources or to receive revenues from the sale of licenses to industrially-developed countries. Third, the principal purpose and reason for establishing an economic zone, according to all the drafts submitted to the Third United Nations Conference on the Law of the Sea, was the need to satisfy the requirements of socio-economic development of the coastal States. Fourth, a reason for the conception of the economic zone to arise was the desire to find a compromise between the majority of States who adhered to a 12-mile limit of the territorial sea and the comparatively small number of countries insisting upon a 200-mile limit thereof.

Unlike the position of the African States, the representatives of fifteen Latin American States\footnote{Barbados, Venezuela, Haiti, Guatemala, Honduras, Dominican Republic, Colombia, Costa Rica, Mexico, Nicaragua, Panama, Trinidad and Tobago, Jamaica, Guyana, and El Salvador.} worked out and adopted the 1972 Santo Domingo Declaration on the so-called patrimonial sea. The principal provisions of that Declaration came down to the following: (a) the coastal State exercises sovereign rights over natural resources, both renewable and nonrenewable, which are in the waters, in the seabed, and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea (point 1); (b) the breadth of the patrimonial sea should be the subject of an international agreement, preferably of a worldwide scope. The whole of the area of both the patrimonial sea and the territorial sea, taking into account their geographic circumstances, should not exceed a maximum of 200 nautical miles (point 3); (c) in a patrimonial sea ships and aircraft of all States, whether coastal or not, enjoy the right of freedom of navigation with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area (point 5).

The conception of the patrimonial sea proposed by the Latin American States contained the threat of so-called ‘creeping jurisdiction’ of the coastal
State. Thus, in accordance with the Declaration of Santo Domingo (point 5), a coastal State could at any moment advantageous to it unilaterally abolish the rights of other States, referring to the fact that the particular rights of other States were incompatible with the “exercise by the Coastal State of its rights within the area”. In other words, the rights of foreign States, in particular rights connected with the freedom of navigation, if this conception were adopted, would remain in the complete independent discretion of the owner of the patrimonial sea.

Thus, the term ‘patrimonial sea’ was used to substantiate claims of certain States of Latin America not only to sovereign rights with respect to resources of the 200-mile zone, but also to other rights which taken together were in essence claims to the zone itself. Therefore the conception of the ‘patrimonial sea’ met to the greatest extent the demands of certain States for the establishment of a 200-mile territorial sea, at least in the form of a territorial sea of a special type, which might be established in the opinion of these States, to protect their economic interests in the domain of fishing and not affect other freedoms of the high seas (freedom of navigation, overflight, laying of cables, and others). Certain States realized in their legislative practice the provisions of the ‘patrimonial sea’ conception. Thus, the Decree-Law of Brazil, No. 1098, of 25 March 1970, proclaimed a 200-mile territorial sea in which the vessels of all States enjoy the right of innocent passage. Other Latin American States followed this example. Only certain States of Latin American (Argentina, El Salvador, for example) established for themselves a 200-mile territorial sea with retention therein of the freedom of maritime navigation and flights.

The proclamation by certain States of Latin America of a 200-mile territorial waters, including territorial waters of a special type, brought forth protests from the majority of States. It was noted in the protests that such unilateral actions were contrary to the generally-recognized principle of the freedom of the high seas and customary norm of international law which had formed on the 12-mile limit of the territorial sea. In addition, it was noted that the aspiration of a significant group of States to acquire dominant powers in an economic zone did not correspond to the real trends of contemporary international relations, including in the domain of international navigation, objective requirements of States in the freedom of navigation, and intensive use of the maritime fleet for the maintenance and development of comprehensive economic links and cooperation.

The socialist countries, treating with understanding the needs of developing coastal States and their aspirations for their sovereign rights to be recognized for the purposes of the exploitation and conservation of natural resources of the economic zone, could not, just as the majority of States, agree with the proposals to establish the dominant position of the coastal State in an economic zone adjacent to its coasts which would impinge navigation and
overflights of aircraft, the laying of pipelines and cables, and other types of
the lawful use of vast areas of the sea which are effectuated on the basis of
the principle of the freedom of the high seas.

Certain specialists, understanding all the dangers and shortcomings con-
ected with the adoption of the conception of a patrimonial sea, proposed
various variants compensating for these dangers and shortcomings. For ex-
ample, the American jurist, L. Nelson, proposed to compensate for these
shortcomings with obligations of a coastal State possessing a patrimonial sea
to conclude bilateral treaties with other interested States. When concluding
such treaties, as M. I Lazarev justly believed, “foreign States will take ad-
vantage of not immanent rights arising from the principle of the freedom of
the high seas, but granted rights ‘given’ by the State adjoining the patrimo-
nial sea”.\(^3\)

The idea of the ‘territorialization’ of the economic zone was not generally
acceptable to or generally-recognized at the Third United Nations Confer-
ence on the Law of the Sea since it did not meet the interests of the interna-
tional community of States. The approximation or identification of the eco-
nomic zone with the territorial sea transcended the framework of reasonable
limits of jurisdiction of the coastal State and was contrary to the interests
of the international community of States. The establishment of economic zones
with virtually unlimited jurisdiction therein of coastal States would lead to a
reduction by 40% of the expanses of the World Ocean in which the principle
of the freedom of the high seas operated in full and the principle of the ex-
clusive jurisdiction of the flag State based thereon.

The realization of similar kinds of demands of States insisting on the ‘ter-
ritorialization’ of the exclusive economic zone would inflict ineradicable
damage on all types of maritime activity, especially navigation, fishing, and
marine scientific research. Limitation of the recognized freedoms of the high
seas would materially narrow the limits of that maritime expanse, which in
turn would lead to the subverting of all types of international cooperation in
the cause of using the seas and oceans. Such maritime nationalism mani-
ifested in unilateral acts of the actual division of the World Ocean required
the adoption in international law of norms prohibiting the arbitrary and dis-
criminatory actions of a narrow group of States prejudicial to the interests of
the international community. The provisions of the 1982 United Nations
Convention depriving ‘territorialism’ of any legal base were such a norm.

Another group of States (Australia, Burma, Liberia, Malagasy Republic,
Nigeria, and others) dwelt on the possibility of endowing the coastal State
with exclusive jurisdiction in an economic zone for the purpose of control,
regulation, and preservation of the marine environment, including the strug-

\(^3\) М. И. Лазарев, Теоретические вопросы современного международного морского права
gle against pollution, and also the right of these States to adopt any effective measures for the purpose of the prevention of pollution and punishment of the guilty, up to and including the arrest of ships and masters and committing them for trial in accordance with national laws.

Such proposals also were rejected by the majority of States. The adoption of these proposals would have led to legal consolidation of the right of interference of coastal States in the activities of fleets of foreign States and to a limitation of international navigation in economic zones, which would signify in essence the actual replacement of the regime of economic zones with the regime of the territorial sea.4

A third large group of States favored at the Third United Nations Conference on the Law of the Sea recognition of the economic zone as part of the high seas with exceptions in favor of coastal States which would be established by the new convention (in particular, with respect to their sovereign rights to living and mineral resources of the zone). States which had advanced demands to establish 200-mile economic zones, the majority being developing States of Africa and Latin America, proceeded from the fact that the establishment of such zones would bring the greatest advantage to those States having vast sea coasts. The greater part of stocks of living and nonliving resources are found in these expanses. Naturally, coastal industrially-developed States occupying an advantageous geographic position (United States, Canada, Norway, Sweden, and others) also favored the establishment of economic zones.

As indicated above, the idea of the ‘territorialization’ of an economic zone did not meet the interests of the international community and naturally could not be generally acceptable to the Third United Nations Conference on the Law of the Sea. The approximation and even identification of an economic zone with the territorial sea exceeded the reasonable limits of coastal State jurisdiction and was contrary to the interests of the international community. The establishment of economic zones within the limits of 200 nautical miles with virtually unlimited coastal State jurisdiction would in practice lead, as was noted above, to the expanse of the World Ocean being reduced by 40%, expanses in which the principle of the freedom of the seas operated in full.

The equilibrium between coastal State rights and the rights of other States in an economic zone and an acceptable compromise on the legal status and

regime of the economic zone was reached successfully only after the sixth session of the Third United Nations Conference on the Law of the Sea.\(^5\)

Formulas for compromise provisions of the 1982 United Nations Convention relating to the economic zone were worked out through the efforts of a working group, the members of which were representatives of States in various regional groups and adhering to different positions on the legal status of the economic zone. The texts of the respective articles of the draft Convention prepared by this working group were included ultimately in the 1982 Convention on the Law of the Sea (Articles 55, 56, 58, and others).

In accordance with the 1982 United Nations Convention (Article 55) an 

exclusive economic zone is an area beyond and adjacent to the territorial sea subject to the specific legal regime established in this Part [that is, Part V of the Convention – A. K.], 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 formulation of this Article of the 1982 Convention unambiguously describes the legal status of the economic zone as a zone which is distinct from the territorial sea and to which the sovereignty of the coastal State does not extend. This provision is confirmed in Article 58 of the 1982 United Nations Convention, which provides that

In the exclusive economic zone, all States … enjoy … 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 …

The reference in Article 87 to ‘high seas’ means that the freedoms operating in the economic zone are classified as freedoms of the high seas. Consensus with respect to the establishment of an economic zone which includes the bed of seas and oceans and the subsoil thereof, as well as superjacent waters to a distance of 200 nautical miles from baselines, was reached at the first session of the Third United Nations Conference on the Law of the Sea held in 1974 at Caracas. Sovereign rights were recognized in that zone for a coastal State for the purposes of the exploration, exploitation, and preservation of natural resources, as well as jurisdiction with respect to marine scientific research and protection of the marine environment against pollution. All other States enjoy in the exclusive economic zone the freedoms of navigation and overflight and the right to lay submarine cables and pipelines.

Thereafter the term ‘exclusive economic zone’ was used in the documents of coastal developing States, and later was incorporated into the final text of the 1982 United Nations Convention on the Law of the Sea.

Lazarev believes that the term ‘exclusive economic zone’ is inappropriate since it contains the adjective ‘exclusive’, which is supposedly “broad and dangerous for the interests of the international community”. Even though the term ‘exclusive’ may be associated with the concept of sovereignty of a coastal State in an economic zone, the authors of the formula ‘exclusive’ with regard to an economic zone, in our view, introduced it to characterize the zone itself and not to establish the extent of coastal State rights in the zone. This term emphasizes merely the exclusiveness of those rights which a coastal State may exercise in the economic zone for the purpose of protecting its economic interests. By virtue of this exclusivity, as Molodtsov justly noted, “other countries do not have the right to engage in those types of economic activities in the zone which are the prerogative of the coastal State”.

The term ‘exclusive economic zone’ gives no grounds to believe that this is an exclusive national zone of a coastal State in which it enjoys exclusive rights or exclusive jurisdiction. Moreover, even coastal State jurisdiction with regard to questions provided in the 1982 United Nations Convention is not, as will be shown below, exclusive. Not only coastal States possess economic rights in an economic zone under determined circumstances. Other States, in particular in accordance with Articles 61, 62, 69, and 70, may have the right to carry on fishing. Thus, the use of the term ‘exclusive’ with regard to an economic zone is admissible merely in the sense that this zone was created exclusively to defend the economic interests of the coastal State.

2 Legal Regime of Exclusive Economic Zone

The decision to confer a *sui generis* status on an exclusive economic zone was embodied in the 1982 United Nations Convention (Article 58), which in essence contains the legal regime of the exclusive economic zone. It comes down to the following. A coastal State has in an exclusive economic zone sovereign rights for the purposes of the exploration, exploitation, and preservation of natural resources, and also possesses jurisdiction with respect to marine scientific research and preservation of the marine environment. At the same time, all States enjoy in an exclusive economic zone of other States the freedoms of navigation and overflight, the laying of submarine cables.

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6 Lazarev, note 3 above, p. 234.
and pipelines, and “other internationally lawful uses of the sea related to those 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” (Article 58[1]).

One of these freedoms is, in particular, the right to effectuate operations with regard to the towing and rescue of vessels in the said zone. These actions are connected with the freedom of navigation and, consequently, a coastal State should neither reserve this right to itself, as it may do within its territorial sea, nor demand from other States a prior request about the possibility of conducting such rescue actions. In addition, a coastal State possesses in an economic zone jurisdiction with respect to the creation and use of artificial islands, devices, and installations, marine scientific research, and protection and preservation of the marine environment.

The fact that the special-purpose or functional character of the right of a coastal State to natural resources of an exclusive economic zone, as well as with respect to other types of activities, is specially and precisely emphasized in the 1982 United Nations Convention enables one to conclude that if as a result of the development of science and technology new types of economic activity arise in the domain of using marine expanses of a zone, the rights of the coastal State should not automatically extend to these types of activities. This conclusion flows, in particular, from the provisions of Article 56 of the Convention, in accordance with which only the enumerated rights in specific domains are granted to a coastal State.

Thanks to the conception of the exclusive economic zone the positions of the Latin American States who supported the idea of a patrimonial sea and of the African States who first used the term ‘exclusive economic zone’ were successfully combined.

On the basis of the consensus achieved, beginning from 1984 the great majority of coastal States declared the establishment of their exclusive economic zones. In the documents of those States, including Latin American, the term ‘exclusive economic zone’ gradually began to figure and was included in all drafts of the Convention on the law of the sea and in the text of the 1982 United Nations Convention itself (Part V).

The granting to a coastal State of sovereign rights with respect to natural resources of the economic zone entailed the following legal consequences concerning the protection of its interests. First, other States, as noted above, have no right to explore for and exploit natural resources of the economic zone without the clearly expressed consent of the coastal State even if it does not itself exploit these resources. Second, a coastal State enjoys in the economic zone such rights as the issuance of respective laws and regulations concerning the exploration and exploitation of zone resources, a prohibition against taking certain species of living resources, and so on. Third, in accordance with the 1982 Convention (Article 73[1]), in exercise of its sovereign
rights to explore, exploit, conserve, and manage the living resources in the exclusive economic zone, coastal States have the right to take measures as may be necessary to ensure compliance with the laws and regulations adopted by them in conformity with the Convention. This same Article of the Convention enumerates those measures which a coastal State takes to ensure the fulfillment of its laws and regulations. Such measures may include boarding, inspection, arrest, and judicial proceedings.

However, the 1982 United Nations Convention establishes certain limits for the exercise of the said sovereign rights of the coastal State in the exclusive economic zone, which additionally underscores the peculiarities of the economic zone as an area not under the sovereignty of any State. In accordance with Article 61(2), the coastal State is obliged by taking proper measures to ensure the conservation of living resources in the zone so that the state thereof is not endangered as a result of over-exploitation. At the same time, the coastal State should promote the optimal use of living resources in the economic zone. This means that if the coastal State for some reason can not catch the entire admissible catch established on a scientific basis, it should by means of concluding treaties grant other States access to the residual admissible catch. In so doing attention should be given in priority to taking into account the requirements of developing States of the said subregion or region (Article 62).

In other words, the coastal State is obliged to have regard to the interests of other States in exercising its rights in precise conformity with the 1982 United Nations Convention. This general provision finds clarification in the following duties of a coastal State which materially limit the extent of its rights with respect to living resources of the zone: to take measures directed towards conservation of living resources of the zone, promote the aim of the optimal use of living resources, grant access to fishermen of other States to unused surplus fish stocks of the zone (Articles 61 and 62, 1982 United Nations Convention). In this connection inaccurate, in our view, interpretations of Articles 61 and 62 of the United Nations Convention are encountered in doctrinal writings. Podstavkin suggests that on the basis of these Articles the taking of measures for conservation of living resources of a zone is of an ‘internal character’ and relates to the use of these resources by citizens of the coastal State.\(^8\)

In our view there are no grounds for such a construction of the said Articles of the 1982 Convention. The establishment of measures directed to-

wards the conservation of living resources of the economic zone means, above all, the introduction of such limitations on commercial fishing in the economic zone which most often are of a general character for everyone having access to living marine resources: the establishment of prohibited areas, periods, implements, and so on. Naturally these limitations relate in equal measure to foreign fishermen and may be even broader in scope and more severe, which should be reflected in fishery agreements.

The provision concerning the duties of a coastal State to ensure access for foreign fishermen to unused surplus resources of an exclusive economic zone has cardinal significance for determining the prospects for the continuance of commercial operations of foreign States in the zones. From the content of the said Articles of the 1982 United Nations Convention, the procedure for granting such access to resources should in principle appear as follows: (1) on the basis of available scientific data (including the data of competent international organizations) a coastal State determines the maximum sustainable yield for individual species of fish enabling their reproduction to be maintained at the same high level and the rational use of the stocks thereof at the same time; (2) own possibilities of the coastal State are determined with regard to the catch of individual objects and the need to reserve any stocks requiring regeneration; (3) on the basis of the first two positions, the unused surplus fish stocks are calculated which may be granted to foreign States to be caught; (4) surpluses so determined are distributed among the States who have made application, taking into account the traditional catches by their vessels in the areas and their participation in the study, maintenance, and protection of respective fish stocks, and other factors.

As is obvious from the foregoing, in order to avoid the negative economic consequences of free competition, the practice of regulating and managing marine fishing has proceeded along the path of dividing the total admissible catch among individual countries, processing enterprises (when the entire catch is processed at a limited number of enterprises, as occurs, for example, when catching sardines off the coasts of Namibia and South Africa), extractive ships, or even individual fishermen. The distribution among individual processors of the total admissible catch in principle reduces to zero the basic incentives for the squandered augmentation of the extractive potential, helps avoid overstocking the market, and reduces to a minimum the race for amounts of the catch. The distribution of quotas by individual countries or vessels theoretically leads to the great independence of their operations from the activity of the remaining users of the distributed stocks and ensures more effective control over the catch of each season.

This scheme for granting access to foreign States to unused surplus fish stocks was the most progressive practical form for regulating fishing and corresponds completely to the 1982 United Nations Convention, and in one
form or another has been incorporated into the legislation of many coastal States.

In summary, all the provisions of the 1982 United Nations Convention on the regulation and management of marine fishing can be conditionally divided into two large groups: (a) provisions directed towards establishing the balance of rights and duties of coastal and other interested States with regard to the exploitation of living resources of an economic zone; (b) provisions directed towards the creation of foundations for the cooperation of States when effectuating fishing beyond the limits of the economic zone, including directed towards the protection of individual species of fish through the entire area of their migration.

It was indeed after the adoption of the 1982 United Nations Convention that in doctrinal writings the term 'management' found broad usage with respect to living resources. The more extensive use of this term reflects, in our view, the processes occurring in the international law of fisheries which are of an objective character. During the rather brief period that has elapsed from the moment of the entry of the 1982 United Nations Convention into force (1994), the situation in world fishing has changed significantly. Relations in the domain of the international law of fisheries have become more complex and the state of fish stocks, as shown above, has worsened – and it was this which conditioned the need for an integrated approach to their management and regulation. States having access to a sea or ocean regulate fishing within their 200-mile economic zones and thus limit the commercial activity of other States, in the majority of instances leaving them only the open part of the World Ocean.

As observed above, the 1982 Convention emphasizes the special-purpose or functional character of the rights of the coastal State to natural resources of the economic zone, and likewise with respect to other types of activity. Granting to the coastal State sovereign rights with respect to natural resources of the exclusive economic zone has the following legal consequences. First, the coastal State may adopt laws and regulations concerning the exploration and exploitation of natural resources of the zone. Second, the coastal State “in exercise of its sovereign rights to explore, exploit, conserve, and manage the living resources in the exclusive economic zone” has the right to take measures which may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with the 1982 United Nations Convention (Article 73[1]). In conformity with Article 73 of the Convention, in particular, the coastal State has the right when exercising its sovereign rights to resources of the exclusive economic zone even to arrest a vessel in the waters of the zone and initiate judicial proceedings against it for a violation of legislation of the coastal State on fishing in its economic zone.

At the same time, the 1982 United Nations Convention contains an important provision concerning the limitation with a certain framework of re-
pressive measures that may be applied by a coastal State in response to a violation of its laws and regulations in the economic zone. The Convention (Article 73) precisely indicates that an arrested vessel and its crew shall be promptly released upon the posting of a reasonable bond or other security. The punishments imposed by a coastal State for a violation of fishing rules in an exclusive economic zone may not be assigned in the form of imprisonment in the absence of agreements of the States concerned to the contrary or any other form of corporal punishment. In addition, the coastal State is obliged in the event of an arrest or detention of foreign vessels to inform the flag State at once.

Thus, in accordance with Article 292 of the 1982 United Nations Convention a State which has detained or arrested a vessel flying the flag of another State is obliged immediately to release it after the posting of a reasonable bond. In the event of a refusal of the coastal State to release the foreign vessel after the posting of a reasonable bond, the flag State of the detained vessel upon the expiry of 10 days from the moment of detention of the vessel has the right to apply to the International Tribunal for the Law of the Sea.

Regrettably, this provision of the Convention, whose purpose is to ensure the rapid adoption of proper measures to settle a situation which has arisen, is rather frequently violated by the coastal States with respect to foreign vessels engaging in commercial fishing in the exclusive economic zone of a coastal State. Of eleven cases considered to date by the International Tribunal for the Law of the Sea, decisions of the Tribunal were adopted in six cases concerning the prompt release of vessels and crew detained for supposedly having violated fishing rules in the economic zones of foreign States. By a decision of the Tribunal on 23 December 2002 the Russian fishing vessel *Volga*, arrested on 2 December 2002 for illegally catching fish in the Australian fishing zone, was released.9

Provisions arising from the sovereign rights of the coastal State in respect of natural resources have been reflected in other more specific norms of the 1982 United Nations Convention. Article 62 of the 1982 Convention, for example, endows the coastal State with powers in an economic zone to adopt regulations relating to the exploitation of natural resources of the zone and their conservation and management binding upon natural and juridical persons of other States who have received authorization from it to fish in the zone. These rules concern, in particular: (a) the issuance of authorizations to fish; (b) determination of the species of living marine resources which may be caught and the establishment of catch quotas; (c) the establishment of seasons and areas of fishing, and the species, dimensions, and quantities of fishing implements, as well as the number, sizes, and types of vessels which may be used to catch fish; (d) establishment of the sizes of fish which may

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9 www.itlos.org/star2-en.html
be caught; (e) other questions relating to foreign fishing for living resources in the zone, including the placement of observers on board fishing vessels, and others.

Even though African States were the ‘founders’ of this institution of the law of the sea, of what the economic zone is, some of these States have departed in their national legislation from the basic provisions of the 1982 United Nations Convention regulating the regime of the zone. Ghana, Kenya, and a number of other States, for example, undermine the functional rights granted by the 1982 Convention in the economic zone with territorial rights. The provisions of the legislation of certain African States (Togo, in particular) granting access to the residual amounts of the total admissible catch in the 200-mile zones only to neighboring States do not correspond to the 1982 Convention. The Seychelles in 1979 introduced Decree No. 5, according to Article 15 of which a foreign fishing vessel should when passing through the economic zone notify the coastal State beforehand about the route and the quantity of fish on board.\(^\text{10}\)

Certain coastal States of Africa refuse for political reasons to admit fishing vessels of foreign States to their zones. A significant number of States in practice neglect the criteria for access set out in Article 62(3) of the 1982 United Nations Convention. Such States, in particular, as Tanzania and the Seychelles, in refusing other States access to their exclusive economic zone, do not take into account the needs of developing States of the subregion or region for part of the residual catch and the need to reduce to a minimum the economic losses of States whose citizens usually fished in the particular zone.

In endowing coastal States with extensive powers in the domain of exploitation of the living resources of the zone, the 1982 United Nations Convention at the same time establishes certain limits and obligations when the said sovereign rights of a coastal State are exercised in the economic zone, which underscores the distinctive nature of the legal status of the economic zone as an area of the high seas not under the sovereignty of any State. A coastal State, for example, as noted above, is obliged to ensure by means of taking necessary measures the preservation of living resources in the zone and the optimal catch thereof.

In other words, in such a zone of national jurisdiction as is the exclusive economic zone one refers not simply to the jurisdiction of the coastal State, but to the functional jurisdiction, which implies limited rights and prerogatives of this State for special purposes. It is important to note not only that these rights in the sphere of national jurisdiction are exercised to a lesser degree than in the sphere of sovereignty (in the territorial sea, for example), but

that they are distinctive in their nature and character from the rights based on sovereignty.

The jurisdiction of a coastal State in an exclusive economic zone with respect to the effectuation of marine scientific research therein is not exclusive. In accordance with Article 56(1)(b) of the 1982 United Nations Convention, the coastal State merely has jurisdiction with respect to marine scientific research. In regulating the conducting of marine scientific research by other States and international organizations, the coastal State must be guided by the respective provisions of the 1982 United Nations Convention and should take into account the interest of other States in using the freedom of the high seas. States, in particular, when conducting marine scientific research should not unjustifiably interfere with other legitimate uses of the sea (Article 240). In addition, these States should proceed from Article 241 of the 1982 Convention, which provides that “marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources”. In other words, scientific research conducted in an exclusive economic zone does not give rights to resources nor to part of the environment. Moreover, scientific data obtained as a result of research is provided to the coastal State which enables, for example, the biological characteristics of a species or an area to be determined and, possibly, its biological productivity to be ascertained.

In this connection proposals were made at the Third United Nations Conference on the Law of the Sea to give incentives to States which had conducted scientific research in the exclusive economic zone. When a coastal State, in particular, decided the question of exploiting living resources of the economic zone by other States, the country which conducted the scientific research of the marine environment and/or resources of the zone should enjoy preferential rights in comparison with other States.

Regrettably, these proposals of certain delegations (Cuba, for example) were not legally consolidated in the 1982 United Nations Convention.

The jurisdiction of the coastal State with respect to the protection and preservation of the marine environment, according to the 1982 United Nations Convention, also is not exclusive. First, coastal States, according to the Convention, may adopt with respect to their economic zones only those laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to international rules and standards (Article 211[5]). Second, ensuring the fulfillment of such international rules and standards is relegated principally to the jurisdiction of the State (Article 217(1)(2) and [4]).

Besides sovereign rights to resources, the 1982 United Nations Convention (Article 56) grants jurisdiction to the coastal State relative to activities connected with its sovereign rights in the economic zone, but in a number of instances going beyond economic purposes. One such activity is the creation
and use in the economic zone of artificial islands, installations, and structures. In accordance with Article 60 of the United Nations Convention, a coastal State has the exclusive right in the zone to construct, and also to authorize and regulate the creation, exploitation, and use of: (a) artificial islands (intended not only for economic purposes); (b) installations and structures for the purposes of exploration and exploitation of natural resources of the zone and other economic purposes; (c) installations and structures which may promote the effectuation of the rights of the coastal State in the economic zone. Other States may create in the economic zone of a coastal State artificial islands, installations, and structures for economic purposes only with the authorization of the coastal State. In so doing the coastal State retains the right to regulate their operation and use.

The 1982 United Nations Convention (Article 60) provides for the exclusive jurisdiction of the coastal State over the said artificial islands, installations, and structures, including with respect to customs, fiscal, sanitary, and immigration laws and regulations, and also safety rules.

The experience of using artificial islands, installations, and structures in exclusive economic zones of certain coastal States, in particular, as piers for large-tonnage vessels, has raised a number of problems for the law of the sea. First, in the event of a vessel tying up at a pier beyond the internal waters and the territorial sea, the legal status of such a foreign vessel is not clear. Second, it has not been determined to which laws and regulations concerning border, customs, sanitary, and navigation regimes the vessel is subordinate while at the pier. The proposal made in this connection by Molodtsov should, in our view, be supported; it concerned the adoption of a special universal international legal act which would take into account the duties and rights granted by international law to coastal and noncoastal States with respect to artificial islands, installations, and structures.¹¹

Such an international legal act should, in our view, provide for the creation, placement, and establishment of safety zones of artificial islands, installations, and structures and the establishment of safety zones around them. This act also would set out an exhaustive list of grounds for a refusal to authorize the creation of artificial islands, installations, and structures. It is necessary, moreover, to lay down provisions concerning abandoned or no longer used artificial islands, installations, and structures.

The 1982 United Nations Convention on the Law of the Sea does not contain any norms specially devoted to determining the legal status of the exclusive economic zone. In considering the problem of the legal status of the economic zone, obviously Article 58(2) of the 1982 Convention must be taken into account. This Article indicates that Articles 88 to 115 and other pertinent rules of international law regulating the regime of the high seas ap-

¹¹ Molodtsov, note 7 above, p. 155.
ply to the economic zone insofar as these provisions are not incompatible with this Part of the Convention which regulates the regime of the economic zone. Article 89 of the 1982 Convention, for example, that “no State may validly purport to subject any part of the high seas to its sovereignty” relates entirely to the economic zone. No State may claim to subordinate the economic zone or any part thereof to its sovereignty.

Article 58 of the 1982 Convention in addition endows landlocked States with specific rights for activity in the economic zone of equal importance as rights on the high seas (freedom of navigation and overflight, laying of submarine cables and pipelines, and others).

The aforesaid enables the conclusion to be drawn that the exclusive economic zone is by its legal status, on one hand, part of the high seas in which a coastal State is granted sovereign rights and jurisdiction over resource activity in strict accordance with the 1982 United Nations Convention. On the other hand, the certain exceptions enumerated above from the legal status of the high seas in the economic zone and the presence of specific features of the economic zone impart to it its own face, distinct in legal classification from any other expanse.\footnote{S. A. Malinin, Изв. [Selected Works] (Spb., 2003), p. 204.}

In this connection the optimal definition of the legal status of the economic zone, in our view, is that offered by Molodtsov. He suggests that the maritime area beyond the limits of the territorial sea and adjacent thereto, called the exclusive economic zone, is high seas with respect to the exercise therein of freedom of the high seas and other legal types of use of the sea, as is established by this Convention. However, it is not considered to be high seas with respect to the exercise therein of sovereign rights and jurisdiction of the coastal State granted to it under this Convention.\footnote{S. V. Molodtsov, Правовой режим морских вод [Legal Regime of Maritime Waters] (M., 1982), p. 108.}

Other authoritative specialists in the domain of the international law of the sea adhere to a similar position.\footnote{See A. L. Kolodkin, Мировой океан [World Ocean] (M., 1973), p. 55; M. I. Lazarev, note 3 above, p. 264.}

Imparting to the legal status of the exclusive economic zone the status of high seas is important from the standpoint of finally eliminating the ‘creeping jurisdiction’ of coastal States and transformation of the economic zone into a sea expanse subject to the sovereignty of the coastal State. Insofar as the 1982 Convention on the Law of the Sea, as Lazarev suggests, suffers from an imperfect balancing of the interests of the coastal State with the interests of the international community as a whole, the threat of claims being made on the part of coastal States to various new exceptions (for example,
control over merchant and naval navigation in a vast zone of the high seas), the threat of unjustified obstacles to foreign navigators is not removed.\textsuperscript{15}

The problem of delimiting these vast maritime expanses and, as a consequence, the problem of dividing significant stocks of marine living resources, was one of the most acute issues when drafting and adopting the 1982 United Nations Convention provisions relating to the exclusive economic zone.

As a result of lengthy discussions at the Third United Nations Conference on the Law of the Sea, a balanced approach was found to the delimitation of the exclusive economic zone between States with opposite or adjacent coasts. This approach found its embodiment in Articles 74 and 83 of the 1982 United Nations Convention. These Articles were based on a ‘package’ approach: the principles of delimitation of the economic zone are set out therein, and there are provisions on the procedure for the settlement of disputes arising in the course of delimitation; and the application of provisional measures is provided for.

The 1982 United Nations Convention provides the following principles for delimitation of the exclusive economic zone: (1) the delimitation of the exclusive economic zone between States with opposite or adjacent coasts is effectuated by means of 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, the States concerned resort to the procedures provided for in Part XV of the Convention; (3) until the conclusion of an agreement on the question of delimitation of the exclusive economic zone, the States concerned shall undertake all possible efforts to achieve a provisional arrangement and during this transitional period not to jeopardize or hamper the reaching of the final agreement. Such a provisional arrangement should be without prejudice to the final delimitation; (4) where there is an agreement in force concerning delimitation between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be decided in accordance with the provisions of that agreement.

Thus, the basic principles of delimitation of the exclusive economic zone set out in Article 83 of the 1982 United Nations Convention are the principle of equity when deciding these issues and agreement of the parties concerned. The principle of equity in relations between States in the context of Article 83 is a category corresponding to the basic principles and norms of contemporary international law.

The principle of reaching agreement when delimiting the exclusive economic zone obliges the parties to display only a joint approach. Unilateral actions in this respect, even with references to the principle of equity, can

\textsuperscript{15} Lazarev, note 3 above, p. 264.
not be considered to be lawful. In the absence of an agreement, neither of the parties concerned may take any unilateral measures with regard to delimitation not approved by an agreement with the other party. In other words, demarcation of an exclusive economic zone is precluded in an extra-treaty procedure. If the parties cannot reach agreement, in accordance with Article 83(2) of the 1982 United Nations Convention, a dispute exists between them which must be decided according to Part XV of the Convention.

A number of disputes with regard to drawing boundaries of sea expanses between adjacent and opposite States arose before the adoption of the 1982 United Nations Convention on the Law of the Sea. The problem of delimitation of sea expanses served as an occasion for the exacerbation of existing disagreements, which made more difficult the settlement of a number of territorial conflicts, among them being, in particular, the Argentine-Chilean dispute concerning the Beagle Strait, which remains one of the most complex territorial conflicts between Argentina and Chile.

The legal regime of the Beagle Strait, situated at the southern tip of the American continent, falls under Article 37 of the 1982 United Nations Convention concerning straits “which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone”. The provisions of the 1982 United Nations Convention applicable to the specific conditions of the Argentine-Chilean dispute mean that the party possessing the islands in the Beagle Strait receives the right to materially enlarge the territorial sea, economic zone, and shelf adjacent to the ‘Tierra del Fuego’ in a southeasterly direction, which comprises about 78,000 square kilometers in which rich deposits of oil and natural gas have been discovered and where large fish stocks are located.

In 1971 Argentina and Chile concluded an arbitration agreement. Among the questions subject to consideration of the arbitration tribunal were an interpretation of the 1881 Treaty between Argentina and Chile on boundaries, which in its day did not resolve the affiliation of the islands in the Beagle Strait. The award of the arbitration tribunal in 1977 met the interests of Chile but was not satisfactory to Argentina, which renewed negotiations with Chile. Various ideas advanced during the negotiations for the settlement of the dispute were rejected by the parties and brought no results.

Negotiations recommenced in 1984 to resolve the territorial dispute concerning the Beagle Strait were successfully completed thanks to a material concession by Argentina, which virtually renounced its claims to Picton, Lennox, and Nueva Islands in exchange for a guarantee of peace on the boundaries with Chile. Under the Argentine-Chilean treaty concluded, the line demarcating the sovereignty of the parties in dispute at the southern extremity of the mainland passes from Cape Horn to the South Pole.
The signature of such a treaty gives grounds to hope that the dispute concerning the Beagle Strait, which does much to determine the situation in South America, is close to resolution.

In this connection should be noted the unjust, in our view, provisional Agreement “On the Line of Demarcation in the Bering Sea” signed between the USSR and the United States on 1 June 1990. This Agreement on the demarcation of the economic zones of the USSR and the United States in the Bering Sea and subject to ratification by both parties has been ratified only by the United States, it being extraordinarily advantageous to it. The Russian Federation, coming to its wits after the euphoria of new relations with the United States, has not ratified this Agreement. Under this Agreement, 75% of the territory of the Bering Sea passed to the jurisdiction of the United States, which received 55,000 square kilometers more area than if the line of demarcation had been drawn equidistant between the coasts of the two States.

As a result, the exclusive economic zone of the United States in individual sections became 50 miles greater than the 200-mile limit established by international law, and the Russian zone in these sections was reduced by this amount. At the moment of signature of the 1990 Agreement, the 1982 United Nations Convention on the Law of the Sea had not yet entered into force; however, its provisions concerning, in particular, the exclusive economic zone should have been applied as customary law norms. This was confirmed, for example, in the decision of the International Court of Justice with regard to the dispute between Libya and Malta of 1982. Thus, the exercise by the United States of sovereign rights and jurisdiction with respect to sea expanses located beyond the limits of the 200-mile zone is contrary, in our view, to norms of international law, although certain scholars do not adhere to this view.

The reference in Article 3(3) of the 1990 Agreement that the exercise by Russia and the United States of sovereign rights and jurisdiction with respect to such expanses arises from the agreement between them and is not an expansion of their economic zones is, in our view, an incorrect interpretation of international legal norms. Any State has the right under an international treaty to transfer a right belonging to it to another State. However, under the 1990 Agreement all sovereign rights and jurisdiction are transferred, and in certain areas the breadth of the exclusive economic zone of the coastal State (United States) becomes more than the 200-mile expanse beyond the limit of which these rights and jurisdiction at present can not be exercised in accordance with international law (Article 57, 1982 United Nations Convention).

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16 V. Zilanov, “A после Аляски ещё одна клякса”, [After Alaska Yet Another Blot], Российская газета [Russian Newspaper], 14 January 1997.
According to experts, about 16% of world oil reserves are situated in the seabed area in the Russian economic zone transferred to the United States. Besides violations by the parties of the aforesaid customary law rules, the USSR by the signature of the 1990 Agreement also violated the 1969 Vienna Convention on the Law of Treaties (Article 18), according to which a State which has signed a treaty (having in view here the 1982 Convention on the Law of the Sea) on condition of ratification is obliged to refrain from actions which would deprive the treaty of its object and purpose.

The question is now being considered of terminating the operation of an agreement unjust and disgraceful for Russia and the return to Russia of ‘lost’ territory. From the legal point of view this possibility exists on the basis of the following provisions. The 1990 Agreement is subject to ratification by the parties and enters into force on the day of exchange of instruments of ratification (Article 7). Until the entry of the Agreement into force, it is, in accordance with the proposal of the American side and with the consent of the Russian side, subject to provisional application, which corresponds to Article 25 of the 1969 Vienna Convention. The United States ratified this agreement advantageous to it on 16 September 1991; the Russian Federation still has not ratified the Agreement. The State Duma has repeatedly rejected the draft federal laws on ratification of the agreement and extension of the period for temporary application by Russia.

In accordance with Article 23(3) of the Federal Law “On International Treaties of the Russian Federation”, No. 104-ФЗ, of 15 July 1995, unless provided otherwise in an international treaty, or the respective States have not agreed otherwise, the provisional application by Russia of the treaty or part thereof is terminated upon notification of the other States who provisionally apply the treaty of the intention of the Russian Federation not to become a party to the treaty. On the basis of this, and also taking into account Article 25 of the 1969 Vienna Convention, the Russian Federation may inform the United States of its intention not to become a party to the Agreement. In this event the provisional application of the treaty with respect to Russia terminates (Article 25(2), 1969 Vienna Convention). In this connection the 1990 Agreement should not be ratified, and the State Duma should adopt a decision to refuse the ratification thereof. In this event, in accordance with Article 25(2) of the 1969 Vienna Convention and Article 23(3) of the Federal Law “On International Treaties of the Russian Federation”, provisional application of the 1990 Agreement will be terminated. This would enable Russia to put the question of commencing new negotiations with the United States with regard to the entire complex of issues of demarcating the maritime expanses in the Bering Sea and the Bering Strait.

Recourse to the United States for the allocation of fish catch quotas to Russian fishermen in the disputed area of the Bering Sea, as some specialists suggest, can hardly be deemed to be lawful from the standpoint of the inter-
national law of the sea. This would signify, in essence, recognition of the 1990 Agreement.

In this connection the position of the State Committee of the Russian Federation for Fisheries, which initiated the Russo-American negotiations to consider a special agreement on compensation of material damage sustained by Russia under the 1990 Agreement, is astonishing. The draft of this special agreement contains a condition that it shall enter into force after the ratification of the 1990 Agreement by both parties. Since the State Duma of the Russian Federation does not consider it possible to ratify the Agreement, one can hardly expect compensation from the United States.

3 Legal Regulation of Exploitation of Living Resources of Exclusive Economic Zone

One of the most controversial problems connected with the conception of the economic zone is the legal regulation of the exploitation of living resources of the economic zone. This is to be explained by the fact that the economies of a significant number of States in the past and at present depend to a great extent upon commercial fishing and the recovery of other marine bioresources. According to certain specialists, the stocks of the living substances of the oceans and seas reach 60 billion tons, whereas on land the biomass does not exceed 10 billion tons. About 150,000 species of fauna feed in the oceans and seas, including about 16,000 species of fish. And the stocks of fish resources in the World Ocean are still not fully investigated, especially that part found at great depths. The world catch of fish and marine water objects exceeds 110 million tons per year, providing up to 25% of the consumption of the animal protein in the food ration for each inhabitant of the planet.

According to forecasts of specialists of the United Nations Food and Agricultural Organization (FAO), demand for fish products in the twenty-first century will constantly grow, and the gap between demand and supply already comprises not less than 10 to 15 million tons.

With the adoption of the 1982 United Nations Convention on the Law of the Sea, a fundamental restructuring occurred and a search for new approaches in international relations in the domain of the use of resources of the World Ocean. By the adoption of this international legal act the international community acknowledged for the first time the right of coastal States

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to declare 200-mile exclusive economic zones off their coast in which they could exercise sovereign rights for the exploration and exploitation of both living and nonliving natural resources.

The era of 200-mile economic zones, on one hand, sharply reduced the possibilities for long-distance maritime, oceanic fishing by the most developed fisheries States and, on the other, put before all States, especially developing, questions of the optimal use of living marine resources of the economic zones, which is possible only on the basis of extensive cooperation between countries concerned by taking into account the good-faith fulfillment by them of obligations assumed and norms of international law.

A large role in forming international-legal regulation of the exploitation of living resources of the exclusive economic zone belongs to the legislation of coastal States on the 200-mile economic zone. The coastal States in their legislative acts determine the regime of fishing and economic zones, taking into account the treaty and customary norms in that domain. International legal norms, in turn, are formed or worked out by taking into account the legislative practice of individual States, singling out from them the most rational and generally-recognized provisions.

The partial coincidence of the object of international and municipal law in the sphere of maritime fishing necessarily gave rise to the problem of the optimal correlation of the said legal systems in this domain. This problem, as noted above, became one of special urgency during the last two decades, when two opposite trends collided in international fisheries law: an increase in the regulatory role of international law and, on the other hand, the aspiration of coastal States with the assistance of national legislation to ensure for themselves certain preferences when using living marine resources in coastal sea waters. In this connection the question arises of the interaction of international and municipal law when regulating relations in the domain of maritime fisheries. Two aspects of the problem may be singled out: the influence of municipal norms on the development of international-legal norms; and on the contrary, the impact of norms of international law on national legislation. It should be noted that when the said two systems interact, the influence of national norms on international-legal norms is primary, is basic. And this situation is incontestable since “States create international law, and not the reverse”.

In considering this question, obviously one should proceed from the fact that the more developed the legal system of a State is, the more influential are its norms of national law on international law. In addition, such influence to a considerable degree depends upon the role which the particular State plays in the international community.

In the international law of the sea it is rather difficult to demarcate the spheres of operation of municipal and international law on questions connected with the determination of the legal regime of sea expanses in general and the economic zone in particular. The sphere of operation of municipal and international law on questions connected with maritime fishing do not simply come into contact with one another; they partly overlap, the line between them being conditional and mobile:

The coincident part of the object of international and municipal law: the actions of States or refraining from actions by way of the exercise by a State of its international rights and duties; the operation or refraining from actions relating to foreign relations and subject to recognition on the part of other States.\(^{19}\)

How those and other actions are characteristic of contemporary fisheries law in which, in particular, basic elements of the regime of fisheries are actually determined simultaneously by provisions of national legislation and international legal norms. To these elements are relegated the following basic rights and duties of the coastal State and States interested in fishing in the zone:

1. **Sovereign rights of coastal State with respect to living resources of economic zone to:**
   (a) determine on the basis of scientific data the total admissible catch, own fishing possibilities, extent of surpluses of total admissible catch not used by it;
   (b) distribute unused surpluses of fish stocks between foreign States on the basis of a system of priorities provided for in a law and recognized in international practice;
   (c) establish the conditions for the conducting of and regulations for the regulation of foreign fishing in the zone, including by means of the conclusion of bilateral agreements with regard to fishing with States concerned;
   (d) ensure compliance by foreign vessels with respective norms of national legislation and international law.

2. **Duties of coastal State to:**
   (a) ensure the conservation of living resources, maintain the maximum productivity thereof with the assistance of taking necessary measures;

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(b) ensure the optimal use of fish stocks, including at the expense of providing access to unused surpluses of the total admissible catch to foreign States;

(c) cooperate with neighbors and other States in the domain of the protection and rational use of stocks of fish migrating in zones of other States and areas of the World Ocean beyond the limits of economic zones;

(d) duly take into account the rights and interests of other States to be exercised by them in the economic zone in accordance with the 1982 United Nations Convention.

3. Rights of Noncoastal States to:

(a) receive access to unused surpluses of fish stocks, taking into account traditional fishing and cooperation with the coastal State in conducting research and other criteria;

(b) strive for just conditions of conducting fishing with the assistance of negotiations and other means of settling disputes.

4. Duties of Noncoastal States to:

(a) comply with conditions and regulations for conducting fishing provided for in an agreement on fishing and in legislation of the coastal State;

(b) comply with requirements concerning the protection of living resources and prevention of pollution of the marine environment;

(c) participate in necessary measures with regard to the study and conservation of living resources of the economic zone.

In comparing the said provisions of the conditional classification of municipal fishing law of the majority of States with the provisions of the 1982 United Nations Convention regulating fishing in the exclusive economic zone, one may conclude that all these rights and duties found reflection in one or another formulation in the respective Articles of the 1982 Convention.

The creation of international legal norms is conditioned, first, by the interests of States. In particular, the interests of the development of maritime fisheries of different States caused the objective need for international-legal regulation of the regime of fishing in foreign economic zones and the regime of entry and sojourn of fishing vessels in foreign ports. Indeed, the draft international convention on the regime of vessels in foreign ports was prepared by studying the national legislative practice of maritime States. The difficul-

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ties which arose in this work were linked in no small degree with the unconstructive positions of certain States. In April 1962 at the Conference of the International Maritime Committee (IMC) held in Athens the question was considered of the legal status of maritime (including fishing) vessels in foreign ports. The Conference was forced to declare that the material at its disposal regrettably was not sufficient for a profound study of the problem since only a few national international law associations responded to the questions of the IMC.  

The draftsmen of the sections of the 1982 United Nations Convention concerning the regime of the 200-mile exclusive economic zone also encountered this situation.

The principal distinctive feature of international legal norms in the domain of the regulation of fisheries in economic zones at present is the contradiction between the provisions of the 1982 United Nations Convention and the very rich, albeit not always consistent, practice of the regulation of inter-State relations for the use of living marine resources of coastal areas based on national legislative acts. The emergence of this practice is to be explained, in our view, first by the aspiration of many States and especially developing States to extend to the maximum their rights to coastal fish resources and thereby reserve them for themselves and, second, the objective need to adopt on a global scale measures with regard to the conservation and rational use of marine bioresources. In this connection the establishment in the 1960-1980s of coastal maritime zones with various names and various regimes, but with the obligatory inclusion of provisions on the regulation of fishing, occurred avalanche-like and in principle were irreversible.

Therefore under conditions of the adoption and application in practice by a majority of coastal States of laws on the establishment of 200-mile fishing and economic zones the question of the extent of the conformity of these acts to the 1982 United Nations Convention and other international-legal documents acquires at present special urgency. The legislation adopted by these States on the creation of the 200-mile economic zones during the work of the Third United Nations Conference on the Law of the Sea exerted a certain impact on the fact that a significant part of the provisions of the 1982 United Nations Convention worked out at the Conference were of, as noted above, rather a general and compromise character.

Despite the fact that all States-parties to the 1982 United Nations Convention were obliged to bring their municipal law into conformity with obligations under international law, in practice many States did not do so, and some States which adopted new legislation addressed this question formally. The legislation of these States in essence comes down to formal compliance with international legal norms. Certain States, in particular, determined in

21 “Очередная Конференция ММК” [Regular Conference of the IMC], Информационный сборник ЦНИИМФ [Information Manual of TsNIIMF], вып. 86 (М., 1962), р. 79.
their legislation an excessively high payment for the right to fish in their coastal waters, established severe measures for management and regulation of fishing in those waters without satisfactory scientific substantiation for this, and the like. In addition, internal regulations, instructions, orders, and other normative acts called upon to develop and clarify these legislative acts in fact changed or distorted the essence thereof, reflecting the trend of establishing a greater amount of rights than provided for in the laws that formally corresponded to the 1982 United Nations Convention. This practice of individual States can not fail to cause tangible damage to world fishing and lead to the underutilization of the richest stocks of fish in the economic zones of certain areas of the World Ocean.

It seems to us in this connection that the stage following the entry of the 1982 United Nations Convention into force has special importance. It is during this period that the role of interpreting rules of the 1982 Convention grew sharply, which was directly linked with the unification process of national legislation at various levels. It should be borne in mind that the process of extending jurisdiction to living marine resources of coastal zones was in essence irreversible, and the question is on the agenda of a doctrinal interpretation of the articles of the Convention concerning maritime fishing which would consolidate in practice the compromise provisions reached. The need for such an approach is confirmed by an analysis of national legislation, the variegation and contradictoriness of which should not interfere with certain legal features of the formation thereof on a world scale.

The working out and consolidation of a uniform legal regime for coastal maritime expanses is obstructed, in our view, not by the new legislation of coastal States in and of itself, but by the following factors: (1) as noted above, some States followed the course of incorporating in their laws provisions which go beyond the compromise reached at sessions of the Third United Nations Conference on the Law of the Sea and sometimes are expressly contrary to the 1982 United Nations Convention; (2) many differences in approaches exist in the legislation of coastal States on the 200-mile economic zones and there is no anticipated uniformity, which not only makes the work difficult of the organizations who engage in maritime fishing but also leads to various interpretations of the provisions of laws and respective articles of the 1982 United Nations Convention; (3) certain States, having consolidated in their national legislation as a whole provisions on the regulation of foreign fishing which are true to the 1982 United Nations Convention, obstruct their realization in any way possible for various reasons (economic, political, and others), and also apply discriminatory measures against fishing vessels of individual States or groups of States.

On the basis of an analysis of the legislation of a number of States certain developmental trends can be ascertained in the legislation of coastal States regulating fishing in their economic zones. Thus, of 60 States, virtually all of
them great maritime powers, the legislation of 41 States expressly authorizes the access of foreign fishermen to fishing resources on certain conditions; in 14 enactments nothing is said about fishing, and in five small countries the right to fish is granted only to local fishermen. It is evident from the said analysis that coastal States are concerned mostly with the regulation of fishing in their own zones, only an insignificant number of States having a short coastline expressly prohibiting foreign fishermen to have access to the fishing resources of their coastal areas. A significant part of the legislative acts requires further work and clarification, many being of a declarative character.

Some States before the issuance of licenses to foreign fishing vessels lay down a number of conditions. In accordance, for example, with the governmental decree of New Zealand of 20 March 1978 such licenses may be issued only after confirmation by the Minister of Fisheries of New Zealand of a fishing operations plan. This plan contains the following information: (a) areas of the exclusive economic zone of New Zealand in which fishing vessels of foreign States will fish; (b) proposed number of fishing vessels which will engage in fishing; (c) proposed time of entry of fishing vessels into the exclusive economic zone and departure therefrom; (d) proposed duration of plan for fishing operations; (e) draft of all planned operations to reload fish from fishing vessels of a foreign State to other vessels in the exclusive economic zone during the period of operation of the plan of fishing operations (including proposed number and type of such other vessels, and also the time and place of unloading); (e) draft of all planned operations to unload fish in New Zealand from fishing vessels of a foreign State during the period of operation of the plan for fishing operations.22

The granting of authorizations to foreign vessels for fishing in waters under the jurisdiction of Peru are regulated by a decree of the President, No. 07, of 30 April 1965. In order to receive authorizations to catch fish, foreign vessels must be entered in a register which operates for one year. The authorization operates for 100 days. Each vessel pays US$500 per net registered ton of the fishing vessel in order to be entered in the register. Requests to receive an authorization to fish are sent to the chief administration of ports and merchant marine of Peru or to empowered Peruvian consulates at ports where vessels are registered. All fishing activities effectuated by foreign vessels is controlled by the fisheries department of the ministry of agriculture, which dictates the limitations and prohibitions, as well as provisions of a

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technical character, which it considers to be most advisable for the purpose of conservation of fish resources.\(^{23}\)

An analysis of legislation in force in certain States of the Pacific Ocean region with regard to regulation of fisheries in economic zones enables one to conclude that a significant portion of the provisions on fishing binding upon foreign juridical and natural persons are contained not in the legislative acts of competent State agencies, but in subordinate acts, regulations, decrees, orders, and the like adopted in development and execution thereof.

It is established in the legislation of the majority of African States, having regard to the trends manifest during the work of the Third United Nations Conference on the Law of the Sea, that a coastal State exercises not sovereignty in the economic zone, but sovereign rights with respect to research, exploitation, conservation, and regulation of natural resources in the water column and on the seabed. This question has been so resolved, for example, in the legislation on the exclusive economic zone of the Islamic Federal Republic of the Comoro Islands, Kenya, Mauritius, Seychelles, Mauritania, and certain other States of Africa. A sharp distinction is drawn in the national legislation of these States regulating the legal regime of the exclusive economic zone between the sovereign rights with respect to the use, conservation, and management of all resources of the zone and the exclusive jurisdiction with regard to economic activities of States in the economic zone (construction of terminals, installations extending seaward, erection of artificial islands, and so on), scientific research, and protection of the environment.\(^{24}\)

This distinction between the extent of the rights of coastal States with respect to various types of activities in the economic zone corresponds in greatest measure to the provisions of the 1982 United Nations Convention, in particular Article 56, establishing the rights, jurisdiction, and duties of the coastal State in the exclusive economic zone.

At the same time, the legislation of certain African States (Djibouti, Ivory Coast, Nigeria) reflects the trend exhibited in some drafts submitted to the Third United Nations Conference on the Law of the Sea to declare not only sovereign rights, but also exclusive rights and exclusive jurisdiction of the coastal State in the exclusive economic zone with regard to all questions. According to Article 13 of the Law of Djibouti No. 52/AN 78, for example, this State possesses “sovereign and exclusive rights with respect to the conservation, research, exploitation, and management of renewable and nonrenewable natural resources and with respect to the production of electric power from water, currents, and wind”. That legislation, notwithstanding the 1982 United Nations Convention, legally consolidates the classification of the economic zone not as high seas with a special legal regime, but as a zone

\(^{23}\) Ibid., II, pp. 128-129.

\(^{24}\) Kovalev, note 10 above, p. 172.
sui generis, in which the coastal State is endowed with exclusive rights in regard to virtually all issues. In other words, the economic zone is unlawfully declared to be, in essence, a zone of national jurisdiction, or a national zone.

Especially illustrative in this respect is the Decree of the Federal Republic of Nigeria, No. 28, of 8 October 1978, which established the 200-mile economic zone. In accordance with Article 2(1) of that Decree, Nigeria exercises sovereign and exclusive rights both with respect to natural resources and with respect to the zone itself, that is, its water expanse, which is in manifest contradiction with the 1982 United Nations Convention (Article 56[1]). It should be noted in this connection that the United Nations Convention (Article 56) speaks not only about the jurisdiction of the coastal State in the economic zone, but about the functional jurisdiction, presupposing the exercise by this State of a limited amount of rights and prerogatives for special purposes. The rights of the coastal State, in accordance with this Article of the Convention, are rather extensive. But these extensive rights of the coastal State in the economic zone, established in strictly determined domains and in a strictly determined amount, do not signify the exercise by this State of sovereignty over the natural resources existing in this zone. One must note not only that these rights in the sphere of national jurisdiction are exercised to a lesser extent than in the sphere of operation of sovereignty (in the territorial sea, for example), but that they are distinct in nature and character from the rights based on sovereignty.

In addition, under Article 3(2) of the Decree, Nigeria may declare in the economic zone so-called ‘established areas’ for the purposes of the exploration, exploitation, conservation, and management of natural resources. The entry of a foreign vessel into such areas without the authorization of Nigerian authorities is prohibited. In the event of a violation of this Decree, the master or possessor of the foreign fishing vessel may be subjected to imprisonment. This provision of the Decree on ‘established zones’ is a departure from the 1982 United Nations Convention, which although it provides for the possibility of the establishment of ‘special zones’ (Article 121[6]), their establishment is subject to a number of conditions, the most important of which is approval of this measure on the part of a competent international organization. The possibility of applying punishment in the form of imprisonment for a violation of the Decree is contrary to the 1982 United Nations Convention, which does not provide for such punishments at all.

Unilateral actions with regard to the establishment of special jurisdiction of the coastal State in areas of the high seas adjacent to its territorial waters, intruding into the sphere of international law, must correspond not only to the basic developmental trends of the international law of the sea, but also to its basic institutions and norms. In accordance with the principle of the primacy of international law over municipal law, if in time the laws precede the
conclusion of a universal codification treaty, as is the 1982 United Nations Convention, those laws should, in our view, be brought into conformity with its provisions after the accession of the particular State to the treaty. A problem arises in this connection of great practical significance: in what instances should the provisions of a law conform entirely to the norms of a treaty, and in what instances may local conditions augment or develop them: the distinctive features of geographic position, size of stocks of living marine resources in the economic zone, historical links, and own possibilities to use them, and the like.

The legislative acts of certain States mentioned above show that coastal States are mostly concerned to regulate fishing in their economic zones. A small number of States with a short coastline expressly prohibit foreign fishing enterprises from access to living marine resources. A significant number of legislative acts need further clarification and are of a declarative character.

A great danger to the development of marine fishing, as noted above, are the limitations in practice, often of a purely political nature, that lead to incomplete utilization of the fish stocks of coastal States. The 1982 United Nations Convention enabled States endeavoring to retain the catch volumes in traditional fishing areas with the assistance of the conclusion of bilateral agreements with coastal States to have at their disposition new legal means based on a correct interpretation of its Articles.

In developing the legislation of coastal States on 200-mile economic zones one may discover many similar features. As a rule, the basic law containing general provisions on the nature of jurisdiction with respect to the economic zone and its resources is augmented by a series of subordinate normative acts, including regulations on foreign fishing. Whereas the law usually contains conditions for granting access to unused surpluses of fish stocks, the provisions on the powers of competent agencies and responsibility for a violation of the zone regime, the fishing regulations incorporate a range of limitations to be introduced by areas, fishing periods, implements, and so on. The national legislation of a majority of States establishes an entire system of measures with regard to the regulation and protection of fish resources, the determinative place of which is occupied by legal measures regulating the limits of the permissible behavior of subjects in their relations with resources of the World Ocean.

One means of such regulation is the establishment of limitations and prohibitions on the use of fish stocks that have been consolidated in normative acts containing both general provisions on limitations and prohibitions and specific measures. The general provisions on limitations and prohibitions come down to the following: (a) they must be consolidated in a legislative procedure; (b) have the purpose to protect and rationally use fish resources; (c) with their assistance effectuate the legal regulation of fishing; (d) the
prohibitions and limitations are various, and the forms, content, and conditions of application are determined by normative acts; (e) compliance with them is obligatory.

The list of specific measures with regard to the limitation and prohibition of use of fishing resources, although it differs from one State to another, also has general features that come down to: (a) limitation of areas for catching fish; (b) limitation on periods for catching fish; (c) prohibition or limitation on catching determined species of fish; (d) limitation of the commercial loading of fish resources; (e) limitation on the use of implements and means of fishing; (f) limitation on throwing fish back; (g) other types of limitations (for example, mesh-size of nets, group of persons or organizations having the right to fish).

All these types of limitations were provided for in legislation of the USSR and accordingly of the Russian Federation as the State-continuer with regard to fishing questions. The Law of the USSR “On the Protection and Use of Fauna” (Article 21) indicates that the protection of fauna (including fish resources) is ensured by means of establishing limitations and prohibitions in the use of fauna. Specific prohibitions and limitations have been established in the Statute on the Protection of the Economic Zone of the USSR of 30 January 1985, and the Statute on the Use of Living Resources of the Economic Zone of the USSR, and Also the Protection and Use of Stocks of Anadromous Species of Fish Forming in Rivers of the USSR and Beyond the Limits of the Economic Zone of the USSR, of 17 February 1986.

Measures with regard to fisheries management of the United States, according to a 1976 law on the conservation and management of fisheries resources, could be combined into three groups: quotas, permits (or licenses), and limitations on catch of fish resources or fishing conditions.\(^\text{25}\) To manage foreign fishing total catch quotas distributed by country were used. Quotas also were applied when regulating own United States fishing. Limitations on fishing conditions and permits were used only for certain specific types of fishing and could be of several types: (a) closure of an area for a determined period for a determined species of fish or implements; (b) introduction of seasons for certain areas, species of fish, or implements; (c) limitations on gear; (d) limitations on the size or sex of fish; (e) conservation of fish species prohibited to be caught.

The activities of foreign vessels fishing in a fisheries conservation zone of the United States fell under specific requirements, namely: the foreign State must conclude with the United States, before its vessels would be permitted to catch fish in the zone, an international fishing agreement. The same requirements are contained in the legislation of Australia, New Zealand, and a number of other States.

The measure most widely used in the United States for limiting the size of catches is closure, which may be regarded as a prohibition against fishing in a certain fishing area for a determined period. Closure may be year-round or short-term, be confined to the conservation of a certain species of fish or determined types of gear (for example, trawling or deep-water angling), or may encompass thousands of square miles of space.

Legislation of the United States thus provides for all the aforesaid measures used in legislation of the Russian Federation of a restrictive and prohibitive character.

The fishing regulations of Japan represent a system of provisions, part of which apply to coastal fishing (granting of rights to fish) and others to oceanic fishing (issuance of authorizations). In the last instance all fishing activity is under a general prohibition, but for special exceptions provided for by the conditions of the authorization issued. An authorization is therefore, on one hand, considered to be an exception from the general prohibitions and, on the other, is itself a form of limitation or prohibition. Such authorizations may establish: (a) prohibited areas (in determined places in order to coordinate coastal fishing operations the use of trawls, calceolarian seines, or catching of salmon is prohibited); (b) closed zones (in order to conserve resources and coordinate fishing operations among fishermen at certain periods of the year trawling on the high seas, small-scale trawling, and calceolarian seines are prohibited); (c) limitations or prohibitions with respect to vessels or equipment (includes limitations on the tonnage of vessels and engine capacity in small-scale trawling; regulations with regard to size of mesh or number of nets to be used when trawling in the Yellow Sea, East-Chinese Sea, and so on).

The Japanese regulations, unlike those of the United States, incorporate detailed limitations and prohibitions for each type of fishing; for example, the establishment of the maximum number of vessels for each class of tonnage, prohibited fishing areas, gear, seasons, size of catch, and so on. Measures, for example, have been worked out for the limitation and prohibitions of calceolarian fishing by large and medium-tonnage ships, which may be subdivided into three groups: the establishment of areas in which calceolarian fishing, tuna, scad, and mackerel fishing, and other types of fishing is prohibited; determination of prohibited implements (with specification of the types of implements and areas where their use is prohibited); establishment of types of fish resources prohibited for fishing (object, area, type of vessel). In addition, measures have been worked out in Japan for the limitation and prohibition of seabed trawling.

Foreign fishing in the economic zone of Japan is regulated by a number of articles of Law No. 31 on provisional measures for the conservation of re-
sources in the fishing zone of Japan, adopted in 1977. A certain procedure was established by the law for fishing by foreign vessels in the Japanese fishing zone. According to Article 6 of the Law, foreign persons may be permitted to fish for objects of marine fauna and flora only when they have an authorization of the Ministry of land, forestry, and fishing. Article 5 of the Law establishes the areas in which foreign fishing is prohibited. The Minister of land, forestry, and fishing by a special regulation determines the size of the admissible catch of the resources and establishes quotas (Article 7).

In accordance with legislation of Indonesia (Law on exclusive economic zone of Indonesia of 30 September 1983), the exploration or exploitation of living resources by foreign natural or juridical persons or by a State in a determined area of the exclusive economic zone of Indonesia is permitted only if the recovery of commercial species exceeds the possibility of Indonesian use thereof. In order to carry on such activities the executor must have an authorization of the Government of Indonesia, or this activity must be based on an international agreement concluded with Indonesia. An essential condition for such activity is fulfillment of the regulations on the management of natural resources of the Indonesian zone.

The legislation of Mexico contains a number of general provisions on limitations and prohibitions to be applied for the optimal regulation of fishing. Article 6 of a law clarifying the Constitution of Mexico (Article 27) concerning the exclusive economic zone provides that federal executive authorities shall take respective measures with regard to compliance with and conservation of living resources so as to avoid the threat of their excessive exploitation and determine the admissible commercial use of living resources in the exclusive economic zone. According to Article 13 of the Federal law on the development of fisheries of 10 May 1972, the establishment through the Ministry of Industry and Trade of zones for the exploitation of stocks, limitations on fishing (the times for conducting fishing, commercial species, and other parameters), the times and zones for extending prohibitions on catches, and also the determination of the minimum size and weight of commercial objects and amount of the catch thereof, is within its competence.

The said measures with regard to the regulation of fisheries in economic zones and the limitations and prohibitions in national legislation of coastal States find reflection, as a rule, in bilateral fisheries agreements. Restrictive measures, for example, connected with the regulation of fisheries off the

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26 See note 22 above, II, p. 311.
27 See note 22 above, I, p. 75.
28 Note 22 above, II, p. 28.
29 See note 22 above, II, p. 28.
Russian coast and the coast of Japan have been detailed in Russo-Japanese agreements on fishing off the coast of both countries signed on 7 December 1984 and in the Agreement on cooperation in fisheries concluded on 12 May 1985. The detail has been with regard to the following parameters: (1) types of fishing resources authorized for commercial use; (2) establishment of amounts of catch (quotas) for species of resources or fish, which are determined in tons and pieces by categories of vessel and fishing areas; (3) areas of catch adjacent to the coast of Russia and coast of Japan allotted for foreign fishing; (4) fishing periods; (5) application of determined implements and means for catching fish.

To the 1985 Agreement the Russian party has appended Rules concerning stocks of anadromous species of fish originating in the far eastern rivers of Russia in which the procedure has been determined for fishing for such anadromous species of fish by Russian and foreign vessels and management measures of a restrictive and prohibitive character.

Under conditions of the existence of 200-mile economic zones fishing cannot be properly managed without simultaneously taking into account biological and social factors and without cooperation with other interested States with regard to the study, rational use, and protection of living marine resources.

In this connection the final stabilization of international relations in the domain of marine fishing, in our view, is hindered by the positions of a number of developing States which sometimes fail to correspond not only to the basic trends of the development of international fishing law and its universal and regional norms, but also to the legislation of these countries themselves regulating foreign fishing in their economic zones. This is expressed, in particular, in the ignoring of principles consolidated in laws and bilateral agreements with these countries such as the principle of the optimal use of fish stocks of an economic zone, the principle of taking traditional fishing into account, and so on. Bilateral contractual relations in the domain of marine fishing with such States are not stable and are determined, as a rule, by political and economic relations as a whole existing between the States-parties.

Compliance with the principle of traditionality is, in our view, a definite criterion with whose assistance one may determine the gap between the formal incorporation in legislation of generally-recognized provisions on granting foreign fishermen access to fish stocks and the practice of that State. The duty of a coastal State to grant foreign States access to unused surpluses of the total admissible catch, which serves as the basis for negotiations with interested States, so far has not found sufficient reflection in national legislation.

At this stage the prospects for the development of fishing are retained in the economic zones of those States in relations with which the principle of
mutual advantage operates and where in connection with traditional forms of cooperation place is ceded to new forms of cooperation (creation of mixed companies, joint fishing, exchange operations in combination with fishing, and so on).

Coastal States usually manifest maximum caution when applying formulations which might even indirectly reflect their duties under international law. The absence, of course, in national legislation of any references to the duties of the coastal State does not mean that there are none at all or that they are not recognized by the State. But even taking this into account, it must be noted that such a legal duty of the coastal State as granting foreign States access to unused surpluses of the total admissible catch serving as the basis for negotiations with interested countries has not found proper reflection in the national legislation of many States.

The law of the sea in this respect is integrating the principles of economic development of States with the natural laws of development of existing marine life. We suggest in this connection that insofar as they are defined and brought into conformity with one another and applied within a complex system of respective international legal and municipal norms, the future of world fishing will depend on this. It is understandable that a special responsibility here lies on coastal States in whose legislation the concretization and development of the general principles and norms of the 1982 United Nations Convention is found. Regrettably, in the majority of instances the entire system of norms and rules applied by a coastal State to regulate and control foreign fishing is directed towards preventing damage to fisheries, collecting levies, and detecting and bringing offenders to responsibility. Rather rarely do these norms and activities of competent agencies correspond with regard to their application to the principal purpose for the fisheries management in an economic zone – the optimal use of fish stocks, as a result of which resources in some instances is undermined and, in others, underutilized. Both these phenomena may occur in the zone of the same coastal State and cause material damage not only to foreign, but also to local fishermen.

In connection with the aforesaid the question arises of the effectiveness of the 1982 United Nations Convention, in particular the provisions regulating marine fishing, and also how realistic and universal will be the participation of States in the Convention. This question originates, first, in the fact that not all States have signed and/or ratified the Convention and, second, that certain States do not want to recognize provisions agreed within the framework of the Third United Nations Conference on the Law of the Sea with regard to questions disadvantageous for themselves.

The question arises in this connection as to the lawfulness of the use by third States who have not signed or ratified the 1982 Convention of the rights and privileges arising from individual parts of the Convention and the failure to comply with obligations arising from other provisions thereof.
Here obviously one should separate the bindingness of the treaty with respect to third States from the duties of these States to respect international treaties, especially treaties of a universal character, affecting the interests of the entire international community. To put it otherwise, States not participating formally or actually in a multilateral treaty should not by their actions undermine the purpose and orientation of a treaty of that nature. Resolution of the question lies, in our view, in the respective interpretation and development of Articles 34-36 of the 1969 Vienna Convention on the Law of Treaties and in the normative consolidation of the lawful behavior of third States with respect to the multilateral treaty, the more so because the duty of third States to respect treaties concluded between other States arises from the basic principles of international law.

Additional Information

1. The provisions of the Agreement between the USSR and the United States on the line of delimitation of marine expanses of 1 June 1990 is in practice applied with a violation of the norms of international law and the national law of Russia. Russian fishing vessels violating, in the opinion of the American side, the demarcation line of economic zones in the Bering Sea are detained and inspected by ships of the United States Coast Guard, including on the high seas. Thus, on the night of 15-16 August 1997 the Russian trawler Chernaevo was detained by a United States patrol ship on the high seas far from the demarcation line of the economic zones. Twenty armed soldiers came on board the vessel, intruded into the cabin of the master, and demanded a change of course by 180 degrees. The Americans accused the master of the trawler of supposedly having entered the limits of their exclusive economic zone and of having engaged in poaching there. Other instances of similar behavior of American authorities in the Bering Sea have been recorded. The last time a Russian vessel was detained occurred on 5 September 2002. And only after interference by the Soviet of the Federation of the Russian Federation was the fishing vessel released.

2. In November 1997 the Republic of Saint Vincent and the Grenadines brought suit in the International Tribunal for the Law of the Sea against the Republic of Guinea in connection with the arrest by the Guinean authorities of the tanker Saiga and demanded its immediate release. In so doing the arguments of the plaintiff State basically came down to the fact that Guinea had violated Article 73 of the 1982 United Nations Convention on the Law of the Sea, according to which the coastal State when exercising its sovereign rights to resources of the exclusive economic zone has the right to arrest a ship which has proved to be in the waters of the zone or to take other measures with respect to it which it considers to be necessary. At the same time, it is obliged in the event of arrest or detention of a vessel, first, promptly to no-
ify the flag State of the action taken and, second, promptly release the ar-
rested vessel and crew upon the posting of reasonable bond or other secu-

Saint Vincent and the Grenadines believed that, first, after the arrest of
the tanker Guinea did not notify the arrest of the vessel to the flag State;
second, it continued to hold the vessel and part of its crew; third, the arrest
of the tanker was made in waters of the exclusive economic zone not of
Guinea, but of Sierra Leone.

These violations, in the opinion of the Plaintiff State enabled it to resort
to the procedure provided for by the 1982 United Nations Convention (Arti-
cle 292), according to which if one State detains a vessel sailing under the
flag of another State and does not fulfill the provisions of the Convention
concerning the prompt release thereof after the provision of reasonable
bond, the question of release of the vessel may be transferred after 10 days
from the moment of detention thereof for the consideration of the Interna-
tional Tribunal on the Law of the Sea.

According to Guinea, the arrest of the tanker conformed to norm s of in-
ternational law and its release can not be demanded on the basis of Article
73 of the 1982 Convention since operations relating to the supply of fuel to
other vessels occurred in waters adjacent to Guinea (less than 24 nautical
miles from Alcatraz Island). Guinea regarded the actions of the tanker as a
violation of its customs legislation, and not legislation on fishing in its exclu-
sive economic zone. The argument that the arrest was illegal because it oc-
curred in the waters of the economic zone of Sierra Leone was refuted by
Guinea, who asserted that the arrest was effectuated on the basis of Article
11 of the 1982 Convention as a result of 'hot pursuit'. Consequently, in
Guinea’s view the procedure of Article 292 of the 1982 Convention is not
applicable to the incident. The Tribunal should reject the suit of the Republic
of Saint Vincent and the Grenadines.

In additional arguments the Republic of Saint Vincent and the Grena-
dines pointed out that if the procedure of Article 292 of the 1982 Convention
is applicable to all instances of the lawful detention of a vessel provided in
the 1982 United Nations Convention, it must a fortiori apply to instances of
detention not provided for in the Convention.

The Tribunal first attempted to find an answer to the question: could one
regard the operations of a tanker with regard to the supply of fuel for fishing
vessels in the waters of the exclusive economic zone of another State as ac-
tivity which this other State has the right to regulate within the framework of
the exercise of its 'sovereign rights to the exploration, exploitation, conserv-
avion, and management of living resources in the exclusive economic zone'? The Tribunal pointed out that if this question is answered affirma-
tively, then a violation of legislation of the coastal State concerning the sup-
ply of fuel to fishing vessels would signify a violation of its legislation regu-
lating fishing and other activity in the waters of its exclusive economic zone. In this event the arrest of a vessel and demand for the release thereof after the provision of reasonable bond would fall under Article 73 of the 1982 Convention. And if the demand concerning prompt release of the vessel were not satisfied, the procedure of Article 292 of the 1982 Convention on the Law of the Sea would operate.

The Tribunal based its argument on the fact that operations relating to fuel supply are within the ambit of questions which are regulated by a State when exercising its sovereign rights in waters of its exclusive economic zone since fuel supply of fishing vessels under the legislation of Guinea is regarded as activity connected with fishing in waters of the exclusive economic zone. Therefore the Tribunal concluded that the arguments of the Plaintiff concerning a violation of Article 73 of the 1982 Convention were substantiated.

The objections of the defendant that in fact the tanker was guilty not of a violation of legislation regulating the regime of the exclusive economic zone, but of smuggling in waters adjacent to the zone of Guinea and that it was detained by way of ‘hot pursuit’ the Tribunal rejected, pointing out, first, that it was clearly reflected in the log on board the Saiga that the provision of fuel occurred beyond the limits of the zone belonging to Guinea and, second, Guinea itself acknowledged that the pursuit commenced only on the day following, after the completion of operations relating to fuel supply.

With respect to the defendant’s argument that the vessel was not released because the plaintiff did not provide bond, the Tribunal pointed out that the requirement concerning prompt release did not obligatorily ensue only after the provision of bond since bond might be revoked, or its provision might prove to be impossible, or it may not be provided for in the legislation of the coastal State.

However, in all these instances the vessel and crew must be released. Since Guinea did not even notify the detention of the vessel to the flag State, refused to discuss this question, and did not release the vessel and crew upon the expiry of the 10-day period, the Tribunal could not deem the Plaintiff to be guilty of the failure to provide bond.

Proceeding from the foregoing, the Tribunal on 4 December 1997 recognized the suit of Saint-Vincent and the Grenadines to be substantiated and ruled that Guinea was obliged promptly to release the vessel together with the crew in accordance with Article 73 of the 1982 United Nations Convention.\textsuperscript{30}

6. Continental Shelf

1 Concept of Continental Shelf

By continental shelf from the geographical point of view is understood the underwater extension of the mainland seaward up to its sharp precipice or transition into a continental slope. From the international legal point of view the continental shelf is understood to be the area of the seabed, including the subsoil thereof, extending from the outer boundary of the territorial sea throughout the entire extension of the natural continuation of the land (mainland or island) territory of States up to the limits determined by international law, over which the coastal State exercises sovereign right for the purposes of the exploration and exploitation of its natural resources.

The concept of “continental shelf” emerged in the practice of international relations at the outset of the twentieth century. In 1916 Russia, substantiating its sovereign rights to certain islands in the Northern Arctic Ocean (Henrietta, Uedinenie, and others), declared that those islands are a continuation northward of the Siberian continental platform.¹ Later this concept was used by coastal States as substantiation for their claims to the natural resources of underwater marine expanses for the purpose of their appropriation. The emergence of technical possibilities to explore and exploit natural resources in the subsoil of the continental shelf facilitated this process. The tone was set by the United States on this issue, which published on 28 September 1945 the Proclamation of the President of the United States, Harry S. Truman, No. 2667, on the policy of the United States with respect to natural resources of the subsoil and surface of the continental shelf. This Proclamation provided, in particular, that

¹ See V. L. Lakhtin, Права на северные полярные пространства [Rights to Northern Polar Expanses] (M., 1928).
the Government of the United States regards the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States subject to its jurisdiction and control. 2

The United States thus unilaterally declared the natural resources of the continental shelf adjacent to its coasts to be its ownership, by stating that these resources are under its power, the extent of which was not determined in the Proclamation.

After the Truman Proclamation there followed a series of similar unilateral claims of States not only to the natural marine resources of the continental shelf, but to the shelf itself and superjacent waters. In 1946 Argentina issued a decree on the continental shelf in which sovereignty was claimed to the continental shelf and superjacent waters. In that same year Panama issued a national act in which claims were expressed to the products of marine fishing within the limits of the continental shelf. Similar claims to the continental shelf and superjacent waters were laid down in the legislation of other Latin American countries (Chile in 1947; Peru in 1947; Costa Rica in 1950; Brazil in 1950; Honduras in 1950; Nicaragua in 1950; Ecuador in 1951, and others).

The danger of appropriation of the seabed by individual States as a result of such a division of the continental shelf, the discovery of significant reserves of oil and other natural resources in the subsoil of the continental shelf of many coastal States, and the creation of technological possibilities enabling these resources to be exploited at ever greater depths advanced a number of legal problems. The most urgent became the spatial extension of sovereign rights of coastal States to the exploration and exploitation of natural resources of the continental shelf.

In this connection the International Law Commission was charged to prepare draft legal rules relating to the continental shelf. The final draft prepared by it, the basis of which was granting to the coastal State “sovereign rights over the continental shelf for the purposes of exploration and exploitation of its natural wealth” was submitted for consideration of the First United Nations Conference on the Law of the Sea.

At the Conference, the proposal of the International Law Commission was subjected to criticism by several countries. On one hand, the most technologically-developed States (Germany, Japan, and others), referring to international law, insisted on the absence of any right of the coastal State to the continental shelf beyond the outer limits of the territorial sea. Representatives of a number of Latin American States, on the contrary, favored an ex-

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pansion of the rights of the coastal State to the shelf and elimination of the principle of the freedom of the high seas in the superjacent waters.³

Understandably, these extreme positions of individual States did not receive the support of the majority of States.

As a result of extended discussions at the Conference and the bringing of the positions of States concerned into concordance, the 1958 Geneva Convention on the Continental Shelf was adopted, at the basis of which lay the position that “the coastal State exercises sovereign rights over the continental shelf for the purposes of the exploration and exploitation of its natural wealth”. The exclusive character of these rights was thereby legislatively consolidated, as was the right of the coastal State to adopt laws and regulations concerning the adjacent continental shelf, as well as measures with regard to compliance with them. At the same time, the Convention limited these sovereign rights of coastal States to certain specifically specified purposes, which excludes the possibility of an extensive interpretation of those rights. Coastal States possess these rights on a permanent basis, irrespective of any factors except those which have been specified in the Convention. In particular, Article 2 of the Convention expressly indicates that

... if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

Moreover, the rights of the coastal State to the continental shelf do not depend on occupation, effective or notional, or on any express proclamation (Article 2(3), 1958 Convention).

According to the 1958 Geneva Convention (Article 1), the continental shelf is the surface and subsoil of the seabed of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. Thus, three criteria underlie the definition of the continental shelf: the depth of the superjacent waters of the shelf (200 meters), the possibility of developing the natural wealth of the shelf, and the proximity or adjacency to shore.

These criteria contained in the definition of the continental shelf virtually exclude the possibility of unlimited extension by coastal States of rights to the exploration and exploitation of seabed resources.

However, as noted in a report on oil resources of the subsoil of the ocean bed prepared in 1969 by the United States National Council on Oil and Gas, this definition of the continental shelf does not contain precise criteria for the outer limit of the continental shelf, and the criterion of a 200-meter depth of

the superjacent waters of the shelf is inconsistent with the criterion of ‘possibility of development’. Whereas when preparing the draft Convention the development of continental shelf resources beyond the 200-mile limit was unlikely, with the development of technology the criterion of ‘possibility of development’ became inconsistent with the criterion of the depth of superjacent waters.

The criterion of ‘proximity to the coast’ was not defined precisely in the 1958 Geneva Convention. This criterion was treated by a number of members of the International Law Commission (representatives of the United States, England, certain countries of Latin America) as the possibility of the exploitation of natural wealth not only of the continental shelf but of areas within reasonable proximity to the coast of the State. Representatives of a number of other States at the Conference (in particular, the representative of the Dominican Republic) insisted that the criterion of proximity to the coast be the decisive criterion, and the “exploitation of resources beyond the limit where proximity terminates not be covered by the provisions of the convention”.  

The criterion of proximity to the coast introduced in the convention definition of the continental shelf is a departure from the geological concept of the shelf which, in our view, is justified from the standpoint of the interests of States not having a continental shelf in the geological understanding thereof or whose shelves extend a small distance from the coast (for example, States of the Persian Gulf, Africa, Nepal, Bolivia, and others).

Various interpretations of the definition of the continental shelf laid down in the 1958 Geneva Convention have conditioned the need for working out a more precise definition of the continental shelf and the limits of its outer boundary which would take into account in equal degree the interests of all coastal States, including States not possessing a geological shelf.

2 Outer Boundaries of Continental Shelf

The introduction into the international law of the sea of the conception of the continental shelf was a consequence of the activities of States relating to the exploitation of seabed resources. Initially arising as a result of the unilateral claims of a number of States, this concept, having received extensive support, was simplified into a treaty rule of international law in the 1958 Geneva Convention on the Continental Shelf. According to this Convention, the sovereign rights were recognized for coastal States to explore and exploit natural resources of the surface and subsoil of the seabed in areas adjacent to

4 UN Doc. A/Conf. 13/42, p. 9.
the coast but beyond the territorial sea up to a depth of 200 meters or beyond that limit up to the place to which the exploitation of such resources is possible.

Such international-legal regulation of the activity of States with regard to the exploitation of seabed resources in coastal waters of the high seas on the basis of the conception of the continental shelf in principle meets the requirements for the exploitation of natural resources of the seabed. The regulation of the use of the wealth of the continental shelf on this basis ensured international legal order in connection with the development of oil and mineral resources on the shelf, averted conflicts between States in connection with the exploitation of these resources, and also defended the economically weak States which possess rich continental shelf resources against economic pressure on the part of economically strong States.

However, scientific-technical progress facilitated the growing possibilities for the exploitation of resources of the seabed at depths exceeding the 200-meter mark. At the XXII Session of the United Nations General Assembly in 1967 this question was put at the initiative of Malta on the legal regime of the bed of the seas and oceans beyond the limits of national jurisdiction and, accordingly, on the international legal regulation of the exploitation of resources in those areas. In particular the question was raised as to the delimitation of seabed areas falling under national jurisdiction and those deep-water areas of the bed with respect to which a new international-legal regime should be worked out on the basis of the ‘common heritage of mankind’, which would exclude the subordination of the seabed to the sovereignty of coastal States or extension of their sovereign rights to seabed resources.

Since the rights of States to natural resources of the seabed in the definition contained in the 1958 Geneva Convention in comparison with other types of national jurisdiction operated, as a rule, at the greatest distance from shore, one was speaking about clarifying the outer boundary of the continental shelf, beyond which would be the “bed of seas and oceans beyond the limits of national jurisdiction”.

Many States were interested in such a division of the two zones of the seabed and were ready to use combined criteria for these purposes – combining depth with distance from shore. This approach took into account the differences in configuration and structure of the seabed as a continuation of the mainland of the coastal State. Differences in the length of the shelf zone in various parts of the globe vary from several dozen to several hundred miles. Moreover, in many marine basins a shelf in the geological meaning does not exist at all. The application of such a combined criterion for dividing the two seabed zones would have granted the right to the coastal State itself to choose between depth or distance from shore and thereby resort to that method of delimitation of the outer boundary of the continental shelf which most fully meets the interests of that State and guarantees sovereign rights to
natural resources of the seabed in coastal waters determined to be inalienable in the 1958 Geneva Convention.

Having regard to various interests of States with shelves that vary in breadth, for a long period of time, virtually throughout the Third United Nations Conference on the Law of the Sea, a mutually-acceptable resolution of the outer limit of the continental shelf could not be found. The group of States with a broad shelf or long coastline, as well as a number of island States, favored a resolution of the issue on the outer limit of the shelf under which coastal States would enjoy sovereign rights to seabed resources throughout the entire extent of submarine margin of the mainland up to the abyssal zone or valley of the World Ocean. These States subjected to criticism the 1958 Geneva Convention on the Continental Shelf for the lack of geomorphological criteria therein as the foundation of the international legal concept of continental shelf, and also for accentuating attention on the concept of the ‘natural prolongation’ of the territory in substantiation of the rights of coastal States not only to the continental shelf adjacent to their coast, but also to the remaining part of the submarine margin of the mainland. However, international law in force, in particular the 1958 Geneva Convention, did not provide for nor assume even indirectly the possibility of extending the Convention to the entire submarine margin of the mainland. Landlocked States, in particular, pointed to this and attempted to achieve serious revisions of prevailing international legal norms on the continental shelf for the purpose of receiving rights equal to those of coastal States to exploit natural resources of the shelf. The majority of States were nonetheless interested in retaining the existing international legal regime of the continental shelf.

Under these conditions the sole acceptable resolution of the continental shelf problem could only be achieved by an arrangement which, having affirmed the conception of the continental shelf, at the same time brought it closer on the basis of a reasonable compromise to the aforesaid extreme positions of States on this issue. After lengthy debates at the Third United Nations Conference on the Law of the Sea a compromise was found and consolidated in Article 76 of the 1982 United Nations Convention.

Initially point 1 of this Article of the Convention provided:

The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance.

This definition takes into account the shortcomings of the definition of the continental shelf formulated in the 1958 Geneva Convention and provides to the coastal State the possibility to establish the outer boundary of the conti-
continental shelf beyond the limits of 200-nautical miles from baselines when the shelf adjacent to its coast together with other parts of the continental margin (continental slope, for example) go beyond the limits of that distance.

Where the submarine margin of the mainland extends to more than 200 nautical miles from baselines, the coastal State in accordance with Article 76(4) establishes its outer boundary with the assistance of straight baselines by reference to fixed points not more than 60 nautical miles from the foot of the continental slope. These fixed points comprising the line of the outer limits of the continental shelf on the sea-bed should be not more than 350 nautical miles from baselines from which the territorial sea is measured, nor farther than 100 nautical miles from the 2500 meter isobath, which is the line connecting the depth of 2500 meters (Article 76[5]). On submarine ridges “the outer limits of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured”. This multicomponent and complex definition of the concept of the continental shelf adopted in the 1982 United Nations Convention is to be explained, as Barsegov correctly notes, by the need to take into account the interests of States having a narrow shelf and States possessing a broad continental margin, as well as States making claims to receive high revenues from the exploitation of mineral resources from the deep-water seabed and landlocked States.5

Establishment of the boundaries of the continental shelf is in accordance with the 1982 United Nations Convention (Article 76) and Annex II thereto the prerogative of the coastal State. The State, however, is obliged to submit data on the boundaries of the continental shelf beyond the limits of 200 nautical miles from baselines to the Commission on the Limits of the Continental Shelf created in accordance with Annex II on the basis of equitable geographical representation. The boundaries of the shelf established by a coastal State may be considered to be final and binding upon other States only if they have been established on the basis of recommendations of the said Commission (Article 76[8]).

Where a coastal State intends to establish boundaries of its continental shelf beyond limits of 200 nautical miles it shall submit particulars to the Commission connected with such limit confirmed by geophysical, seismic, and geological data within 10 years from the day of entry of the 1982 United Nations Convention into force (Article 4, Annex II, 1982 United Nations Convention). Since the collection and preparation of necessary data to substantiate the shelf boundaries beyond the limits of 200 nautical miles require large financial expenditures and time, developing States of the Pacific Ocean Forum (Fiji, Marshall Islands, Micronesia, Nauru, Papua and New Guinea,

Samoa, Solomon Islands, Tonga, and Vanuatu), supported by Australia and New Zealand, applied in April 2001 to the Secretariat of the Commission on the Limits of the Continental Shelf with a request to extend the period for submitting applications to establish the boundaries of the continental shelf exceeding 200 nautical miles, referring to the lack of financial resources to prepare the necessary data.

The said States, acting in the name of developing States as a whole, requested the Commission to: (1) extend the 10-year period established in Annex II of the 1982 United Nations Convention; and (2) establish that the 10-year period for any State should not commence irrespective of the date of ratification or accession of this State to the 1982 United Nations Convention.

This question was considered at the eleventh meeting of States-parties to the 1982 United Nations Convention. The majority of delegates agreed with the arguments presented by the developing States and approved the establishment of a 10-year period beginning from May 1999 for calculating the filing of applications to establish boundaries of the continental shelf beyond the limits of 200 nautical miles. This date operates also for States for which the 1982 United Nations Convention entered into force before 13 May 1999.

The first application to the Commission on the Limits of the Continental Shelf for the establishment of shelf boundaries beyond the limits of 200 nautical miles was submitted in 2002. The Commission confirmed the recommendation for this State with regard to establishing the outer boundary of the shelf. A fund was created at this same meeting to ensure the preparation of necessary documentation for countries needing financial support for this purpose.

The Russian Federation referred the application for the boundaries of its shelf through the Secretary-General of the Commission on 20 December 2001.

3 Legal Regime of Continental Shelf

The legal regime of the continental shelf was worked out for the first time at the First United Nations Conference on the Law of the Sea and found legal consolidation in the 1958 Geneva Convention on the Continental Shelf.

This Convention contains provisions which provide, first, for the recognition of the sovereign rights of the coastal State to explore and exploit the natural resources of the shelf; second, a precise special-purpose limitation and recognition of the exceptional character of these rights in the sense that no other State or its natural and juridical persons has the right to effectuate the exploration and exploitation of natural resources of the shelf without the
express consent of the coastal State even if it does not engage in this; sixth, confirmation of the status of superjacent waters of the shelf as high seas with the exercise therein of the generally-recognized freedoms of navigation, fishing, overflight, laying of cables and pipelines, and so on; fourth, the establishment of an authorization procedure for the conducting of scientific research on the shelf by other States.

All these provisions characterizing the legal regime of the continental shelf were taken as the foundation when considering the problems of the continental shelf at the Third United Nations Conference on the Law of the Sea. All provisions of the 1958 Geneva Convention on the Continental Shelf were critically assessed by taking into account modern requirements for legal order on the seas and oceans, which ultimately conditioned the convocation of the Third United Nations Conference on the Law of the Sea. Certain of these requirements were sufficiently substantiated and supported by the participants of the Conference, which led to the augmentation, clarification, and even change of certain fundamental provisions of the 1958 Geneva Convention.

For example, the norm of the 1958 Convention concerning the legal status of superjacent waters and the rights and freedoms of other States was augmented by a provision that the exercise of the rights of the coastal State with respect to the continental shelf should not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States. The provision of the 1982 United Nations Convention (Article 78) in this form guarantees more fully the rights and freedoms of all States, is more precise, and encompasses a broader group of questions in comparison with the 1958 Geneva Convention, Article 5 of which provides that the exploration and exploitation of the shelf

… must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research ….

The fundamental provision of the 1958 Geneva Convention on the inadmissibility of causing damage to the principle of freedom of the high seas in waters superjacent to the continental shelf was materially expanded.

The 1982 United Nations Convention (Article 79) significantly expanded upon the 1958 Geneva Convention concerning the laying of submarine cables and pipelines. The reference in the 1958 Geneva Convention to the inadmissibility of the creation by a coastal State of impediments to the laying or maintenance of such cables or pipelines on condition of compliance with the rights of a coastal State to explore and exploit shelf resources was clarified in the 1982 United Nations Convention (Article 79) with respect to the
conditions for laying cables and pipelines. It is established in this Article, in particular, that the delineation of the course for the laying of pipelines on the shelf is effectuated with the consent of the coastal State, and the laying is conducted with due account of cables and pipelines already laid. The participation of the coastal State in determining the course for laying cables and pipelines enables, on one hand, the damaging of existing cables and pipelines to be averted and, on the other, optimal conditions to be chosen for laying cables and pipelines by taking their safety into account. In the 1958 Geneva Convention the question of ensuring the safety of cables and pipelines was not properly resolved because of the insignificant scale of laying them.

The 1982 United Nations Convention, unlike the 1958 Geneva Convention, contains a special provision, “drilling on the continental shelf” (Article 81), which grants to the coastal State the exclusive right to resolve and regulate drilling work on the continental shelf for any purposes. The inclusion of this provision in the 1982 United Nations Convention is explained by the fact that drilling serves, in essence, as the principal means for the exploration and exploitation of the shelf since data obtained with the assistance of drilling might be used against the coastal State.

Also new in the 1982 United Nations Convention are provisions on payments and contributions with respect to the exploitation of the shelf beyond 200 nautical miles (Article 82). A coastal State makes the following payments or contributions in kind in respect of the exploitation of mineral resources of the shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured: for the sixth year of extraction 1% of the value or volume of the production on the site, with an annual increase thereof by 1% for each subsequent year until the twelfth year, after which the amount thereof remains at 7%. Such payments are made through the International Seabed Authority, which distributes them among the States-parties to the 1982 United Nations Convention on the basis of equitable sharing criteria, taking into account the interests of developing countries, especially landlocked countries. The provision of the 1982 United Nations Convention on payments and contributions ensures the creation of a fund and partial compensation to States not having a broad shelf.

Unlike the 1958 Geneva Convention, the 1982 United Nations Convention (Articles 208, 214) contains detailed norms on the prevention of pollution on the shelf caused by activity of the coastal State on the seabed of the shelf up to its outer limits. In addition, measures are provided for in the 1982 United Nations Convention (Articles 210, 216) for the prevention of pollution by dumping of wastes or other materials in territorial waters, economic zone, and on the shelf. In order to prevent pollution of the shelf within 200 miles from the coast, the 1982 United Nations Convention provides for such measures as the creation of special areas for the prevention of pollution ap-
applicable to polluting ships, measures for inspection, including the detention of the vessel, and also the adoption and ensuring of compliance with national laws and regulations for the prevention of pollution in ice-covered areas (Articles 211, 220, and 234).

Despite the fact that the 1982 United Nations Convention provisions concerning the legal regime of the shelf were agreed and approved by the participants of the Third United Nations Conference on the Law of the Sea, a number of States when signing or ratifying the Convention made statements regarding the invalidity of these provisions for them. About 30 States during the Third United Nations Conference up to the 1990s adopted laws and regulations relating to their own continental shelf. But the provisions of many legislative acts differed from the respective provisions of the 1982 United Nations Convention and insufficiently fully and precisely regulated the various elements of the legal regime of the continental shelf. Some of these laws contained basically provisions of a declarative nature defining the rights of the coastal State with respect to its shelf only on the general plane (for example, the Law of Senegal of 1 April 1976; the law of New Zealand of 26 September 1977; the decree of Haiti of 8 April 1997; the law of Colombia of 4 August 1978, and others).

Certain States regulated in their normative acts only individual aspects of activities on the shelf. The provisions in particular of the Act of Great Britain of 17 June 1976 concerned principally issues of establishing safety zones around installations and structures on the continental shelf.

The legislation of many States (Burma, Seychelles, Guyana, Mauritius, Sri Lanka, and others) contains norms providing for the possibility of creating special areas on the shelf and in the superjacent waters with a limitation on navigation therein. A departure from the continental shelf regime established by the 1982 United Nations Convention also is the measures of punishment provided for by the legislation of some States for a violation of the shelf regime, including the arrest of vessels and imprisonment of crew members. The law of Pakistan, in particular, provides imprisonment for a term of up to three years for such violations, and laws of Mauritius and the Seychelles, up to five years.7

The analysis above of the legislation of certain States concerning the regime of the continental shelf testifies to the fact that we confront a lengthy and complex process of bringing national legislation into conformity with the respective provisions of the 1982 United Nations Convention concerning these issues.

It seems necessary in this connection to ensure international control over the fulfillment by States which have signed and ratified the 1982 United Na-

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tions Convention and the obligations assumed with respect to the continental shelf. International control over the fulfillment by States of international obligations is effectuated by the States themselves and by international agencies, international organizations, control missions founded within the framework of the United Nations and created for this purpose, and also in other forms.\

The optimal type of control applicable to the legal regime of the continental shelf is, first, control by the States themselves and, second, control on the part of the International Seabed Authority.

Legal norms establishing determined stages of international control are absent in international law. However, it might be approached through the adoption by States themselves and respective international agency of recommendations and prescriptions with regard to bringing national legislation concerning the continental shelf into conformity with the 1982 United Nations Convention. The provisions of this Convention regulating the legal regime of the continental shelf meet the interests of both the coastal States and the international community as a whole, promote progress in the exploration and exploitation of marine wealth without violating in so doing generally-recognized rights and freedoms of other States with regard to the use of the expanses and resources of the World Ocean.

4 Delimitation of Continental Shelf between States with Opposite and Adjacent Coasts

The principles of delimitation of the continental shelf between States are contained in the 1958 Geneva Convention on the Continental Shelf. According to this Convention (Article 6),

where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

Where “the same continental shelf is adjacent to the territories of two adjacent States … the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured”.

It follows from the above provisions of Article 6 of the 1958 Geneva Convention on the Continental Shelf that delimitation of the shelf between coastal States must be effectuated either on the basis of agreement, or on the basis of the median line principle, or the principle of equidistance. In addition, when delimiting the shelf ‘special circumstances’ which influence the application of the said principles must be taken into account.

Negotiations of a number of States having a common continental shelf concerning its delimitation on the basis of the median line or equidistance concept have not always ended with agreements of the parties since one of them insisted on the principle of equidistance and the other demanded deviations from this line by reason of ‘the existence of special circumstances’. Moreover, even after eighteen years lapsing since the adoption of the 1982 United Nations Convention, Article 6 of the 1958 Convention on the delimitation of the continental shelf has not been extensively applied. In all justice it should be noted that the methods of delimitation are used by States that are not parties to the Convention. In practice certain States make reference to the principles of equity.

In this connection it should be taken into account that in accordance with the 1958 Geneva Convention (Article 6) the median line and equidistance principles can not always be taken into account. This method can not be used, in particular, when there are special circumstances (for example, historical legal grounds, factors of an economic, geographical, geological, and geomorphological character, and so on) and when the use of this method would not correspond to the principle of equity.

The experience of applying the 1958 Geneva Convention on the Continental Shelf has shown that Article 6 inadequately made provision for precise legal relations with regard to delimitation and needed changes and additions.

The International Court of Justice plays an important role in generalizing the practice of States and developing the ideas of delimitation. In the decision of the Court of 20 February 1969, for example, on the continental shelf in the North Sea between Denmark and Holland, on one side, and Germany, on the other, it was indicated that the 1958 Geneva Convention could not be applied to the dispute. The Court, in particular, decided that since the equidistance method of delimitation of the continental shelf is not obligatory as between the parties, the

delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as

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to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.\textsuperscript{10}

An important conclusion was drawn in this decision of the Court, that there was no single method of delimitation of the continental shelf the use of which is in all circumstances obligatory. The primary significance of agreement of States to delimit the shelf was emphasized.

The question of delimiting the continental shelf was discussed at the Third United Nations Conference on the Law of the Sea. Underlying the unofficial text submitted to the Conference were the provisions of Article 6 of the 1958 Geneva Convention on the Continental Shelf, State practice with regard to shelf delimitation, and decisions of the International Court of Justice. The question of delimitation of the continental shelf was combined at the Conference with the issue of delimiting economic zones.

During the Conference various, sometimes directly opposed, positions of several groups of States who were concerned with the delimitation emerged. One group, for example, of 29 States favored delimitation of the continental shelf on the basis of the principle of equity. Another group of 22 States insisted that the sole method for delimiting the shelf was that of equidistance.

The positions of various groups of States at the Conference were approximated with great difficulty.\textsuperscript{11} Ultimately, as a result of prolonged negotiations the participants of the Third United Nations Conference on the Law of the Sea agreed on the basis of a ‘package’ deal the principles of delimiting the continental shelf and the economic zone, as well as the procedure for the settlement of disputes arising in the course of such delimitation. These principles encompass the delimitation of the continental shelf and economic zone and come down to the following: (1) delimitation is effectuated by agreement on the basis of international law in accordance with Article 38 of the Statute of the International Court of Justice for the purpose of achieving an equitable solution; (2) until the conclusion of an agreement the States concerned undertake efforts to reach a temporary arrangement on delimitation.

These principles also in essence underlay Article 83 of the 1982 United Nations Convention, which provided:

\textsuperscript{10} For details, see I. P. Blishchenko, \textit{Прецеденты в международном праве} [Precedents in International Law] (M., 1977), pp. 113-121.

The delimitation of the continental shelf 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.

The adoption of the said formula of delimitation was the consequence of a compromise between two groups of States: on one hand, those who insisted that the median line be the principal criterion of delimitation and only when this was justified would any special circumstances be taken into account and, on the other hand, those who favored delimitation being effected in accordance with the principle of equity, having regard to all respective circumstances and with the use, as appropriate, of any other methods of delimitation, including the median line.

Therefore, according to the 1982 United Nations Convention, States are obliged to resolve issues of delimitation of the continental shelf first by means of agreement, being guided in doing so by the principle of equity.

The International Court of Justice proceeds, when considering disputes of States connected with the proximity of their marine expanses, in particular disputes arising when delimiting the continental shelf, from those principles. For example, the dispute on jurisdiction over the continental shelf between Guinea and Guinea-Bissau was decided on the basis of equity with regard to all circumstances, the significance of the shelf for the parties in dispute, and the configuration of the continental shelf.

Disputes periodically arise between Turkey and Greece over the continental shelf in the Aegean Sea, where there are a large number of islands, mostly belonging to Greece. The International Court of Justice in 1978 considered such a dispute in connection with the discovery of oil and gas deposits in the northwestern part of the Aegean Sea. Both sides claimed the right to search for oil in the same areas. Turkey proceeded from the fact that the continental shelf also of islands is a natural prolongation of the Anatolian mainland, and the Greek islands, in its view, partially overlap the Turkish shelf. The dispute was decided also on the basis of the principles of equity and regard to the significance of the shelf for the parties in dispute.

At the moment there exist disputed issues and claims of various States concerning economic issues connected with the continental shelf. Characteristic in this respect is the dispute of six States in southeast Asia: China, Taiwan, Brunei, Malaysia, Philippines, and Vietnam with regard to the affiliation of the Paracel Islands and the Spratley Islands in the South China Sea, which consist of a large number of small islands and reefs. Rich deposits of oil and gas have been discovered in the area of the Spratley Islands.

Ukraine also has disputes issues concerning jurisdiction over marine expanses. One such issue concerns the status of Zmeinyi (Fidonisi) Island. The continental shelf of this island, belonging to Ukraine, contains significant oil and gas reserves. Romania suggests that Zmeinyi is a rock, which can not
have another status. If the Ukrainian-Romanian negotiations underway do not lead to a mutually-acceptable solution, the dispute between the two States obviously will be referred to the International Court of Justice.\textsuperscript{12}

**Additional Information**

*Under a treaty between the Federal Republic of Germany and the Netherlands of 1 December 1964 and a treaty between the Federal Republic of Germany and Denmark of 9 June 1965, the parties determined the boundary of the continental shelf only close to the shore. As regards the remaining part of the shelf, the parties, without coming to a single view, on 2 February 1967 concluded a special agreement on referral of the dispute to the International Court of Justice.*

The Government of the Federal Republic of Germany took the following positions: (1) Article 6(2) of the 1958 Convention on the continental shelf in which the principle of equidistance was consolidated could not apply to Germany since it had not ratified the Convention; (2) the method of delimitation of the continental shelf on the basis of the principle of equidistance could not in the absence of agreement on this question be considered to be a customary norm of international law; (3) delimitation of the continental shelf in the North Sea should be effected on the basis of the principle of equitable distribution of the shelf among all the coastal States, the entire shelf of the North Sea being regarded as in common possession, and therefore each State has a right to a just share; (4) the method of dividing the shelf should be sectoral, calculated from a single point or from a median line passing through the North Sea.

The Governments of Denmark and the Netherlands took the following positions: (1) in this case it is necessary to use the principle of equidistance since it had become a norm of customary international law. Despite the fact that Germany had not ratified the 1958 Geneva Convention, it all the same was bound by its provisions in view of the official statement of Germany concerning consent to the Convention and the absence of reservations on its part to Article 6 of the Convention; (2) delimitation of the shelf should depend only on the configuration of the coastlines of Denmark and Germany in their relationship to one another and, correspondingly, of the Netherlands and Germany. The question of the boundaries of the continental shelf must be considered separately between Germany and the Netherlands and between Germany and Denmark.

\textsuperscript{12} For details, see I. V. Lukshin, “Международно-правовой режим Мирового океана и нерегулированные вопросы суверенитета государств” [International Legal Regime of World Ocean and Unresolved Questions of Sovereignty of States], Право и политика [Law and Policy], No. 2(26) (2002), p. 66.
The principal disputes during the consideration in the Court of this case raised two questions: (a) was the theory of proportional distribution applicable; (b) was the principle of equidistance of the boundaries of a continental shelf a norm of general international law.

The International Court of Justice rejected the theory of proportionality advanced by Germany as being contrary to the basic norms of law with respect to the continental shelf. The Court stressed that the right of a coastal State with respect to an area of the continental shelf comprising a natural prolongation of its territory under the sea is undoubted by virtue of sovereignty of a State over its territory.

As regards the provisions of the 1958 Geneva Convention being binding on Germany, the International Court of Justice considered that Germany, in view of the fact that it had not ratified the Convention, could not be bound by its provisions and was not obliged to comply with Article 6 of the Convention.

It also was noted in the decision of the International Court that the principle of equidistance of the boundaries of the continental shelf could not fully conform to the provision concerning the natural prolongation since the application of this principle in practice could form areas of the shelf which were a prolongation of the territory of one State but relating to another State.

On the issue of the method of delimitation, the Court came to the conclusion that: (a) use of the equidistance method was not obligatory for the parties to the dispute; (b) there was no other single method of delimitation whose use was obligatory in all circumstances.

Taking into account the above, the International Court decreed that: the delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of the land territory of the other party. 13

The Court also pointed to the need for taking equitable principles into account at the time of dividing the continental shelf, it being one of the most important principles of contemporary international law.

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7. Seabed Beyond Limits of National Jurisdiction

1 Conception of ‘Common Heritage of Mankind’

The development of new technologies for the exploration for and recovery of minerals and the improvement of economical methods for the exploitation of resources of the seabed have conditioned the need for special legal regulation of seabed resources and determination of the legal status of the seabed beyond the limits of national jurisdiction.

The conception of international legal regulation of the activity of States with regard to exploitation of the seabed beyond the limits of national jurisdiction according to which the seabed of the World Ocean and its resources (under the terminology of the 1982 Convention – the ‘Area’) is the ‘common heritage of mankind’ was first advanced by the Ambassador of Malta, Arvid Pardo, at the session of the United Nations General Assembly in 1967. On 17 December 1970 the United Nations General Assembly adopted with regard to the results of the work of the Sea-Bed Committee the Declaration on Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction. The Declaration provided that this area and its resources are the ‘common heritage of mankind’ and not subject to appropriation, and that it remains to establish the international regime for the exploitation of resources in this area.

The reasons for forming the conception of a common heritage of mankind at the end of the 1960s were linked to a great extent with the policies of the developing countries. This conception was used extensively by the developing countries in UNESCO with respect to cultural valuables and the

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environment, and in UNCTAD and UNIDO with regard to problems of technology transfer. In 1975 the representative of Sri Lanka put the question of the need to recognize the waters and mainland of the Antarctica as the common heritage of mankind.3

The developing countries consider this conception as a means of realizing their own interests and transforming international law into an instrument for the redistribution of world wealth to their advantage. In the view of the majority of representatives of these countries, the conception of common heritage of mankind presupposes: seabed resources are in the common ownership of all mankind; each State acting as ‘owner’ has the right to participate in the management of the common heritage and receive a respective share of revenues and other benefits; the powers arising from the right of common ownership are exercised in the name of mankind by a special international agency within whose framework all respective activity is internationalized.

Moreover, the reasons for forming the conception of common heritage of mankind should be sought in objective processes occurring in the international arena. The most important of them is the process of intensifying the interdependence of States, globalization, development of integration trends, and exacerbation of global problems of mankind. The creation of common interests among many States is conditioned by these factors, that is, of objective requirements having for each State the same object, similar but not identical ultimate aims of realization. Similar interests or consequences of their realization by individual States affect all countries and are becoming the common interests of all mankind. Such interests, in particular, are linked with the maintenance of peace, protection of the environment, exploitation of the World Ocean and outer space, and so on. An awareness of these interests has given birth in essence to the idea of the weal of all mankind, of the common use of certain objects and internationalization of the respective activities, of equity and the need to have regard for the interests of all States. The conception of the common heritage of mankind is one form of reflecting common interests in a legal consciousness.

The conception of a common heritage of mankind reflects the objective requirement of expanding the sphere of international legal regulation. The declaration of a particular object to be the common heritage of mankind is in essence tantamount to acknowledging the need to work out its special legal regime. It is no accident in practice that the Declaration on Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction in 1970 recommended to clarify by way of treaty the concept of the common heritage of mankind in respect of its spatial sphere.

The declaration of a particular object to be the common heritage of mankind entails important procedural consequences. It is tantamount to recognizing the legality of the interests of all States with respect to that object, and the right of each State to participate in negotiations concerning this object. In addition, the declaration of a particular object to be common heritage pre-determines to a significant extent the basic orientations of the norm-creation process since the very content of the conception inevitably puts to the participants of negotiations the task of preventing the monopolization of a particular sphere of activity and the organization of extensive international cooperation taking into account the interests of all States concerned.

Whereas in the case of cultural valuables, technology transfer, and environmental protection the concept of ‘common heritage’ is used in the broadest sense and does not entail directly any changes in the existing mechanism of legal regulation, in the matter of the exploitation of resources of the deepwater seabed we are speaking of the regulation of a completely new group of relations connected with economic activity falling under the sovereignty of States beyond the limits of national jurisdiction. Therefore in the international law of the sea the concept of the common heritage of mankind acquires the significance of a legal category forming the respective principle and reflecting in concretized form the essence of the respective legal regime. As a result, rights and duties of States arise in which their interests are realized in some measure.

The concept of common heritage of mankind in the international law of the sea can not be interpreted to the detriment of generally-recognized principles of the international law of the sea, to be contrary to the basic principles of this branch of international law. There are express indications to this effect in the 1982 United Nations Convention. Moreover, the regime of common heritage of mankind is genetically linked with the regime of the high seas. This link is expressed, in particular, in the fact that together with elements of the regime of the high seas it contains specific elements that augment the principle of the freedom of the high seas as being more general but in no way replace it even with respect to the seabed.\(^4\)

In other words, we speak of the further development of prevailing principles and their concretization with regard to a new domain of the activity of States, which is the exploitation of resources of the deepwater seabed.

One such principle is the principle of the prohibition against the national appropriation of resources recovered in the deepwater area of the seabed. The 1970 Declaration of Principles Governing the Sea-Bed proclaimed that

the international territory of the seabed is not subject to appropriation by any means by States or by natural and juridical persons, and no State shall claim, exercise or acquire sovereignty or sovereign rights over any part of this territory. This provision was accepted by drafts of the conventions prepared by the majority of States and received more extensive interpretation with regard to the following three points: (1) prohibition against appropriation; (2) renunciation of claims; and (3) nonrecognition of appropriation and claims. These provisions, in prohibiting any encroachments, in a certain way guarantee the inviolability and integrity of the international territory of the seabed and are confirmation of the fact that international territory of the seabed can not be the weal of individual States.

In the work of the seabed committee of the Third United Nations Conference on the Law of the Sea the concept of common heritage of mankind was developed along three orientations: (1) to all States belongs in equal measure and all States have the right to exploit the bed of the seas and oceans and the subsoil thereof beyond the limits of the continental shelf; (2) no State or group of States may appropriate this Area for itself or themselves; (3) the advantages from exploitation must be distributed equally among States, taking into account the special requirements and interests of developing and landlocked countries. From the standpoint of defining the concept of the common heritage of mankind the first orientation caused the greatest dispute at sessions of the seabed committee. One was referring to the affiliation to all States in equal measure of the seabed and its subsoil, which is in essence the basic concept of common weal.

The representatives of many States approached variously the interpretation of the concept of common heritage of mankind with regard to the seabed and its resources. Thus, for example, representatives of Great Britain, Kenya, and others incorporated in the concept of common heritage a provision concerning the equitable distribution of revenues received from the exploitation of the seabed among all States with special account taken of the requirements of developing countries. The representative of Austria, concurring in principle with this position, suggested that the principle of common heritage assumes international cooperation in the exploration and rational exploitation of seabed resources.

The representatives of certain States proceeded from the fact that common heritage is the joint ownership of States in the seabed. To this position, in particular, adhered the representatives of Brazil, Malta, Mexico, and a number of other States. The position, in equating common heritage to common ownership, could not be adopted since, unlike common ownership, division of the common heritage is impossible as this would be contrary to the very essence of this concept.

Also unacceptable was the application to the seabed and its subsoil of the conception of common use since in this event States should be endowed, al-
beit temporarily, with exclusive rights to individual sectors of the seabed in order to exploit its resources.

In summarizing, that which was shared in common in the approaches of the representatives of various States at the Third United Nations Conference on the Law of the Sea with respect to the content of the conception of common heritage in respect of the seabed and its resources beyond the limits of national jurisdiction of coastal States, one may formulate the basic elements of the content of this conception: (1) mankind as a whole is the subject of the common heritage. This means that: (a) the rights of possession, use, and disposition of the heritage belong to mankind as a whole; (b) these powers are exercised in the interests of all States; (c) States jointly establish the form of appropriation of seabed resources; (2) the seabed belongs to mankind as a whole and consequently can not belong to anyone except all mankind as a whole. It can not belong by right of ownership either to any international agency. States must not claim sovereignty or sovereign rights with regard to any part of the seabed nor recognize any claims of this nature. Likewise the seabed and its subsoil can not be appropriated by natural or juridical persons by any means whatsoever; (3) the right of operative management, that is, powers with regard to the possession, use, and disposition of the right of exploitation of seabed resources, issuance of licenses, conclusion of contracts, and so on shall be granted by States to an international organization which operates within the limits of those rights and in accordance with the purposes established by States; (4) the seabed may be granted to individual States and to natural or juridical persons only for temporary use for the purpose of exploiting the resources thereof; (5) seabed resources are a constituent part of the subsoil thereof and, consequently, part of the common weal of mankind as a whole so long as they have not been exploited by the user. After exploitation, the resources pass in ownership to the exploiter. The exploitation of resources in violation of the rules established by the international regime leads to nonrecognition of the said transfer of ownership from the common weal of mankind to ownership of the exploiter with all the consequences arising from this.3

In considering the above elements of the conception of the common heritage of mankind with regard to the Area and its resources, a number of issues arise.

First, the question is not clear on the legal plane as to the treaty rights of ‘mankind as a whole’ to resources of the Area, to which attention has been

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3 For details, see B. M. Klimenko, “Морское дно за пределами континентального шельфа как общее достояние человечества” [Seabed Beyond the Limits of Continental Shelf as Common Heritage of Mankind] in Международно-правовые проблемы Мирового океана на современном этапе [International Legal Problems of World Ocean at the Contemporary Stage] (М., 1976), p. 92.
drawn in Russian doctrine. As Barsegov noted, “mankind in the strict sense of this word, that is, the entire population of the planet, can not be the subject of legal relations”.

In this connection Lazarev stresses that putting the question of the legal personality of mankind as a whole would be justified in one of two instances: “the foreign policy relations of all States on earth as a single whole, the planet as a whole, with other planets, ... and if States ceased to exist on our planet as social institutions and the entire planet were transformed into a single monolithic international community”.

Second, the position that the International Seabed Authority (the Authority), provided for by the 1982 United Nations Convention (Article 137[2]), acts in the name of mankind as a whole is subject to doubt. From the standpoint of prevailing international law, in particular the 1969 Vienna Convention on the Law of Treaties, this proposition is vulnerable. One can hardly deem to be legal the activities of an Authority, an international organization created on the basis of a treaty, in the ‘name of mankind as a whole’ if it has not been empowered by way of a treaty by that part of mankind represented by States who are not parties to the Convention.

It is clear that without the clearly-expressed consent of these ‘third States’ the Authority, proceeding from the principle of the sovereign equality of States and the 1969 Vienna Convention on the Law of Treaties, does not have the right to operate in the name of such States. Nonetheless, the parties to the 1982 United Nations Convention agreed that the Authority operates not only in their name, but also in the name of ‘mankind as a whole’, that is, in the name of member States of the international community who are not parties to the 1982 United Nations Convention. The legal foundation of such powers of the Authority is, as Vylegzhanin justly noted, not only the norms of the 1982 United Nations Convention and the 1969 Vienna Convention of the Law of Treaties, but also the aggregate impact of customary and treaty norms of international law.

International custom plays, in our view, a special role in this issue. The practice of more than 140 States-parties to the 1982 Convention, in recognizing as a legal norm not only for them but also for States who are not parties to the 1982 United Nations Convention (the United States, Switzerland, for example), compensates for the absence of written consent of the last concerning the powers of the Authority to act in their name.

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6 Barsegov, note 4 above, p. 54.
8 A. N. Vylegzhanin, Морские природные ресурсы (международно-правовой режим) [Marine Natural Resources (International Legal Regime)] (M., 2001), p. 145.
9 Vylegzhanin, note 8 above, p. 146.
In summing up the results of considering the conception of the common heritage of mankind relating to the seabed of the World Ocean beyond the limits of the continental shelf, we would wish to stress the importance of this conception for the equitable use of seabed resources by all States of the world, irrespective of the level of their industrial development and geographic position. The very name of the conception ‘common heritage of mankind’ emphasizes the equal position of all with respect to this heritage. The content of the conception, which is that no people and no State may effect any action on the seabed without an officially-received authorization on the part of ‘mankind as a whole’ from an international Authority specially created to do so, also is directed towards ensuring equity in the cause of exploiting seabed resources. In other words, no one may use the resources of the World Ocean in general and seabed resources in particular without the knowledge and authorization of others, since the others have the same rights as those ‘heirs’ who want to and may use the ‘heritage’.

Of course the conception of common heritage of mankind, in stressing the equal rights of all to the international territory of the seabed and the inadmissibility of claims of some States to seabed wealth to the prejudice of others, is equitable only from the formal point of view. This conception naturally can not eliminate the actual unequal dispositive legal capacity of States with regard to exploiting deepwater seabed resources since there exists an unequal position of various parts of mankind (that is, States) with respect to this heritage. Industrially-developed States naturally have greater possibilities when exploiting deepwater seabed resources in comparison with developing countries.

But, as noted above, the 1982 United Nations Convention contains a number of provisions directed towards taking account of the interests of developing countries. First is the ‘equitable distribution’ by the International Seabed Authority of the financial and other economic advantages received from activity in the Area (Article 140). Second, in accordance with Article 144, the Authority will facilitate the transfer of technology to developing countries connected with the exploration and exploitation of resources of the Area on commercial conditions, and also the transfer to them of scientific knowledge and training of personnel for developing countries. In addition, the 1982 United Nations Convention provides that activities in the Area be structured so as to protect developing countries from adverse effects on their economies or on their export earnings as a result of the recovery of resources of the Area (Article 150[h]). The interests of developing countries who are exporters of raw material are thereby ensured.

What has been said enables the conclusion to be drawn that the conception of the common heritage of mankind, unlike conceptions put forward at various times substantiating the use of the seabed beyond the limits of the continental shelf (concepts of a ‘legal vacuum’, res nullius, ‘common own-
nership’, ‘object of common use’), is the only acceptable one in conditions of
the modern world. The legal regime of resources of the deepwater seabed
formulated in the 1982 United Nations Convention on the basis of this con-
ception enables, in our view, the seabed resources to be exploited beyond the
limits of national jurisdiction in the interests of all States and the interests of
mankind as a whole.

2 Legal Regime of Seabed Beyond Limits of National
Jurisdiction

With the adoption in 1982 of the United Nations Convention on the Law of
the Sea, one of the spatial spheres of the World Ocean – the deepwater seabed
and subsoil thereof – acquired for the first time in the history of the inter-
national law of the sea a special legal status materially distinguishing it
from all other maritime expanses. According to this Convention (Article
136), the bed of the seas and oceans beyond the limits of national jurisdi-
caton are the common heritage of mankind. Seabed resources (in the termi-
nology of the Convention, the ‘Area’) also are common heritage.

the seabed and its subsoil beyond the limits of national jurisdiction to be the
common heritage of mankind, imparted to this concept, as noted above, a
specific content which includes two key moments: the principle of nonap-
propriation and the principle of common use.

According to the 1982 United Nations Convention, no State has the right
to claim or exercise sovereignty or sovereign rights over any part of the Area
or its resources, nor shall any State or natural or juridical persons appropriate
any part thereof. No such claim or exercise of sovereignty or sovereign
rights nor such appropriation shall be recognized (Article 137). All rights in
the resources of the Area belong to mankind as a whole, in whose name the
International Seabed Authority acts; these resources are not subject to alien-
ation; minerals recovered from the Area may be alienated only in accordance
with the provisions of the Convention (Article 137[2]). No State or natural or
juridical person may claim, acquire, or exercise rights with respect to miner-
als extracted in the Area other than in accordance with the Convention. Oth-
wise, no such claim, acquisition, or exercise of such rights shall be recog-
nized (Article 137[3]).

In addition to those enumerated above, the 1982 United Nations Convention
contains the following elements of the legal regime of the Area: (1) con-
solidation in the Convention of a provision that all activities in the Area shall
be special and shall be controlled by a special agency – the International
Seabed Authority (Authority), members of which may be all States-parties to
the 1982 United Nations Convention; the Authority shall ensure the equitable distribution of financial and other economic benefits received from activities in the Area through an appropriate mechanism acting on a nondiscriminatory basis; (2) establishment in the Convention of a so-called ‘parallel system’, according to which not only the Authority, but also the States themselves, have the right to access to resources of the Area; States may effectuate activities in the Area jointly with the Authority; such activities also may be carried on by State enterprises on condition of guarantees of States-Parties to the Convention, and also by natural persons having the citizenship of those States; (3) the prohibition when exploiting seabed resources of interfering with the freedom of navigation, fishing, scientific research, and other lawful types of activities on the high seas (Article 147[2]); (4) consolidation by the Convention of the duties of States to take in the Area all necessary measures to ensure protection of the marine environment against pollution and the protection of human life against harmful consequences which may arise as a result of activity on the seabed. The Authority also must take measures to ensure the effective protection of the marine environment against consequences harmful for it which may follow as a result of activities in the Area. Installations to be used for activities in the Area must be assembled in compliance with the rules, regulations, and procedures of the Authority (Article 145); (5) the consolidation by the Convention of the right to carry on scientific research exclusively for peaceful purposes and for the benefit of mankind as a whole. Marine scientific research may be carried on in the Area and effected by the Authority and by States independently of one another (Article 143); (6) consolidation of the provision that “activities in the Area shall be carried out … for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or landlocked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status” (Article 140); (7) instructing the Authority to devote special attention to developing States, including those which are landlocked or geographically disadvantaged (Article 152[2]). Together with the distribution of revenues from the exploitation of resources of the Area, taking into consideration the interests of the developing countries, providing them with scientific knowledge, training personnel for them, and technology transfer, the 1982 Convention provides norms and principles directed toward the protection of land producers of metals if activities in the Area will have an adverse effect for the exports of developing countries of respective minerals recovered on land (Article 150(h), Article 151[10]).

The legal protection of the economies of developing States is for them a vital economic and political question. Two approaches were worked out at the Third United Nations Conference on the Law of the Sea for the purpose of legal protection of land-based recovery of raw materials analogous to that
which it is proposed to recover from the seabed (copper, nickel, cobalt, man-
eganese) and correspondingly the protection of the interests of producer
States of raw materials: compensatory and preventive. Article 151(10) of the
1982 United Nations Convention expressly provides for a compensatory sys-
ystem which is to be established by the Assembly of the Authority “upon the
recommendation of the Council on the basis of advice from the Economic
Planning Commission”. The preventive approach developed by a conference
consists of the prohibition of the production of metals from nodules on the
basis of nickel production exceeding firmly established annual ceilings and
the possibility of the Authority to participate in any commodity conference
in which any interested parties including both producers and consumers par-
ticipate, as well as the possibility for the Authority to become a participant in
the results of any such conferences (Article 151(1)(b), (3)-(7), 1982 United
Nations Convention).

Moreover, the 1982 United Nations Convention in order to attain the said
purpose also provides for

… other measures of economic adjustment assistance including cooperation
with specialized agencies and other international organizations to assist devel-
oping countries which suffer serious adverse effects on their export earnings
or economies resulting from a reduction in the price of an affected mineral or
in the volume of exports of that mineral, to the extent that such reduction is
cau sed by activities in the Area (Article 151[10]).

The compensatory methods of protecting land producers of raw materials, as
the discussion during the Third United Nations Conference on the Law of
the Sea showed, is the least acceptable for the majority of States since, first,
this method presupposes adverse consequences from exploiting seabed re-
sources for ‘land’ producers and, second, the effectiveness of its application
depends upon net revenues received from exploiting deepwater seabed re-
sources. These circumstances explain the fact that the majority of developing
States supported the long-term preventive strategy which was worked out
within the framework of UNCTAD and came down, in essence, to control
over the production of raw materials from the seabed, conclusion of com-
modity agreements, and price regulation of raw materials.

The Convention determines the group of States which may sustain dam-
age as a result of activities in the Area and to which the aforesaid measures
extend with regard to the protection of their economies to the developing
States. The Convention also contains another limitation expressed in general
form – they must be States “which suffer adverse effects on their export
earnings or economies …” (Article 151[10]). In all probability it would have
been inadvisable and hardly possible to have established strict quantitative
criteria for the ‘seriousness’ of these consequences since the level of eco-
nomic development of producer States of raw materials on land, as well as
the dependence of their economies on export, is various. In our view, how-
ever, the said convention provision should have been clarified, having in view to reduce to a minimum the group of States claiming protection against adverse economic consequences.

Taking into account that the recovery of minerals in the Area may cause damage to a specific developing State, it seems that every developing State which is a traditional exporter should resolve on a bilateral basis the issue of measures to ameliorate the adverse results for its economy with the States whose actions give rise to such adverse consequences. In order to resolve this issue on a bilateral basis between concerned parties – the developing States which are traditional exporters and the traditional importer States or new exporter States – it is essential to: (a) agree the real damage for export receipts of developing States; (b) determine the direct causes of such damage; (c) agree specific measures to reduce the said damage.

In this context measures directed towards adapting the economies of traditional exporter developing States to the new conditions may be recommended to be, in particular, the obligation of traditional importer States to support an average yearly fixed ceiling of import from the particular developing State during a 10-year preferential period mentioned above, this ceiling during the first 5 years not being lower than the average yearly ceiling of the base 5 years. As regards new exporter developed States of raw materials, on the basis of the said bilateral procedure they would agree with the traditional exporter developing States their access to the world markets of the respective types of raw material so as not to allow a reduction of export by the traditional exporter developing States during a 5 year preferential period, and in the next 5 years again by agreement with the developing States gradually to increase the amount of export.\(^\text{10}\)

An important distinctive feature of the new legal regime of the Area is that all activity with regard to the exploration and exploitation of mineral resources therein proceeds under the control of the Authority on the basis of applications and plans of work submitted by States and authorizations issued by the Authority. The 1982 United Nations Convention (Articles 151 and 153, and Annex III) contain principles elaborated in detail for the regulation of activities in the Area by the Authority.

In accordance with these principles activities in the Area may be effected only by an international enterprise for the exploration and exploitation of its resources working under the aegis of the Authority or – in cooperation with the Authority – by States parties to the Convention or their State enterprises,

or by natural and juridical persons (if States parties have sponsored them, if they have the citizenship of these States and are under their effective control). The Authority establishes the maximum production volume of metals, controls the fulfillment of the confirmed plans of work, and has the right to inspect any installations in the Area to be used in connection with the activities therein.

One important element in this connection of the legal regime in the Area are the provisions on cooperation of the Authority and the States-parties in facilitating access of the Enterprise, which is created by the Authority for activities in the Area, and also of developing States to the respective technology on equitable and reasonable conditions (Article 144). In each contract for activities in the Area the contractor, including a State, must assume the obligation to provide to the Enterprise of the Authority

... on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer (Article 5(3a), Annex III).

Such are the basic principles of the legal regime of the seabed beyond the limits of national jurisdiction as consolidated in the 1982 United Nations Convention on the Law of the Sea. These principles were then elaborated in the rules, regulations, and procedures of the activities of the Authority.

Taking into account, however, that the exploration and exploitation of the mineral resources is a new domain of activity on the World Ocean, the 1982 Convention provides (Article 154) that every five years from the moment of entry into force the Assembly of the Authority will conduct a general and systematic review of the practical functioning of this regime with a view to its improvement. As regards the Convention provisions (Part XI, Annex III) regulating the exploration and exploitation of the mineral resources of the Area, in accordance with Article 155 upon the expiry of fifteen years from 1 January of the year in which the earliest commercial production commences under an approved plan of work, the Assembly of the Authority shall convene a conference for the review of those provisions of this Part and the relevant Annexes. This conference, having regard to practical experience, may in principle work out and submit to the States-parties for ratification or accession amendments to the aforesaid provisions of the Convention. Holding such a conference also is important in connection with the position of the United States vis-à-vis the 1982 United Nations Convention, in particular, its provisions which regulate the exploitation of seabed resources. The United States was not satisfied with the Convention provisions providing for control on the part of the International Seabed Authority over activities relating to the exploration and recovery of resources of the seas and oceans, which would interfere with the monopoly and uncontrolled right to dispose of re-
sources of the seabed in the interests of American monopolies. Sabotaging
the signature of the Convention, the United States and its close allies chose
the path of separate agreements. On 2 August 1982 the United States, Great
Britain, and France signed in Washington D.C. the so-called ‘mini-treaty’ on
provisional measures in respect of polymetallic nodules in deepwater areas
of the seabed, and on 3 August 1984, with the participation of a much larger
number of Western States (the United States, Great Britain, Germany,
France, Japan, Belgium, Italy, and the Netherlands), another agreement
called a Provisional Understanding Regarding Deep Seabed Matters.11

Both agreements are directed towards the creation of a pseudo-legal base
for the illegal seizure of the more promising sectors of the seabed to the det-
riment of the interests of all other States. One such measure is the issuance
by the National Oceanic and Atmospheric Administration of the United
States Department of Commerce of licenses to certain consortiums for the
exploration of manganese nodules in sectors of the International Seabed
Area in the Pacific Ocean.12

The conclusion of these mini-agreements in essence led to the creation of
two international-legal regimes for deep seabed resources which may be a
source of international conflicts and various complications connected with
the exploration and exploitation of Area resources. The fact is that the 1982
United Nations Convention does not recognize any rights to mineral re-
sources acquired outside the convention regime. The aforesaid agreements of
western countries in turn do not recognize any rights to those resources ac-
quired outside the framework of those agreements. Ultimately, it was neces-
sary to find a compromise settlement of this problem on the basis of a single
treaty.

In 1987 Belgium, Italy, the Netherlands, Canada, and the USSR signed
an agreement to resolve practical issues relating to deepwater mining. At the
initiative of the United States and other western States who had not signed
the 1982 United Nations Convention, whose provisions prevented the mo-
nopoly and uncontrolled right to dispose of resources in the interests of large
monopolies, signed on 17 August 1994 the Agreement Relating to the Im-
of the Sea. This 1994 Agreement was immediately supported by the United
Nations General Assembly, which noted in its resolution that the “political
and economic changes, including, market-oriented approaches”, have led to
the need to reassess certain aspects of the regime of the Area and its re-
sources. The United Nations accepts that the Agreement Relating to the Im-

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11 See “Des Cent Dix-Neuf Signatures à la Ratification de la convention le chemin sera long”,
12 *Известия* [News], 6 June 1985.
Sea of 10 December 1982 and Part XI shall be “interpreted and applied together as a single instrument”.

The 1994 Agreement, which entered into force on 28 July 1996, changed the regime of mineral resources of the Area and resource activities in the Area in favor of market principles, retaining, however, the inalienable basic principle established by the 1982 Convention concerning the regime of expenses of the Area and its resources – the principle of the common heritage of mankind. In the Annex to the Agreement it was provided that the “exploitation of resources of the Area shall be effected in accordance with reasonable commercial principles” (Section 6[1]).

The changes of principle in the regime of the Area and its resources in comparison with the regime established by the 1982 Convention are made in the Annex to the 1994 Agreement. These changes basically concern the introduction of ‘commercial principles’ applicable to the deepwater exploitation of the seabed. Section 1 of the Annex (points 2, 3, and 5) expressly indicates reducing to a minimum the expenses of States-parties to the Agreement; all organs and auxiliary subdivisions of the International Seabed Authority must function on the basis of the principle of being economical. In the interests of economies the functions of the Enterprise at the beginning stage will be performed by the secretariat of the Authority (Section 2[2]). The Annex provides also for the possibility of rendering economic assistance to developing countries for whose export revenues or economies adverse consequences are created in connection with activity in the Area. Such assistance is rendered by the Authority, which establishes for these purposes an economic assistance fund. The assets of this fund come in the form of payments by contractors, including the Enterprise, as well as voluntary contributions (Section 7[1a]). It is additionally provided that developing countries needing technology connected with activity in the Area acquire this on commercial conditions in the open market (Section 5[1a]). The Annex also contains other provisions, in particular, provisions concerning production policies for minerals in the Area; financial conditions of contracts; the founding of a finance committee; and others.

The meaning of Article 1(1) of the 1994 Agreement on implementing Part XI of the 1982 United Nations Convention is that Part XI of the 1982 Convention should be implemented in accordance with this Agreement. Moreover, the Agreement makes provision for the preferential legal force of its provisions in the event of an inconsistency between them and the provisions of the 1982 United Nations Convention. Article 2(1) of the 1994 Agreement provides that

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The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

The 1994 Agreement enters into ‘connection’ with the 1982 Convention. “No State or entity”, provides Article 4(2) of the Agreement, “may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention”.

In development of this provision the 1994 Agreement provides that after the date of adoption of the 1994 Agreement (17 August 1994) “any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement” (Article 4[1]).

The fact that after the signature of the 1994 Agreement there followed a sharp increase in the number of accessions and ratifications of the 1982 United Nations Convention speaks to the positive significance of the Agreement from the standpoint of bringing into operation the mechanism for exploiting deepwater seabed resources and launching the 1982 Convention into real life with the participation of large players. The formal introduction of the 1982 Convention into force after ratification by the sixtieth State could hardly have secured the effective application of the Convention provisions, especially Part XI thereof.

This explanation, it seems, answers the questions in doctrinal writings as to why Russia readily agreed with so serious a change of the convention regime of the International Seabed Area (Area) and its resources, having ratified by a single Federal Law No. 30-ФЗ of 26 February 1997 the 1982 United Nations Convention and the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea.\(^\text{14}\) It was the 1994 Agreement, in our view, that ensured the universal regime of the seabed and its resources beyond the limits of national jurisdiction.

8. High Seas

1 Concept and Legal Regime of High Seas

The high seas is the sea expanse beyond the limits of the territorial sea to which the sovereignty of no State(s) extends and which is in the common and equal use of all peoples. Both indicia are vital for a definition of the high seas: (1) it is not subordinate to the sovereignty of any State; (2) it is situated beyond the limits of the territorial sea. Thus, the contiguous zone and the economic zone beyond the limits of the territorial sea and not under the sovereignty of any State are areas of the high seas with a specific legal regime.

The 1982 United Nations Convention (Article 89) applies to the high seas, including the contiguous and economic zone, in accordance with which “No State may validly purport to subject any part of the high seas to its sovereignty”.

Underlying the legal regime of the high seas is the *jus cogens* principle of freedom of the high seas. This principle, one of the most important generally-recognized principles of contemporary international law, found consolidation in Articles 87 and 89 of the 1982 United Nations Convention. Article 87 of the 1982 Convention indicates that “the high seas are open to all States, whether coastal or landlocked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law”. In this same Article it is provided that

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.

From the formulation of Article 87 of the 1982 United Nations Convention one may conclude that the freedom of the high seas is not absolute. In particular, the freedom of the high seas may not be exercised for the use or threat of force. No State enjoying any freedom of the high seas should ob-
struct other States in their enjoyment of this freedom or any other. We thus speak here of the reasonable combining of various types of use of the high seas.

In accordance with Article 87 of the 1982 United Nations Convention, the freedom of the high seas incorporates: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines; (d) freedom to construct artificial islands and other installations permitted under international law; (e) freedom of fishing; (f) freedom of scientific research.

The 1982 United Nations Convention does not provide for the priority of one freedom of the high seas over any other.

*Freedom of navigation* means that every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas (Article 90, 1982 Convention). Freedom of navigation is the freedom of both merchant shipping and military navigation. All States exercise exclusive jurisdiction on the high seas over their flag vessels. Vessels on the high seas, as a rule, can not be detained nor subjected to search by any vessels or warships flying the flag of another State. In the event of a collision or other incident with a vessel on the high seas giving rise to criminal or disciplinary responsibility of the official on the vessel, criminal or disciplinary prosecution may be instituted in accordance with the 1958 Geneva Convention on the High Seas (Article 5) only by authorities of the State under whose flag the vessel sails or that State of which the official is a citizen. Neither the arrest nor the detention of the vessel may be made even as investigative measures by anyone other than the authorities of the flag State of the vessel.¹

Warships in accordance with the 1982 United Nations Convention (Article 96) enjoy on the high seas complete immunity from the jurisdiction of any State other than the flag State. All questions concerning a warship shall be settled solely by diplomatic means.

The immunity of a warship does not mean that unlimited rights are granted to it. In the internal waters and ports of foreign States and during innocent or transit passage a warship must comply with the laws and regulations of the coastal State concerning transport and navigation and the conditions of sojourn in port; in economic zones it is prohibited to conduct combat shelling, depth charges, and the like.

In connection with the freedom of navigation it is essential to note the legal distinctive features of the freedom of military navigation distinct from other types of navigation as it is effected by ships endowed with special rights and duties and possessing special legal indicia and properties.

The freedom of military navigation, being one of the generally-recognized principles of contemporary international law, should be con-

structured and applied in connection with the basic principles of international law. The principle of freedom of military navigation should be effected in accordance with the principle prohibiting the use or threat of force against the territorial integrity or independence of any State.\(^2\)

The freedom of military navigation is regulated by generally-recognized norms of international law and obliges States and their naval forces to operate only within the limits permitted by contemporary international law.

Principles and norms regulating military navigation have primarily an imperative character. Their arbitrary interpretation and application is a flagrant violation of the existing legal order on the high seas, which obliges other States to take respective measures directed towards the preservation and strengthening of international peace and security.\(^3\)

On the basis of obligations of States arising from ‘antinuclear’ treaties concluded in recent years, military navigation on the high seas must be effected by taking into account international legal prohibitions and limitations. In particular, it is prohibited by prevailing international legal norms for the naval forces of any State to: (1) perform any test explosions of a nuclear weapon and any other nuclear explosions in the atmosphere or beyond its limits, including outer space, and underwater, including internal waters, the territorial sea, and the high seas;\(^4\) (2) effectuate any measures of a military character, in particular, conduct military maneuvers, as well as test any types of weapon in the Antarctic southward of the 60\(^{th}\) parallel south latitude;\(^5\) (3) establish and place on the bed of seas and oceans or subsoil thereof beyond the outer limit of the 12-mile zone of the seabed any nuclear weapon or any other types of weapon of mass destruction, as well as installations, launch devices, and any other structures specially intended to keep or use such weapon;\(^6\) (4) transfer a nuclear weapon or any nuclear explosive devices (missiles, mines, torpedos, and so on) to other States, and also control over such weapon or explosive devices directly or indirectly.\(^7\)

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\(^5\) See Articles I and VI, 1959 Antarctic Treaty.


\(^7\) Article I, 1968 Treaty on the Non-Proliferation of Nuclear Weapons.
The rule of the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof granting to States-parties to the Treaty the right to verify the activities of other States-parties to the Treaty conducted by them on the bed of the seas and oceans beyond the 12-mile zone (Article 3) also is of importance in this connection.

In the meaning of this Treaty functions with regard to the exercise of observation over objects, installations, devices, and other objects whose emplacement on the seabed and ocean floor is prohibited may be placed on warships of the respective States.

This norm of international law endowing warships with the right and duty to effectuate the said observation enlarges the group of questions of international significance in whose resolution warships may play an important role in the maintenance of peace and international security.

The nationality of a vessel is important in connection with the question of flag State jurisdiction. The flag is the most important external indicator of the nationality of a vessel. Norms of international law of the sea have not established any list of requirements for States with respect to granting or the right to sail under their flag. Moreover, safety of navigation often is violated by vessels operating under so-called ‘flags of convenience’. Responsibility for a violation of navigation safety rules is significantly lower in States (Panama, Liberia, and others) granting their flag to foreign vessels, and the maximum amounts of compensation of losses for damage incurred is lower, as is the extent of responsibility for pollution of the marine environment. Lower technical and classification requirements for vessels and their crew, as well as the possibility to ‘economize’ on the earnings of seamen on such vessels, persuades shipowners from many countries to register their ships under flags of convenience. The registration of foreign vessels under flags of convenience brings considerable revenues to States who grant their flag.

The practice of using flags of convenience in international shipping destabilizes such shipping and threatens navigation safety. It is no coincidence that the largest number of serious accidents sustained in recent years were tankers sailing under the flag of Liberia (Torrey Canyon, Amoco Cadiz), Panama, and certain other States which grant flags of convenience.

The existence of open registration and growth of flag of convenience fleets should be regarded as a source of abuse on the part of, primarily, transnational companies. The lack of control by individual States over the activities of their fleet and of a genuine link between the State and its flag vessels is leading to a crisis in international navigation, increased numbers of accidents of the fleet and related pollution of the marine environment, as well as numerous human casualties. Therefore one must concur with Gureev that States should be aware of the consequences which may occur for them
by the conferment of the flag of another State on their ship. In accordance with the 1982 United Nations Convention (Article 94), the responsibility of a State may ensue for the failure to fulfill its duties with respect to administrative, technical, and social matters over ships flying its flag. However, such responsibility may ensue only when there is a genuine link between the State and the vessel. This link is genuine only when the vessel, its crew, passengers, and cargo on board are subject to the authority of this State.

The ‘genuine link’ principle is among in substance the new provisions established by the 1958 Geneva Convention on the High Seas and then consolidated in the 1982 United Nations Convention. The inclusion of this principle has great international significance, eliminating to a certain extent arbitrariness in the matter of certain States granting the right to sail under their flag to vessels.

According to the 1982 United Nations Convention (Article 91), every State itself determines 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. Therefore ships have the nationality of that State under whose flag they have the right to sail. A ship sailing under the flag of any State has respective documents for the right to sail issued by this State. The flag serves as the distinguishing feature of the nationality of a ship, that is, its affiliation to a particular State. With the flag are linked the protection of the vessel, granting of immunity in instances of bringing suit against the shipowner or State, and so on. Under the 1982 Convention (Article 92), on the high seas

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\text{ships shall sail under the flag of one State only and, save in exceptional cases provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction...}
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This has in view, of course, jurisdiction in the broad sense, that is, not only judicial, but any other authority of the flag State. In other words, on the high seas a ship is subordinated to the authorities and law of that State whose flag it sails. In the event of a collision or any other navigation incident with the ship entailing criminal or disciplinary responsibility of the master or any other person who is a member of the crew of the vessel

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\text{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 (Article 97, 1982 Convention).}
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The reference in the 1958 Geneva Convention, as noted above, to the necessity of a genuine link between the State and vessel proved to be insufficient, as the continuing practice of granting flags of convenience testified. There-

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Therefore, when drafting the respective provisions of the 1982 United Nations Convention an attempt was made to agree the minimum requirements ensuring a genuine link between the State and the vessel under whose flag it sails. However, because of resistance on the part of developing States who received financial benefits from registering foreign vessels, offering a simplified procedure for granting their flag to sea-going ships, there remained in the 1982 United Nations Convention merely a reference to the need for a ‘genuine link’ between the ship and the State under whose flag it sails. Besides the provision of the 1982 United Nations Convention (Article 94[5]) that if “proper jurisdiction and control with respect to a ship have not been exercised”, then upon receiving such a report the flag State is obliged to “investigate the matter and, if appropriate, take any action necessary to remedy the situation”, which is evidence of the legal requirement to strengthen the link between the State and the vessel flying its flag. What specific measures may be adopted to remedy the situation the State itself must decide by virtue of its sovereignty.

A genuine link between the State and the ship of its flag is impossible without highly efficient and permanent control over its vessels on the part of the flag State. The level of intensity of control over the fulfillment of safety of navigation norms is established by each State autonomously. The extent of the verification of ships must include the basic requirements established in international treaties on navigation safety, safety of life at sea, prevention of and control over pollution of the marine environment, the training and certification of the crew of sea-going vessels, and others. The 1982 United Nations Convention placed the duty of such control on the flag State (Article 94[1]).

The regime of the high seas also is determined, as noted above, by the freedom of overflight by aircraft (both civil and military). Proceeding from this principle, all States have equal rights to the following types of activity: the organization and effectuation of flights of civil and military aircraft; conducting of scientific research with their assistance, use of radio-technical means; observation from the air over the situation at sea in the interests of merchant, naval, commercial, and scientific research vessels; and rendering assistance at sea.\(^9\)

With the development of means of communication at the end of the nineteenth century a new freedom of the high seas was formed – the freedom to lay submarine cables and pipelines. It is indicated in the 1982 United Nations Convention, first, that the freedom to lay submarine cables and pipelines shall be exercised on the high seas in compliance with the provisions of Part VI of the 1982 Convention, “Continental Shelf”. In particular, in accor-

dance with Article 78(2) of the 1982 Convention “the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention”. Second, all States have the right to lay submarine cables and pipelines on the continental shelf (Article 79[1]). The coastal State in turn may not impede the laying or maintenance of such cables and pipelines on condition of compliance with its rights to take reasonable measures to explore the continental shelf and exploit its natural resources and to prevent, reduce, and control pollution from pipelines. Third, “the delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State” (Article 79[3]).

The legal regime of the high seas also is determined by the freedom of fishing in this maritime expanse. Freedom of fishing is effectuated in compliance with the conditions set out in Part VII, section 2, of the 1982 United Nations Convention, which is titled “Conservation and Management of the Living Resources of the High Seas”.

In accordance with the 1982 United Nations Convention (Article 116), the freedom of fishing means that all States have the right for their citizens to engage in fishing on the high seas subject to their treaty obligations and respective Articles of the 1982 Convention.

Technical progress in the postwar years facilitating the improvement of catch implements and fishing methods and growing capital investment in the construction of fishing vessels led to a sharp increase during the 1960-1970s in the total fish catch. As a result, the serious danger emerged of the complete extinction of certain living marine resources. This enabled a significant number of States participating in the Third United Nations Conference on the Law of the Sea to place in doubt the traditional freedom of the absolute freedom of fishing on the high seas beyond the limits of national jurisdiction. This principle was subjected to special criticism on the part of developing States, who justly believed that the principle of absolute freedom of fishing on the high seas in fact gave privileges and preferences to individual States possessing oceanic fishing vessels and necessary gear to fish on the high seas, deepening thereby the inequality between industrially-developed and developing States.

As a result of extended discussions at the Third United Nations Conference on the Law of the Sea, the conception of the exclusive economic zone was worked out, granting to a coastal State the right to determine the procedure for optimal use of the living resources in the exclusive economic zone and its possibilities with respect to catching them. The creation of an exclusive economic zone undoubtedly led to the conservation of living resources and effective management thereof on the high seas.
As regards the high seas beyond the limits of the exclusive economic zone, then in accordance with the 1982 United Nations Convention (Article 117), all States have the duty to take measures themselves or to seek ways of cooperation for the protection of living resources of the high seas. All States take such measures or cooperate with other States in taking these measures, which has proved to be essential in order to conserve living resources of the high seas.

As the experience of international fishing shows, cooperation of the States concerned in regional intergovernmental fishing organizations is the most fruitful cooperation of States for the purposes of conserving living resources of the high seas. These organizations combine the efforts of scholars in the study and assessment of stocks of particular species of living resources in individual regions and work out recommendations concerning measures for rational fishing and conservation of resources, including with respect to the admissible level of catches for each year.10

The activity of such organizations is important, in particular, in connection with the fact that any coastal State may not objectively assess the stocks of individual species of fish enabling them to be maintained at their highest level of regeneration and at the same time rationally use the stocks thereof. Since schools of fish migrate within very wide limits, often beyond economic zones, the need arises for systematic observation of them in all areas of the World Ocean. Only on the basis of extensive international cooperation of the States concerned can the necessary data be collected and processed and the materials obtained be exchanged which are the objective base for working out measures to regulate fishing, including the size of the total admissible catch and catch quotas.

The 1982 United Nations Convention expressly provides for the possibility of cooperation of States with a view to the conservation and rational use of living marine resources and the creation for these purposes of subregional and regional fishing organizations (Article 118).

A new element of the freedom of the high seas not present in the 1958 Geneva Convention on the High Seas – the freedom to construct artificial islands and installations – was included in the 1982 United Nations Convention on the Law of the Sea. This was conditioned by the expanding activity of States during the scientific-technical revolution with regard to constructing artificial islands and installations intended for various purposes. Such purposes might be ports built on artificial islands, oil storage containers, installations and devices for the exploration and exploitation of seabed mineral resources, floating platforms for intermediate landings of aircraft, and storehouses for wastes on artificial islands.

10 See Volkov and Bekiashev, note 1 above, p. 179.
In accordance with the 1982 Convention (Article 87), only those artificial islands and installations may be constructed which are permitted under international law. In practice this means that when constructing artificial islands and installations the basic principles of international law should not be violated.

With a view to ensuring the safety of scientific research devices and installations for the exploration and exploitation of natural resources of the economic zone and deepwater areas of the seabed, and also in order to ensure safety of navigation in the area of these installations and devices, safety zones are created. The breadth of such zones is determined by the coastal State but, however, may not exceed, as a rule, 500 meters. Artificial islands and installations, and likewise safety zones around them, should not create impediments to the exercise by all States of any freedoms of the high seas. This especially concerns the freedoms of navigation and fishing.

Freedom of scientific research. Part XIII of the 1982 United Nations Convention, “Marine Scientific Research”, is devoted to this issue, codified for the first time in the international law of the sea. Since with regard to marine scientific research individual groups of States took at the Third United Nations Conference on the Law of the Sea various and sometimes directly opposed positions, the provisions of Part XIII of the Convention have the nature of a compromise which met the interests of both States carrying on scientific research and the States within whose coastal waters it is conducted.11

The legal regime of marine scientific research which existed before the adoption of the 1982 United Nations Convention was determined by the 1958 Geneva Conventions and by norms of international customary law. The essence of this regime was as follows: on the high seas the principle of freedom of scientific research operates; in the territorial sea scientific research may be conducted only with the consent of the coastal State on the conditions established by it; on the continental shelf the conducting of scientific research also requires the consent of the coastal States. These initial provisions underlie the general principles for marine scientific research consolidated in the 1982 United Nations Convention. This Convention consolidated for the first time the freedom of scientific research as one of the freedoms of the high seas (Article 87). In addition, the Convention (Article 238) provides for the right of all States and competent international organizations to conduct marine scientific research. This right, as Article 238 of the Convention notes, may be exercised “subject to the rights and duties of other States as provided for in this Convention”.

In accordance with Article 240 of the Convention, marine scientific research must be carried on exclusively for peaceful purposes with appropriate

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scientific methods and means, not unjustifiably interfere with other legitimate uses of the sea; marine scientific research also must not be conducted in violation of provisions concerning the protection and preservation of the marine environment.

The 1982 United Nations Convention also contains provisions concerning international cooperation in the domain of marine scientific research ensuring favorable conditions for conducting such research (Articles 242-244). The Convention allot's an important role to international organizations as centers for extensive international cooperation.

The 1982 United Nations Convention establishes a uniform procedure and conditions for conducting marine scientific research in the exclusive economic zone and on the continental shelf. The enlargement of the outer limits of the continental shelf and creation of exclusive economic zones provided for by the Convention narrows the spatial sphere for the operation of the principle of freedom of scientific research. Whereas under the norms of the 1958 Geneva Convention on the Continental Shelf the coastal State, as a rule, did not have the right to refuse to issue authorizations to conduct any scientific research on its continental shelf, the 1982 United Nations Convention grants this right to a State. In accordance with Article 246(5), a State may refuse to issue an authorization for the effectuation of a marine scientific research project on the continental shelf if the project: (1) is of direct significance for the exploration and exploitation of natural resources; (2) involves drilling on the continental shelf, the use of explosive substances, or the introduction of harmful substances into the marine environment; (3) involves the construction, operation, or use of artificial islands, installations and structures.

In addition, conducting scientific research work on the continental shelf may be refused when the information submitted regarding the nature and objectives of the project is inaccurate, and also when there are obligations not fulfilled to the coastal State arising from a prior project.

When scientific research is conducted on the continental shelf beyond the limits of 200 nautical miles the coastal State may withhold authorization for such scientific research work only in those areas of the continental shelf which have been officially declared to be areas in which the coastal State is conducting or will conduct detailed exploration and exploitation of natural resources (Article 246(6), 1982 United Nations Convention).

The United Nations Convention has regulated in detail the procedure for obtaining consent on the part of the coastal State to carry on scientific research in its economic zone and on the continental shelf. In accordance with Articles 248 and 250 of the 1982 Convention, a request to carry on scientific research work and all necessary information with regard to the project are sent to the coastal State through diplomatic channels not less than six months before the proposed date of commencement of the marine scientific research
project. The information must contain data concerning the nature and objectives of the project, method and means which will be used (description of sea-going vessels, description of scientific research equipment), precise geographical coordinates of the areas in which scientific research work will be conducted, dates of arrival and departure of the scientific research vessels, data concerning the organization sponsoring the project, and information about the persons responsible for conducting the project.

In the event of the failure of the scientific research work being conducted to conform to the information submitted to the coastal State concerning the nature and objectives of the project and other data, such work may be suspended.

This rather complex procedure for receiving authorization of the coastal State to conduct scientific research on the marine environment in its economic zone and on the continental shelf and the possibility to reject the conducting of scientific research work may in actuality mean the closure of vast areas of the World Ocean to scientific research work and to the development of marine science and technology as a whole.

The idea realized in the 1982 United Nations Convention of subordinating scientific research in significant expanses of the high seas to the control of the coastal State in practice may mean that the fate of many national and international marine scientific research programs, in the conducting of which all States and peoples of the world are objectively interested, will be dependent upon the discretion of the coastal State. As practice shows, the trend towards refusing to authorize foreign vessels to carry on scientific research in the economic zone and on the continental shelf remains stable.

With a view to interesting coastal States in the conducting of scientific research in their exclusive economic zones and on the continental shelf an important provision was incorporated in the 1982 United Nations Convention on the duties of States and international organizations when conducting marine scientific research to ‘share’ the results of these studies with the coastal State.

Among such duties are, according to the 1982 Convention (Article 249): (1) the duty of States and international organizations to submit to the coastal State preliminary reports, as well as the final results and conclusions, after the completion of the research; (2) the duty to provide access to the coastal State to all data and samples derived within the framework of the scientific research project, and also to furnish data which may be copied and samples which may be divided without detriment to their scientific value; (3) the duty to provide information to the coastal State containing an assessment of such data, samples, and research results, or provide assistance in their assessment or interpretation; (4) the duty immediately to inform the coastal State about any major change in the research program.
The said duties of States conducting scientific research at sea were provided for in the 1982 United Nations Convention in the interests of developing coastal States which do not at present possess the necessary technological and financial means to elicit the reserves of natural resources in their economic zone and on the continental shelf.

2 Criminal and Civil Jurisdiction on High Seas

In accordance with the 1958 Geneva Convention on the High Seas (Article 2) and the 1982 United Nations Convention (Article 92), ships on the high seas are subject to the jurisdiction only of their flag State and, as a rule, may not be detained and subjected to search by any vessels or warships sailing under the flag of another State. These norms permit exceptions from the principle of exclusive jurisdiction of the flag State. The 1958 Geneva Convention on the High Seas (Article 22) provides:

Except where acts of interference derive from powers conferred by a treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship is engaged in the slave trade; ...

In addition, the 1958 Geneva Convention provides for the possibility of interference on the basis of an international treaty also if the vessel is flying a foreign flag or refuses to show its flag, but in reality the vessel is of the same nationality as the warship.

The 1982 United Nations Convention on the Law of the Sea expanded the list of exceptions from the principle of exclusive jurisdiction of the flag State. In accordance with the 1982 Convention (Article 110) a warship may exercise such interference in the navigation of a foreign sea-going ship if it engages in unauthorized broadcasting. Such illegal broadcasting to the territory of a State from ships or installations beyond the limits of territorial waters of this State has in recent years been extensively engaged in. Since such broadcasting creates impediments to the procedure accepted in respective international organizations, and also may be used for subversive purposes, it is prohibited by norms of international and municipal law in the majority of States. In particular within the framework of the Council of Europe in 1965 a European Agreement on the prevention of radio broadcasting from stations beyond the limits of national territories was concluded. The parties to the Agreement declared broadcasting by their own or by foreign citizens to be punishable under their legislation.

Under the 1982 United Nations Convention (Article 109), 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 trans-
mitters of distress calls”. Any person engaged in unauthorized broadcasting
may be brought to responsibility in a court of: the flag State of the ship; the
State of registry of the installation; the State of which the person is a citizen;
any State where the transmissions can be received; or any State where au-
thorized radio communication is suffering interference.

The formulation ‘contrary to international regulations’ used in the 1982
United Nations Convention (Article 109) is the principal criterion enabling
unauthorized broadcasting to be distinguished from authorized. This formul-
lation is broad, as Malinin and Ziabkin suggest, incorporating both interna-
tional violations (States are the subjects of violations of law and responsibil-
ity) and violations of an international character (violations infringe the inter-
national legal order and responsibility for their commission ensues for natu-
ral and juridical persons). 12

In the cause of preventing and suppressing unauthorized broadcasting a
large role is allotted to the cooperation of States. For this purpose States are
obliged, first, to ensure that all vessels and installations on the high seas flying
their flag comply strictly with international regulations when broadcast-
ing and, second, make joint efforts to prevent the use of radio and television
devices in violation of such regulations.

Success in the prevention and suppression of unauthorized broadcasting
depends to a great extent on the level of specificity of legal rules regulating
the use of radio and television devices. To such norms are relegated above
all the norms contained in such international legal acts as the 1982 Interna-
tional Telecommunication Convention (Nairobi) and the 1959 International
Radio Regulations (with subsequent changes). Since we speak of unauthor-
ized broadcasting from the high seas, the 1982 United Nations Convention
must be relegated to such acts. Many issues linked with unauthorized broad-
casting from the high seas remain unresolved in this Convention. In particu-
lar, there is no clarity with respect to the subjects of the violations or the
classification of such broadcasts as unlawful. Clarification is needed for the
mechanism for the cooperation of States and activities of international or-
ganizations, especially the United Nations and its specialized agencies
Convention is the question of who (which State) has the right to interfere
with unauthorized broadcasting from the high seas. As noted above, in in-

12 S. A. Malinin and A. I. Ziabkin, “Международно-правовые вопросы пресечения
несанкционированного вещания из открытого моря” [International Legal Questions
of Suppression of Unauthorized Broadcasting from High Seas], in Актуальные проблемы
советского и иностранного морского права [Urgent Problems of Soviet and Foreign Mar-
stances connected with piracy or slave trade, warships or empowered State vessels have the right to board. In the event of unauthorized broadcasting the right to interfere, according to Article 109(3) of the 1982 Convention, is granted to: (a) the flag State of the ship; (b) the State of registry of the installation; (c) the State of which the person engaging in authorized broadcasting is a citizen; (d) any State where the transmission can be received; (e) any State where authorized radio communication is suffering interference.

The 1982 United Nations Convention contains a rather important provision concerning such crimes on the high seas as illegal trade in narcotics and psychotropic substances. A State having reasonable grounds to suppose that a vessel sailing under its flag is engaged in illegal trade in narcotics or psychotropic substances may apply to other States with a request concerning cooperation in the suppression of such illegal trade.

However, this Convention (Article 110) in establishing instances giving the right of visit of a vessel does not provide that illegal trade in narcotics or psychotropic substances is grounds for interference in the navigation of a foreign vessel. This ‘shortcoming’ of the 1982 Convention was rectified by the adoption of the 1988 Convention Against Illegal Traffic in Drugs and Psychotropic Substances. In accordance with Article 18 of that Convention, a warship has the right to interfere in the navigation of a foreign ship and verify it for the illegal carriage of narcotics or psychotropic substances and take respective measures.

Struggle Against Piracy. Instances of piracy, despite the existence of international legal norms and legislative acts of individual States providing sanctions for such international crimes, are not declining and represent, as before, a serious threat to realization of the principle of freedom of navigation and cause great damage to maritime navigation, especially in Southeast Asia and Southwest Africa.

According to information from the International Maritime Bureau, from 1991 to 1999 more than 500 pirate attacks on vessels on the high seas were identified. The year 2000 was a record year for the number of instances of sea piracy. More than 300 instances were identified in that year in the waters of southern and southeast Asia.

The first international legal act containing provisions on the struggle against acts of piracy on the high seas was the 1958 Geneva Convention on the High Seas. Eight articles of that document relate to piracy without resolving, however, all the legal problems connected with it.

First, the definition of piracy given in the 1958 Geneva Convention en-compassed, in our view, not all the actions which under contemporary inter-

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13 Piracy is any illegal act of violence, detention, or any act of depredation directed against another ship or aircraft, against persons or property on board such ship or aircraft at the mo-
national law should be considered to be acts of piracy. This may in practice lead to an expansive interpretation of this concept. The 1958 Geneva Convention classifies as acts of piracy not only those actions which are committed for personal purposes by the crew or passengers of a privately-owned ship. A material element of this definition is an indication that the acts of piracy must be committed for personal ends. Consequently, it does not encompass acts of piracy one way or another sanctioned by a government. Second, the 1958 Geneva Convention does not regulate the question of unlawful actions committed on the high seas by military or State vessels controlled by mutineers.

The 1982 Convention on the Law of the Sea (Article 101) includes in the concept of piracy: (a) any illegal act 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 on the high seas against any other ship or aircraft, against persons or property on board thereof, or outside the jurisdiction of any State; (b) any act of voluntary participation in the use of such vessel or aircraft committed with knowledge of the circumstances by virtue of which the ship or aircraft is a pirate-ship or aircraft; (c) any act which is incitement or intentional facilitation of the commission of the aforesaid actions.

Acts of piracy committed by a warship or State vessel the 1982 Convention relegates to such only if the crew has mutinied and seized power.

In accordance with the 1982 Convention (Article 105) every State has the right to seize a pirate ship or aircraft on the high seas and the property on board, and also to arrest the crew and passengers. The question of punishing pirates is decided by courts of the State which seized the pirate ship. The seizure of pirate ships or aircraft may be performed only by military ships or specially-empowered ships on government service.

In laying out the concept of piracy, the 1982 United Nations Convention (Article 101) places the main emphasis, as does the 1958 Geneva Convention, on illegal acts on the high seas committed by privately-owned ships for private ends. This position can be explained partly by the fact that Western doctrine did not consider it necessary to revise the articles of the 1958 Geneva Convention concerning piracy on the grounds that these articles “serve the eradication only of private violence at sea”.

Some authors cited as an argument for retaining the provisions of the 1958 Geneva Convention at the end of the 1960s the conception of the exclusive economic zone. Robert Hodgson, referring to the 1958 Geneva Convention (Article 14), which limits the concept of piracy to the “high seas or...
in any other place outside the jurisdiction of any State”, asserted that the introduction of the 200-mile economic zone to a significant extent reduces the area of the sea beyond the territorial jurisdiction of States in which illegal actions may regarded as piracy. In Hodgson’s view, despite the fact that all freedoms of the high seas are retained within economic zones, coastal States all the same should regard piracy as a threat to certain sovereign rights of States in these zones and demand in this connection exclusive jurisdiction in the economic zone. This approach is not correct, in our view, for two reasons. First, despite the rather material exceptions from the legal status of the high seas in an economic zone (in particular, sovereign rights of State for the purpose of the exploration, exploitation, and conservation of living and nonliving resources in its waters, in the seabed, and in the subsoil), all States – coastal and landlocked – enjoy in the economic zone all the freedoms of the high seas, including the “… freedom of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the sea …” (Article 58, 1982 United Nations Convention). In this sense the legal regime of the economic zone is not different from the regime of the high seas. Second, acceptance of Hodgson’s proposal on extending the sovereignty of coastal States to the economic zone, being part of the high seas with respect to the exercise of the freedom of the seas therein, would cause material harm to these freedoms as established by the 1958 and 1982 conventions. This would lead to strengthening by way of treaty the right of coastal States to interfere in the activity of the fleets of other countries; that is, to limitation of the freedom of navigation in economic zones which, in turn, would signify the actual replacement of the legal regime of economic zones with the regime of territorial waters. This insignificant threat which in principle exists for the realization of sovereign rights and jurisdiction of States in the economic zone granted to them under the 1982 United Nations Convention on the part of pirate ships is hardly sufficient for revising the legal status of the economic zone.

The most complex and controversial question in connection with the definition of the concept of piracy is that of recognizing as such the politically-motivated actions committed at sea by organized groups. In this respect the most characteristic example was the seizure in January 1961 of the Portuguese ship *Santa Maria*. The seizure of the vessel was a purely political act and directed solely against the government of Salazar. Despite the fact that this act was purely political and pursued a single aim – to receive political asylum – the Portuguese authorities considered it to be an act of piracy.

The decision of the United States Government to recapture and detain this ship en route to a Brazilian port upon the express request of Portugal

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concerning its detention was based solely on the duty of the United States to defend its citizens on board the ship as passengers and crew members.

Judicial practice and doctrine of certain States recognizes politically-motivated actions connected with the seizure of vessels on the high seas as acts of piracy. This, however, does not give grounds for the treaty consolidation of this practice in international law. Such attempts, which can not be recognized as legitimate, are as a rule connected with the aspiration of certain States to unambiguously declare the unlawfulness of certain types of actions and justify any measures undertaken by the government. In this connection the concept of piracy given in the 1982 United Nations Convention (Article 101) should not be expanded by the inclusion therein of politically-motivated acts of violence at sea.

The issue of classifying unlawful acts on the high seas authorized by a government deserves, in our view, serious attention. During the discussion of the 1958 draft convention, the USSR and other socialist countries pointed to the great danger of piracy authorized by a State and proposed to make provision together with autonomous international responsibility of natural persons guilty in an individual capacity of acts of piracy at sea, also the international legal responsibility of States with the authorization of which such acts were effectuated. In our view, raising the question of international legal responsibility of a State for acts of piracy of natural persons is legitimate. Such responsibility originates not simply with the unlawful actions of natural persons, but also the failure to act of State agencies which did not take proper and timely measures to prevent acts of piracy. Such behavior gives grounds for a victim of piracy by States to regard the respective agencies of a State in their failure to act as intentional encouragement of illegitimate actions of private persons on their territories and by virtue of this to classify it as an international violation.16

In recent years piratical actions at sea have been committed to a significant extent not on the high seas, but in the territorial sea and internal sea waters, straits, and other maritime routes. From the standpoint of international law these actions committed not on the high seas can not be regarded as piracy; they are ordinary grave crimes. Criminal prosecution for such crimes may be effectuated only by the coastal State. These crimes, including terrorism at sea, are directed against the safety of navigation and other types of marine activity and are considered elsewhere in this book.

Struggle Against Slave Trade. One of the grounds for the seizure of ships from under the exclusive jurisdiction of the flag State on the high seas is en-

gaging in slave trade. According to the 1982 United Nations Convention (Article 99),

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.

In other words, the flag State is obliged itself to prevent the transport of slaves on a ship under its flag and punish such transport. The failure to take measures on the part of the flag State may lead to interference on the high seas on the part of a warship of any other State. If a warship has ‘reasonable grounds to suspect’ that a foreign vessel is ‘engaging in slave trade’, it may interfere in the sailing of that vessel and verify it with respect to the transport of slaves.

Ensuring Fulfillment of Norms Determining Regime of High Seas. Besides the instances relating to the exercise of rights based on a treaty, and also to piracy and slave trade, a foreign vessel may be stopped and detained on the high seas on the basis of the right of hot pursuit. In accordance with the 1982 United Nations Convention (Article 111), the pursuit of a foreign vessel may be undertaken “when competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State”. The pursuit must be ‘hot pursuit’, that is, may commence when the foreign ship (or one of its boats) is within internal waters, the archipelagic waters, the territorial sea, or the contiguous zone of the pursuing State and may be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not required that at the time when the foreign ship within the territorial sea or contiguous zone receives a sound or visual signal to stop the ship giving the order should likewise be within the territorial sea or contiguous zone. It may be any place, including on the high seas.

The right of hot pursuit ceases from the moment when the ship pursued entered the territorial sea of its own State or any third State.

The right of pursuit and, as noted above, seizure of a pirate ship, may be effectuated only by warships or by specially empowered ships or aircraft on government service.17

At present the question is being raised in the doctrine of some States, especially Australia and New Zealand, of creating so-called protected areas of the high seas. Although this issue is still at the stage of discussion, there are grounds to suggest that such areas may emerge in the World Ocean in the near future. At the seventh session of the United Nations Commission for stable development in 2000 a recommendation was adopted that States cre-

17 See Volkov and Bekiashev, note 1 above, p. 93.
ate protected zones of the high seas within the limits of and beyond the limits of national jurisdiction.

The ideologues of this conception suggest that the IMO and International Seabed Authority have the right for the purpose of conserving living and nonliving resources of the World Ocean to create such protection zones on the high seas upon the proposal of one or several States in any region.

The creation of such protection, in essence closed, zones on the high seas can hardly be supported by the international community since this is connected with an attempt against the freedom of the high seas.

3 Right of Landlocked States to Access to Sea and Use Thereof

As noted above, the freedom to use the high seas is not the privilege of any State or group of States. The high seas are free for the use of all States, having or not having a seacoast. The right of landlocked States is substantiated from the standpoint of the development of cooperation. These States are interested in participating on an equal and nondiscriminatory basis in international trade and for these purposes must have the right to free use of international sea routes.

There are 34 landlocked States in the world, of which four are in Asia (Afghanistan, Laos, Mongolia, Nepal); fourteen on the African continent (Botswana, Burundi, Burkina-Faso, Zambia, Zimbabwe, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Central African Republic, and Chad); eleven in Europe (Austria, Andorra, Belarus, Vatican, Hungary, Liechtenstein, Luxembourg, Monaco, San Marino, Czech Republic, Switzerland); two in Latin America (Bolivia and Paraguay); three in Central Asia (Kyrghizia, Uzbekistan, Tadzhikistan).

For this group of States one of the urgent problems of international law is to ensure free access to the sea. Resolution of this problem was undertaken for the first time at the international legal level during the 1958 United Nations Conference on the Law of the Sea. The 1958 Geneva Convention on the High Seas (Article 3) notes that “in order to enjoy the freedom of the seas on equal terms with coastal States, States having no seacoast should have free access to the sea”. Thus, the right of free access to the sea by landlocked States is regarded in the 1958 Geneva Convention as arising directly from the principle of freedom of the high seas. However, the granting of this right is limited by two conditions. The first is free transit through the territory of States located between the sea and the landlocked State and access to seaports and the use thereof for ships of the landlocked State is granted “only by agreement and in conformity with existing international conventions”. 
The second is the extent of rights to be granted during transit and use of the ports, determined by common agreement between the State located between the sea and the landlocked State, taking into account the rights of the coastal State or State through whose territory the transit is made.

The 1958 Geneva Convention on the High Seas (Article 3(1)(a) and [b]) provides that States situated between the sea and a landlocked State accord “to the State having no seacoast, on a basis of reciprocity, free transit through their territory” and to ships flying the flag of the landlocked State accord “access to seaports and the use of such ports”.

Thus, although the 1958 Geneva Convention has consolidated by way of treaty the legal right of transit and use of seaports, no norms were established in the Convention which should guide interested States when concluding bilateral treaties regulating transit through the territory of another State and the use of seaports of this or a third State.18

In other words, the practical aspect of the problem of transit remained unresolved at the time of adoption of the 1958 Geneva Convention on the High Seas.

The right of landlocked States to access to the sea in accordance with Article 3(1) of the 1958 Geneva Convention should have been resolved by concluding a respective agreement. The consent of a State to transit in the form of an agreement or formalized otherwise is necessary. Consequently, negotiations at which the landlocked State was in advance in an equal position lay between the requirement for access to the sea and the effectuation thereof. Landlocked States have no possibility to refer to norms agreed in international law applicable when concluding such agreements.

The right to access to the sea of landlocked States with the adoption of the 1958 Geneva Convention on the Law of the Sea, although it became a generally-recognized norm of a treaty character, had not been sufficiently codified by the Convention. The extent of rights accorded on the basis of this norm during transit and access to and use of ports is determined by bilateral and partly by multilateral agreements. The agreements imparted to the right of landlocked States a specific meaning and content by means of exempting these States from customs and transit levies, provision of wharfs, warehouse premises, free zones in ports, and so on.

The 1982 United Nations Conference on the Law of the Sea (Article 125) also does not clarify the right of landlocked States to access to the sea and confines itself merely to an indication that “the terms and modalities for exercising freedom of transit shall be agreed between the landlocked States and transit States concerned through bilateral, subregional, or regional agreements”. In other words, the 1982 Convention also does not grant a genuine

right of transit to landlocked States, but simply creates an obligation for coastal States and transit States to conclude an agreement with a landlocked State which determines and regulates the right of access to the sea. Moreover, in accordance with the 1982 Convention (Article 125[3]),

transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for landlocked States shall in no way infringe their legitimate interests.

Thus, both the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, having placed defense of the interests of basically the coastal States and transit States at the forefront, actually worsened the content of the norm of customary law providing for the granting of access of landlocked States to the sea also in the absence of a respective agreement.

Landlocked States were interested not only in receiving access to the sea, but also in the exploitation of living and mineral resources of the World Ocean and in exploiting deepwater resources of the seabed beyond the limits of national jurisdiction. The majority of coastal States who favored at the Third United Nations Conference on the Law of the Sea the conception of the economic zone acknowledged the right of landlocked countries to explore for and exploit living resources of economic zones of neighboring coastal States on an equitable and nondiscriminatory basis. The essence of their proposals and drafts submitted for consideration of the Conference came down to the following:

1. coastal states recognize the right of landlocked countries to explore and exploit living resources of economic zones of neighboring coastal States on an equitable and nondiscriminatory basis;

2. this right of landlocked States may be realized only by means of concluding a respective bilateral or regional agreement. Such agreements between a coastal State and landlocked country would establish not only the right to exploit living resources of the zone, but also the area of the economic zone in which the said right might be realized. In other words, the right granted to a landlocked State to exploit living resources of the economic zone of a neighboring State extends not to the entire zone, but merely to a determined area thereof, the coordinates of which are indicated in the agreement;

3. preferential rights are recognized for landlocked States with respect to living marine resources which are effectuated on the basis of bilateral or regional agreements with coastal States. Such preferential rights are not subject to transfer to juridical and natural persons of third countries;
(4) Coastal States which are not adjacent to landlocked countries in the same region or subregion shall grant the right to use and a preferential regime within the limits of adjacent seas to national enterprises of such landlocked countries in accordance with regional, subregional, or bilateral agreements.

The drafts submitted to the Third United Nations Conference on the Law of the Sea by landlocked States and by States in a disadvantageous position were different from the drafts of coastal States. First, the representatives of landlocked States did not make the right granted to them to exploit living resources of economic zones of neighboring coastal States dependent on the conclusion of bilateral or subregional agreements. In so doing they proceeded from the fact that in order to exercise this right it would suffice to incorporate it in a universal convention on the law of the sea. Second, landlocked States in their drafts by the expression ‘neighboring coastal States’ understood not frontier, but all coastal States of the region or subregion.

Ultimately a compromise draft article on the rights of landlocked States to access to the sea and use thereof was approved at the Conference.

4 Struggle Against Terrorism at Sea

Numerous acts of international terrorism with an enormous number of human casualties committed in recent years in Russia, Spain, the United States, and other States, affecting the interests of virtually the entire international community, place with new impetus before the science and practice of international law and inter-State relations the question of working out essential effective legal means for the struggle against this evil.19

Terrorism, used over the centuries as an illegal but effective instrument in political struggle, was transformed in the twentieth century into a serious problem for the entire world community. Terrorism transcended individual States, and its scale reached such dimensions, and specific manifestations acquired such socially-dangerous forms, that one may with full justification call it the plague of the twentieth century – so great are the threat and possible consequences for the development of mankind.

The tragedy in the United States of 11 September 2001, which extinguished the lives of thousands of innocent people, demonstrated that today

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19 In accordance with information of the United States Department of State, from 1968 to 1982 there were about 8000 terrorist acts in the world. About 540 takings of hostages were effected by 188 terrorist groups. During the 1990s there were from 600 to 850 terrorist acts per year. See G. Siegel, "Le terrorism", in La prévention du crime et le traitement des délinquants. See UN Doc. A/Conf. 144/Federal Republic of Germany/July 1990, p. 34.
no State, even a superpower, can insure itself against the all-prevalent danger of terrorism. The organization in this connection of an effective struggle against this exceptionally dangerous socio-political phenomenon is becoming one of the priority tasks of the international community as a whole and individual States. Terrorism undermines the foundations of the activities of States, threatens the lives of peaceful citizens, creates an atmosphere of fear and psychological imbalance among the population. The international community is aware that the threat of terrorism is growing and that the methods and means of the actions of terrorists are improving, with the use of the latest achievements of science and technology. There is a genuine danger of terrorists using nuclear, chemical, and biological means, an example of which was the postal despatch in the United States with anthrax spores. It also is clear that a constant financial feeding of terrorists is occurring, conditioned by the growth of terrorism with such international crimes as the narcotics business and trade in weapons. Moreover, the integration of the world community, expansion of inter-State economic links, development of maritime navigation, and other types of activities on the World Ocean, and increase of migration and tourist flows, liberalization of frontier control open for terrorists additional possibilities for the commission of terrorist acts.

The increased wave in recent years of terrorism has not overlooked marine expanses: the seizure by terrorists in 1985 of the Italian liner Achille Lauro and the murder on board of a United States citizen, the seizure by Chechen terrorists of Russian citizens on the Turkish vessel Avrasia, the explosion on an American aircraft carrier in the waters of Saudi Arabia, frequent instances of attacks on sea-going ships with the use of weapons is testimony to the intensification of international terrorism at sea and its heightened danger for the international community in the domain of the use of water expanses and resources of the World Ocean.

As a specialist in international legal regulation of the struggle against crimes of an international character, Romashev, noted,

in the twenty-first century conditions and factors will exist which further the commission of crimes of an international character at sea. The existence of the threat of these crimes and their growing danger for States and international relations, as well as the inadequate standard of struggle against these crimes, require the increased effectiveness of the activities of States in this domain.\footnote{Iu. S. Romashev, \textit{Борьба с преступлениями международного характера, совершаемыми на море} [Struggle Against Crimes of International Character Committed at Sea] (M., 2001), p. 128.}

Resolution of the problems of terrorism at sea require the effectuation of measures on the basis of extensive international cooperation and the adoption of acts on the international level directed towards the struggle against
these socially-dangerous phenomena. Since acts of terrorism with respect to ships are committed most often in areas adjacent to the coast of States, a large role in the struggle against such crimes is allocated to measures undertaken by coastal States. Thus, the struggle against terrorism is a complex of measures on the international and State levels aimed at the prevention and suppression of acts of terrorism and elimination of the consequences which may ensue as a result of their commission. Such measures may be applied in internal waters or the territorial sea of States, on the high seas, and on board ships.

An important role in the struggle against terrorism at sea is allotted to international legal measures, on the effectiveness of which directly depends success in the struggle as a whole. Special importance in this connection attaches to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, adopted at an international conference in Rome on 10 March 1988.

The need to adopt such international legal acts was conditioned by acts of maritime terrorism frequent at the time, as well as the fact that maritime terrorism has specific features in comparison with terrorist acts committed in other spheres and expanses.

In accordance with the 1988 Convention (Article 3), any person commits a crime if he “unlawfully and intentionally”: (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or (d) places or causes to be placed on a ship by any means whatsoever a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or (g) injures or kills any person, in connection with the commission or attempted commission of any of the aforesaid crimes.

Persons attempting to commit the crimes enumerated, and also persons inciting to commit any of these crimes, also are considered in accordance with Article 3 of the 1988 Convention to be criminals.

As is evident from the disposition of Article 3 of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, the types of crimes enumerated therein and the consequences of com-
mitting them may be: the perishing of people; the infliction of grave harm to their health; damage and destruction, and as a consequence the perishing of a ship; significant economic harm to the State; violation of the stability of international relations. In other words, these crimes entail socially-dangerous consequences.

The said international legal documents and many similar treaties concerning the struggle against terrorism do not contain in the text an express indication that the crimes provided therein appertain to acts of terrorism at sea. However, these crimes may be relegated to acts of international terrorism on the following grounds. First, the reasons which persuaded the international community to conclude the said universal treaties and the purposes for the attainment of which these documents were worked out confirm what has been said. Second, reference is made in the preamble of the 1988 Convention to United Nations General Assembly Resolution 40/61 of 9 December 1985, in which all acts, methods, and practices of terrorism, wherever and by whomever committed were unreservedly condemned as criminal, including those which jeopardize friendly relations among States and their security, and also proposed to study the problem terrorism aboard or against ships with a view to making recommendations on appropriate measures. In this same preamble the parties to the Convention express concern about the world-wide escalation of acts of terrorism in all of its forms. Third, the majority of treaties concerning international cooperation in the struggle against terrorism, and likewise the treaties being considered, do not use the term ‘acts of international terrorism’. However, it has been recognized by the international community that the crimes encompassed, for example, by such treaties as the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1979 International Convention Against the Taking of Hostages, the 1980 Convention on the Physical Protection of Nuclear Material, the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, and others are acts of international terrorism. Such recognition, in particular, was consolidated in United Nations General Assembly Resolution 49/60 of 9 December 1994.

Thus, the crimes encompassed by the 1979 Convention and by the 1988 Convention and Protocol are acts of international terrorism or acts of maritime terrorism.

The objects of maritime terrorism are, in accordance with the 1988 Convention (Articles 1 and 2), any ships not permanently attached to the seabed, submersibles, or any other floating craft, except for warships and ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes.
The 1988 Convention, according to Article 4, applies when a ship is navigating or is scheduled to navigate into waters, through or from waters beyond the outer limit of the territorial sea of a State. Accordingly, the 1988 Convention does not apply if the ship navigates only in internal waters or the territorial sea of a State-party to the Convention whose nationality the particular ship has and it does not intend to leave the territorial sea of that State. The spatial sphere of operation of the 1988 Convention is thus in essence identical to the spatial sphere of the 1982 United Nations Convention on the Law of the Sea regulating piracy at sea. As noted above, this provision of the 1982 Convention (Article 101) applies to actions committed on the high seas.

The 1988 Convention provides (Article 6) that the following States possess jurisdiction with respect to acts of maritime terrorism: (a) the State under whose flag the ship sails if an act of maritime terrorism is committed against or on board such ship; (b) the State on whose territory the act of maritime terrorism is committed; (c) the State whose citizen committed such act; (d) the State on whose territory the alleged criminal is situated.

In addition, the State-party to the 1988 Convention may establish its jurisdiction with respect to the said crimes also when they are committed by a stateless person habitually resident on its territory, or when during the commission of such act of terrorism a citizen of the particular State was captured, killed, wounded, or subjected to threats, or when the act of terrorism was committed in an attempt to compel this State to perform or refrain from any action. The State-party is obliged to inform the Secretary General of the IMO about the establishment of such jurisdiction. If subsequently the State renounces such jurisdiction, it also must inform the Secretary-General of IMO.

The State on whose territory the criminal or alleged criminal is found, unless it extradites such person to another State, is obliged to institute a criminal prosecution against this person irrespective of whether or not this crime was committed on its territory (Article 10).

The 1988 Convention provides various forms of inter-State cooperation in the struggle against maritime terrorism. In particular, in accordance with Article 13 States must not only take all practicable measures to prevent preparations of acts of maritime terrorism within or outside their territories, but also exchange information and coordinate their actions directed against the prevention of the commission of acts of maritime terrorism.

The 1988 Convention provides a procedure for the settlement of disputes which may arise between two or more States-parties concerning the interpretation or application of the Convention. If a dispute cannot be settled through negotiation within a reasonable time, at the request of one of the parties the dispute is submitted to arbitration. In this event, if the parties, within six months from the date of the request for arbitration, have not
agreed to organize the arbitration, any of the parties may refer the dispute to the International Court of Justice in conformity with the Statute of that Court (Article 16). A State when accepting, ratifying, approving, or acceding to the 1988 Convention may make a reservation about not being bound by any or all of the said procedures for the settlement of disputes.

In the 1988 Protocol the content is elicited of criminal actions directed against the safety of fixed platforms located on the continental shelf. These criminal actions and means of the effectuation thereof on the whole are analogous to the actions specified in Article 3 of the 1988 Convention. The 1988 Protocol virtually reproduces all points of the 1988 Convention and the word ‘ship’ is replaced by the words ‘fixed platform’.

The object of crimes under the 1988 Protocol is inter-State and social relations in the sphere of ensuring the safety of work on the continental shelf. The objects of criminals also may be public security, service personnel of the fixed platforms, their health, life, personal freedom, and inviolability.

The 1988 Protocol indicates the special danger of these crimes, having regard to the fact that these acts may threaten the safety of a fixed platform. As Romashev noted, by safety of the fixed platform is understood “the state of protection of the fixed platform and its servicing personnel when effectuating work on the continental shelf of the State against internal and external threats in the form of crimes provided for by the 1988 Protocol”. The consequences of such crimes being committed may be: the perishing of people; damage or even destruction of the fixed platform and as a consequence – great economic damage to States, material pollution of the marine environment as a result of the flow of oil; lowering the safety of exploiting the resources of the continental shelf.


A material gap in the international law of the sea was filled by the signature of the 1988 Convention and Protocol since both documents concern illegal acts (terrorism) on the high seas not falling under the international crime of piracy at sea, whose definition was given in the 1982 United Nations Convention on the Law of the Sea. However, in the general context of the struggle against terrorism in its contemporary form the significance of

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21 Romashev, note 20 above, p. 147.
these documents is relatively minor. First, the list of criminal acts in the 1988 Convention is not complete. As Modzhorian noted, this treaty did not include, in particular, attacks against coastal installations and seaports for the purpose of committing terrorist acts, and it would have been desirable to augment it with a reference to the acts analogous to those provided in the Montreal Protocol for the Suppression of Acts of Violence at Airports Serving International Civil Aviation of 24 February 1988.22

Moreover, far from all issues connected with the struggle against terrorism at sea are encompassed by the provisions of these documents. In particular, the working out and legal consolidation in treaties of a mechanism for the effectuation by States of fixed-term compulsory measures with respect to persons who committed acts of terrorism against foreign ships in those instances when the flag State of the victim ship is not in a position to render urgent effective assistance is necessary. An important role in this connection is allotted to the conclusion by interested States of bilateral, regional, and international treaties regulating the conducting of joint measures in the event of a terrorist act against ships flying under the flags of these States. These treaties also must, in our view, provide a mechanism for anti-terrorist cooperation of States and the use of their forces and means in the struggle against terrorism at sea.23

At the initial stage one should obviously confine oneself to working out the basic principles for the interaction of States. Thereafter the elaboration of international-legal norms in this domain is necessary in view of the great diversity of possible situations requiring respective international legal regulation.

Such an important issue as the self-defense of ships and their crews against terrorist attacks, including questions of the use for these purposes of a weapon, the procedure for storing it on ships, definitions of the group of persons who may effectuate the said functions, also requires international legal regulation. All these questions are resolved variously in the legislation of various States.

Then questions of strengthening the security of ships in internal waters, especially in seaports, needs to be worked out at the international level. Security in ports must be ensured by a complex of measures of a legal, organizational, and technical character directed against prevention of attempts to seize and hijack ships, seize crew and passengers as hostages, and so on. To such measures may be relegated questions of the creation and activity in ports of special services for maritime security, the protection of ships, careful verification of cargo, inspection of crew members, passengers, their baggage and hand luggage for the purpose of suppressing attempts to transport

23 Romashev, note 20 above, p. 131.
weapons and explosives on a ship. The said regime measures within the competence of coastal States should take into account recommendations worked out within the framework of the International Maritime Organization (IMO). In particular, States should avoid taking measures which may tell on the effectiveness of maritime navigation and to this end take into account norms of the 1965 Convention on the Facilitation of Maritime Traffic directed towards simplifying and reducing formalities to a minimum when ships arrive and anchor in ports.

The 1979 International Convention Against the Taking of Hostages and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation serve the aims of preventing acts of terrorism at sea by means of the effectuation of timely measures within the territories of ports and seacoast of States. These conventions provide for very important provisions for the suppression of terrorism at sea and contain international legal measures aimed at ensuring the coordination and exchange of information about threats to commit acts of terrorism at sea. All these questions must be provided for in the treaty practice of States, in which, in our view, it is necessary to move on more effectively from treaties of a general character to more specific treaties that take into account the specific features of the struggle against terrorism at sea.

The question arises in connection with the struggle against terrorism at sea about the possibility of using armed forces in various maritime expanses and the legal grounds of and framework for such use.

Contemporary conceptions about the use of force on the high seas in peacetime are based on the respective provisions of the 1982 United Nations Convention on the Law of the Sea and the instances of piracy, transport of slaves, unauthorized broadcasting from the high seas, and illegal trade in narcotics effectuated by ships on the high seas are exhaustive.

The anti-terrorist operation ‘Enduring Freedom’ in Afghanistan accorded an important place to the naval forces of various States, which operated in vast areas of the World Ocean and incorporated a vast spectrum of waters having a different legal regime. In the course of this operation missile and bombing attacks were made against the territory of a sovereign landlocked State which was not in any way in a state of war. About 70% of sorties were performed by naval aviation based on four aircraft carriers in the Arabian Sea.\footnote{S. Sokut, “Новое слово в военном искусстве. Обзор боевых действий в Афганистане со 2 по 15 ноября” [New Word in Military Arts. Survey of Combat Actions in Afghanistan from 2 up to 15 November], Независимое военное обозрение [Independent Military Survey], no. 42 (2001).}
From submarines of the United States Navy and the Royal Navy more than 300 seabased cruise missiles were launched.25 Virtually all the ships participating in strikes on the territory of Afghanistan were equipped with nuclear reactors.

The involvement of naval forces in anti-terrorist operations was effectuated within the conception of networking warfare, presupposing in particular the use of a geographically dispersed force and, consequently, the diffusion of spatial limits of armed struggle and difficulty of localizing objects.26 Thus, the sphere of actions of Japanese Navy ships extended from the Hawaiian Islands in the Pacific Ocean to the Indian Ocean and the Arabian Sea. Within the sphere were the islands of Guam, Strait of Malaccas, Bay of Bengal, and Diego-Garcia Island. The Greek naval vessel _Psara_ was involved in patrolling the waters of the Red and Arabian seas, Persian Gulf, and Indian Ocean.27 German naval vessels patrolled the territorial waters in the area of Yemen, Sudan, and Somali.28

A large-scale naval operation was actually carried on which was effectuated by the fleets of States, not one of which was in a state of war against Afghanistan and embraced, together with the territory of a landlocked State not capable of waging naval warfare, vast expanses of the World Ocean both under the jurisdiction of nonbelligerent States and those to which the freedoms of the high seas traditionally extend as legally consolidated in the 1982 United Nations Convention on the Law of the Sea.

As a result of conducting an anti-terrorist operation a complex situation from the standpoint of international law was formed. The statement of the First Deputy Minister of Foreign Affairs of the Russian Federation, V. I. Trubnikov, on the importance in principle of the fact that the military actions of the United States, Great Britain, and other States against terrorists in Afghanistan were carefully verified and effectuated within the framework of international law in accordance with the purposes and principles of the United Nations Charter is applicable to them as a whole.29

The 1982 United Nations Convention on the Law of the Sea, the Rome conventions, and the 1988 Protocol are instruments of peacetime. If one proceeds from the conception of terrorism as an ‘act of war’, logically when resolving situations connected with such only should rely on the principles and norms of the law of armed conflicts collected, in particular, in the _San Remo_

Part V of the San Remo Manual provides for a number of measures enabling effective control to be exercised over navigation. Among them are the interception, visit, search, diversion, and capture. However, when applying these measures it is essential to distinguish between a ship flying the flag of an enemy State and neutral ships. In other words, the presence of belligerent parties is necessary and a state of “declared war or any other armed conflict arising between two or several” States.30

Finally, there exists the view that under conditions of the influence of a threat emanating from terrorist, criminal, and other structures, the role and place of the armed forces is changing. To a great extent the accent is placed on conducting operations other than war.31 It is evident that to conduct such operations the existence of a state of war is not necessary. The use of force, including armed force, is effectuated under peacetime conditions, that is, under conditions when the provisions of the 1982 United Nations Convention on the Law of the Sea operate.

In this event use of the peacekeeping potential of the 1982 Convention and of specific convention provisions together with other norms of international law would enable a legal classification to be determined and given to situations requiring resolution similar to that which was done with respect to the aforementioned piracy, unauthorized broadcasting from the high seas, and so on.

On this basis it also would be possible to determine the group of States endowed with jurisdiction in respect of the settlement of individual situations, work out legal mechanisms directed towards the resolution thereof, and, when necessary, determine the framework of the use of armed force and foundations for the regulation of the use thereof on the high seas.

The consolidation by convention of a similar type of provisions could constitute the international legal foundation of anti-terrorist activity of States in the waters of the World Ocean.

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30 Article 2 is common to all the 1948 Geneva conventions on the protection of victims of war.
31 Griniaev, note 26 above.
9. Enclosed and Semi-Enclosed Seas

The author of the conception of the ‘closed sea’ was the English jurist and political figure, John Selden, who substantiated it in his book *Mare clausum* (1635). According to this conception, the King of England had dominion over the adjacent sea as an inseparable and eternal part of the British Empire. It was necessary to prove in this connection that according to natural law or to the law of nations the sea was not common to all people and that it, just as the land, could be in private ownership or under the authority of individual persons. Selden, having spoken somewhat earlier than Hugo Grotius, to whom the concept of freedom of the high seas belongs, pursued the aim of substantiating the possibility and lawfulness of the appropriation of individual marine areas washing the coasts of States and to seek their security for the British crown even at the expense of limiting vitally important foreign navigation. As Molodtsov noted,

unlike Selden and his proponents who justified the claims of the coastal State to the right of ownership to marine expanses adjacent to the coasts thereof, the conception of the closed sea did not put the question of the right of possession of coastal States over the closed sea. It was based on geographical peculiarities of the closed sea, its isolatedness, and put to the forefront the interests of security of the coastal States while simultaneously respecting the freedom of merchant navigation for all flags in the closed sea.¹

The conception of the closed sea found juridical embodiment at the end of the eighteenth and first half of the nineteenth centuries and was especially developed during the twentieth century.

In accordance with the conception which existed in the USSR until the end of the 1970s, the concept of ‘closed sea’ was applied, as a rule, to seas penetrating deeply into the land which washed the coasts of a limited number of States. It was believed that closed seas were linked with the high seas by a strait or canal having significance as a water or transport (or transit)

route leading only to the coasts of coastal States. As regards the legal regime of closed seas established exclusively by coastal States, it consisted of norms regulating the complete freedom of merchant navigation of all countries and, on the contrary, the complete prohibition of military navigation of non-coastal third States.

"Among all the factors substantiating the need for the preservation and further development of the conception of closed seas", noted Melkov, “the factor of ensuring security has been advanced as the foremost. Next follows the factor of a water or transport route leading to the coasts only of the coastal States, and the factor of remoteness from world international routes".2

By the 1980s, the content of the conception of closed seas had justifiably changed, which is to be noted in the definition of Molodtsov:

By closed or semi-enclosed sea is understood a sea which is virtually encircled by land territory of several States and in view of its geographical position can not be used for transit (or through) passage to another sea. Access to a closed or semi-enclosed sea and other parts of the World Ocean may be effected along narrow sea routes leading only to the coasts or ports of States whose land possessions surround this sea.

In Article 122 of the 1982 United Nations Convention on the Law of the Sea, offering a new interpretation of the conception of closed sea, it is noted that “… ‘enclosed or semi-enclosed sea’ means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States”. An analysis of this provision enables one to note the absence of a material difference between the terms ‘closed sea’ and ‘enclosed sea’, which, in principle, may serve as synonyms, and also enables, at last, unnecessary terminological disputes to be eliminated.

This Article of the 1982 Convention, and likewise other analyzed scholarly definitions, enable a basic indicator to be singled out under which closed (or enclosed) seas are distinct from frontier lakes erroneously labeled as closed seas – ‘narrow outlet’. Despite the fact that the Convention does not clarify the content of that term, a number of scholars suggest that international or national rivers do not fall under this definition.4

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3 Molodtsov, note 1 above, p. 186.
4 See, for example, R. Mamedov, “Международно-правовой статус Каспийского моря: вчера, сегодня, завтра” [International Legal Status of Caspian Sea: Yesterday, Today, To-
The definition of the concept of ‘closed or semi-enclosed sea’ consolidated in such a universal treaty as is the 1982 United Nations Convention testifies under present conditions to the vitality of the conception of ‘closed or semi-enclosed sea’ and its importance for ensuring the security of coastal States. On the other hand, in the very definition of ‘closed or semi-enclosed sea’ provided for by the Convention there is an element which may lead to the fact that many other seas besides those seas which always have been related to closed or semi-enclosed (Black Sea, Baltic Sea, Sea of Azov) may be regarded as closed or semi-enclosed. The indication in the definition that a closed or semi-enclosed sea is a sea, gulf, or basin “… consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States” enables one to legitimately relegate to such type of seas the Mediterranean Sea, Adriatic Sea, Red Sea, and other seas entirely or primarily consisting of the economic zones of two or more States. However, the 1982 United Nations Convention (Article 123) in avoiding the difficult question of semi-enclosed seas, left this question to the discretion of the coastal States themselves, having recommended that they merely cooperate with one another in the exercise of their rights and duties provided for by the 1982 United Nations Convention on questions of the exploration, exploitation, and conservation of bioresources, conducting scientific research, protection of the marine environment, and so on.5

In supplementation of what has been said about the legal regime of closed or semi-enclosed seas the following should be noted. The concepts of closed sea adopted in the 1958 Geneva Convention on the High Seas and 1982 United Nations Convention on the Law of the Sea are not universal and can not relate to any seas irrespective of their geographical position. The legal regime of the closed sea is determined, as a rule, by coastal States on the basis of a treaty by proceeding from considerations of security and the preservation of peace while conforming to generally-recognized norms of international law concerning various types of activities at sea. One can not concur with certain specialists who assert that coastal States have no special rights to establish a special regime for an enclosed sea distinct from the regime of the high seas.6 In our view, the very fact that respective Articles of the 1982 United Nations Convention (Articles 122 and 123) do not touch questions ei-

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5 Molodtsov, note 1 above, p. 187.
6 See, for example, P. V. Savaskov, “О правовом режиме замкнутых и полузамкнутых морей” [On the Legal Regime of Enclosed and Semi-Enclosed Seas] in Международно-
ther of the legal status or of the legal regime of closed or semi-enclosed seas indicates that only the coastal States establish the legal regime of closed or semi-enclosed seas by means of the conclusion of respective treaties, taking into account the interests thereof, and also freedom of navigation, fishing, and other types of activity, on the basis of generally-recognized norms of international law.

The 1982 United Nations on the Law of the Sea (Article 123) serves as confirmation. In accordance with this Article, coastal States of a closed or semi-enclosed sea must cooperate between themselves with regard to the exercise of their rights and duties provided for by the 1982 United Nations Convention. This cooperation must be effected with respect to: (1) the management, conservation, exploration, and exploitation of living marine resources; (2) protection and preservation of the marine environment; (3) joint conducting of scientific research work in the sea.

Coastal States may in respective instances invite other States concerned or international organizations for the purpose of cooperation with them in order to implement the 1982 United Nations Convention.

Characteristic in this respect is the agreement by two coastal States of the closed Sea of Azov – the Russian Federation and Ukraine – the legal regime of the Sea of Azov and the rules for the passage of ships through the Kerchensk Strait. Negotiations with Ukraine on the delimitation of sea expanses concern especially two problems: the bilateral establishment of the regime of internal waters of Russia and Ukraine for the entire aquatory of the Sea of Azov and Kerchensk Strait; and also delimitation of the territorial sea in the sector from straight baselines in the area of the Kerchensk Strait up to the delimitation line under the intergovernmental Agreement between the USSR and Turkey on the delimitation of the continental shelf between the USSR and Republic of Turkey in the Black Sea of 23 June 1978.

The Sea of Azov by virtue of its geographical position and in accordance with norms of international law had the status of internal waters of the USSR, which no one contests. With the emergence on the shores of the sea and strait of new independent States – Russia and Ukraine – the question arose of a treaty consolidation of the legal status of these maritime expanses. So far the delegations of the parties for determining the status of the Sea of Azov and Kerchensk Strait have not succeeded in reaching agreement on this question nor to approximate positions on the principles and method of delimitation of the said sea expanses or the system for calculating the course of the delimitation line. The idea of preserving for these aquatories the status of internal waters of Russia and Ukraine, expressed by certain specialists, can hardly be deemed to be legitimate. The Sea of Azov, in particular, in accordance with the norms of the prevailing international law of the sea, considered above, falls under the concept of a closed sea.
10. Legal Regime of the Caspian Sea

1 Legal Status of Caspian Sea

The legal status of the Caspian Sea has for decades been classified by scholars basically according to two categories: (1) a closed sea; (2) a frontier lake. On the legal classification of the Caspian as a closed sea or frontier lake depends the legal regime of the Caspian and the rights and duties of the Caspian States.

For a rather long time a stormy discussion has proceeded in legal writings concerning the demarcation and definition of such concepts as ‘frontier lake’ and ‘closed sea’ with regard to the Caspian Sea.

1.1 Closed Sea

In Russia the view of scholars who consider the Caspian to be a closed sea is the most popular. F. F. Martens, the noted Russian jurist and diplomat, was among the first to have characterized the Caspian Sea from the standpoint of international law. He wrote:

In a completely different position in comparison with the high seas are those seas which are not only encircled by the territorial possessions of a single State but also have no connection with the ocean. These are closed seas: they are under the authority of that State within whose limits they lie. On this basis … the Caspian Sea also is closed, although it washes coasts belonging to Russia and Persia, but should be considered to be Russian.1

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Kamarovskii and Ulianitskii held to similar positions. In the naval manual edited by Belli it was noted that “the Caspian Sea being geographically closed and encircled by the territories of two States – the USSR and Iran – is considered to be a Soviet-Iranian sea”. The Caspian was defined as a closed sea in the 1957 textbook on international law. The substantiation for this conclusion was that its waters had no connection with the high seas.

One of the authors of the naval international law manual edited by Barabolia, issued in 1966, Ivanashchenko, relegated sea-lakes to closed seas on the basis of their legal status and regime of navigation as representing internal national waters of coastal States within the limits of their State boundaries, to which he relegated the Caspian Sea.

In the same work a number of positions not consistent with one another were advanced by V. Logunov. At the outset he stated that the Caspian Sea is not linked by routes either with the high seas or with an ocean and therefore from the standpoint of international law is closed. On the next page he put forward a different conception: “Not having an exit to the ocean, the Caspian Sea is a typical frontier lake located between two States – the Soviet Union and Iran”. In confirmation of this view Logunov notes that general norms applicable to the high seas, vessels and crew sailing on the high seas, and likewise to research and natural resource trades on the high seas, and the provisions on the territorial waters do not extend to the Caspian Sea since they do not extend to frontier lakes.

Boitsov, Ivanov, and Makovskii also acknowledged that the Caspian, being an enclosed sea-lake, in accordance with agreements concluded, should be regarded as a Soviet-Iranian sea.

On the official position of Iraq, which is reflected in national legislation, Shestopalov wrote:

Although in the law of 12 April 1959 [Law on making amendments to the Law on territorial waters] there is no special clause, on the basis of an analysis

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of legislation previously adopted and the treaty practice of Iran one may conclude that the provisions of this law may not be extended to the basin of the Caspian Sea, which is considered to be a closed sea. This obvious fact was recognized by the legislative practice of Iran during the mid 1950s and found reflection in the note to Article 2 of the law on the continental shelf of 19 July 1955, which indicates that the ‘provisions of international law with respect to closed seas apply to the Caspian Sea’.8

In the Russian translation of *International Law of the Sea* Colombos wrote:

Land-locked seas, lying entirely within the boundaries of one State, form part of the territory of that State. On the other hand, when the shores of a land-locked sea belong to two or more countries, and there is no agreement to the contrary between them fixing the limits of their respective boundaries, the sovereignty of each must be respected in the zone of its territorial waters, and the legal regime in the central part is then similar to that on the high seas. As there is usually no necessary trade or navigation in internal seas, the line of demarcation is drawn in the middle. Such used to be the position of the Caspian Sea, whose shores belonged to Russia and Persia, but by the Treaties of Gulistan of 1813 and of Toukmantchai of 1828, Persia ceded to Russia in perpetuity the exclusive right of keeping warships in this sea which placed it under Russian jurisdiction until the constant expansion of the Russian territories entirely surrounded it. To-day by the Treaty of Moscow, 1921, as reaffirmed by the treaty of August 27, 1935, both States enjoy equal rights of navigation on the Caspian Sea for their commercial vessels, subject to certain restrictions.9

Barsegov wrote in a monograph issued in 1998 that:

Attempts to treat the Caspian as an expanse without a prevailing international legal status have no legal grounds. It is impossible to imagine that at the end of the twentieth century an entire sea has not fallen under the operation of international law. Besides elementary logic, the existence of the international legal status of the Caspian is confirmed by the aforementioned normative material [having in view the Soviet-Iranian treaties of 1921 and 1940].

He went on to say: “The Caspian has the status of a closed (in the legal sense) landlocked sea established by the coastal States and recognized by the international community”.10

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10 Iu. G. Barsegov, *Каспий в международном праве и мировой политике* [Caspian in International Law and World Politics] (M., 1998), p. 4.
1.2 Frontier Lake

Among the unjustly forgotten, under-researched issues, treated as narrow and local, of contemporary international relations and international law is that of lakes, which nonetheless play an enormous role in the fate of States situated around them and have international significance.

There are about one hundred frontier lakes in the world, that is, those which wash the shores of two or more neighboring States and comprise their frontier space. The largest frontier lakes are the Great Lakes (Superior, Erie, Huron, Ontario, and Michigan (between the United States and Canada); Lake Geneva (between France and Switzerland); Lake Chad (between Nigeria, Chad, and Cameroon); Lake Victoria (between Uganda, Kenya, and Tanzania); Lake Titicaca (between Bolivia and Peru), and others. More than three hundred special international agreements, treaties, and conventions have been concluded between coastal States with respect to various types of use of frontier lakes; these concern such important questions as delimitation of the boundaries between neighboring States, navigation, fishing, irrigation, water table, exploitation and recovery of mineral resources, ensuring peace and security, and in this connection international guarantees, protection of water against pollution, and others.

The earliest of the bilateral treaties concerning frontier lakes was that concluded in 1426 between a Swiss canton and the Duchy of Milan on the cession of Lake Lugano to the last. Of this category of lakes the international legal regime most often codified has been that of the Great Lakes, Lake Constance, and Lake Geneva. It should be said that the conclusion of such a large number of treaties nonetheless has not led to an international legal definition of the concept of a ‘frontier lake’. The adoption on 20 August 1966 at the 52nd Conference of the International Law Association of the Helsinki rules for the use of international rivers in which certain questions were dealt with relating to navigation and environmental protection of frontier lakes does not fill this gap since that document was adopted by a nongovernmental international organization and is an example of unofficial or private codification of norms of international law. In addition, it is difficult to single out from this large number of treaties a special one which might play the role of analogue; for example, which other States might refer to or rely upon in the process of drafting their own agreements with regard to specific frontier lakes on whose shores they are situated. Virtually every frontier lake, as a rule, has its own entirely distinctive procedure for navigation, fishing, and so on for the use of frontier lakes.

Even though the law of frontier lakes has not been codified, nonetheless since the 1960s the attitude of the world community towards the problems of the use of frontier lakes has changed. First it began to occupy itself with problems of international waterways, of which frontier lakes are an integral
part. This also relates to non-navigation types of use – fishing, irrigation, electric power, and others. In 1970 the United Nations General Assembly considered the question of the progressive development and codification of the norms of international law concerning international waterways and referred it to the Sixth Committee for study and drafting. Regrettably, its activity has not to date been successful.

The insufficient work on problems of frontier lakes on a treaty basis has been reflected in the question of defining the status of these water expanses; however, this has not prevented certain scholars from undertaking attempts to independently work out this problem. Glazunov wrote that “lakes through which the State boundary of two or several States passes are considered to be frontier [lakes]”. On this basis he divides frontier lakes into two categories: frontier drainless lakes (of the Caspian Sea type) and lakes linked with the ocean (for example, the Great Lakes of North America).

However, this definition and classification of frontier lakes lacks a geographical characterization of a frontier lake, which is so important an attribute that in its absence it is simply impossible to carry on a comparative analysis of various legal categories. Moreover, this definition does not contain completely those legal categories which would enable one to judge whether a specific lake is a frontier lake.

Colombos in his *The International Law of the Sea* offers the following definition of lakes:

> Where such lakes are bordered by land belonging to different Powers, such as for instance, Lake Constance which is bounded by the German and Swiss territory, Lake of Geneva (French and Swiss territory), and Erie, Huron, Superior and Ontario (Canada and the United States), the practice is that, by treaties between the bordering States, arrangements are made as to the waters belonging to each State and as to the rights of navigation in the lakes. Where no such agreement is in force, a reasonable solution appears to be that the boundary should be fixed by the middle line, unless there exists a ‘thalweg’ or mid-channel in the lake, in which case the same principles are to be followed as in the case of rivers.

This definition does not enable frontier lakes and closed seas to be precisely distinguished.

One may encounter the term ‘international lake’ in various works. Tarasov, for example, noted:

> An international lake is a lake enclosed by the land territory of various States ... The use of waters of international lakes is regulated by international agreements of coastal States establishing the line of the State boundary, rights

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to navigation, and conditions for the use of waters for non-navigation purposes.\textsuperscript{12}

A noted Portuguese jurist, Jouquim Silva Cunha, justly considers that in order to determine the international legal regime of lakes it is necessary to distinguish between national and international lakes, as well as lakes having a link with the sea from those not having such. International lakes, in his view, are those which wash the territories of two or more States. Lakes on the territory of one State are national.\textsuperscript{13}

In accordance with this view, international lakes which have no link with the sea are under the jurisdiction of the coastal States and the water expanse thereof are divided into as many zones of equal breadth as there are coastal States. As regards the water course connecting such a lake with the sea, the Portuguese jurist believes that if it passes through the territory of one State, it is subordinate to the regime of national rivers, that is, the exclusive jurisdiction of that State; if it crosses the territory of different States, the regime of international rivers applies to it.

The most detailed definition of lakes is given in the works of Pondaven, who divides them into three categories: national, international, and frontier. The last two categories are examined by the author in greatest detail. According to his definition, an international lake is any lake situated on the boundaries of two or more States whose water navigation routes, in accordance with the Barcelona Convention and the 1921 statute relating to the regime of navigable waterways of international significance, are of international significance and whose waters can be used for industrial or agro-industrial purposes by various countries.

In seeking to draw a line between the categories being investigated, Pondaven suggests that frontier lakes situated on the territories of two or more States are by virtue of their position international lakes, and international lakes, on the contrary, are not necessarily frontier lakes.\textsuperscript{14}

All frontier lakes, however, have an international legal status which automatically leads to them being deemed to be international. If any frontier lake has been declared to be open for international navigation and its water


\textsuperscript{14} Ph. Pondaven, Les lacs frontière (1972), cited in Mamedov, note 13 above, p. 235.
routes have acquired additional significance, it has come consequently to be singled out and called international, but it does not cease to be a frontier lake.

The term ‘frontier lake’ is more specific and precise since it affirms the affiliation of the lake to particular coastal States which by virtue of this fact are not obliged to the detriment of their boundaries and national security interests to declare their internal water spaces to be open to third countries. It should be noted that with regard to international rivers this question is resolved otherwise: if a river crossing the territory of several States combines the most advantageous water and sea communications, it must be declared to be open for international navigation.

The classification of frontier lakes based on geographical location suggested by Pondaven is of considerable interest: (1) lakes which have natural links with the high seas. Such lakes as Lake Malawi, which links with the Indian Ocean through the Shire and Zambesi rivers, and Lake Scutari, which links with the Adriatic through the Boyana River, and Lake Mirim, which links with the southern part of the Atlantic Ocean, and a number of others meet this condition; (2) lakes having artificial links with the high seas which made them suitable for navigation (for example, the Great Lakes linked by a canal with the St. Lawrence River and flowing to the Atlantic Ocean through an artificial canal); (3) lakes linking with international rivers (for example, Lakes Victoria, Edward, and Albert, which are linked with a large international river, the Nile).  

The significance of this classification is that by using this method it is easier to study the prevailing international legal regime of a particular group of frontier lakes, as well as to attempt to work out for each group of lakes individually more or less general international legal positions.

Commencing in the 1980s views emerged in Soviet legal science concerning the possibility of deeming the Caspian to be a frontier or international lake. Meshera, for example, noted that although the designation ‘sea’ historically had been applied to the Caspian, nonetheless from the geographical point of view it was an ordinary frontier lake.  

Vereshchetin also did not include the Caspian Sea in the category of closed seas:

However, such seas are distinct from closed seas in the broader sense of the word in that by virtue of a treaty they may be divided between coastal States; that can not be said with respect to closed seas. Even the navigation of mer-

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15 Mamedov, note 13 above, p. 235.
chant ships of noncoastal States in such seas is usually excluded, which also is not characteristic of closed seas.\(^{17}\)

Malinin classified the Caspian Sea as a frontier lake.\(^{18}\)

The most complete definition, in our view, of a frontier lake is offered by Mamedov:

> Frontier lakes should be considered water expanses washing the shore of two or more States having no natural link with the World Ocean and possessing an autonomous international legal status and regime determined in a specific international treaty concluded by the lake States.\(^{19}\)

Despite the existence of certain common features with other aquatories, a frontier lake undoubtedly deserves to be singled out into an autonomous legal category. Regrettably, neither the treaty practice of States nor international legal doctrine has been able to date to resolve this issue of the definition and formation of the legal regime of frontier lakes unequivocally and uniformly.

Under modern conditions when new principles are being established to secure universal peace and international security, frontier lake areas are not included in the sphere of their operation since the land territories surrounding lakes and often the frontier lakes themselves, when their delimitation and demarcation is controversial, become the subject of serious inter-State conflicts.

In contrast to the Soviet (Russian) school of international law in foreign legal literature the view predominates that the Caspian is a frontier lake. At the end of the 1960s the noted English jurist, W. E. Butler, wrote that despite the inclusion of the Caspian Sea within the internal waters of the Soviet Union, in fact it is a large lake which historically is called a sea.\(^{20}\) The French scholar, de Hartingh, wrote that

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\(^{19}\) Mamedov, note 13 above, p. 243.

\(^{20}\) “The 1947 international law textbook introduced the closed sea concept in its narrowest possible form by defining it as a landlocked body of water. The Caspian and Aral Seas were offered as examples, and they were described as large lakes whose regime was that of national or frontier waters”. W. E. Butler, The Soviet Union and the Law of the Sea (1970), p. 121.
the Caspian Sea, just as the Aral Sea, in reality is a large lake subordinated to national jurisdictions. Since the shores of the Caspian belong to two States, the Soviet Union and Iran, its waters are therefore frontier [waters].

Phillimore relegated the Caspian Sea to a lake: “… seas encircled by one or two States are saltwater lakes and to them should apply those same principles that apply to freshwater lakes”.

Pondaven gives a certain place to the Caspian Sea in his book on frontier lakes. In his view, the Caspian, despite its size, resources, and ancient history, all the same is relegated to the “least regulated, from the standpoint of international law, lakes”.

From the above one may draw the conclusion that specialists in the domain of international law have yet to come to common agreement as to whether the Caspian is a sea or a lake. One reason may be that the conception of ‘frontier lake’ has been inadequately elaborated in the international law of the sea.

Kolodkin believes in this connection that

in the event of any changes in the regime of the Caspian, which must be effected with the common consent of five countries, it is necessary to take into account that this is not part of the World Ocean, and therefore the norms of the law of the sea are inapplicable here: in the Caspian there is no territorial sea, economic zones, and continental shelf (that is, the 1982 Convention can not be applied to the Caspian).

Scholarly discussions on classifying the Caspian Sea continue. In this connection the official position of Russia is the most productive:

… the Caspian Sea, having no natural link with the World Ocean, is a unique landlocked body of water which from the international legal point of view can not be regarded either as a sea or as a lake. The operation of the 1982 United Nations Convention on the Law of the Sea can not extend to it.

It follows from the foregoing that the Caspian States, for whom the Caspian Sea and its resources have vitally important significance, are interested in a rapid determination of the legal status and agreement of the legal regime of

23 Note 14 above, p. 174.
25 Дипломатический вестник [Diplomatic Herald], No. 3 (2000).
this enclosed body of water. Until the establishment of the new regime, as Kolodkin justly observes,

the legal regime of the Caspian operates as determined by the provisions of the Soviet-Iranian treaties of 1921 and 1940, in accordance with which no spatial delimitations exist in general in the Caspian except for a fishing zone; the Caspian is open for use by all Caspian States. However, none of them has the right to effectuate unilateral steps for the purpose of the national appropriation of its areas.26

2 Positions of Caspian States on Legal Regime of Caspian Sea

The situation in the basin of the Caspian Sea is under strong influence of a conflict of interests around the large oil and gas reserves in this area. According to various assessments, the hydrocarbon reserves in the Caspian Sea comprise from six up to twelve billion tons. Kazakhstan alone, according to projected reserves, occupies the second place in the world after Saudi Arabia.27 The coastal States have been drawn deeply into disputes around the legal regime of the Caspian Sea, as well as on the question of the delimitation of national economic zones and sectors. Discussion is continuing with regard to possible routes for transporting hydrocarbons from the Caspian region to world markets. This conflict of interests is exacerbated by the growing involvement of the United States and a number of European States in the affairs of the region. In recent years the trend towards militarization has clearly gathered momentum. Aware of the dangerous consequences of this turn of events both for regional and global security, the coastal States are undertaking intensive efforts to lessen the growing tension around the Caspian Sea. A fundamental condition for averting an escalation of apprehensions may be the rapid achievement of a universal agreement on the legal status of the Caspian Sea acceptable to all coastal States. However, it has to be said that despite achieving certain obvious successes in the cause of determining the legal status of the Caspian, a breakthrough has not occurred. As Kaliuzhnyi noted,

The process of legal regulation on the Caspian has seriously been held back by what has occurred there de facto. Moreover, without a serious legal foundation peace and stability in the region can not be reliably ensured nor can

26 Kolodkin, note 24 above, p. 115.
mutually-advantageous cooperation of the Caspian States – Russia, Azerbaijan, Iran, Kazakhstan, and Turkmenistan – with one another and with extra-regional partners.

It seems advisable in this connection to consider the positions of the Caspian States on the legal regime of the Caspian Sea.

After the disappearance of the Soviet Union, the number of Caspian States increased from two to five. Correspondingly, the need arose for the adoption of a new agreement on the legal status of the waters, the participants of which, together with Russia and Iran, would be Azerbaijan, Kazakhstan, and Turkmenistan. A convention on the legal status of the Caspian Sea should, in our view, become such a document. An arrangement was reached among the Caspian States that such a convention might be adopted only by consensus. Until the adoption of this document the legal regime established by the Soviet-Iranian treaties continues formally to operate in the Caspian Sea. However, Azerbaijan, Kazakhstan, and Turkmenistan actually ignore them, unlike Iran, which has repeatedly declared its devotion to compliance with the treaties of 1921 and 1940.

The position of Russia on this question was expressed at the international conference on managing the exploitation of Caspian oil, where the Special Representative of the President of the Russian Federation, V. Kaliuzhnyi, declared as follows:

The Caspian Sea has a legal status. It was established by the Soviet-Iranian treaties of 1921 and 1940, and until a new status is adopted, it continues to operate. I recall that all the former republics, now sovereign States, recognized the treaties concluded by the USSR. This means that the Caspian Sea as before is in the common use of all, now five and not two, as in the past, Caspian States, that the regime of freedom of navigation and freedom of fishing (except for a 10-mile coastal zone) operate on the Caspian, and that navigation on the sea of vessels under the flags of non-Caspian countries is prohibited.

The presently operating status is behind the times. And the time has come to conclude a new five-party document – a convention on the legal status of the Caspian Sea. But, I repeat, so long as the convention has not been drafted, the Soviet-Iranian treaties continue to operate. Otherwise – anarchy and chaos.28

This position of the Russian Federation was confirmed in a joint statement of the Russian Federation and Islamic Republic of Iran on the legal status of the Caspian Sea adopted in the course of negotiations held on 12 March 2001 between the President of the Russian Federation, V.V. Putin, and the President of the Islamic Republic of Iran, S.M. Hatami. It has indicated in point 2

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28 Address of V. Kaliuzhnyi at the International Conference “Managing the Exploitation of Caspian Oil”, Baku, 8-10 November 2000. Дипломатический вестник [Diplomatic Herald], No. 3 (2000).
of that Statement that the Parties, until an improvement of the legal regime of the Caspian Sea, officially do not recognize any boundaries in that sea and, taking into account the said legal foundation [the Soviet-Iranian Treaty of 1921 – A.K.] shall develop cooperation in the Caspian Sea in various domains by means of working out necessary legal mechanisms.

Azerbaijan initially drew a line for the division of the Caspian into national sectors which would have included the seabed, water column, and surface and be under the sovereignty of the respective coastal State. According to the 1995 Azerbaijan Constitution, the ‘Azerbaijan sector’ of the Caspian Sea is part of the territory of the Republic. Serious disagreements exist at present between Baku and Ashkhabad relating to the affiliation of the Kiapaz and Cherag oil fields.

In January 2002 the President of Azerbaijan, G. Aliyev, visited Moscow. In a joint statement the heads of the two States confirmed the aspiration for a rapid determination of the new legal status of the Caspian on the basis of the common consent of all Caspian States. Russia and Azerbaijan stated the closeness of their positions on this question.29

In 1994 Azerbaijan had submitted its first draft convention on the legal status of the Caspian Sea, which consisted of a preamble and twelve articles. In the preamble it was said that the Caspian States, aware of the important political, economic, social, and cultural value of the Caspian ecosystem and significance of its resources for peoples of the Caspian region and all of mankind, and welcoming the climate of cooperation and mutual understanding between these States, should strive for mutual understanding in establishing the legal status of the Caspian Sea.

Article 1 set out a definition of terms to be used in the basic text. According to Article 2, cooperation and activity of the Caspian States should be structured on the basis of principles of international law. In Article 3 it was proposed to divide the sea into respective national sectors. In so doing the delimitation should be carried out on both a bilateral and a multilateral basis (Article 4). Within the limits of each sector of the sea the legislation of the respective coastal State would apply unless provided otherwise in international treaties (Article 6).

The draft convention also considered various types of activities in the Caspian, in particular, fishing, navigation, the exploitation of bioresources, hydrocarbons, and other minerals, scientific research, and other types of activity not contrary to national legislation of the coastal States.

Soon after the first variant of the draft a second, improved version was proposed of the draft convention on the legal status of the Caspian, consisting of a preamble and fourteen articles.

29 Дипкурьер [Diplomatic Courier], No. 2 (172) (January 2002).
The principal difference between the first and second variants was that the last more precisely defined the international legal status of the Caspian Sea. In particular, Article 1 offered definitions of the terms ‘Caspian Sea’ and ‘sector of the Caspian Sea’, absent in the first variant. The concept ‘Caspian Sea’ was defined as a landlocked drainless basin (enclosed body of water) not having a natural link with the World Ocean which by reason of physical-geographical conditions of location and, proceeding from the traditionally established principle of delimitation of its aquatory (Russia-Iran, USSR-Iran), falls under the concept of ‘frontier lake’. By ‘sector of the Caspian’ was understood the part of the aquatory, seabed, and subsoil washing the coastal State and integral part of the territory of the Caspian State limited by the State boundary in the waters. According to Article 3 of the draft convention, the Caspian Sea (frontier lake) was divided into sovereign sectors which were an integral part of the territory of the respective Caspian States.

The process of delimitation of the boundaries in the Caspian Sea was precisely determined in the draft, the State boundary between the Caspian States passing along a median line equidistant from the coasts and where there were islands – from a conventional line joining the coasts of these islands to the median line. Moreover, it was suggested to establish the State boundary in waters between neighboring Caspian States along a conventional line that was the natural prolongation of the land boundary perpendicular to the median line of the aquatory. The draft Convention also proposed to establish the outer boundary of the sector of the aquatory of Iran, which according to the draft might be established along a straight line joining the southern boundaries of Azerbaijan and Turkmenistan. As Mamedov suggested, “possibly these provisions predetermined the fate of the draft and therefore it was not accepted as a working document for discussion” at the Conference in Moscow on 11-12 October 1994 specially convened to discuss the draft conventions proposed by Russia, Azerbaijan, and Kazakhstan.

On 23 September 2002 a Russian-Azerbaijan Agreement was signed on delimitation of the neighboring seabed parcels of the Caspian Sea. This Agreement establishes, in particular, specific geographic coordinates for the Russian-Azerbaijan ‘seabed’ line of delimitation. On both sides the Russian Federation and Azerbaijan also will exercise their sovereign rights with respect to developing the mineral resources and other lawful economic activity connected with use of the seabed resources of the Caspian Sea.

Russia and Azerbaijan thus ultimately settled bilaterally all issues in dispute connected with activity relating to the use of resources of the seabed of the Caspian Sea in common water. This maximal approximation of the

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positions of Moscow and Baku with regard to determining the Caspian regime, taking into account an analogous agreement between Russia and Kazakhstan, means the actual creation of an alliance of these three States in the Caspian Sea.

Turkmenistan for a number of years has vacillated but, on the whole, has taken the position of sectoral division. In the words of the President of Turkmenistan, Saparmurat Niazov, the country headed by him “has precisely indicated its position and favors division of the seabed and water column into national sectors”. However, he noted that it is not precluded that during the process of forming the international-legal status of the Caspian Sea a compromise variant will be adopted when “a 20-mile zone for free navigation will be separated out in the middle of the body of water”. The President of Turkmenistan repeatedly stressed that for Ashkhabad the priority of the ‘Caspian Five’ finding agreement on the question of the status of the sea was one of principle. “Only after working out the new status can one speak of the creation of various kinds of economic centers and other equal cooperation. We oppose the creation of any structures on the Caspian until the status of the sea is determined”. In so doing Turkmenistan unilaterally proclaimed its own territorial sea in the Caspian.

In August 1999 a National Service for the Exploitation of the Turkmen Sector of the Caspian Sea was created in Turkmenistan and given powers to regulate navigation and license fishing in the ‘Turkmen national sector’. Russia in this connection cautioned Turkmenistan that the realization of the powers would be contrary to the prevailing regime of the Caspian.

Negotiations between Presidents Putin and Niazov took place in Moscow in January 2002. The Russian President called “especially gratifying” the fact that “our specialists materially approximated the positions with regard to the division of the Caspian”. In the ‘Caspian section’ of the communiqué both States affirmed their aspiration to find a solution as soon as possible to the problem of determining the new legal status of the Caspian, taking into account the interests of all the Caspian States. The Presidents especially noted that the determination of the legal status of the Caspian would enable favorable conditions to be created for exploitation of hydrocarbons and biological resources and the protection and preservation of the ecological system of the sea.

31 Независимая газета [Independent Newspaper], 16 March 2001.
32 Ibid.
33 Ibid.
34 Дипкурьер [Diplomatic Courier], no. 2(172) (January 2002).
Recently Turkmenistan also has leaned towards the position taken by Azerbaidzhan, that is, delimitation of the seabed of the Caspian as a common aquatory.\textsuperscript{35}

The position of Kazakhstan on the legal status of the Caspian Sea is reflected in a draft convention submitted to all the coastal States initially on 19 July 1994 and then new variants in 1998 and 2000. This draft is an attempt to apply to the Caspian the provisions and principles of the 1982 United Nations Convention on the Law of the Sea while simultaneously rejecting the Russian-Iranian treaties of 1921 and 1940 as obsolete and nonoperative. The principal ideas of the Kazakhstan conception (in all 35 articles) are the following.

Kazakhstan believes that the seabed and subsoil of the sea must be delimited among the coastal States, which would possess national jurisdiction and exclusive rights relating to the exploration and exploitation of mineral resources in their parts of the seabed. Kazakhstan favors other Caspian States, including Russia and Iran, possibly participating in the exploitation of oil and gas fields in the Kazakhstan part of the Caspian, the forms of participation being various. In Astana they suggest that the answer to the question whether the Caspian is a sea or a lake may have significance when choosing the procedures for determining the rights of coastal States under international law, but does not material influence on the result of such division. In the proposed variant of the convention the Caspian Sea is defined as a ‘marine expanse’. Kazakhstan claims that the legal status of the Caspian Sea in complete conformity with the principle of equity and Part XI of the 1982 Convention should provide for access to the high seas and freedom of transit throughout the system of the Volga-Baltic and Volga-Don canals for Kazakhstan, Azerbaidzhan, and Turkmenistan, they being landlocked countries. This same principle also should relate to the communications systems of Iran.\textsuperscript{36}

Article 17 of the draft contains an important provision reiterating the respective articles of the treaties of 1921 and 1940:

\begin{quote}
Throughout the entire extent of the Caspian Sea may be situated only vessels belonging to the parties, and likewise to citizens and juridical persons of the parties, sailing, correspondingly, under the flags of the Republic Kazakhstan, Azerbaidzhan Republic, Islamic Republic of Iran, Russian Federation, and Turkmenistan.
\end{quote}

However, the Kazakhstan draft also suffered the fate of the Azerbaidzhan draft: it was not accepted for discussion at the Moscow Conference.

\textsuperscript{35} \textit{Независимая газета} [Independent Newspaper], 24 September 2002.

\textsuperscript{36} From the Address of T. K. Kudekov, Permanent Representative of the Republic Kazakhstan attached to the VMO and Deputy Chairman of Kaskom, at the International Conference “Caspian: Legal Problems”, held at Moscow on 26-27 February 2002.
As a result of numerous contacts of the heads of State of Kazakhstan and Russia, an agreed position was worked out with respect to determining the new legal regime of the Caspian Sea. Consensus was found in resolving the complex issue on interaction in the Caspian, expressed in signing a bilateral Agreement on Delimitation of the Seabed of the Northern Part of the Caspian Sea. On 13 May 2002 the presidents of Russia and Kazakhstan signed the Protocol to the said Agreement for the purposes of the exercise of sovereign rights to subsoil use of 6 July 1998. This document establishes the “geographical coordinates of the modified median line of delimitation of the seabed of the northern part of the Caspian Sea for the purpose of the exercise of sovereign rights to subsoil use”. Three hydrocarbon deposits situated along this line, ‘Kurmangazy’, ‘Tsentral’naia’, and ‘Khvalynskoe’ will be exploited by Russia and Kazakhstan on a parity basis of 50/50. In the words of the President of the Russian Federation, this is a “breakthrough in cooperation on the Caspian”. In turn, President Nazarbaev noted that Russia and Kazakhstan are the first to have achieved an arrangement concerning exploitation of the seabed resources, and this fact once more confirms the aspiration of both States to develop a strategic partnership. This is an “enormous agreement” which Kazakhstan signed within the framework of the Commonwealth of Independent States and in mutual relations with Russia.37

Russia considers the Caspian to be a unique landlocked body of water and opposes its division into national sectors since this would require a fundamental revision of the economic use of the water that has developed over the past 70 years. Moreover, such a division would enable the Caspian States, without considering the interests of others, to establish in their sectors any procedures advantageous to them, including various limitations on navigation, and this would give rise to a mass of new problems, including territorial disputes and conflicts. Serious harm would be caused to the ecosystem of the Caspian and its fish wealth.

In 1994 Russia, just as Azerbaidzhan and Kazakhstan, proposed for the consideration of participants of the Moscow Conference a draft convention on the legal status of the Caspian Sea. The Russian variant of the convention proposed to defer for an indefinite period the issue of determining the new legal status of the Caspian and then to determine it by a ‘separate convention’, and until agreement was reached on this issue between all Caspian States to adhere to the previously established legal regime (that is, the provisions of the Soviet-Iranian treaties of 1921 and 1940). The Russian variant provided less for principles of cooperation than did the Azerbaidzhan and Kazakhstan variants. A proposal was made to create an international organization – the Inter-State Council for Problems of the Caspian Sea (Article 5),

37 http://www.rian.ru
with a number of committees (Article 7) and a secretariat (Article 8). Among the tasks of the Inter-State Council should be consideration of strategic questions and an action program of the Caspian countries, as well as the adoption of decisions concerning the further development of cooperation (Article 6).

The draft proposed the space and resources of the Caspian Sea be used jointly. This initiative, and the proposal to create an Inter-State Council, did not receive support from Azerbaidzhan, or Kazakhstan, or Turkmenistan, and the Russian draft, just as the two others mentioned above, was rejected.

A compromise proposal was put forward by the Russian side in 1996 to establish for the Caspian States a 45-mile coastal zone with ‘pointwise jurisdiction’ over deposits being exploited beyond the limits thereof. This proposal also did not receive support from the Caspian States.

The next compromise initiative of Russia was a proposal to delimit the seabed of the Caspian Sea among neighboring and opposite Caspian States along a modified median line for the purpose of the exercise of sovereign rights over subsoil use (that is, resource jurisdiction) while retaining the water expanse in common use, freedom of navigation, agreed norms in the domain of fishing, and protection of the environment.

Kazakhstan supported this proposal, with whom on 6 July 1998 an Agreement had been signed on delimitation of the seabed of the northern part of the Caspian Sea for the purpose of the exercise of sovereign rights to subsoil use, and in May 2002 a Protocol to the Agreement. In accordance with the Protocol, three hydrocarbon deposits located along this line will be exploited by the two States on a parity 50/50 basis. The closeness of the positions of Russia and Kazakhstan was reflected in the Declaration between the Russian Federation and the Republic Kazakhstan on Cooperation in the Caspian Sea, signed by the presidents of the two countries at Astana on 9 October 2000.

In supporting an equitable delimitation of the seabed of the Caspian, Russia also allowed the possibility of the establishment for the Caspian States of two coastal zones of agreed breadth: one for the exercise of frontier, customs, sanitary, and other control; and the other, for fishing.

Recently there has been an approximation of the positions of Russia and Azerbaidzhan. In a joint Statement of the Russian Federation and the Republic Azerbaidzhan on Principles of Cooperation in the Caspian Sea, signed by V.V. Putin and G.A. Aliev at Baku on 9 January 2001, there is a provision on the step-by-step movement towards a resolution of the status of the Caspian. It is noted in the Statement, in particular, that

at the first stage it is proposed to delimit the seabed of the Caspian Sea between respective neighboring and opposite States into sectors/zones on the basis of the median line method drawn by taking into account the equidistance

38 http://www.rian.ru
of points and modified by agreement of the parties, and also by taking into account generally-recognized principles of international law and practice that have formed in the Caspian. The parties agreed that for each of the coastal States in the sector/zone formed as a result of such division exclusive rights would be recognized with respect to the exploitation of mineral resources and other lawful economic activities on the seabed.

In comparison with the Russian-Kazakhstan Declaration the use of the term ‘sector/zone’ is new to this formulation, as is the addition of ‘other lawful economic activities on the seabed’. This document is based on the principle: ‘the seabed is divided, the water is in common’.

As regards the position of Iran, when working out the legal status of the Caspian in Teheran they preferred to retain a large part of the sea, with the exception of a national coastal zone of an agreed breadth, in the common possession and joint use of all Caspian States (a so-called condominium). However, in order to facilitate the reaching of a common agreement Iran was ready to divide the sea into national sectors. The Iranians indicate that they would be prepared to support the position of Russia and Kazakhstan on delimitation of the seabed of the Caspian Sea if it were effectuated on the principle of ‘20% of the area to each coastal State’. Kazakhstan and Azerbaijan oppose this position. Turkmenistan for tactical reasons supports the Iranians but refrains from a specific discussion of the issue to grant a determined share of the seabed to the Caspian States.

While supporting in principle the proposal of Russia to create for the purposes of protection of the ecosystem and bioresources of the sea a monitoring center, the Iranians also favor conferring economic functions on it.

With a view to reaching agreement relative to a new legal status of the sea it would be advisable for the Caspian States, in our view, to recognize the Caspian as a ‘landlocked body of water with a special legal status’.

Such a ‘special’ status would enable the five Caspian States, without recycling attempts to convince about numerous controversial moments under the existing conventions and agreements, to create the precedent of a legal definition of the status and regime of the territory (in this instance – water expanse) without falling manifestly under one of the existing classifications.

If the Caspian Sea were deemed to be a ‘landlocked body of water with a special legal status’, one could flexibly approach the resolution of a number of complex problems; for example, effectively apply the method of the modified median line to delimit the seabed. It seems this method enables one to most equitably divide the seabed into national sectors. Moreover, as shown above, virtually all the Caspian States are ready in principle to accede to the position of Russia, which consists of dividing the seabed of the Caspian among the States concerned with common use of the aquatory of the Caspian Sea. To enhance the productiveness of the negotiations on delimitation of the seabed an agreement might be reached among the parties to apply
the principle of 50/50 to disputed fields. At the same time, when applying this principle to a party which has discovered the deposit the expenditures incurred should be compensated. Otherwise, the deposit may pass to it. As regards the coastal zones, when retaining the water column in common use one may make provision for the creation of two zones – coastal, with a breadth of up to 12 miles in which each State will exercise frontier, customs, sanitary, and other control, and fishing – within the limits of about up to 20 miles.

It seems that reaching agreement on the legal status of the Caspian Sea in principle is possible in the near future. The signature by the five coastal States of a comprehensive convention on the legal status of the Caspian which would to the maximum extent satisfy the interests of all five States is an important but rather complex task. The draft convention on the legal status of the Caspian Sea submitted in this connection by Russia in 2001 best reflects the aspirations and expectations of all Caspian States. In the event of adoption, such a convention would facilitate the development of cooperation of the Caspian States and further the use of the Caspian for peaceful purposes and the rational use of its resources.

Until consensus is found on disputed issues of a general convention, it seems it is necessary as a matter of priority to conclude multilateral intergovernmental agreements in accordance with which one may adopt urgent collective measures with regard to protecting the ecology of the Caspian and its fish resources. Three such agreements are proposed: “On the Conservation and Use of Biological Resources of the Caspian Sea”; “On Protection of the Natural Environment of the Caspian Sea”; and “On Cooperation of the Caspian States in Hydrometeorology and Monitoring of the Natural Environment of the Caspian Sea”. They all are under consideration by the Caspian States. The last was initialed by representatives of the meteorological services of Kazakhstan, Iran, and Russia. The agreement on the conservation of Caspian bioresources, in the view of experts, has the greatest chances of signature.

In order to settle the numerous problems of the Caspian, in our view, it would be desirable to create an independent international agency – the Center for Strategic Resolution of Caspian Problems – to watch over its ecology and, in the long term, navigation and fishing. In the context of the ecological problem, it should be noted that in Russia work on a draft framework convention to protect the marine environment of the Caspian is viewed positively, it being conducted by experts of the five Caspian States under the patronage of UNEP. Russian initiatives relative to the signature of an Agreement for Protection of the Marine Environment of the Caspian and the crea-

39 See Kolodkin, note 24 above, p. 110.
tion of a Strategic Center are in no way inconsistent with working out the framework convention, but rather in essence develop and augment it.

It is necessary for Russia, it seems, in future to continue to carry on an active policy towards resolving a strategic task – the signature of a comprehensive Convention on the legal status of the Caspian Sea. It is important to take into account the interests of all Caspian States since with a view to obtaining enormous economic benefits from the export of oil and gas they obviously will firmly insist on their positions with regard to the status of the Caspian. At the present stage the line of a prompt signature of agreements to protect the ecology of the sea without waiting to achieve consensus relative to the legal regime of the Caspian seems to be most fruitful. The greatest measure of agreement of the five Caspian States has been achieved in this direction.

With a view to achieving a compromise Iran put forward the idea of joint use of a belt (10 to 20 miles in breadth) along lines separating national sectors. Charts illustrating the Iranian initiative have been promised for distribution.

As noted above, during the visit to Russia of the President of Iran, S. M. Hatami, the presidents of the two countries signed on 12 March 2001 the Joint Statement of the Russian Federation and Islamic Republic of Iran with regard to the legal status of the Caspian Sea which identified the coincidence or proximity of their positions on many issues of principle (Soviet-Iranian treaties as the legal foundation regulating activities at present on the Caspian; nonrecognition of boundaries in the Caspian Sea until resolution of the question of its legal status).

Ultimately, Iran softened its positions on the problem of the division of the seabed and water surface of the Caspian Sea. After Iranian-Azerbaijani consultations during the first ten days of September 2002 on the status of the southern Caspian, the parties concluded that the signature of a respective document on this issue was possible. In this document Iran and Azerbaijan propose to leave part of the coastal zone in national use and to divide only the seabed of the Caspian (with the possibility of joint exploitation of its resources) and leave the Caspian aquatory in common use.

Thus, as the analysis above shows, all the Caspian States are virtually at one on the variant of the regime of the Caspian proposed by Russia: “the seabed of the Caspian we divide, the waters are common”.

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40 Независимая газета [Independent Newspaper], 24 September 2002.
11. Legal Regime of the Arctic

1 Sectoral Principle of Division of the Arctic

The Arctic is an area of the planet located around the North Pole whose total space is about 21 million square kilometers. Many definitions of the Arctic exist in the literature. The multiplicity of definitions testifies to the existence of a large number of criteria and aspects which need to be taken into account when attempting to give a strict legal definition of a territory such as the Arctic.

The definition of the Arctic and its international legal regime are of exceptional importance, bearing in mind the discovery in the Arctic of oil-bearing areas, the successful exploitation of hard minerals, and accordingly the arising of various territorial claims in the Arctic by Arctic States.

The Arctic is a region in which enormous reserves of natural resources are located, and therefore, despite the remoteness of its geographical position, the Arctic region is attracting more attention from the international community, linked especially with its military-strategic and economic characteristics.

The Arctic region plays an exceptionally important role in the preservation of ecological equilibrium on the planet, being an area where the global atmospheric processes are a distinctive filter for air pollutants. The biological resources of the Arctic for a number of centuries were and remain the basis of life for native peoples and ethnic groups of the North and their unique economic life and culture. The island territories of the Russian Arctic (Novaya Zemlia archipelago, Franz Josef Land, Severnaia Zemlia, Novosibirsk Islands, Wrangel Island) and many continental territories (for example, Tai-
myr Peninsula, Chukotsk Peninsula) are unique systems for scientific research and tourism which have no analogues in the world.¹

More than two-thirds of Russian gas fields and a third of oil deposits of the United States and the incalculable mineral resources of Canada are in the northern part of the Arctic.

The Arctic maritime region is becoming a source of international tension in connection with competition to obtain access to its ecological resources. Arctic navigation, for example, for a number of years has been the subject of sharp dispute between the United States and Canada. Disputes concerning navigation in the Arctic may be exacerbated if such navigation will be effected by other States, for example, in connection with possible climate warming.

The Northern Arctic Ocean washes the coasts of five Arctic States – Russia, Norway, Denmark, Canada, and the United States. The length of the Russian coastline comprises about 16,000 kilometers and exceeds in length the coastlines of the other Arctic States. The Northern Sea Route, which was discovered and exploited by Russian navigators, passes through the areas adjacent to the Arctic coast of Russia. The Northern Sea Route, being the shortest water route between the western and eastern areas of Russia, is a national water route of Russia, its most important national maritime artery.

Official Russian claims to an Arctic sector date from a Note of the Russian Government of 20 September 1916 in which it was communicated that the islands of Henrietta, Jeannette, Bennett, Herald, Uedinenie, Novosibirsk, Wrangel, Novaia Zemlia, Kolguev, Vaigach, and others are part of Russia, comprise the territory of Russia “in view of the fact that their affiliation to the territories of the Empire has been generally-recognized for centuries”.

The legal act which confirmed the affiliation to the Soviet Union of all lands and islands in the Northern Arctic Ocean was the Decree of the Presidium of the Central Executive Committee of the USSR “On the Proclamation of Lands and Islands Located in the Northern Arctic Ocean as Territory of the USSR” of 15 April 1926.

Geographical Arctic space within whose limits all lands and islands previously discovered, and also lands and islands which might be discovered, were proclaimed to be the territory of the Soviet Union. This Decree of the Presidium of the Central Executive Committee did not touch upon questions of the legal status and legal regime of sea expanses of the polar sector of the Arctic northward of the coast of the USSR up to the North Pole between 32°04′35″ E. long. Greenwich passing along the eastern side of Vaida Guba and the meridian 168°49′30″ W. long. Greenwich passing in the middle of

the strait separating Ratmanov and Kruzenshtern Islands from the Diomede group of islands and the Bering Strait. The total area of the polar possessions of the USSR comprised 5.8 million square kilometers.

In and of themselves the boundaries of the polar sectors are not considered to be State boundaries, and the establishment of a polar sector by a particular State does not pre-decide the issue of the legal regime of the marine expanses within that sector.

The rights of the USSR in arctic areas belonging to territories have been ensured, as those of a number of States, by legislative acts, in particular, by the 1982 USSR Law on the State boundary and 1968 Edict of the Presidium of the USSR Supreme Soviet “On the Continental Shelf of the USSR”. The provisions of these normative legal acts passed into Russian legislation on the State boundary and continental shelf, especially the Law of the Russian Federation “On the State Boundary of the Russian Federation” of 1 April 1993.

Canada acted as the pioneer in the legal consolidation of its respective part of the Arctic sector. In 1925 Canada adopted an amendment to the law on the northwest territory, prohibiting foreign States from engaging in any activities within the limits of Canadian Arctic lands and islands without the special authorization of the Canadian Government.

The principle indicated in the documents of Canada and the USSR of taking into account the special rights and interests of the Arctic States in the Arctic expanses contiguous to their shores also found reflection in the so-called ‘sector theory’. This theory was applied in the practice of individual States of the Arctic. Canada in particular adhered to this theory, advancing at various times the ‘sector theory’ as international-legal substantiation of its claims to the use of the Arctic waters. Until recently, the Russian Federation also adhered to that theory.

Such Arctic States as Denmark, Norway, and the United States did not adopt special acts on the Arctic areas contiguous to their territories. However, the legislation of those States also extends to these areas.

The said sectoral division of the Arctic did not at the time it was done cause any objections on the part of other, non-Arctic, States and was de facto accepted. This de facto recognition operated so long as the development of science and technology did not allow States to embark upon the practical exploration and exploitation of the natural resources of the Arctic. In recent times the scientific research activities of a number of States in the Arctic, including within the polar sector of Russia, has noticeably accelerated. In 1998 alone within the sector of Russian polar possessions no less than ten marine scientific expeditions of the United States, Norway, and Germany were carried on. During July and August 1998, the German research vessel Polar-
stern conducted substantial studies in the Laptev Sea close to the boundaries of the 200-mile economic zone of the Russian Federation. This is understandable, for according to experts the potential of the Arctic shelf within the boundaries of the Russian polar sector exceeds 88 billion tons of fuel, which comprises in the dollar equivalent at existing levels of more than nine trillion US dollars.

The United States continues an unprecedented program commenced in 1994 for study of the Arctic with the assistance of atomic submarines equipped with the newest systems for seabed and seabed deposit cartography.

The United States opposes the sector principle for division of the Arctic. Proceeding from its own strategic and other interests, the United States suggests that the realization of the sector principle by all Arctic States may materially limit the possibilities for their naval forces in the Arctic. The United States believes that only legal norms regulating the regime of the high seas are applicable to the water space of the Arctic seas, except for the 12-mile territorial waters.

Moreover, the United States exerts constant pressure on Canada in order to modify Canadian approaches to the ‘sector theory’ and thereby reduce the risk of a certain legal dependence of the United States on Canada in the Canadian Arctic sector. Regrettably, individual Canadian jurists and political figures under the influence of the United States reject the sector principle and declare that Arctic States can not exercise supremacy within the Arctic sector over maritime expanses.

The issues which arise for Canada in connection with the delimitation of maritime Canada endeavors to resolve without absolutizing the ‘sector principle’.

Having regard to the intensification of interest in the Russian Arctic sector by foreign States, the Russian Federation has attempted to consolidate its sovereignty in national legislation over the Arctic sector. In 1998 a draft federal law was submitted to the State Duma of the Russian Federation “On the Arctic Zone of the Russian Federation”. In accordance with that draft law, the Arctic zone was defined as the part of the Arctic under the sovereignty and jurisdiction of the Russian Federation. It included within it: lands and islands discovered and which might be discovered in the Northern Arctic Ocean northward of the coast of the Russian Federation up to the North Pole within the boundaries provided for the aforementioned decree of the Central Executive Committee. Thus, the draft law virtually reiterated the 1926 De-

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3 Details in Коммерсант [Kommersant], 12 May 1999.
cree of the Central Executive Committee by mentioning the North Pole as the upper point of the Arctic sector of Russia.

2 Problem of Internationalization of the Arctic

Attempting to obstruct the consolidation of the rights of the Soviet Union to the polar areas contiguous to its shore, the United States in 1970 launched an initiative to convene an international conference in order to work out and establish the international-legal regime of the Arctic, underlying which would have been the principle of ‘internationalization’ of the Arctic put forward in the early 1920s. Thanks to the objections of the USSR, this conference did not happen. Despite this, the question of the internationalization of the Arctic was at the initiative of the United States put to the Third United Nations Conference on the Law of the Sea. Norway and Denmark supported the United States in this, for they did not use the sector principle to consolidate their rights to Arctic expanses as this supposedly did not meet their national interests nor correspond to international law. The delegation of Canada at the Third United Nations Conference on the Law of the Sea officially also did not reject the idea of internationalization of the Arctic with regard to the seabed area and the creation of the International Seabed Authority.

Among the proponents of internationalization of the Arctic there is no single approach. Some supporters of this conception suggest that universal norms determining the general regime of the high seas should extend to the Arctic water expanses. Others proceed from the need for a regional resolution of Arctic problems, substantiating this on the basis of the extensive experience of cooperation of the Arctic States. A third variation of the conception comes down to a partial internationalization of the Arctic beyond the limits of the 200-mile exclusive economic zone.

The United States with the support of certain other Arctic States (Norway, Denmark, in particular) on the basis of the ‘internationalization’ of the Arctic principle intended to put an end to Arctic sectors, the more so since the ‘sector interests’ of certain Arctic States do not always coincide.

As Krivchikova and Kolosov correctly note, the process of the internationalization of the Arctic is accelerating and has certain chances for success. This process in our view is facilitated by the Arctic Council, created in September 1996. Eight Arctic States are members of this Council: Canada, Denmark, Finland, Sweden, Iceland, Norway, Russian Federation, and the United States. The Inuit Circumpolar Conference, Saami Council, and Association of Indigenous Minorities of the Far North, Siberia, and Far East of

\[5\] Kolosov and Krivchikova, *ibid.*, p. 128.
the Russian Federation take part as ‘permanent participants’ in the work of the Council.

Provision also is made in the Arctic Council for observers from non-Arctic States, intergovernmental and interparliamentary organizations, and nongovernmental organizations which, by decision of the Council, may make a certain contribution to its work.

In accordance with the Declaration on the Establishment of the Arctic Council, its tasks are: (1) the organization of cooperation, coordination, and interaction among the Arctic States with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common arctic issues (except military security); (2) oversee and coordinate the Arctic Monitoring and Assessment Program established under the Arctic Environmental Protection Strategy; conservation of Arctic flora and fauna; protection of the Arctic marine environment; and emergency preparedness and response programs; (3) adopt terms of reference for and oversee and coordinate a sustainable development program; (4) disseminate information, encourage education and promote interest in Arctic-related issues.

In recent years the sector method for the delimitation of national interests of Arctic States in the Arctic, according to which the sovereignty of these States extends to the entire spatial sphere of the Arctic, has been subjected to criticism in the Russian doctrine of international law. Bekiashev and Volosov note that “in reality none of the well-known acts contains statements concerning the extension to the entire Arctic of the supremacy of countries contiguous to the Northern Arctic Ocean.”  

Prevailing international law also does not contain such norms. In this connection in future when working out and adopting a treaty establishing the legal regime of the Arctic it follows, in our view, that one should proceed from the fact that the maritime expanses of the Northern Arctic Ocean are by their legal status subdivided into those same categories as the water expanses of the entire World Ocean, the legal regime of which is provided for in the 1982 United Nations Convention. Such expanses in the 1982 Convention are: internal sea waters and territorial sea to which the sovereignty of the coastal States extends; contiguous exclusive economic zone and continental shelf, where coastal States may exercise only jurisdictional powers with respect to individual types of marine activities, and also expanses of the high seas and international seabed area falling under the operation of the international regime permitting the use of their space and natural resources by any State with regard taken of the requirements established by international law.  

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7 Bekiashev and Volosov, ibid., p. 1.
In other words, the legal regime of the Arctic, proceeding from norms of prevailing international law, and also the municipal law of States contiguous to the Northern Arctic Ocean, should not differ from other expanses of the World Ocean.

Taking into account the special climatic conditions of the Arctic, the principle of coastal States having special rights in Arctic areas adjacent to their land territory has been formed in contemporary international law. Article 234 was included in the 1982 United Nations Convention on the Law of the Sea, entitled ‘Ice-covered areas’. This Artiele indicates that coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

Although Article 234 of the 1982 United Nations Convention provides for the right of Arctic States to adopt laws directed only against the protection and preservation of the marine environment in the Arctic, the very fact of the inclusion of this Article in the 1982 Convention unambiguously affirms that States contiguous to Arctic waters have the right by legislative means to ensure their legal interests in the areas contiguous to their northern coast. Before the adoption of this norm at the Third United Nations Conference on the Law of the Sea, certain Arctic States, Canada in particular, adopted national laws regulating the prevention of the pollution of Arctic waters.

The problem of the conformity of national legislation to international legal principles and norms regulating territorial issues and, in particular, the principle of the freedom of the high seas, arises in connection with the legislation of Arctic States in regard to the legal regime of the Arctic. Thus, a Canadian law of 1970 on the prevention of pollution of Arctic waters enables the Canadian authorities to suspend for the purpose of environmental protection the movement of ships not only through the territorial waters of Canada, but also through the waters of the Arctic contiguous to them.

In recent times with the expansion of ecological cooperation between Russia and the United States a conception is developing of the Arctic as a region where not military, but ecological, security is of paramount significance. Whereas formerly ecological policy in the Arctic was formed basically at the national level (or coordinated on a bilateral basis), now the need has increased for international cooperation and the creation of a comprehensive regime for protecting the Arctic environment.

Ecological changes in the Arctic during recent decades because of pollution of the sea, including radioactive pollution, have led to the international
community coming to acknowledge Arctic pollution as a serious ecological problem of global significance requiring urgent resolution. It should be noted in this connection that approaches to the organization of nature-protection cooperation in the Arctic are various. Some States favor the conclusion of special or regional agreements applicable to specific conditions of the region, whereas others favor the adaptation of universal treaties in force. There is no single approach to the optimal grouping of the objects of cooperation: both proposals for the creation of a universal nature-protection regime for the Arctic (on the basis of the signature of an “umbrella” or framework agreement) and for the conclusion of a series of special agreements for the protection of individual objects of the atmosphere, marine environment, ozone layer are put forward.8

It would be timely, in our view, to raise the question of working out a regional treaty on the Arctic in which it is necessary to establish a monitoring mechanism for the environment and the creation of an Arctic early-warning system, including a network for notifying crisis situations.

In such a treaty questions of radioactive pollution of the Arctic should be linked with land-based production entities connected with radioactive substances, testing grounds for nuclear tests, naval and civilian vessels using nuclear fuel or carrying radioactive substances, and nuclear wastes discharged into the Arctic seas. Questions of managing the radioactive risk should be stipulated in order to achieve ecological security, including activities not prohibited by international law.9 It also might consider the creation of a regional international organization which would be engaged with the entire spectrum of Arctic issues, including an integral conception for the stable development of the Arctic.

The problem of delimitation and regime of marine Arctic expanses is a serious legal issue in the Arctic. This problem arises, inter alia, by virtue of the fact that as a consequence of the existence of vast pack icefields in the Arctic and the great irregularity of the coastline, Arctic States measure the breadth of their territorial waters not from the ebbtide line, but from straight baselines. Norway on this basis relegated to internal waters the navigable sea route Indrelia, and Canada declared the waters of the Canadian Arctic archipelago to be internal waters of Canada. In all justness it should be noted that the Soviet Union also used straight baselines to calculate the breadth of territorial waters in the Arctic, which led to virtually covering the entrances to

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9 Perelet, Kukushkina, and Travnikov, ibid., p. 169.
the Vilkitskii, Shokal’skii, Dmitrii Laptev, Sannikov, and Eteriken Straits. The Straits of Iugorskii Shar, Kara Gates, Matochkin Shar, and Red Army also were relegated to the ranks of internal and territorial waters of the USSR.

No less serious a problem in the Arctic is the delimitation of marine Arctic expanses between certain Arctic States. Since 1974 the problem of the delimitation of marine expanses in the Barents Sea between the USSR (Russia) and Norway has not been finally resolved. The USSR in 1974 proposed to Norway that when delimiting the marine expanses it should be based on the boundaries of the ‘Soviet polar sector’. Norway, not having its own Arctic sector and rejecting in principle the conception of polar sectors, insisted that the median line be used for these purposes. In January 1978 the USSR and Norway came to a provisional agreement in which a so-called ‘gray zone’ was determined between the sector line and the median line. The total fish catch quota was provided for in this zone for the USSR and Norway, as well as the quota for third States fishing in the zone under Russian or Norwegian licenses.

Final resolution of the ‘gray zone’ in the Barents Sea is complicated by the fact that since 1 January 1977 Norway declared its Arctic coast to be an exclusive economic zone, and from 3 June 1977 a fishing zone with a breadth of 200 nautical miles around Spitzbergen and Bear Island. This step by Norway is contrary to the 1920 Paris Treaty on Spitzbergen, which does not give to Norway any rights to extend its sovereign rights and exclusive jurisdiction beyond the limits of the Spitzbergen archipelago.

Another problem connected with the delimitation of maritime boundaries in the Arctic is the American-Canadian dispute concerning the maritime boundary in the Gulf of Maine, washing the western coasts of Canada and the United States. This dispute was exacerbated in 1945 with the adoption of the Truman Proclamation, in accordance with which the United States intensified its legal claims to the continental shelf beneath the Gulf of Maine. Despite the objections of the United States, Canada continued to issue authorizations to develop oil and gas deposits in that area, in particular in the area of Georges Bank. Ultimately, Canada in 1970 agreed to the establishment of a delimitation line in the Gulf of Maine in accordance with the principles of the 1958 Geneva Convention on the Continental Shelf. That Convention provides (Article 6) that the median line may not be applied when delimiting the continental shelf if there are special circumstances present (historical legal grounds, factors of economic, geographical, geological, and geomorphological character, and so on) and when the use of the said method did not correspond to the principle of equity. It is stipulated in this Article that the boundary of the continental shelf is determined by agreement between States, and in the absence of such agreement, and unless another boundary
line is justified by special circumstances, the median or equidistant line serves as the boundary.

However, in practice the question of the delimitation of the maritime boundary in the Gulf of Maine was not resolved. Moreover, in 1977 Canada established a 200-mile fishing zone and officially declared its territorial waters in that area.

The American-Canadian disputes with regard to the Gulf of Maine in 1984 became the subject of consideration in the International Court of Justice. In accordance with the decision of the Court, two-thirds of the Gulf of Maine was to go to the United States, and one third, to Canada. In elaboration of this decision the United States, claiming the entire Georges Bank, rich in fish, proposed to the Government of Canada that a year’s moratorium be established for the introduction by Canada of fishing rules in this area of the Gulf of Maine. On the grounds that the dispute initially arose over the continental shelf covered by the waters of the Gulf of Maine and did not relate to fishing, Canada rejected the United States proposal.

The application of the 1982 United Nations Convention to the waters of the Arctic excludes the claims of Russia to a significant portion of the Arctic continental shelf and deprives Russian policies in the Arctic of the legal foundation of many years on which they were based. In this event the continental shelf of Russia in the Arctic would comprise only 4.1 million square kilometers.

It seems in this connection that Russia when working out legislation regulating the legal regime of the Arctic should proceed from the following.

The 1982 United Nations Convention provides for a 200-mile limit for the continental shelf calculated from baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance (Article 76[1]). By continental margin is understood the submerged prolongation of the land mass of the coastal State and consists of the seabed and subsoil of the shelf (Article 76[3]). In this situation Russia should, in our view, find substantiation for the fact that the shelf of the Northern Arctic Ocean is a prolongation of the Siberian continental platform and apply the norms of the 1982 United Nations Convention on the Law of the Sea which provide for the outer boundary of the continental shelf beyond the 200-mile zone. In a similar instance the 1982 Convention (Article 76[5]) provides for the establishment of the outer edge of the continental shelf to a distance of 350 nautical miles from baselines from which the breadth of the territorial sea is measured or to a distance of 100 nautical miles from the 2,500 meter isobath. Next this data on the boundaries of the Russian Arctic continental shelf must be submitted to the Commission for the Boundaries of the Continental Shelf and registered at the United Nations and by the International Seabed Authority. This legal procedure enables the sovereign rights for Russia over the continental shelf of the Russian
sector of the Arctic to be consolidated for the purposes of exploration and exploitation of its natural resources.

The attempts encountered recently of certain specialists to defend the sectoral division of the Arctic and consolidate this division in national legislation of Arctic States, in particular Russia, has no legal grounds. References of these specialists to the *de facto* consolidation, commencing from 1926 by the USSR and its continuer, Russia, of polar possessions and the “centuries of experience of the exploitation by Russia of lands in the Northern Arctic Ocean” are hardly convincing. According to the 1982 United Nations Convention on the Law of the Sea (Article 77[3]), the rights of the coastal State to the continental shelf do not depend upon effective or fictitious occupation of the shelf or upon an express declaration thereof. In other words, the changed international legal situation connected with the entry into force in 1994 of the 1982 United Nations Convention makes historical references insufficient.

3 International Legal Status of Spitzbergen

The Spitzbergen archipelago, officially known as Svalbard and situated in the Arctic beyond the Polar Circle, for a very long time by reason of grave climatic conditions remained a territory belonging to no one and had the status of *res nullius*. This status enabled the citizens of concerned States in accordance with international-legal custom established on the archipelago to occupy land plots there and carry on economic activities.

In 1910, 1912, and 1914 at Oslo, Norway, international conferences were held whose purpose was to work out a convention on Spitzbergen and establish on the archipelago a condominium of three States – Norway, Russia, and Sweden. One of the most complex and controversial issues discussed at these conferences were the rights of persons who occupied land plots on the archipelago. The position of Norway and Sweden at these conferences was to recognize the right of ownership for these persons to the land plots they occupied, which differed from the position of Russia, according to whom only the right of these persons to fixed-term use of the land plots should be recognized. The First World War did not allow these issues to be settled or the agreed status of Spitzbergen to be elaborated.

The legal status of Spitzbergen was determined by the 1920 Treaty Concerning the Archipelago of Spitzbergen, prepared by a special Spitzbergen

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10 See I. Bartsits, “К вопросу о правовом статусе российского арктического сектора” [On the Question of the Legal Status of the Russian Arctic Sector], *Фактор* [Faktor], no. 7 (1999), p. 34.
Commission\textsuperscript{11} and adopted at the 1920 Paris Conference with the participation of the United States, Great Britain and its dominions, France, Italy, Japan, Netherlands, Denmark, Norway, and Sweden. Soviet Russia did not take part in the conference. The Soviet Union acceded to the Treaty on Spitsbergen in 1935, and at various times more than twenty other States have acceded to that Treaty.

According to the Treaty (Article 1), the “full and absolute sovereignty of Norway” was established over the archipelago, including Bear Island. It also was provided in the Treaty that ships and citizens of all Contracting Parties “shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters” (Article 2). The possibility was excluded in the Treaty to establish any kind of “privileges, monopolies, or favors for the benefit of the State or of the nationals of any one of the High Contracting Parties, including Norway…” (Article 8).

The Mining Regulations for Spitzbergen derived from the Treaty should have become an important element for the realization of those conditions. The working out of these Regulations in accordance with the Treaty (Article 8) was placed on Norway. However, drafting the Mining Regulations in accordance with the principles of the Treaty Concerning the Archipelago of Spitzbergen did not correspond with the interests of Norway since granting to natural and juridical persons who had occupied land plots in full those rights which they acquired before the signature of the Treaty deprived the acquisition by Norway of sovereignty over the archipelago of any meaning. Moreover, the principles set out in the Treaty differed from the principles of Norwegian mining legislation in force on the territory of Norway since 1841. As a result, the Mining Regulations for Spitzbergen worked out on the basis of principles differing from those principles set out in the Treaty on Spitzbergen created a number of controversial issues concerning the legal regime of Spitzbergen.

One such question was the lawfulness of the claims of Norway to the right of ownership to ‘State lands’ of the archipelago. First, the Mining Regulations did not define the concept of ‘State lands’, which left the possibility of extensive interpretation open. Second, there is no clarity as to which relations of ownership underlay the claims advanced by Norway concerning the right of ownership to State lands.

Norway itself approaches the interpretation of State lands of Spitzbergen from the position of internal legislation. In the Law of Norway on Svalbard of 15 June 1925 (Article 22) it says: “All lands which are not recognized for

\textsuperscript{11} The Spitzbergen Commission was established in 1919 by the Supreme Council of the Paris Peace Conference. Representatives of Great Britain, Italy, United States, and France were members thereof.
anyone in ownership under the treaty on Svalbard shall be State lands and as such subject to the right of ownership of the State”.

Another major issue in connection with the adoption of the Mining Regulations which gives rise to controversy is the acquisition of the right of ownership to land plots of the archipelago. Since the Mining Regulations do not contain a procedure for the acquisition of such right by juridical and natural persons, States parties to the Treaty on Spitzbergen have been deprived of the possibility to acquire the right of ownership to land plots of the archipelago on conditions equal to persons who occupied land plots before the signature of the Treaty.

Finally, the special complexity of resolving the issue concerning the acquisition of the right of ownership to land plots on so-called State lands of Norway is imparted because the Mining Regulations, being in essence an international legal document, were introduced into operation and considered from the standpoint of Norwegian law as an act of internal legislation. The Mining Regulations, by not having a precise and unequivocal legal terminology, enable its provisions to be construed from various positions, and this makes it difficult to understand and use the legal regime of the Spitzbergen archipelago in the interests of the Russian Federation.12

Additional Information

1. Navigation along the Northern Sea Route (Kara, Laptev, East Siberian, Chukotsk seas) is regulated as navigation along an historic national sea route on a nondiscriminatory basis. By Decree of the USSR Council of Ministers of 1 July 1990, the Northern Sea Route is open for ships of all flags with obligatory icebreaker-pilotage escort.

2. In order to demarcate the spheres of interests of the polar States, the USSR, Canada, Norway, Denmark, and United States have resorted to a system of polar sectors. Each polar sector is triangular, the base of which is the coast of the States contiguous to the Northern Arctic Ocean, and the top – the North Pole. All lands in the sector are part of State territory, and sea expanses beyond the limits of the territorial waters are high seas. The boundaries of the Soviet polar sector in the Arctic were determined by the Decree of the Presidium of the Central Executive Committee of the USSR of 15 April 1926.

12. International Legal Regime of the Antarctic

1  General Characteristics of Antarctic and Interests of States

The Antarctic is a vast region of the planet extending from the South Pole up to the 60th parallel south latitude. Within it lie the land mass of Antarctica as well as islands around that continent and the southern parts of the Atlantic, Pacific, and Indian oceans. The continent of Antarctica was discovered and first investigated by Russian navigators M. Lazarev and F. Bellinghausen, who headed the first Antarctic expedition in 1819-1821.

The economic and geographical data obtained about the Antarctic during many years of research testifies to its international significance. The territory of Antarctic and contiguous waters are of great economic value to many States. Until the establishment of a moratorium, up to 90% of the world catch of whales came from the Antarctic, whaling being carried on by the USSR, England, Norway, Holland, and Japan. Moreover, significant mineral reserves (coal, ferrous metals, iron, and uranium ores) in whose use many States are interested have been discovered in the Antarctic. Antarctica also is of interest as a site for important scientific studies and meteorological observations.

Interest in Antarctica began to grow with the development of technology which ensured access to the severe southern continent. At the outset of the twentieth century, certain States attempted to proclaim their sovereignty over individual areas thereof, which led in practice to disputes and even armed conflicts. Great Britain laid the beginnings of territorial claims. Then followed attempts to divide the Antarctic on the part of Australia, New Zealand, France, Norway, and Argentina, who advanced territorial claims to vast

1 Сборник статей по геологии Антарктики [Collection of Articles on Geology of Antarctica] (М., 1957), I.
parts of the continent. The territorial claims were based on historical, geographical, and legal considerations.

Great Britain by royal decrees of 1908 and 1917 declared all islands and territories between 20 and 80 degrees west longitude southward of the 58th parallel to be ‘dependent lands’ under the administration of the Governor General of the Falkland Islands. In 1923 Great Britain proclaimed its sovereignty over Ross Colony and transferred it to the administration of New Zealand. The Antarctic lands south of the 60th parallel between 160 and 45 degrees east longitude Great Britain declared to be under its sovereignty and then transferred them to the sovereignty of Australia.

France in 1924 proclaimed Adelie Land to be under the administration of the Governor General of Madagascar, and in 1938 the sovereignty of the French Republic was declared over it. A law was issued in 1955 on the creation of a French overseas territory named Iuzhnyi and the Antarctic possessions of France, among which were the islands of Saint Paul, Amsterdam, Crozet, and Kerguelen. Both Great Britain and France based their actions on the ‘right of first discovery’.

Norway, Chile, and Argentina acted in a similar way, justifying the announcement of their sovereignty over certain parcels of Antarctic territory on the basis of geographical and historical factors. Without analyzing the arguments from the standpoint of the substantiation of the rights and interests of the said countries with respect to Antarctica, their unfoundedness should be noted for a unilateral sectoral division of the Antarctic.

Many States resolutely opposed such territorial claims of the aforesaid States. The Soviet Union displayed great activeness in this respect. In 1959 the Soviet Government pointed to the illegality of the unilateral declarations of Norway with regard to the affiliation to it of a number of Antarctic lands discovered by Russian explorers. In the Memorandum of the Soviet Government sent 7 June 1959 to the Governments of the United States, Australia, Argentina, Great Britain, New Zealand, Norway, and France the position of principle of the Soviet Government was affirmed concerning the inadmissibility of a separate resolution of the State affiliation of Antarctica. The Memorandum also contained a precise proposal on the advisability of discussing the problems of the Antarctic in an “international procedure having in view the reaching of an agreement which would meet the legal interests of all the State concerned”.\(^2\)

The USSR proceeded from the fact that under the conditions of the Antarctic the unilateral establishment of polar sectors could not be a just delimitation of the interests of States since Antarctica is of international interest and its status should be decided by taking into account the rights of all States concerned. The unilateral approach to deciding the State affiliation of Ant-

\(^2\) The full text is published in Прорда [Pravda], 10 June 1959.
arctica, and also the means itself of resolving this problem by sector division, were unacceptable because they ignored the international significance of the southern polar area and the rights and interests of all other States.

The transparent unsuitability of the sector method for the Antarctic by means of unilateral actions also had been noted by the majority of international lawyers. The French jurist, Fauchille, in suggesting that the Antarctic areas could not be the object of individual exclusive sovereignty, came to the conclusion that Antarctica should be an area of international joint possession-condominium. He noted, in particular, that the condominium arises from economic interdependence of all States and from their common interest in the polar areas. Fauchille suggested that the fact of discovery be taken into account when exploiting the polar areas, that is, each State should have the right to the greater part of the wealth in the region discovered by it or preference in the administration or management of that region.3

The Canadian scholar Reeves also supported the idea of international administration of Antarctica, noting in particular that “this area [Antarctica – A.K.] is not a res nullius and can not be subject to possession by one State. It, just as the oceans, is a common thing”4. An Egyptian specialist proposed that a treaty be concluded between the States concerned which, without touching the question of sovereignty, would establish the freedom of research, hunting, and fishing for citizens of all countries. In order to ensure these conditions, he proposed that an international Antarctic commission be created.5 The idea of an internationally-agreed resolution of the legal regime of the Antarctic also received recognition among American and English jurists.6

Thus, in the doctrine of international law during the 1940-1950s the dominant view was that the legal regime of the Antarctic should be the subject of internationally-agreed decisions. As regards the official position of States relative to resolving the problem of the legal status of Antarctic, the majority of States advocated that it be discussed in an international procedure, having in view the reaching of an agreement that would meet the legal interests of all States concerned.7

The issue of Antarctica was not officially raised until 1956, when the governments of England, New Zealand, and Australia had an exchange of

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4 American Journal of International Law, XXVIII (1934), 119.
7 Известия [News], 10 June 1950.
opinions on the question. And only in 1956 did the Government of India propose to include the question of Antarctica on the agenda of the XI session of the United Nations General Assembly. In an explanatory memorandum on the question it was noted that Antarctica is an area having strategic, climatic, and geographical significance for the entire world. In this connection, and also having regard to growing interest in the Antarctic by many States, the Government of India believed that it would be appropriate and timely for all States to agree and affirm that this area would be used solely for peaceful purposes and the common good.⁸

The said positions of the USSR and other States were reflected in the Antarctic Treaty, which “stopped” territorial claims of States and did not confirm the sovereignty of any State in Antarctica. The Antarctic Treaty was adopted at an international conference on the Antarctica opened at Washington D. C. on 15 October 1959. The representatives of twelve States took part in the Conference: Australia, Argentina, Belgium, Great Britain, New Zealand, Norway, USSR, United States, France, Chile, Union of South Africa, and Japan. On 1 December 1959 the Conference adopted the Antarctic Treaty, which also determines its international legal regime. The Treaty entered into force on 23 July 1961.

2 Legal Regime of Antarctic

Demilitarization and Neutralization of Antarctic. The Antarctic Treaty (Article I) establishes that it shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

This provision on the use of Antarctica ‘for peaceful purposes only’ and the prohibition of any measures of a military nature have a rather broad meaning and incorporate traditional institutions of international law: demilitarization and neutralization. It is necessary to note in so doing that the list of prohibited military measures is not exhaustive. This means that in Antarctica complete demilitarization has been in essence carried out. Moreover, the provision of the Treaty that Antarctica is used for peaceful purposes only also means that it may not be used as a theater of military actions. Antarctica may not serve as a base for waging warfare, which means the neutralization of Antarctica. In addition, the Antarctic Treaty (Article V) prohibits the conducting in Antarctica of “any nuclear explosions … and the disposal there of

⁸ See UN Doc. A/3118, 21 February 1956.
radioactive ... material”. The said provisions of the 1959 Antarctic Treaty in aggregate with the extensive system of international control existing in Antarctica enable the Antarctic area to be classified as a nuclear-free zone.

Extensive earth and air control have been established over compliance with the 1959 Antarctic Treaty. States parties of consultative meetings have the right to appoint an unlimited number of observers from among their citizens. Any observer has complete freedom of access to all areas of Antarctica for the purpose of the inspection of stations, installations, and equipment, and all ships and aircraft at points of discharging or embarking cargoes or materials. Observers draw up reports concerning the control results, which are sent to all States-parties of consultative meetings. Many countries enjoy the right of control and inspection of scientific stations, above all the United States, and also Australia, Argentina, Great Britain, and New Zealand, who have conducted inspections of stations chiefly located in those areas to which they lay claim.

With a view to facilitating the organization of control the States-parties to the 1959 Antarctic Treaty assumed the obligation to inform one another in good time about all expeditions on this continent on the part of their ships or citizens, and also all expeditions organized on their territories, all stations in Antarctica occupied by its citizens, and about any military personnel or equipment intended to be sent to Antarctica.

The mutual informing of States-parties to the 1959 Treaty must, in accordance with decisions of Consultative Meetings, contain an illumination of the following questions: (a) types, description, and armament of ships, aircraft, and other means of transport which are introduced into the area of operation of the Treaty; (b) the time of arrival and sojourn and routes of expeditions; (c) detailed description of all scientific stations to be created in the area of operation of the Treaty, specifying the programs of work, equipment, personnel, and personal weapons; (d) means of communication and reserve aerodromes; (e) means of rendering assistance; (f) notices concerning the intention to use radioisotopes, scientific research work, and ships to be used for extensive oceanographic studies.

The demilitarization and neutralization of the status of Antarctica is confirmed by the Convention on the Conservation of Marine Living Resources of Antarctica, according to which (Article 3) the parties to the Convention, irrespective of their participation in the 1959 Antarctic Treaty, have obliged themselves to comply with the provisions of Articles I and V of the 1959 Treaty.

The Antarctic Treaty authorized the use of military personnel or military equipment for scientific research or for any other peaceful purposes (Article I[2]). The consolidation of this norm in the Treaty was justified by the participants at the 1959 Conference by the fact that under severe conditions of the Antarctic it was difficult to effectuate scientific research for peaceful
purposes without involving military personnel and the use of military
equipment. With a view to excluding any abuses on this question it was pro-
vided in the Treaty that the parties thereto would inform one another about
any military personnel or equipment intended to be sent to Antarctica in
compliance with the conditions provided for in Article 1(2) of the Treaty.

Limits of Operation of Antarctic Treaty. The operation of the Antarctic
Treaty extends to the continent of Antarctica and closest sea expanses. In the
Treaty itself the zone of its operation is determined as the area
south of 60 degrees South latitude, including all ice shelves, but nothing in the
present Treaty shall prejudice or in any way affect the rights, or the exercise
of the rights, of any State under international law with regard to the high seas
within that area (Article VI).

Whereas the application of Treaty provisions to the continent of Antarctica
gives rise to no doubts, their application to maritime expanses within the
limits of the 60th parallel, to which the regime of the high seas applies, may
give rise to questions. On one hand, in accordance with the international law
of the sea, all States enjoy on the high seas the freedoms of navigation, fish-
ing, laying of submarine cables and pipelines, and overflight in airspace
above the high seas. On the other hand, these freedoms in Antarctic seas may
be exercised with certain limitations conditions by the peculiarities of the in-
ternational-legal regime of Antarctica. However, as will be shown below,
these limitations in principle are not contrary to the principle of freedom of
the high seas. Delimitation and neutralization, in particular, of the entire area
of Antarctica, including maritime expanses south of the 60th parallel, prohib-
it the conducting of military maneuvers, creation of military bases con-
ducting of military actions does not limit freedom of navigation in these ex-
panses and even in some degree facilitates it.

Another distinctive feature of the regime is the special protection of liv-
ing marine resources provided for by the 1980 Convention on Conservation
of Marine Living Resources of Antarctica, which is not contrary to the free-
dom of fishing. The unique natural peculiarities of sea waters of Antarctica
require respectively the special international legal regulation of marine fish-
ing therein. In this connection the Third Consultative Meeting worked out
“Agreed Measures for the Protection of Antarctic Flora and Fauna” based on
the principle of freedom of fishing in areas south of the 60th parallel.

There are no legal limitations also on the laying of submarine cables and
pipelines on the floor of Antarctic seas.

As regards the freedom of overflight in Antarctica, the absence of any
limitations on the exercise of this freedom should be noted since the provi-
sions of the Treaty (Article VI) extend to airspace above the high seas south
of the 60th parallel.
Thus, it follows from the above that the special international-legal regime of the Antarctic seas washing the continent of Antarctica does not violate the fundamental principle of the international law of the sea – the principle of freedom of the high seas.

**Territorial Claims and Jurisdiction of States in Antarctica.** The 1959 Antarctic Treaty does not deny in principle the existence of territorial claims. In accordance with the Treaty (Article IV), nothing in its provisions shall be interpreted as a renunciation by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica, nor sovereignty in Antarctica which it may have whether as a result of its activities or those of its citizens in Antarctica, or otherwise. At the same time, without renouncing existing territorial claims of States, the Treaty excludes the possibility of the realization of those claims in the form of real territorial sovereignty in Antarctic. In other words, the Antarctic Treaty does not ‘extinguish’ territorial claims declared by States, but at the same time provides for the right of other States not to recognize these claims. This complex formula of the Treaty is clarified by the provision that while the present Treaty is in force no acts or activities shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty nor create any rights of sovereignty in Antarctica. Thus, no State formally may strengthen its territorial claims or create the basis for declaring a new claim.

All these provisions of the Treaty concerning territorial claims were confirmed in the 1980 Convention on the Conservation of Antarctic Living Marine Resources. The parties to this Convention obliged themselves irrespective of participation in the Antarctic Treaty to comply in their relations with one another with obligations arising out of Article IV of the Antarctic Treaty, and also agreed that any activity within the framework of the present Convention should be treated in accordance with the provisions of Article IV of the Treaty.

The jurisdiction of States in the Antarctic is a complex and unresolved issue. The complexity of the issue is explained by the fact that when preparing the Antarctic Treaty two approaches were elicited to jurisdiction in the Antarctic. On one hand, States claiming a certain part of Antarctic territory (Argentina, Chile, and others) favored consolidation in the Treaty of the principle of territorial jurisdiction. On the other hand, the majority of States (United States, USSR, Belgium, and others) preferred the consolidation of personal jurisdiction in the Treaty. In the Treaty (Article VIII) a compromise was found which consisted of observers and scientific personnel exchanged between expeditions and stations in Antarctica, as well as personnel

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9 Territorial jurisdiction extends to a determined territory. This, as a rule, is linked with the exercise of sovereignty or sovereign rights of a State to the particular territory. Personal jurisdiction of a State extends only to its citizens.
accompanying them, being subject to the jurisdiction of that State of which they are citizens. Taking into account that the exchange of scientific personnel in Antarctica occurs rather frequently, this provision of Article VIII of the Treaty on jurisdiction over these persons seems optimal.

As regards jurisdiction over other persons not enumerated in Article VIII (tourists, for example), the Treaty does not contain a special provision. However, the provision that the Treaty shall not prejudice the respective position of each Party relative to similar jurisdiction enables the issue of jurisdiction to be resolved over persons not mentioned in the Treaty by each party in accordance with its point of view.

Moreover, since personal jurisdiction is a jurisdiction extending to subjects of municipal law irrespective of their whereabouts, in our view, there was no special need to provide in Article VIII for ‘jurisdiction over other persons’.

There simply should be no such persons. Personal jurisdiction, as Chernichenko noted, “is established by the State over its citizens and certain other subjects of law having a stable legal link with a State” (for example, ships being considered as institutions possessing a respective nationality).\textsuperscript{10} As regards the Antarctic, having regard to the provisions of Article IV(2) of the Antarctic Treaty renouncing claims to sovereignty in the Antarctic, in our view personal jurisdiction, which unlike territorial jurisdiction cannot be used by individual States to establish extraterritorial jurisdiction, is the most optimal approach.

The Antarctic Treaty does not, in our view, contain precise norms directed towards elimination of the difficulties connected with the possible ‘penetration’ of various national jurisdictions. We refer not so much to the delimitation of jurisdictions as to the determination of which of the national jurisdictions has priority in the event of competition. This situation may occur, for example, when crimes are committed in Antarctica. Moreover, such issues may arise in connection with the activities of transnational companies in Antarctica.

\textit{International Legal Regime of Natural Resources of Antarctica.} This regime consists of two parts: the regime of marine living resources, and the regime of mineral resources.

The international legal regime of marine living resources of Antarctica is determined by three conventions, the last of which, the 1980 Convention on the Conservation of Antarctic Marine Living Resources, entered into force in 1982. This Convention applies to fin fish, molluscs, crustaceans, and all other species of living organisms. In accordance with the Convention, the taking of marine living resources is effectuated by taking the following prin-

\textsuperscript{10} S. V. Chernichenko, \textit{Теория международного права} [Theory of International Law] (М., 1999), II, p. 131.
principles into account: (1) prevention of a decrease in the size of any population to a critical level; (2) prevention of irreversible changes in the marine ecosystem; and (3) maintenance of the ecological relationships between harvested, dependent, and related populations of marine living resources.

With a view to the realization of these principles the Commission for the Conservation of Antarctic Marine Living Resources was founded. Among the functions of this Commission are, in particular, to compile and analyze data on marine living resources, determine the requirements for the conservation of these resources, work out and adopt necessary measures with regard to conservation of marine living resources, and use monitoring systems established in the Convention. Measures relating to the conservation of marine Antarctic living resources adopted by the Commission are obligatory for all member States of the Commission.

Sealing in the Antarctic is regulated by the 1972 Convention for the Conservation of Antarctic Seals, which entered into force in 1978. The participants of this Convention agreed to a catch of only three of the six species of Antarctic seals, determined the admissible levels of taking them, protected species, areas open and closed to sealing, catch ceilings by sex, size, and age, and the procedure for the provision of information about sealing and inspection systems.

The international legal regime of Antarctic mineral resources is regulated by the Convention on the Regulation of Antarctic Mineral Resource Activities of 2 June 1988. This Convention establishes that the prospecting, exploration, and exploitation of Antarctic mineral resources shall be done only in accordance with the Convention. In particular, the exploitation of mineral resources of Antarctica, according to the Convention, is carried on by an ‘operator’ (a person directly conducting the exploitation), and if a State-party to the Convention does not act itself in this capacity, the operator must have the consent of the ‘Sponsoring State’ with which the operator maintains a substantial link.

The 1988 Convention on the Regulation of Antarctic Mineral Resource Activities extends to the Antarctic continent, all Antarctic islands, including all ice shelves south of the 60th parallel, and also in the seabed and subsoil of adjacent offshore areas up to the deepwater areas of the seabed or outer boundary of the continental shelf.

The creation of the Antarctic Mineral Resources Commission is provided for by the Convention, to which is entrusted the assessment of possible impact on the Antarctic environment in connection with the exploitation of resources, the establishment of areas closed for extracting mineral resources, and others. Moreover, in accordance with the Convention, a Committee for the Regulation of the Exploitation of Antarctic Mineral Resources was created for each open area with the functions of considering applications for the exploration and exploitation of mineral resources in areas open to such activ-
ity, issuance of authorizations, and observation over the activities of States with regard to the exploitation of resources.

Having regard to the special significance of the Antarctic as a nature preserve earmarked for the development of science, the adoption of the 1988 Convention for the regulation of Antarctic mineral resources aroused a negative reaction from the international community, who opposed the very possibility of industrial exploitation of Antarctic mineral resources, fraught with serious global consequences for the environment.

This position of the international community was precisely indicated in a resolution adopted by the United Nations General Assembly at its XLIII session in 1988 in which ‘deep regret’ is expressed in connection with the adoption of the 1988 Convention.11

In attempting to rectify the situation connected with the adoption of the 1988 Convention, a special Consultative Meeting under the Antarctic Treaty at its XI session in 1991 approved the Protocol on Environmental Protection to the 1959 Antarctic Treaty. In accordance with the Protocol (Article 7), in the Antarctic “any activity relating to mineral resources, other than scientific research, shall be prohibited”.

This article of the Protocol brought to the Antarctic Treaty system a certain contradictoriness since it prohibited any activity connected with mineral resources, although such activity, as noted above, was not previously prohibited and even was regulated in detail in accordance with the 1988 Convention on the Regulation of Antarctic Mineral Resource Activities. On the other hand, the Protocol provides that nothing in it shall derogate from the rights and obligations “… under the other international instruments in force within the Antarctic Treaty system”. In this connection the 1991 Protocol contains a system of nature-protection principles operating with respect to Antarctica. In particular, the 1991 Protocol establishes that any activity in Antarctica, before it is permitted, must undergo at the national and, if necessary, at the international level an initial environmental evaluation of the project on the subject of its impact on the Antarctic environment (Annex I to the Protocol). Any exploitation of the Antarctic mineral resources is possible only after the submission of positive opinions based on assessments of its possible impact on the Antarctic environment and on the global and regional climates. Operators (the State, juridical persons thereof) effectuating the exploitation of Antarctic mineral resources undertake all necessary measures to prevent the damaging of the Antarctic environment and in the event of inflicting such, bear material responsibility except for instances of insuperable force.

Annexes III and IV to the Protocol determine the admissible and inadmissible types of activity concerning the prevention of pollution of the marine environment.

In order to ensure compliance with the 1991 Protocol, every State-party to the Protocol within the limits of its competence effectuates respective measures, including the adoption of laws and regulations and acts of an administrative and compulsory character. In addition, the parties to the 1991 Protocol exert all necessary efforts compatible with the United Nations Charter so as not to permit in Antarctica activities which are contrary to the Protocol. On the basis of the Protocol, the participants of consultative meetings organize, individually or collectively, inspections to be conducted by observers in order to not permit the polluting of Antarctica.

The 1991 Protocol obliges the Contracting Parties to work out rules concerning material responsibility for damage from activities in Antarctica.

In accordance with the 1991 Protocol (Article 25[2]), after the expiration of 50 years from the date of entry into force thereof at the initiative of any parties to the 1991 Treaty a conference may be convened to consider the question of the effective operation of this Protocol. Having regard to the excessively long period for the convening of such a conference, the parties to the Protocol agreed that by consent of all the Contracting Parties it might be changed or amendments may be introduced at any time.

All the treaties considered, including the 1991 Protocol, are part of the so-called Antarctic Treaty System, the principal component of which is the 1959 Antarctic Treaty.

The 1988 Convention also provides for the creation of a number of international agencies endowed with power in respect to the exploitation of Antarctic mineral resources. In particular, the following functions have been placed on the Antarctic Mineral Resources Commission: the collection and exchange of scientific, technical and other information to determine the environmental impact of Antarctic mineral resource activities; the adoption of measures for the protection of the environment; the establishment of areas closed for the exploitation of mineral resources; the determination of the maximum amounts of blocks. Decisions of the Commission with regard to budgetary issues or the opening of an area for exploration and exploitation of mineral resources are adopted by consensus. With regard to all other questions the decisions of the Commission are adopted by a three-quarters majority.

The Scientific, Technical and Environmental Advisory Committee, created on the basis of the 1988 Convention, adopts recommendations for the Commission for Mineral Resources and other organs with regard to the scientific, technical, and environmental aspects of exploiting mineral resources. The functions relating to the opening of a certain Antarctic area for exploration and exploitation of its mineral resources have been placed on a special
meeting of the parties. An application to open a certain area for exploration and exploitation of mineral resources is referred by the party to the Convention to the Commission for Mineral Resources. This application is accompanied by the payment of fees established by the Commission and contains a feasibility study concerning the proposed exploration and exploitation: a description of the boundaries of the area, the type of mineral resources planned for exploitation, the scale of exploitation and a preliminary Antarctic environmental impact assessment.

The Advisory Committee submits to the Commission for Mineral Resources recommendations relative to the said application. The Commission, basing itself on the opinion of the special meeting of parties, determines the conformity of the opening of the said area in the Antarctic to the provisions of the 1988 Convention and, if all members of the Commission consent, adopt a decision to open the area for exploration and exploitation of mineral resources. After the opening of a determined area for exploration and exploitation the respective Committee is convened for regulation, which divides its area into blocks for which applications may be filed for exploration and exploitation and establishes the amount of necessary contributions. The same Committee established general requirements for exploration and exploitation of mineral resources of the particular area. The Committee prepares also a management plan containing specific conditions for the exploration and exploitation of mineral resources within the limits of the particular block. The adoption of this plan by the Committee is the ground for the issuance of an authorization for the exploration and exploitation of determined mineral resources. In the event of a pernicious impact on the environment of Antarctica and violation of the prevailing requirements to ensure environmental protection, the authorization for exploration and exploitation may be annulled without the consent of the Sponsoring State.

Additional Information

During the Second World War Chile and Argentina created several bases in the Antarctica within the English 'sector'. On 5 March 1948 Chile and Argentina signed a declaration on the joint defense of their rights in Antarctica against English claims. These measures caused a negative reaction on the part of England. The Minister for Foreign Affairs declared in the House of Commons that British authorities and warships responsible for protecting the interests of England in the Antarctic area “have been given instructions to take all necessary measures to ensure the legal demands of England to sovereign right of possession of this region”. The Government of England sent warships to the Antarctic area which demanded from the Argentines and Chileans the liquidation of the bases created by them there. However, this did not stop Argentina and Chile, and they continued to consolidate
their position in the sector of Antarctica to which England had claims. England in 1955 applied to the International Court of Justice with a request to deem the territories in the Antarctic to which English claims had been declared to belong to it. But Chile and Argentina did not consent to the consideration of their dispute with England by the International Court of Justice.
13. International Straits

1 Legal Classification and Concept of ‘International Straits’

When determining the status of a particular strait difficulties arise in connection with the application in theory and practice of the concepts of ‘international strait’ and ‘strait used for international navigation’, the interpretation of which is various in the doctrine of the international law of the sea.¹

Under a broad interpretation of international straits, natural sea passages joining two parts of the high seas (including exclusive economic zones) or part of the high seas (or economic zone) with the territorial waters of coastal States may be relegated to such straits. To this same group (in the broad sense) are relegated straits situated between the territories of different States. The geographical factor has important significance for the classification of straits, although taking only this factor into account is insufficient for determining the status of specific straits.

Another factor necessary for the legal classification of maritime straits as international is the function of their use as part of an international sea route, or, using the language of the 1982 United Nations Convention on the Law of the Sea, their use for international navigation. Despite the fact that this criterion is indeterminate, the practice of international navigation is a sufficiently stable indicator of the significance of a particular strait when effectuating this type of activity. International maritime navigation is the most venerable type of maritime activity. There is no doubt that the principal world sea

routes in the overwhelming majority have been formed and used for decades. Therefore the practice of their use as such, well known to navigators, may be deemed to be a universal and sufficiently effective criterion for relegating maritime straits to the category of used for international navigation.

The legal status of sea waters forming straits is of enormous significance for determining the regime of passage in international straits. As noted above, the freedom of navigation operates on the high seas (understanding this also encompasses exclusive economic zones), the regime of innocent passage in the territorial sea, and internal waters are the sphere of exclusive jurisdiction of the territorial sovereign. Certain coastal States, especially in the course of the Third United Nations Conference on the Law of the Sea, undertook attempts to subject to their discretion the regime of passage of vessels and ships through straits contiguous to their coasts, having established the regime of innocent passage where they are entirely or partly overlapped by territorial waters. Acceptance of this approach would have caused significant damage to the interests of international navigation and, consequently, to the interests of international trade and cooperation of States. For this reason the said proposals were not supported on the part of the international community of States and were not consolidated in the 1982 United Nations Convention.

Thus, on the basis of the above international straits should be understood to be natural sea passages comprising part of world sea routes and used for international navigation between one part of the high seas, including exclusive economic zones, and another part of the high seas. The 1982 United Nations Convention relies on the term ‘straits used for international navigation’ in an analogous meaning. The convention term is, in our view, more precise. However for brevity the concept ‘international straits’ is used as a synonym of ‘straits used for international navigation’.

Straits which lead to internal waters of a State or are not used for international navigation are not international straits. Among such straits are the Dmitrii Laptev, Sannikov, Long Island, Irben, and Indrelia straits, and others. The legal regime of such straits is determined by the legislation of the strait State.

The legal regime of international straits is established on the basis of international legal norms. There are more than 200 such straits on this planet, the principal ones being: the English Channel, Pas de Calais (Dover), Gibraltar, Bab-el-Mandeb, Malacca, Magellan, Singapore, Tsugaru, the Great and Little Belts, and others. Trade and economic links are effectuated by States through international straits.

The following factors underlie the definition of the concept of a strait having international significance: geographical position of the strait, its significance for international navigation, historical characteristics, and functional characteristics.
The classification of international straits on the basis of these characteristics enables a differentiated approach to determining the legal regime of straits and the rights of coastal States therein. For example, the interests of coastal States prevail in straits which for a great distance wash the territories or coasts of the respective strait States (Eresunn and Malacca straits). On this basis the coastal States in order to ensure their security have the right to demand strict fulfillment of safety standards during the transit passage of warships and/or tankers.

In other straits in which the opposite shores are a small distance apart, for example in the Strait of Gibraltar, the breadth of which at the narrowest place comprises about 7.5 nautical miles, it can hardly be justified to introduce any such limitations on transit international navigation. Passage through such straits, as a rule, is regulated on the basis of bilateral or multilateral treaties or national legislation, depending on to how many States the shores of this strait belong. Passage through the Strait of Gibraltar is regulated by a 1904 Anglo-French agreement and by the Franco-Spanish convention on Morocco of 27 November 1912.

Passage through the Straits of Magellan, joining the Atlantic and Pacific oceans and having a breadth at the narrowest place of 0.5 nautical miles, is regulated by the Chilean-Argentine treaty of 1941.

2 Legal Regime of Major International Straits

The legal regime of straits used for international navigation was one of the main points on the agenda of the Third United Nations Conference on the Law of the Sea. The importance of this problem, besides its political, economic, and military strategic significance, is explained by the fact that after agreeing within the framework of the Conference a uniform breadth of the territorial sea of up to 12 nautical miles, the need arose for a treaty consolidation of the principle of navigation and overflight in international straits since more than 116 such straits might be overlapped by the territorial waters of the strait States.2

Moreover, a number of States situated on the coasts of straits (Spain, Morocco, Cyprus, Somalia, Greece, and others) dwelt on the conception of a regime merely of ‘innocent passage’ through straits, which these States often treated as on the basis that the right to regulate navigation belongs solely to them in the strait. The demands of certain States contiguous to straits (Algeria, Oman, and others) amounted to the introduction in essence of an au-

authorization procedure for the passage of ships, especially warships and scientific-research ships. It is understandable that recognition of such claims could lead to serious conflicts in mutual relations between States in the domain of navigation.

The Russian Federation, washed by fourteen seas, could prove to be in an especially difficult situation in this connection. Russian vessels and ships are forced to use numerous international straits for access to the Atlantic and Northern Arctic oceans and for links between the European part of Russia and the Far East. Moreover, large cabotage, that is, the carriage of cargoes and passengers from Russian ports in one sea to Russian ports in another sea, also is effectuated through straits joining high seas. It is obvious too that for Russia, many areas of which are separated by enormous sea expanses, security and defense depend significantly upon ensuring links between these areas along sea routes, and consequently, through straits used for international navigation.

As a result of prolonged and difficult agreeing of positions by the States concerned on the legal regime of straits, consensus was reached, despite the active resistance of many strait States (Greece, Cyprus, Indonesia, Morocco, and others), on adopting an autonomous part of the 1982 United Nations Convention on the Law of the Sea – Part III, entitled “Straits Used for International Navigation”. The principal difficulty when adopting this Part of the Convention specially devoted to straits was to persuade the aforenamed States bordering the principal straits to renounce unlawful demands from the standpoint of the freedoms of the high seas to consider the legal regime of international straits as an integral part of the regime of the territorial sea and to recognize for such straits the regime of innocent passage.

Ultimately, a reasonable combination of interests of States using straits and States bordering straits was found at the Third United Nations Conference on the Law of the Sea.

Norms regulating the international legal regime of straits in the 1982 Convention, as noted above, were moved into Part III, “Straits Used for International Navigation”. In analyzing this Part of the 1982 Convention, one may single out four categories of international straits, for each of which a respective legal regime has been provided.

To the first category of straits are relegated straits joining one part of the high seas or exclusive economic zone with another part of the high seas or exclusive economic zone (Article 37, 1982 Convention). The regime of transit passage operates with respect to this category of straits. Such transit passage must be continuous and expeditious. The requirement of continuous and expeditious transit does not, however, exclude passage through the strait for the purpose of entering, leaving, or returning from a State bordering the strait. States bordering the straits not only must not hamper transit passage
but are obliged in good time to notify States concerned about any danger to navigation in the strait known to them.

Transit passage through straits may not be suspended even for a brief period. In order to ensure safe passage of ships through straits, strait States may establish sea lanes and prescribe traffic separation schemes for navigation in straits. Such traffic separation schemes must correspond to generally-accepted international regulations and be clearly marked on sea charts, duly published and confirmed by the International Maritime Organization (IMO). The prior notification of all States about their establishment is an obligatory condition of establishing sea corridors in straits. Thus, the interests of States using straits for transit passage are protected.

The 1982 Convention also takes into account the interests of States bordering straits. In accordance with the Convention (Article 39), ships and aircraft are obliged to refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of States bordering the strait or in any other manner in violation of the basic principles and norms of international law. Moreover, ships and aircraft are obliged to refrain from any activities not corresponding to the usual procedure for continuous and expeditious transit, except for instances when such activities are caused by circumstances of insuperable force.

Norms establishing rights and duties of States with respect to protection of the environment in straits also were consolidated in the interests of strait States in the 1982 Convention on the Law of the Sea. When exercising the right of transit passage ships are obliged to comply with generally accepted international regulations, procedures, and practices for the prevention, reduction, and control of pollution from ships (Article 39(2), 1982 Convention). The right has been granted to strait States to adopt laws and regulations for the purpose of the prevention, reduction, and control of pollution by means of the introduction into operation of applicable international regulations relating to the discharge of oil, oil-containing wastes, and other poisonous substances in a strait. Foreign ships exercising the right of transit passage are obliged to comply with such laws and regulations. In the event of a violation by a ship possessing immunity of the said laws and regulations of the coastal State or other provisions of Part III of the 1982 United Nations Convention on the Law of the Sea, the flag State bears international responsibility for any damage or losses caused to strait States (Article 42(5), 1982 Convention).

To the second category of straits are relegated straits between one part of the high seas or exclusive economic zone and territorial sea of another State, and also straits which join one part of the high seas or exclusive economic zone with another part of the high seas or exclusive economic zone formed by an island of a State bordering the strait or part of its continental shelf (Article 38(1), 1982 United Nations Convention). The regime of innocent pas-
sage extends to these straits. States using straits of this type are obliged, in accordance with the 1982 United Nations Convention (Article 43), for the purposes of the prevention, reduction, and control of pollution of the waters of the straits, to cooperate with strait States by means of concluding treaties on these questions.

**To the third category of straits** are relegated straits in the middle part of which there is a belt of high seas or exclusive economic zone in which there passes a route of similar convenience with respect to navigational and hydrographical characteristics (Article 36, 1982 Convention). Such straits do not fall under Part III of the 1982 Convention.

**To the fourth category of straits** are relegated straits in which passage is regulated in whole or in part by “long-standing international conventions in force specifically relating to such straits” (Article 35(c), 1982 Convention). The regime of transit passage does not extend to such straits. Among straits of the fourth category are the Black Sea Straits, Baltic Straits, and Straits of Magellan.

Having regard to the importance of these straits for international navigation, their legal regime requires more detailed consideration.

The Black Sea Straits (Bosphorus-Sea of Marmara-Dardanelles) are one of the most vital international sea routes and sole exit from the Black Sea to the World Ocean. These straits have special significance for Russia. Ships under the Russian flag remain the largest user of the straits. About half of all Russian maritime commerce is effectuated through those straits. In 2004-2005, with the commencement of the carriage of Caspian oil from Novorosiisk through the straits, their significance for Russia will grow even more. Of no less importance for Russia is the military-strategic significance of the straits, routinely confirmed by events in the Balkans during NATO aggression against Yugoslavia.

The legal regime of these straits was determined by the Convention Concerning the Regime of the Black Sea Straits, concluded in 1936 at Montreux. The point of departure of this Convention is the principle of free passage and navigation in the straits (Article 1). In accordance with this principle during peacetime all nonmilitary ships may freely exercise passage through the Black Sea Straits “day or night irrespective of flag and cargo without any formalities”. Freedom of navigation for nonmilitary ships is also preserved in full during wartime unless Turkey is a belligerent. When Turkey is a belligerent party, freedom of navigation in the straits is retained for ships of those countries which are not in a state of war with Turkey.

Through the Black Sea Straits can pass any warships without limitation of tonnage and class with the prior notification of Turkish authorities eight days before the proposed date of passage. Non-Black Sea States may pass through the straits light surface ships and auxiliary ships with 15 days prior notification. The tonnage of the fleets of non-Black Sea States in the Black
Sea should not exceed 45,000 tons, nor the fleet of one such State, 30,000 tons. The time of sojourn of the ships of Black Sea straits also is limited and should not exceed 21 days. Turkey should be notified thereof 21 days in advance. These conditions are preserved during wartime, but only with respect to warships of States not in a state of war provided that Turkey itself is not a belligerent. When Turkey is in a state of war, it determines at its discretion the conditions for passage of warships through the straits.

Thus, as appears from an analysis of certain provisions of the 1936 Convention, its principal content is: ensuring freedom of navigation for all merchant ships irrespective of flag of the vessel and time of passage, and also limitation of passage of warships of non-Black Sea States in the interests of the security of Black Sea countries. The Convention, in recognizing the affiliation of the straits to Turkey, established the international legal regime thereof.

Turkey, however, during the 1980-1990s took a number of legally-formalized actions which cast doubt upon the 1936 Convention. Certain Turkish interpretators of the 1936 Montreux Convention (S. Toluner, H. Harhenli) consider the Black Sea straits to be territorial waters, taking into account the administrative and legal jurisdiction over them, which suggests the right of the Turkish authorities to demand the so-called harmless and nonaggressive passage of the straits. They base themselves on the 1982 United Nations Convention on the Law of the Sea, which Turkey did not sign, as well as the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.

Violations which occurred of this ‘harmless and nonaggressive passage’ of the straits promoted the legal consolidation of this doctrine. In particular there occurred the repeated passage of ships under the Cyprus flag with a cargo of weapons. The Appellate Court of Turkey adopted decisions on the occasion of two instances of transit passage of ships under the Cyprus flag with a cargo of weapons in 1977 and 1991. Both ships – the Vasoula and the Cape Maleas – were loaded at the port of Burgas (Bulgaria) with missiles and bombs and carried false documents.

The Court adopted a decision that this was a “contraband carriage of weapons”, thereby confirming the thesis of Turkish jurisdiction over the Black Sea straits. Moreover, in connection with intensive navigation through the Black Sea straits from 1950 to 1992 in this area of the straits and the Sea of Marmara there were about 500 collisions, accidents, and other incidents. The largest collision in the Black Sea Straits zone was between the Cyprus tanker Kasha with the dry cargo carrier under the Cyprus flag, Ship Broker, as a result of which 5,000 tons of oil was leaked directly into the Bosphorus
Strait nearly Istanbul.  

In connection with a number of serious accidents during 1981-1982 Turkey in 1982 introduced navigation rules in the Bosphorus which contained a number of provisions not in the 1936 Convention. In particular, it was prescribed that ships with a displacement of more than 10,160 tons were to inform the Turkish authorities before the commencement of passage through the Bosphorus. Moreover, merchant ships passing through this strait were obliged to take a Turkish pilot on board. This unilateral introduction by Turkey of navigation rules for the Bosphorus could not fail to give rise to sharp objections from interested parties, especially Russia.  

In 1994 the Government of Turkey, referring to the need to ensure safety of navigation and preserve the marine environment, without any prior consultations with the Black Sea or other States unilaterally adopted the Regulations for Maritime Navigation in the Turkish Straits and Zone of the Sea of Marmara. These Regulations established new rules for passage through the Black Sea Straits by large ships and introduced an authorization regime for passage by ships with dangerous cargoes, including oil and oil products. In addition, the 1994 Regulations provided for the complete suspension of navigation under climatic conditions (Article 42) and in connection with underwater and above-water construction work and scientific research (Article 25).  

Under the pressure of the international community initiated by Russia, who claimed an impingement of rights of Black Sea and transit States, in 1998 Turkey announced the repeal of the 1994 Regulations and the introduction into operation of the 1998 Regulations of Navigation in the Straits. These Regulations, having repealed the authorization procedure for passage by large tankers through the Black Sea Straits, also were adopted by the Turkish authorities in violation of international law unilaterally, which enabled provisions to be incorporated in its text leaving Turkey the right to create obstacles to passage through the Straits of individual categories of ships.  

Positive changes were made in the 1998 Regulations under the pressure of the International Maritime Organization and as a result of a series of Russo-Turkish bilateral consultations on the Straits.  

In May 1999, however, Turkey succeeded in achieving the termination of the discussion of the question concerning a change of the rules of interna-
International navigation in the Straits adopted within the IMO in 1994 and directed towards a complete rectification of the Turkish Regulations of 1994 and 1998. Moreover, at Turkish initiative the Russo-Turkish consultations on the problem of the Straits became less intensive and concerned principally the technical aspects of navigation.\(^5\)

The removal of international pressure from Turkey on the part of the IMO and the more passive line by Russia in the bilateral consultations with Turkey on the Straits could not fail to encourage Turkey to take new unlawful actions with respect to the passage of ships through the Straits. In July 2000 the Turkish authorities detained a ship chartered by Romania under the pretext that its length exceeded the permissible length for a ship of 304 meters for passage through the Straits. Other ships also had problems with passage through the Straits.

All these actions confirm the intention of Turkey to make the regime of passage of ships through the Straits more severe. The geopolitical interests of Turkey are behind this to a considerable extent, connected with the construction of the Baku-Dzheihan oil pipeline to transport Caspian oil.

The Black Sea States with their own economic, transport, and other problems are interested in free navigation in this region without being subjected to any political or priority influences.

Thus, in connection with the absence in a number of instances of an agreed policy on the Straits of the Black Sea and other interested States, Turkey, relying on two international principles — safety of navigation and protection of the marine environment — is constantly transferring navigation in the Straits from international jurisdiction to national.

While sharing in principle the concern of Turkey to ensure protection of the marine environment against pollution from ships in the area of the Black Sea Straits, it is essential to take into account the interests of Black Sea and transit States by proceeding from the provision formed in respective norms of international law. It obviously would be advisable in future to make necessary changes in and additions to the 1936 Convention by taking into account the interests of Turkey, other Black Sea States, and all States using the Black Sea Straits.

The Baltic Straits (Little Belt, Great Belt, Sound) are a single maritime route joining the Baltic and the North seas with the Atlantic Ocean. The distinctive feature of these straits is that the waters of the Little and Great Belts are overlapped by the territorial sea of Denmark, and the waters of the Sound, by the territorial seas of Denmark and Sweden.

The Baltic Straits can conditionally be called ‘functional’ since their legal regime is regulated by multilateral treaties and national legislation of the strait States.

The major treaty regulating the regime of the passage of ships through the Baltic Straits is the 1857 Treaty of Copenhagen.

The Strait of the Great Belt, 117 kilometers in length, passed between the Islands of Fyn and Zealand. The maximum breadth of the strait is 28.2 kilometers, and the minimum, 18.5 kilometers. The sufficient breadth and existence of a channel with a depth of 30 meters make this strait convenient for passage by large modern ships. Unlike the Great Belt, the strait of the Little Belt is 120 kilometers in length and a breadth of 27.5 kilometers and less suitable for navigation because of the large number of islands, sinuosity of the channel, and strong fluctuating current. The strait of the Sound passing between the Danish island of Zealand and coast of Sweden by reason of its comparatively shallow depth (7.3 meters) is unsuitable for the passage of large ships.6

The basic provision of the 1857 Treaty of Copenhagen (Article 1) is that any ship engaged in merchant navigation enjoys free passage through the Baltic Straits. In accordance with this act, State ships intended for the fulfillment of any functions connected with ensuring merchant navigation (tugboats, icebreakers, rescue and training ships) also enjoy free passage through the Baltic Straits.

In 1976 Denmark by decree introduced the regime of innocent passage through the Baltic Straits in accordance with the provisions of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone (Article 14). This decree provided, in particular, that the passage of State noncommercial ships through the Great Belt and Sound is exercised in the same procedure as the right of innocent passage through the territorial sea without obtaining authorization for such passage on the part of Denmark. For navigation through the Little Belt by State noncommercial ships it is necessary to receive prior authorization of the Danish authorities through diplomatic channels. Such authorization is not required for ships in distress on condition of notifying the Danish naval forces.

In accordance with Section 6(1) of the said decree, it is prohibited without special authorization to carry on any scientific research activity in the zone of the straits.

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The *Far Eastern Straits* (Laperouse, Sangar, Korean, and others), joining the Okhotsk, Japan, and Yellow seas between themselves and with the Pacific Ocean, are of exceptional importance to international navigation. For Russia the Laperouse Strait joining the Sea of Japan and Okhotsk Sea, located between the islands of Sakhalin and Hokkaido, is of greatest importance. This strait is used both for cabotage by vessels along the Pacific coast of Russia and for transport between the ports of the Sea of Okhotsk, Sakhalin, and Kamchatka.

Until the end of the Second World War, the regime of Laperouse Strait was determined by the Portsmouth Peace Treaty concluded between Russia and Japan on 23 August (5 September) 1905 as a result of the end of the war between those States. In that Treaty (Article 9) it was indicated that Russia and Japan are “mutually obliged not to take any military measures which might obstruct free navigation in the Laperouse and Tartary Straits”.7

The provisions of the Portsmouth Treaty were confirmed by the Russo-Japanese Convention of 31 January (13 February) 1907 and by the Convention on the Basic Principles of Mutual Relations between the USSR and Japan of 20 January 1925.

In 1937 Japan in violation of the Portsmouth Peace Treaty adopted a law on the preservation of military secrecy, having declared as a zone prohibited for navigation the waters about the southern extremity of Sakhalin and Northern Hokkaido.8 Despite the protests of the USSR, Japan in practice caused obstacles to free passage of ships through Laperouse Strait. On 31 May 1938 the Japanese authorities detained and arrested the command of the Soviet ship *Refrigerator* No. 1, which was wrecked in the Laperouse Strait and supposedly was in the prohibited zone. As regards the protests of the Ministry of Foreign Affairs of the USSR the Government of Japan assured the Government of the USSR that no obstacles would be caused to the free navigation of Soviet ships in the Strait.9

During the Second World War, however, the passage of Soviet ships in the Laperouse Strait was complicated even more. Having established marine defensive installations in the Strait, Japan began to demand notification of the passage of ships, specifying the name of the ship, date of passage, and direction of movement. Such notification was to be sent at least five full days

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7 See V. N. Aleksandrenko (ed.), *Собрание важнейших трактатов, конвенций и соглашений, заключенных Россией с иностранными державами (1774-1906)* [Collection of Major Treaties, Conventions, and Agreements Concluded by Russia with Foreign Powers (1774-1906)] (Warsaw, 1906), p. 565.
9 See *Известия* [News], 10 December 1938.
before the passage of the vessels. In addition the Japanese naval command was endowed with the powers to inspect ships traversing the Strait.\textsuperscript{10}

Soviet ships were repeatedly subjected to shelling and bombardment or detained en route through the Laperouse Strait. As Kutakov noted, during the years of the Second World War eighteen Soviet ships were seized and sunk.\textsuperscript{11}

After the end of the War and defeat of Japan, all limitations established by the Japanese authorities for the passage of ships through the Laperouse Strait were abolished. The Portsmouth Peace Treaty terminated its operation. The absence of any new arrangements with respect to the regime of Laperouse Strait persuaded the USSR to raise the question of the status of this and certain other straits at the San Francisco Conference in September 1951. The Soviet delegation, in particular, proposed to add to Chapter 3 of the draft Peace Treaty with Japan the following Article:

1. The Laperouse (Soya) and Nemuro Straits along the entire Japanese coast, as well as the Sangar (Tsugaro) and Tsushima, should be demilitarized. These Straits shall always be open for the passage of merchant ships of all countries.

2. The straits specified in point 1 of the present Article should be open for the passage only of those warships which belong to powers contiguous to the Sea of Japan.\textsuperscript{12}

Since the proposal of the USSR was not supported at the Conference, the regime of navigation through the said straits is at present regulated by the provisions of Part III of the 1982 United Nations Conference on the Law of the Sea, entitled “Straits Used for International Navigation”.

The question of free passage of ships through the Laperouse Strait with a breadth of 23 miles is complicated by the fact that after the possible establishment by the strait States (Russia and Japan) of up to 12 nautical miles in breadth, in accordance with the 1982 Convention this strait might prove to be overlapped by territorial waters. To give Japan its due, understanding this Japan in Additional Conditions to a Law of 2 May 1977 on territorial waters, which is an integral part of the Law, provided for so-called ‘special areas’ to which were relegated, in particular, the Laperouse and Sangar straits, with a breadth of 3 nautical miles. Accordingly, the Laperouse Strait is not overlapped completely. Having regard to the breadth of the territorial waters of Russia (12 nautical miles) and Japan (3 nautical miles), the part of the strait waters with a breadth of 8 nautical miles is under the regime of freedom of navigation.

\textsuperscript{11} Kutakov, note 8 above, pp. 375-376.
\textsuperscript{12} Правда [Pravda], 7 September 1951.
The Sangar Strait (Tsugaru Strait), joining the Sea of Japan with the Pacific Ocean, has important significance for Russia since this nonfreezing strait is the shortest route from Vladivostok, Nakhodka, and other ports of the Maritime Territory to the Pacific Ocean.

As the Laperouse Strait, the Sangar Strait during the Second World War was declared by Japan to be a marine defensive zone, which meant the complete closure of the Strait to the passage of foreign, above all, Soviet ships. After the War, the question of the legal regime of the Sangar Strait was unsuccessfully raised at the 1951 San Francisco Conference. Since the regime of navigation through the Sangar Strait at present is not regulated by any special treaty, it is regulated by the respective provisions of Part III of the 1982 United Nations Conference on the Law of the Sea.

The Sangar Strait with a breadth of ten nautical miles separating the Japanese islands of Hokkaido and Honsu also is not overlapped completely by the territorial waters of Japan and has a belt of sea expanse with a breadth of about 4 nautical miles in which the regime of free passage operates.

The Korean Strait joins the Sea of Japan with the East Chinese and Yellow seas and is divided by Tsushima Island into two passages: East passage and West Passage.

No treaties have been concluded to regulate the regime of navigation in the Korean Strait, so it has been and is regulated by individual acts of Japan and the Republic of Korea.

The breadth of the Korean Strait is more than 50 miles. Therefore beyond the territorial waters of Japan and the Republic of Korea the waters of the strait are an area of the high seas where, in accordance with the 1982 Convention, the freedom of navigation is exercised. The seaward boundary of the territorial waters of Japan is determined by the aforesaid Additional Conditions to the Law of Japan No. 30 on Territorial Waters of 2 May 1977 and comprises accordingly 3 nautical miles. The seaward boundary of the territorial waters of the Republic of Korea is determined by the Law on the Territorial Sea and Contiguous Zone No. 3037 of 31 December 1977, with amendments made by Law No. 4986 of 6 December 1995, and also by a Presidential decree No. 9162 on ensuring the application of the Law on Territorial Waters and Contiguous Zone of 20 September 1978, with amendments made by Presidential decree No. 13463 of 7 September 1991 and No. 15133 of 31 July 1996.13

All the Far Eastern straits considered in this section, as shown above, are not overlapped entirely by the territorial waters of coastal States. This means that beyond the limits of these waters the exclusive economic zone of the

strait States is situated. In accordance with the 1982 United Nations Convention (Articles 37 and 73), to coastal States are granted respectively in the contiguous zone or exclusive economic zone certain rights with regard to the exercise of their sovereign rights and ensuring the fulfillment of laws and regulations which may violate the unobstructed passage of foreign ships through such straits.

According to the 1982 United Nations Convention (Article 73), 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.

This same principle relates to rights of a coastal State in the contiguous zone, which comes down to the protection of customs, fiscal, immigration, and sanitary interests of this State.

Of urgency in this connection is the question put in his day by Molodtsov about the impossibility of establishing contiguous zones in straits with a breadth of even more than 24 nautical miles.14 Navigation within the limits of an exclusive economic zone in straits, in the opinion of the majority of leading Russian jurists, must be built on the basis of the principle of freedom of navigation as a customary norm of general international law.15

In order to exclude a situation in which a coastal State for the purpose of ensuring compliance with its laws and regulations in a contiguous and/or economic zone does not violate the free passage of foreign ships in the strait, it evidently is essential to put the question of working out and adopting respective changes in and additions to Part III of the 1982 United Nations Convention on the Law of the Sea.

As for Straits of the Caribbean-Mexican Basin, no special inter-State treaties have been concluded on their legal regime. The freedom of the passage of ships is exercised by virtue of historically-formed norms of customary law of the sea in these straits. This position on the whole has been preserved to the present, even though in recent years the international legal

14 Molodtsov, note 1 above, p. 166.
characteristics of sea expanses have significantly changed, which creates certain difficulties when determining the status of the straits of the Caribbean-Mexican basin.

The straits in this region are located, as a rule, between the territories of different States and join various areas of the high seas, including exclusive economic zones. An intensive and rather prolonged use for international navigation is characteristic of these straits. Together with the Panama Canal, they are a vital integral part of intercontinental sea routes.

The legal regime of these straits in the recent past was linked to a great extent with the fact that they were not overlapped by the territorial waters of coastal States. The breadth of territorial waters comprised, as a rule, 3 miles, whereas the breadth of the straits being considered varied from 10 (Old Bahamas) to 108 (Yucatan) nautical miles.

The changes of recent years in the regional political situation and processes of further development of the international law of the sea not only conditioned the growing attention of various States towards this group of straits, but also was reflected in the legal aspects of their use. Decolonization of the island territories and emergence of new autonomous States led to an expansion of the group of subjects directly interested in the regulation of the legal regime of sea expanses of the region, including straits.

The gradual dissemination in the region of the practice of establishing 12-mile territorial waters (Haiti, Jamaica, Cuba, Antigua and Barbados, Dominican Republic, and others) in accordance with the treaty provision on the 12-mile breadth of territorial waters began to influence on the legal regime of the straits.

Whereas previously the regime of the straits of the Caribbean basin were similar and the basis thereof was the fundamental principle of freedom of passage of vessels and ships of all flags, under the new international legal conditions the need arose for legal differentiation. The legal classification of these straits, which was made according to the distinctive features of their legal regime, in particular, the legal status of the aquatories of the straits, was linked significantly with various physical and geographical indicia, such as the breadth of the strait.

In this connection the straits of the Caribbean-Mexican region could be conditionally classified as ‘broad’ and ‘narrow’. To the first group are relegated: Yucatan (breadth – 108 miles), Jamaica (100 miles), Colon (78 miles), Mona (61 miles), Anegada (40-80 miles), Navetrennyi (45 miles), Florida (42 miles), Guadelupe (30 miles), and others. In these straits, having regard to the 12-mile territorial waters of strait States, a rather broad navigable belt remains of high seas in which the freedom of navigation is preserved. Moreover, the regime of 200-mile exclusive economic zones declared by the majority of States of the region extends to these areas of the straits (except Anegada). Thus, the situation exists in these straits when the
need may arise for the optimum ensuring of international navigation and the combining thereof with resource, naval, and other types of activity of strait States in the belt of the strait within their economic zones. In this connection it is essential to take into account the norms of the 1982 United Nations Convention prohibiting the placement of artificial islands and industrial and scientific installations on the seabed and in waters of the high seas, including the economic zone, on established routes of international navigation. In speaking about expanses of the high seas within ‘broad’ straits, Lopatin noted that

maritime and air navigation in this belt is exercised in accordance with freedoms of the high seas with the addition that any other types of maritime activity are subject to the ‘freedoms of navigation and overflight’.16

The most characteristic feature of the legal regime of ‘broad’ straits of the region is the preservation (even on condition of the establishment by all strait countries of a 12-mile territorial waters) in a determined water belt of the freedom of navigation as an integral part of the freedom of the high seas.

It seems advisable to single out certain provisions connected with the practical realization of the freedom of navigation in the said straits. Under this regime, ships are free to maneuver, that is, they may change course and speed, stop engines, lie adrift, and so on – so long as the navigational situation allows this. The coastal State does not have the right to obstruct free navigation of ships in the straits being considered. Submarines may pass through them either on the surface or submerged. However, when exercising freedom of navigation the generally-accepted norms of the international law of the sea must be complied with concerning safety of navigation, prevention of pollution of the sea, and others.

In certain straits of this group the regime of transit passage may be established through the territorial waters within a strait. International law so requires if the belt of high seas in the strait is minimal or navigation conditions therein are less convenient than in zones of the territorial sea. This situation is possible, for example, in Kaikos Strait (breadth – 25 miles; navigable part, 12 miles) after the establishment by coastal States of 12-mile territorial waters.

Another group of straits comprises, speaking loosely, ‘narrow’ straits. These are straits already overlapped entirely or partly or may be in the future overlapped by the 12-mile territorial waters of strait States. Three such straits of the region are presently overlapped entirely by the territorial waters of Cuba, Dominican Republic, Guadelupe, and Martinique: Nameless, Dominica, and Old Bahamas. Respective laws on the 12-mile territorial waters were adopted in recent years and took into account the changes occurring in

16 Lopatin, note 1 above, p. 34.
the international law of the sea. Thus, Article 10(1) of the Act on the territorial sea, contiguous zone, exclusive economic, and fishing zones of the Commonwealth of Dominica of 25 August 1981 mentions that when regulating foreign navigation the norms and principles of international law are taken into account.17 States whose laws affect the regime of navigation in the said three straits have signed the 1982 United Nations Convention.

A compromise according to which freedom of navigation is exercised in the waters of a strait joining part of the high seas, and in those parts which are within territorial waters vessels, ships, and aircraft of all States enjoy the right to exercise transit passage, to which no obstacles shall be placed, found consolidation in the 1982 United Nations Convention.

It is instructive to note in this connection that according to the 1982 United Nations Convention, the provisions on transit passage do not apply to a strait used for international navigation if in this strait there is a route passing to the high seas or exclusive economic zone of similar convenience from the standpoint of navigational and hydrographical characteristics as in the territorial waters; other respective provisions of the Part of the Convention, including provisions concerning freedom of navigation and overflight, apply to such routes. The provisions on transit passage also do not apply if a strait consisting of territorial waters is formed by an island of a State bordering the strait and its mainland and if seaward of the island there is a route to the high seas of similar convenience with respect to navigational and hydrographical characteristics.

Strait States may apply within the framework stipulated by the Convention laws and regulations with respect to transit passage whose application should not in practice deny, hamper, or impair the right of transit passage. Coastal States also may establish sea lanes and traffic separation schemes in straits binding upon all ships.

When passing through straits with a regime of transit passage ships are not so free to maneuver. It follows from Article 39(1) of the 1982 United Nations Convention that transiting ships may reduce speed, stop engines, lie adrift, or anchor only when such actions are caused by circumstances of insuperable force or ‘distress’. It does not follow from the respective Convention provisions that submarines are obliged to pass through the said straits on the surface.

Thus, despite the complete overlapping of the said straits by the territorial waters of coastal States, it seems that no serious threat is created in practice to the exercise of unimpeded navigation and overflight of aircraft.

The semi-enclosed nature of the Caribbean Sea and the Gulf of Mexico, as well as the existence of the Panama Canal, may exert a certain impact on the legal status of straits of the Caribbean basin and their role in the system

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of international water routes. The fact that each of the Caribbean straits is not the sole strait for passage to the semi-enclosed aquatories and to the Panama Canal also has legal importance. The majority of these straits are alternatives with respect to one another. As a general rule, however, this circumstance can not serve as grounds to limit, contrary to norms of international law, the right of transit passage where it may be established in those straits since they are traditionally used for international navigation.

Additional Information

On 1 July 1994 Turkey introduced the Regulation on Navigation in the Black Sea Straits. In this connection the Ministry of Foreign Affairs of Russia sent to the Embassy of Turkey in Moscow a memorandum which noted the understanding by the Russian party of Turkey’s problem in ensuring safety of navigation in the Straits and at the same time drew the attention of the Turkish side to the fact that the Regulations issued introduces unjustified limitations on navigation in the Straits up to and including complete suspension of navigation therein, which is de facto the introduction of an authorization procedure for the passage of ships. However, the legal regime of the Black Sea Straits based on the principle of freedom of merchant navigation and limited passage of warships is regulated by a multilateral Convention concluded at Montreux on 20 July 1936.

The introduction unilaterally of restrictive measures on navigation in the zone of the Black Sea Straits by means of introducing the aforesaid Regulations are contrary to norms of the aforesaid international Convention.

1 Concept and Legal Regime of Major International Canals

Unlike national canals which join rivers, lakes, and internal waterways of a single State, international canals are artificially-created waterways that facilitate navigation along international water routes.

The legal regime of canals used for international navigation is determined by treaties.

Thus, international canals are artificial waterways under the sovereignty of the State whose territory they cross and used for international navigation in accordance with the principles and norms of international law, including norms of treaties relating to individual canals, as well as by the legislation of States possessing sovereignty over the canal.

As will be shown below, international legal norms regulating the regimes of the principal international canals (Suez Canal, Panama Canal, Kiel Canal) are basically similar and are determined by the freedom of passage through these canals by ships of all States.

The most important world water route of international significance is the Suez Canal, built in 1869 and joining the Red Sea with the Mediterranean Sea. The international legal regime of the canal was determined by the Convention of Constantinople, signed 17 October 1888 by ten States (England, Austria, Hungary, Germany, Italy, Spain, Netherlands, Russia, Turkey, France). Greece, Sweden, Norway, Denmark, Portugal, Japan, and China later acceded to the Convention.

In accordance with the 1888 Convention (Article 1), the Suez Canal was declared both in peacetime and wartime to be free and open to every vessel of commerce or of war without distinction of flag. In so doing the Contracting Parties assumed the obligation to not violate the free use of the canal and to apply the principle of equality in all that concerns the canal (Article 12).
According to the 1888 Convention, the Suez Canal is open in wartime even for ships of belligerent States. Having regard to this, the parties to the Convention agreed that no actions which were hostile or have the purpose of disturbing freedom of navigation along the canal would be permitted in the canal or in its ports of entry, nor within an area of 3 nautical miles from these ports (Article 4). The Convention does not limit Egypt as the State under whose sovereignty the canal is from taking all necessary measures to ensure and maintain public order (Article 10).

The legal regime of the Suez Canal did not change after nationalization by Egypt in 1956 of the Universal Suez Maritime Canal Company. Military actions of England, France, and Israel against Egypt in retaliation against the lawful actions of Egypt connected with the nationalization of the canal were an express violation of the 1888 Convention (Article 1), according to which States-Parties were not to violate the freedom of use of the canal in wartime or in peacetime.

After elimination of the crisis around the Suez Canal, Egypt accepted a Memorandum and a Declaration in which its intention was affirmed to comply with the 1888 Convention of Constantinople and to ensure free and continuous navigation for ships of all States, complete equality of all users of the canal without any discrimination. Thus, the canal in 1967 was again opened to free navigation for ships by all States.

The Panama Canal joining the Atlantic and Pacific oceans was opened to navigation in 1914. The legal regime of that canal was determined before it was built by the Clayton-Bulwer treaty of 19 April 1850 concluded between the United States and England. This treaty declared the future canal in peacetime and wartime to be open to all merchant ships and warships without distinction of flag. Moreover, the parties to the Anglo-American treaty obliged themselves not to establish their sovereignty over the canal and neighboring States.

Under an agreement concluded on 18 November 1903 between the United States and Panama, the United States received the right to build the canal and to operate it ‘in perpetuity’. Panama in accordance with this treaty ceded its sovereign rights to the United States within the limits of a ten-mile land zone along the shores of the canal. In so doing the United States declared the neutrality of the canal and the application to it of the provisions of the 1888 Convention of Constantinople regulating the legal regime of the Suez Canal. The Panama Canal began to function in 1914 and was opened officially in 1920. The treaty also provided that the canal, after the construction was completed, and its entrances would remain permanently neutral and open for passage to the merchant ships and warships of all States. It also was provided that ships passing through the canal would not be subjected to charges except those for the use of the canal and other installations. The
United States received the right to erect its own fortifications in the Canal Zone and keep armed forces there for its protection.

Despite these provisions of the 1903 treaty, during the period after the Second World War instances occurred of the application on the part of United States authorities in the Canal Zone of discriminatory measures against many foreign ships.

After a prolonged struggle of the Panamanian people for a revision of the 1903 treaty and for the right of Panama to de facto exercise its sovereign rights over the canal and its Zone, the United States and Panama concluded two treaties on the Panama Canal. The first, the Panama Canal Treaty, recognized the sovereignty of Panama over its territory. In the second, the Treaty on the Permanent Neutrality and Operation of the Panama Canal, it is recognized that this canal as an international transit route should be permanently neutral and open for “transit not disturbing peace” on conditions of equality for ships, including warships, without any verification or discrimination.¹

The principal purpose of these treaties was to eliminate a situation having colonial connotations under which one State (the United States) exercises jurisdictional powers with respect to a determined part of the territory of another State (Panama). These treaties provided that Panama permanently received sovereignty over the canal, which should pass entirely to it on 31 December 1999.

Until that deadline the Americans exercised real authority in the management of the canal and kept fourteen military bases in the Zone. Beginning from 2000, the United States retained only the right to ‘jointly with Panama guarantee the neutrality of the canal’. Regrettably, for the period up to the moment of transfer of the Panama Canal (before 1 January 2000) a large number of violations were registered.

In September 1979 the United States Congress adopted Law 96-70 which to a significant degree distorted the meaning and purpose of the Panama Canal Treaty. This law was directed towards undermining the aims of the Panama Canal Treaty and eliminating the colonial dependence of Panama. Despite the provisions of the Treaty on creating a commission to manage the Panama Canal consisting of representatives of the United States and Panama, this law granted to the President of the United States and the Secretary of Defense of the United States excessive privileges on this commission, limited its administrative functions, and transferred to the United States Congress virtually unlimited rights with regard to managing the Panama Canal. As a result of Law 96-70 the United States administration permitted a large number of violations of the Panama Canal Treaty.

Administrative powers of the commission for the management of the Panama Canal were limited, many federal laws of the United States were applied on the territory of sovereign Panama, and administrative agencies of the United States were instituted on the territory of Panama and without any legal grounds interfered in various aspects of Canal management.

From 2 January 2000 the Panama Canal and its installations finally passed under the sovereignty of Panama.

The Kiel Canal, opened in 1895, joins the Baltic and the North Seas. Until 1919 Germany controlled the Canal. The Canal was opened for international navigation according to the 1918 Treaty of Versailles, in accordance with which the Kiel Canal and locks thereto were declared to be free and open for merchant ships of all States who were at peace with Germany. The navigation of warships along the Canal is authorized after prior notification through diplomatic channels.

The publication of similar regulations concerning the conditions of passage through the Kiel Canal confirms the practice under which the international legal regime of canals does not exclude the rights of a State whose territory the canal crosses to issue respective regulations for the passage through the canal of foreign ships, and also to create an administration for the management thereof. The noted English jurist, Ian Brownlie, also pointed to such a possibility, that if “… a canal has an international status on one basis or another, this is not necessarily incompatible with control by an administrative body which is merely a legal person under the law of the territorial sovereign”. 2

However, measures with regard to the administration of an international canal by a State whose territory it crosses, and also regulations issued by it concerning the conditions of passage through the canal, should not violate the principle of freedom of passage of foreign ships through international canals established by a respective treaty or by international law. Such a regime of international navigation along canals may be limited only in exceptional instances provided for by national legislation and respective treaties. Such limitations usually are connected with military security or safety of navigation along the canal, and also by the need to maintain installations of the canals in an operational state.

Additional Information

In 1922 the English ship Wimbledon was chartered by a French company to carry military materials for Poland, which at the time was in a state of war with Soviet Russia. Germany did not allow the ship through the Kiel Canal,

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justifying its actions by the desire to maintain neutrality in the war between Poland and Soviet Russia.

This issue was referred by the French party to the Permanent Court of International Justice. In the decision of the Permanent Court, given in 1923 in this case, the unlawfulness of the actions of Germany, who closed passage through the Kiel Canal to a neutral ship, was indicated. The decision was based on the Treaty of Versailles (Article 380), according to which the Kiel Canal is not an internal waterway of Germany, passage through which depends upon its discretion. The Permanent Court of International Justice referred to the status of the Suez and Panama canals in support of the generally-accepted position, concluding that an artificial waterway connecting two open seas and permanently dedicated for use by all States is assimilated to natural straits in the sense that even the passage of a belligerent warship does not compromise the neutrality of the sovereign State under whose jurisdiction the waterway is. The condition of free passage through the Kiel Canal of a foreign merchant vessel is its affiliation to a State not in a state of war with Germany.3

15. Protection and Preservation of Marine Environment

1 Basic Principles of International Law of the Sea in Sphere of Protection of Marine Environment

The World Ocean, being an important component of the earth’s biosphere, ensures on a global scale the quality of the planetary environment. The need for the protection of the marine environment against pollution as the most urgent problem of the modern day is determined by this. The increasingly intensive use of expanses and resources of the World Ocean and the concomitant numerous sources of pollution and discharge into the sea of large quantities of harmful and toxic substances has led to the degradation of individual ecosystems of the World Ocean, disturbance of ecological equilibrium and reduction of the productivity of the seas and oceans. The seas and oceans covering more than two-thirds of the surface of our planet possess colossal biological, energy, and mineral resources. The World Ocean also is the largest ‘devourer’ of carbon dioxide and ‘producer’ of oxygen. Hopes to replenish in the near future the food resources and fresh water supplies, the demand for which grows with each year, rest with good reason on the World Ocean.

Despite the efforts of individual States and international organizations, the deterioration of the marine environment is continuing. The United Nations General Assembly at its LVII session in 2001 expressed concern about the continuing degradation of the marine environment as a result of land-based activities, the negative impact on the marine environment of pollution from ships, discharge into the sea of oil and other harmful substances, dangerous wastes, including radioactive materials, nuclear wastes, and dangerous chemicals. In this connection the United Nations General Assembly adopted a resolution in which States who are not parties to the 1982 United Nations Convention on the Law of the Sea were called upon to accede to it, and also appealed to States as a matter of priority to conform their national
legislation to the provisions of this Convention and ensure the consistent application of these provisions in practice. Moreover, the said resolution appeals to the international community to render assistance in appropriate instances to developing countries and small island developing States in the struggle against pollution of the marine environment.

Pollution of the World Ocean by oil was the subject of discussion at the summit meeting of the ‘Eight’ in June 2003 at Evian, France. Attaching great significance to bioresources of the World Ocean and noting the reduction thereof in connection with pollution, the leading States of the world agreed on the following: (1) maintaining the productivity and biodiversity of resources of coastal marine areas; (2) ratification and effective implementation of universal and regional treaties concerning fishing; (3) the development and implementation of international action plans under the Food and Agricultural Organization to eliminate illegal and unregulated fishing; (4) strengthening regional fisheries organizations; (5) improvement of coordination and cooperation between such international organizations as IMO, FAO, and UNEP; (5) incorporation of priorities from the 1995 Global Programme of Action for the Protection of the Marine Environment into national, regional, and international initiatives; (6) establishment by 2012 of networks of marine protected areas in waters of the ‘Eight’; (7) support for the efforts of the IMO directed towards: (a) accelerating the phasing out of single hulled tankers; (b) establishment of mandatory pilotage in narrow, restricted areas in accordance with IMO rules and procedures; (c) acceleration the adoption of guidelines on places of refuge for vessels in distress; (d) enhance compensation funds to the benefit of victims of oil pollution and review the international compensation regime; (e) improve the training of seafarers, including mandatory minimum qualifications.¹

To resolve the problem of the recuperation of the World Ocean and the conservation and rational use of its resources connected with the survival of mankind on the basis of old thinking emanating from conceptions such as the ‘inexhaustibility of Ocean resources’, its ‘self-cleaning’, the ocean as a ‘field for free hunting’, the ‘ocean withstands all’, and others is today impossible. For this, as Brekhovskikh wrote, law and morality are essential.²

The organic integrity of the ecosystem of the entire World Ocean and close interlinkage of its individual elements condition a global approach to the protection and conservation of the marine environment and require international legal regulation. This approach is contained in the preamble of the 1982 United Nations Convention on the Law of the Sea, which provides for

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the close interconnection of the problems of marine expanses and the need to regard them as a single whole.

Mankind is entering a new era, the indicator of which is the arising of global problems, the most serious being pollution of the marine environment and, as a consequence, the possibility of global ecological catastrophe. As many scholars justly noted,

for the first time in history a situation has arisen when mankind may rally together on such a common and thereby maximally democratic basis to ensure the global security of modern civilization. For this is required not only coordinated international actions within the framework of global civilization, but a new awareness of the need which has arisen for what may be called global thinking.3

In this connection the international community has worked out a conception of sustainable development providing that such development, while satisfying the requirements of the modern day, not threaten the capacity of future generations to satisfy their own requirements. The principal international documents adopted in development of this conception are: the Declaration “Agenda for the 21st Century”; Action Program of the United Nations; Declaration on the Environment and Development; and the 1992 Convention on Biological Diversity. As noted in the Declaration “Agenda for the 21st Century” adopted at the 1992 United Nations Conference on the Environment and Development, the marine environment “forms an integrated whole that is an essential component of the global life-support system and positive asset that presents opportunities for sustainable development” (Chapter 17 – Protection of the Oceans, point 17.1).

In accordance with Principle 2 of the Stockholm Declaration of Principles adopted by the 1972 United Nations Conference on the Human Environment, the natural resources of the earth, including the air, land, “… flora and fauna, and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate”. According to Principle 4, man has a “special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat” and “nature conservation, including wildlife, must therefore receive importance in planning for economic development”.

Virtually all States of the world in some degree or another have encountered the problem of the environment and attempt to resolve it at the national level. However, taking into account the integral character of marine ecosystems, the diversity of the sources and types of pollution, and the transbound-

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4 Iu. M. Kolosov and E. S. Krivechikova (comp.), Действующее международное право в трех томах [Prevailing International Law in Three Volumes] (M., 1997), III.
ary nature of the dissemination of pollutants in marine expanses, the problem of the protection of the World Ocean cannot be resolved through the efforts of individual States. The effectiveness of the taking of measures with regard to the protection of the marine environment depends above all upon combining national means and international cooperation at the universal and regional levels. Only joint integrated measures of States and their extensive cooperation can ensure the prevention and limitation of pollution of the marine environment.

The objective necessity of the cooperation of States in the cause of protecting the marine environment against pollution is determined by a number of factors. First, as noted above, no States, however economically developed, can resolve all the problems connected with the protection of the marine environment. Second, the World Ocean is a single and indivisible macrosystem, a change of the state of the marine environment in which is impossible to confine to any aquatory. Third, the international character of the use of expanses and natural resources of the World Ocean requires close international cooperation. In forming and developing such cooperation in the regulation of nature-protection activities of the States in the World Ocean a leading role is played by international law.

Underlying legal regulation of the protection of the marine environment against pollution are the basic principles of international law which, as Skalova rightly suggests, are the foundation of international law irrespective of the sphere of its application. The principles of international marine ecological law – an integrated institution formed on the edge of the two branches, the international law of the sea and international environmental law, are a concretization of the basic principles of international law relating to the protection of the marine environment. There are relegated to such special branch principles: the principle of protection of the marine environment, the principle of preservation of the rational use of living marine resources, the principle of not causing harm to the territories of other States, and the principle of freedom of the high seas.

The principle of protection of the marine environment, occupying the central place among the special principles, arose on the basis of norms regu-

lating the rights and duties of States with regard to protection of the marine environment. In connection with this principle, which was first formulated at the United Nations Conference on Problems of the Human Environment, “States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea” (Principle 7).

The principle of protection of the marine environment was further developed in the 1982 United Nations Convention, especially in Article 192, which provides for the duty of all States “to protect and preserve the marine environment”.

The principle of international responsibility for the preservation of the natural environment is a basic principle of protection of the marine environment. The content of international legal responsibility consists of those legal consequences ensuing for a State which has violated its obligations, the last including the duty of the offending State to compensate damage caused to other subjects of international law, and in individual instances to their juridical and natural persons.8

The principle of the conservation and rational use of living marine resources determines in essence the content and general orientation of the international legal regulation of inter-State relations in the World Ocean connected with the conservation of its bioresources in the process of their exploitation. In interaction with other principles of international fisheries law, it is called upon to ensure the legal foundation of contemporary rational marine fishing. According to this principle, each State has the right to demand from other States the fulfillment of measures with regard to the conservation and rational use of living resources, to which the legal duty corresponds to themselves comply with such measures.

The origin of the principle of the preservation and rational use of living marine resources was conditioned by the requirements of economic development of States, when actiivation of fishing in virtually all areas of the World Ocean and technical achievements in the domain of shipbuilding and the search for, extraction, and processing of fish began negatively to impact the stocks of certain of the most valuable fish and marine fauna. Since the measures with regard to the conservation of these stocks undertaken by individual coastal States within the limits of their coastal waters were insufficiently effective to conserve the continuously migratory marine bioresources, the States concerned understood and acknowledged the need for joint regulation of the issues of fishing in individual areas of the high seas.

8 See М. В. Романчев, “Международно-правовое регулирование охраны морской среды” [International Legal Regulation of Protection of Marine Environment], Весы Фемиды [Scales of Justice], no. 3 (1998), p. 40.
Ecological requirements with regard to the marine environment also influence the traditional and fundamental principle of the law of the sea – the principle of freedom of navigation. This principle, taking into account the norms of such treaties as the 1954 Convention on the Prevention of Pollution of the Sea by Oil (with amendments), the International Convention for the Prevention of Pollution from Ships, as changed by the 1978 Protocol, and the 1982 United Nations Convention on the Law of the Sea underwent significant changes in the aspect of protection of the marine environment. These changes concerned above all the right of innocent passage and transit passage. In the modern understanding the right of innocent passage and transit passage must take into account ecological aspects connected with navigation and provided for in the aforesaid international legal documents.

The effective functioning of the system of principles and norms with regard to the protection and conservation of the marine environment depends to a great degree on the creation of the actual mechanism to ensure the realization thereof. A significant part of this mechanism comprises norms regulating the procedure for ensuring the fulfillment of international legal norms and national legislation with regard to the prevention of pollution of marine expanses. The mechanism for ensuring the fulfillment of international norms and standards with regard to prevention of pollution of the marine environment from ships is the most elaborated in the international law of the sea. This mechanism is based on the jurisdiction of the flag State. In accordance with the 1982 United Nations Convention, a number of measures with regard to prevention of the pollution of the sea also is placed on the port State.

The duty of protection and conservation of the marine environment and living marine resources in the exclusive economic zone is placed by the 1982 United Nations Convention on the coastal State. The coastal State with respect to the economic zone may adopt only those laws and regulations for the prevention, reduction, and management of pollution from ships which correspond to generally-accepted international norms and standards (Article 211[5]).

2 Concept and Sources of Pollution of Marine Environment

The problem of the protection and conservation of the marine environment is a complex problem both with regard to the numerous sources of pollution and the harmful consequences, as well as those measures which it is essential to take in order to prevent and eliminate the dangerous consequences.

In speaking about the sources of pollution of the World Ocean, one should have in view pollution from tankers, ships carrying chemical cargoes,
nuclear-powered ships, and the like. Pollution of the marine environment by ships sailing the seas and oceans may occur either as a result of the deliberate pumping out of oil residues from cargo holds of tankers or the discharge of various types of other wastes, or as a result of wrecks of tankers, chemical carriers, and other ships carrying substances harmful for the marine environment. With a view to a uniform understanding of the concept ‘pollution’ of the World Ocean and use thereof in various law enforcement international legal and municipal acts, in 1969 the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) under the aegis of the United Nations, IMCO, FAO, UNESCO, World Meteorological Organization, World Health Organizations, and IAEA worked out the following definition of this concept: pollution is the introduction by man into the marine environment (including estuaries) directly or indirectly of substances or energy entailing such harmful consequences as damage to living resources, hazard for human health, impediments to marine activities, including fishing, worsening the quality of sea waters and reducing the useful properties thereof.\(^9\)

From the legal point of view of importance in this definition is not so much the fact of the introduction of pollutant substances into the marine environment itself as the damage caused by this to other lawful types of use of the World Ocean. Pollution of the marine environment entailing harmful consequences and impediments to activities at sea is prohibited by contemporary international law. This prohibition arises from the principle of freedom of the high seas, in accordance with which any State must take into account the concern of other States in using the freedom of the high seas.

Numerous organic, synthetic, mineral, radioactive, chemical, and other substances fall into the waters of the World Ocean from land, sea, and air sources by means of discharge or indirectly.

International legal regulation of the activities of States in the domain of the protection and conservation of the marine environment takes its beginning from the prevention of pollution of the sea by oil. This is connected with the fact that oil is one of the oldest and most common pollutants. Oil in the World Ocean comes from land sources, ships, as a result of natural discharges, and exploiting oil on the shelf. Leakages of oil as a result of tanker accidents are in recent times the most material sources of pollution of the sea by oil. Suffice it to recall the wreck of the tanker *Torrey Canyon* in 1967 off the coast of Great Britain, as a result of which 120,000 tons of oil leaked into the sea. In 1978 as a result of the wreck of the supertanker *Amoco Cadiz* off the coasts of France 230,000 tons of raw petroleum were released into the sea. The last example of the wreck of a tanker which led to serious pollution of coastal waters off the Atlantic coasts of Spain and France was that in No-

November 2002, the Greek tanker *Prestige*, on board of which there was about 80,000 tons of heavy raw petroleum. As a result of the wreck, the tanker turned over and sank to the bottom with more than 70,000 tons of oil. Besides the pollution of the Atlantic which already has occurred, the tanker lying on the bottom is an ecological time bomb.

As certain specialists suggest, in addition to oil from wrecks of tankers up to 3.5 to 4 million tons of oil and paraffin annually fall into the seas and oceans during the normal day-to-day operation of oil-loading ships, mostly as a result of ballast and washing of oil tankers, especially tankers of obsolete construction.¹⁰

The exploitation and recovery of oil, gas, and other mineral resources on the seabed also carries great dangers for the marine environment. Although the total amount of pollution entering marine waters as a result of this type of activity is comparatively small, even one-off incidents and accidents at drilling installations can cause catastrophic pollution and inflict enormous harm to the ecosystems of entire marine regions. Illustrative on this plane was the large accident at the oil well ‘Ikstok-1’ off the shores of Mexico. As a consequence of an explosion at a drilling installation, about 500,000 tons of oil were thrown into the sea from the well. As a result of this accident the ecosystem of the Gulf of Mexico, fishing, and tourism in the region were caused colossal damage difficult to estimate.

Certain types of pollution of the marine environment may be caused by the exploitation of polymetallic nodules on the bed of deepwater areas of the World Ocean which certain States are beginning to work.

Pollution of the river waters flowing into seas and oceans, as well as the discharge into coastal waters of various harmful wastes by enterprises working on the coast, may have serious consequences for the marine environment.

Radioactive contamination of the marine environment is especially dangerous and may occur as a result of nuclear explosions, dumping of radioactive wastes as a result of the operation of nuclear-powered ships, and also from enterprises and scientific-research installations, negligent burial of radioactive wastes on land, incidents with nuclear objects near coastal waters, and the transporting of radioactive substances at sea, radioactive pollution of the atmosphere, exploration and exploitation of natural resources of the seabed, and so on.

A great danger for the marine environment are the accidents which have become more frequent with atomic submarines and the burial of their nuclear reactors on the seabed. The intensiveness of sailing submerged, which is not regulated as yet by any rules of navigation, may lead and already is leading

to collisions of atomic ships while submerged and, as a result, to serious radioactive contamination of the marine environment and its flora and fauna.

Radioactive pollution of the marine environment may lead to contamination not only of an enormous quantity of living organisms of the sea, especially fish, but millions of people using these living resources for nourishment.

Pollution of the marine environment and the threat created by it of disturbing the ecological balance are observed at present in many areas of the World Ocean. But an especially high level of pollution exists in enclosed and semi-enclosed seas encircled on all sides by the territories of many States and having a narrow outlet to the ocean, such as the Black Sea, Baltic Sea, and Mediterranean Sea. In 1979 at an international conference devoted to the ecological protection of the Mediterranean Sea it was noted that in the event of the failure to take urgent measures, within about 30 years all fauna and flora of the Mediterranean Sea would perish.\(^{11}\)

Since pollutants do not recognize maritime boundaries, the problem of the protection of the marine environment against pollution is international and may be successfully resolved only by collective efforts of States through the development of comprehensive international cooperation based on generally-recognized principles of international law.

The duty of States is to assume collective responsibility for protection of the marine environment beyond the limits of national jurisdiction and also to cooperate between themselves and with competent international organizations on working out international regulations and procedures directed towards prevention of pollution of the marine environment provided for in the 1972 Stockholm United Nations Convention on Environmental Protection. This same convention provides for the duty of States to adopt in municipal legislation sufficiently strict and effective sanctions for a violation of prevailing international and national norms regulating the protection and preservation of the marine environment.

At present there are about 20 treaties regulating general and specific issues of the protection of the World Ocean against pollution. These treaties may be classified on the basis of the following indicia:

*by sphere of issues regulated*: treaties fall into three groups: (1) of a general character (for example, 1959 Antarctic Treaty); (2) of a special character (1972 Convention on Prevention of Pollution of the Sea by Discharges of Wastes and Other Materials); (3) of a specialized character (International Convention for the Prevention of Pollution from Ships (MARPOL-73/78));

*by geographical indicia*: these treaties may be classified into universal and regional. Among universal treaties encompassing the entire World Ocean are the MARPOL-73/78 Convention, the 1982 United Nations Con-
vention on the Law of the Sea, and others. Among regional treaties in this domain are the 1974 Convention on Protection of the Environment of the Baltic Sea, the 1976 Convention for Protection of the Environment of the Mediterranean Sea, the 1980 Protocol on Protection of the Mediterranean Sea Against Pollution from Land-Based Sources, and a number of other regional acts.¹²

3 International Legal Regulation of Prevention of Pollution of Sea by Most Dangerous Pollutants

3.1 Prevention of Pollution of Sea by Oil

Early attempts to work out on the international level certain measures to prevent the pollution of the sea by oil were undertaken in 1926 when a draft international convention on the protection of coastal waters against pollution by oil was prepared at Washington, D. C., at a conference of experts.

The first universal treaty regulating questions of prevention of the pollution of the sea by oil was adopted in 1954 at London, the International Convention for Prevention of Pollution of the Sea by Oil.

The 1954 Convention extends to ships of the Contracting Parties and provides for the prohibition against the deliberate discharge of oil and oil mixtures into prohibited zones contiguous to the coast of 50 up to 150 miles in breadth. An Annex to the Convention indicates that all maritime zones extending 50 miles from the coastal shore are prohibited. A number of zones of 100 miles in breadth have been established in the Convention, in particular, off the western coast of Canada, in the northwest part of the Atlantic Ocean, off the coast of Iceland and Norway, off the Atlantic coast of Spain and Portugal, in the Mediterranean, Adriatic, and Red seas, and in the Persian Gulf. Along the coast of Madagascar a zone of 100 and 150 miles has been established. A zone of 150 miles has been fixed off the coasts of Australia, except for areas contiguous to the northern and western coasts of the Australian continent. Zones of complete prohibition have been declared in the North, Baltic, Black, and Azov seas. However, this prohibition against the discharge of oil in prohibited zones is not absolute, and such discharge is permitted if it is made in instances mentioned by the Convention: ensuring the safety of the ship, rescue of human life, and so on. Control over the fulfill-

The protection and preservation of the marine environment is given special attention in the 1954 Convention on the High Seas. The Convention places the responsibility for protection of the marine environment primarily on the flag State of the ship. The 1954 Convention contains the following provisions as well: (1) ships must be equipped with proper devices to prevent the overspill of oil (Article VII); (2) ports, oil-pumping points, and ship repair bases must be equipped with appropriate devices to accept oil residues from ships (Article VIII); (3) the discharge of oil and oil mixtures is prohibited throughout the entire aquatory of the World Ocean for ships with a gross tonnage of 20,000 tons or more (Article III(c)); (4) ships must have a log for the registration of oil operations which may be verified by authorities of any Contracting State while the ship sojourns in its port (Article IX).

The fact that the 1954 Convention as amended in 1962 permitted the possibility of the discharge of oil-bearing mixtures into the sea beyond the limits of prohibited zones required the further improvement thereof. Therefore in 1959 new amendments to the 1954 Convention were adopted within the IMO, in accordance with which all zones prohibited for the discharge of oil were abolished. The discharge of oil and oil-bearing mixtures is prohibited throughout the entire aquatory of the World Ocean. For ships which are not tankers by way of exception it is permitted to discharge oil only in compliance with the following conditions: (1) the ship is en route; (2) the instantaneous intensiveness of the discharge does not exceed 60 liters per nautical mile; (3) the content of oil in the discharged mixture comprises less than 100 milligrams per liter; (4) the discharge is made as far from shore as possible.

Moreover, amendments of 1969 introduced additional limitations for tankers. Any discharge within 50 miles from the nearest coast is prohibited, and the total quantity of oil discharged per voyage must not exceed 1/15000 of the gross tonnage of the tanker.13

The significance of the 1969 amendments to the 1954 Convention was not only that they provide greater limitations on the admissible discharge of oil, but that the Convention as changed by these amendments extends to the entire aquatory of the World Ocean.

In 1971 new amendments to the 1954 Convention were adopted within the IMO. One amendment provides, in particular, that each new tanker must meet the technical requirements specified in an Annex to the Convention, and the flag State must issue to this vessel a respective certificate. Navigation is prohibited for tankers not having such certificates.

The 1954 London Convention for the Prevention of Pollution of the Sea by Oil as amended in 1962, 1969, and 1971, although it had important significance as the first multilateral treaty, did not resolve the problem of the struggle against pollution of the marine environment completely. This Con-

vention only regulated questions of pollution of the sea by oil and did not concern pollution by other pollutants. However, with respect to oil the Convention contained, as shown above, a number of exceptions and did not provide for all means of pollution.

Therefore the adoption of further measures was needed to resolve the problem of the struggle against pollution of the marine environment fully. Other international legal acts, to be considered below, were adopted in particular.

3.1.1 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties

This Convention was adopted after the wreck, unprecedented in its consequences, of the Liberian tanker *Torrey Canyon* in March 1967. The basic content of the Convention on intervention is that coastal States may take such measures on the high seas as may be necessary to prevent, mitigate, or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil following upon a maritime casualty or acts related to such a casualty, which may be reasonably expected to result in major harmful consequences (Article 1).

In so doing, however, a number of obligatory conditions should be complied with, namely: before taking measures the coastal State should consult with the States affected, in priority with the flag State of the vessel, inform the persons concerned about the measures contemplated (shipowner, cargo owner, insurer), and consult with experts recommended by the IMO.

Basing oneself on these provisions of the Convention, one may single out three basic moments characterizing the situation in which the coastal State has the right to intervene: an imminent danger threatening the coastline and other related interests of the coastal State; pollution or threat of pollution of the sea by oil; a reasonable supposition that pollution will entail significant harmful consequences.

The 1969 Convention on Intervention grants to the States-parties the right to take any necessary measures on the high seas with respect to ships of other States-parties to the Convention in cases of serious casualties for the purpose of preventing, mitigating, or eliminating a grave and imminent danger which pollution or the threat of pollution of the sea by oil that occurred as a consequence of a maritime casualty represents for their coastline and respective interests. This provision makes a significant exception to the principle of exclusive jurisdiction of the flag State over ships proclaimed in the 1982 United Nations Convention on the Law of the Sea.

When necessary, a concerned coastal State may take extreme measures with respect to a casualty autonomously, without any consultations and irrespective of consultations begun. In taking measures, the coastal State is
obliged to avoid creating any risk to people on board the ship, render necessary assistance, and facilitate the return of the crew to their homeland if the ship is destroyed or perishes.

The Convention proceeds from the fact that the measures taken by the coastal State must be ‘proportionate’, that is, correspond to the damage threatened because of the casualty and the State should not undertake any measures which are not required to prevent, eliminate, or reduce damage from pollution by oil. If these measures prove to be ‘disproportionate’ or contrary to the Convention provisions, the State taking them has the duty to compensate damage which was caused by such unjustified measures.

One should mention in this connection the direct relationship to the problem of protection of the marine environment of the conception of ‘presumed international mandate to the coastal State’. This conception, advanced in 1971 by the representative of Mexico in the Seabed Committee, J. Castaneda, and arising from time to time in international forums discussing the question of protection of the marine environment, proceeds from the fact that the international community, being concerned to defend the seas and oceans against pollution of the waters, may issue to the coastal State a ‘presumed mandate’ to effectuate unilaterally actions with regard to protection of the marine environment. As Lazarev notes,

the possibility is included in this conception of the possibility for a coastal State to perform virtually any unilateral actions under the pretext of defending ‘universal human’ (to which protection of the marine environment is relegated) and ‘its own’ interests under the pretext of an apparent existing sanction on the part of the international community.\(^{14}\)

The Convention on Intervention does not determine the character of the measures which a coastal State may take against a foreign ship. But it provides that measures must be proportionate to the amount of harm caused or imminent (Article V). The maximum distance from the coast within whose limits the coastal State may take such measures is also not provided in the Convention. Evidently this will depend upon the specific circumstances of each instance of intervention.

In urgent circumstances a coastal State may take measures without prior notifications and consultations. But the coastal State is obliged without delay to inform the States and persons concerned about the measures taken under such circumstances, as well as the Secretary General of the IMO (Article III).

The Convention on Intervention applies to all ships, except warships and other ships belonging to the State and operated by it for commercial purposes, as well as to other floating craft, except for installations engaged in the exploration and exploitation of resources of the seabed and ocean floor (Article II).

A Protocol on Intervention was adopted in 1973 to the 1969 Convention at a London conference, in accordance with which the right was recognized for coastal States to take protective measures on the high seas in the event of pollution or a threat of pollution of its coastline and coastal waters by substances other than oil. A list of these substances was worked out by the respective organ of the IMO and annexed to the Protocol.

3.1.2 1973 International Convention for the Prevention of Pollution from Ships with 1978 Additions (MARPOL 73/78)

The MARPOL 73/78 Convention, the basic global treaty regulating the protection of the marine environment against pollution from ships, consists of twenty articles, two protocols (I: Procedure for Transfer of Reports on Incidents; II: Arbitral Procedure for Settlement of Disputes) and six annexes.\(^{15}\)

The said Annexes contain rules for the prevention of pollution by all possible harmful substances which when falling into the sea may create a danger to health and cause harm to marine fauna and flora and impede various types of lawful use of the sea. To such harmful substances the Convention regulates, in particular, oil, noxious liquid substances transported in bulk, harmful substances in packaged form, sewage from ships, and garbage from ships.

According to the MARPOL 73/78, each oil tanker of 150,000 dwt or more and each ship of 400,000 dwt or more is subject to certification at least every 5 years. These ships must have an international certificate for the prevention of pollution by oil issued by a State agency for a term of not more than 5 years, and a log of oil operations in which all operations with oil and tanks are set out in detail.

The concept of ‘special areas’ was introduced by the Convention, for which a special regime for the protection of the marine environment is provided. The Mediterranean Sea, Black Sea, Baltic Sea, Caribbean Sea, Red Sea, Persian Gulf, as well as Antarctica and northwestern European waters are relegated by the Convention to such ‘special areas’. In these areas for recognized technical reasons relating to their oceanographic and ecological conditions and the specific nature of carriages, special obligatory methods apply for prevention of the pollution of the sea by oil and poisonous liquids.

The practice of concluding regional treaties for the protection of the marine environment of these marine basins has become generally recognized. Among such treaties are the 1974 Convention on Protection of the Marine Environment of the Baltic Area, the 1976 Convention on Protection of the Mediterranean Sea Against Pollution, and the 1980 Kuwait Regional Convention on Cooperation in Protection of the Marine Environment Against Pollution.

In areas of the World Ocean which are not ‘special’ the discharge into the sea of oil and oil-containing mixtures from a ship with gross tonnage of 400 registered tons is prohibited. This prohibition against discharge does not apply when this discharge is undertaken in the interests of ensuring the safety of the vessel or rescue of human life at sea as a result of the damaging of the ship or its equipment.

The Convention (Chapter II, Rule 9) provides also for limitations on the discharge of oil. The rate at which oil may be discharged from an oil tanker en route at a distance of more than 50 nautical miles from the nearest coast is 30 liters per mile, and the content of oil in a discharge of a ship of 400 dwt or more en route should not exceed 1/15,000.

When discharging bilge waters from other vessels the content of oil in the discharge should not exceed 1/10,000. Nor should such water contain chemical and other substances whose quantity and concentration is dangerous for the marine environment.16

The Convention (Annex V) provides for the discharge in the sea of all types of foodstuffs, domestic, and operations wastes which a ship forms in the process of normal operation and for which reception installations should be provided for in ports.

Within the limits of their territorial waters coastal States, as a rule, establish more stringent requirements relative to the discharge into the sea of harmful substances, extending these requirements to foreign ships. Legislative acts adopted in a number of countries provide for rather severe sanctions for the discharge from ships of substances harmful for marine waters. In particular, the 1971 Merchant Shipping Law of Canada provides that any person or ship deemed to be guilty of a violation of the law may be brought to responsibility in the form of a fine of up to 100,000 dollars. The 1970 United States Law on the improvement of water quality establishes a ceiling on civil liability of the shipowner at 14 million dollars and a fine of up to US$10,000. The 1976 Law of Iran on protection of the seas and frontier rivers against pollution by oil and oil products establishes punishment for the pollution of sea waters by deprivation of freedom for a term of up to two years or by a fine in an amount of up to 10 million rials, or both.

16 Volkov and Bekiashev, note 12 above, p. 284.

When working out legal norms concerning the protection of the marine environment which were placed in the 1982 United Nations Convention, respective provisions were used as contained in previously concluded universal and regional international conventions. At the same time, when discussing problems of protection of the marine environment at the Third United Nations Conference on the Law of the Sea, the task was to provide in the Convention for all basic sources of pollution of the marine environment.

A special part, Part XII, concerning the protection and preservation of the marine environment was included in the draft convention prepared at the Third UN Conference. The provisions of this Part contain above all the general obligation in accordance with which States have the obligation to protect and preserve the marine environment (Article 192). In so doing, it is emphasized that the sovereign right of States to exploit their natural resources must be exercised in accordance with their duty to protect and preserve the marine environment (Article 193).

The 1982 Convention also provides that States shall take all necessary measures to ensure that activities under their jurisdiction or control do not cause damage to other States and their marine environment by means of pollution and that the pollution which is the result of incidents and activities under their jurisdiction or control does not extend beyond the limits of the areas where they exercise sovereign rights in accordance with the Convention. These measures relate to all sources of pollution and include the minimization to the greatest possible extent of: (a) the release of toxic, harmful or noxious substances, especially those which are from land-based sources, from or through the atmosphere, or by dumping; (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, prevention of intentional and unintentional discharges, and regulating the design, construction, equipment, operation, and manning of vessels; (c) pollution from installations and devices used in exploration and exploitation of the natural resources of the seabed and subsoil; (d) pollution from all other installations and devices operating in the marine environment. In so doing it is provided in the 1982 Convention (Article 194) that in taking measures to prevent, reduce or control pollution of the marine environment States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their right and duties provided for by the Convention.

Questions of global and regional cooperation in working out international norms, standards, and recommended practice and procedures for the protection and preservation of the marine environment occupy a significant place in the 1982 Convention. A State which becomes aware of cases in which the marine environment is in danger or when damage has been caused to it as a
result of pollution must immediately notify other States thereof whose interests may be affected, as well as the competent international organizations. Cooperation of States in the cause of the prevention and struggle against pollution of the marine environment is provided for by the working out of contingency plans for responding to pollution incidents and implementing scientific research programs and encouraging the exchange of information and data received on pollution of the marine environment (Articles 197-201).

The 1982 Convention contains an entire section devoted to specific obligations of States concerning various sources of pollution of the marine environment. These obligations of States appertain to the prevention of pollution of the marine environment from land-based sources. To this end States must establish laws and regulations to prevent and reduce pollution of the marine environment and the struggle against it from land-based sources, including rivers, estuaries, pipelines, and outfall structures, taking into account internationally agreed rules, standards, and recommended practices and procedures (Article 207).

National laws and regulations also must be established to prevent pollution of the marine environment which is caused by activities on the seabed, and also artificial islands, installations and structures under the jurisdiction of States. In so doing States must endeavor to harmonize their national policies at the respective regional level and acting, in particular, through competent international organizations or a diplomatic conference, seek to establish global and regional norms and standards and recommended practices and procedures (Article 208).

States also are obliged to adopt national laws and regulations to prevent pollution of the marine environment caused by activities relating to the exploration and exploitation of seabed resources beyond the limits of the continental shelf to be effectuated by ships, installations, structures, and other devices flying their flag or of their registry. The requirements of such laws and regulations must be no less effective than the international rules, regulations, and procedures (Article 209).

Special provisions are included in the 1982 Convention concerning the duties of States to publish national laws and regulations to prevent pollution of the marine environment as a result of dumping which should ensure that dumping is not effectuated without the authorization of competent authorities of States. It is specially emphasized that dumping within the territorial sea and economic zone, as well as on the continental shelf, may not be effectuated without the clearly expressed prior consent of the coastal States, which has the right to permit, regulate and control such dumping after consultations with other States to which such dumping may adversely affect by virtue of their geographical position (Article 210).

Similar requirements for States have been established by the 1982 Convention with respect to pollution of the marine environment from the atmos-
States are obliged to adopt national laws and regulations to prevent and reduce pollution of the marine environment from the atmosphere and the struggle against it, taking into account internationally-agreed norms, standards, practices, and procedures (Article 212).

As noted above, one of the most complex problems in the domain of the protection of the marine environment is the problem of pollution from ships, which required prolonged negotiations and agreements at the Third United Nations Conference on the Law of the Sea. The complexity of the problem is determined by the fact that together with the adoption of appropriate measures for the protection of the marine environment it is essential to take account of the interests of the development of maritime navigation.

Unilateral acts and regulations adopted by certain States concerning the construction of foreign vessels and their crews entering their ports created difficulties in agreeing the positions of States on the issue of pollution from ships. Thus, the United States in 1972 adopted a law on the safety of ports and waterways, in accordance with which the United States Coast Guard was authorized to issue regulations with respect to the design and outfitting for the prevention of and reduction of damage to the marine environment. These regulations extend to all ships, irrespective of their flag and affiliation.

In 1978 the United States adopted a law on the safety of ports and tankers which granted the right to the Secretary within whose jurisdiction the Coast Guard is located to establish requirements for the construction, equipping, and crew of both American and foreign ships. The requirements established by this law might exceed international standards agreed at the time. In connection with these laws of the United States at the Third United Nations Conference on the Law of the Sea there was support for granting to coastal States the right to establish national norms and standards for the struggle against pollution of the marine environment not only in their internal and territorial waters but also in the 200-mile economic zones. Similar positions were adhered to at the Conference by Australia, Spain, Iran, Iceland, Canada, New Zealand, Philippines, and a number of other States. The representative of Canada, in particular, insisted that States should have the right to “establish higher standards for ships entering their ports than those which have been laid down in international conventions, including standards for the design and construction of such ships”.17

The majority of States, including the USSR, opposed such extreme proposals whose adoption could create serious difficulties for international maritime navigation. These States suggested that resolving the problem of the struggle against pollution of the marine environment from ships is ensured in full measure by the 1973 Convention on the Prevention of Pollution

from Ships, which provides appropriate measures to prevent pollution by oil and other harmful substances carried on ships. At the same time, these States considered it possible to provide in the new convention on the law of the sea for granting to the coastal State within the limits of its internal and territorial waters the right to take necessary measures to ensure compliance by ships with international regulations prohibiting or limiting the discharge of harmful substances. In the event of a violation of these rules by foreign ships, the coastal State must have the right to inform the flag State of the vessel thereof or take appropriate measures in accordance with its legislation.

Ultimately, balanced provisions concerning pollution from ships were adopted at the Conference.

In accordance with the 1982 Convention (Article 211) States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption in the same manner of routing systems for navigation in order to reduce to a minimum the threat of accidents which might cause pollution of the marine environment.

At the same time, States have the right to adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. These laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

By way of exercising their sovereignty within the limits of their internal waters and territorial sea coastal States may adopt laws and regulations for the prevention and reduction of pollution of the sea from foreign vessels and struggle against it. However, such laws and regulations should not obstruct the innocent passage of foreign ships.

As regards the exclusive economic zone, it is provided in the 1982 United Nations Convention that coastal States may adopt in their exclusive economic zones laws and regulations concerning the prevention of pollution from ships which correspond to generally accepted international rules and standards. Where areas of the exclusive economic zone in which, for reasons of an economic nature or connected with the protection of its resources and special nature of the movement of vessels, the adoption is required of special mandatory measures for the prevention of pollution from vessels, the coastal State may adopt additional laws and regulations. These regulations may be established only after consultations with other States concerned and with the consent of the competent international organization. Moreover, these additional laws and regulations should not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted norms and standards.
In this connection note should be taken of the calls during December 2002 in certain States of the European Union, in particular, Spain, France, and Portugal, to make access to their exclusive economic zones more difficult for tankers after the accident off the coast of Spain of the Greek tanker *Prestige*. These States insist that single-hull tankers more than 20 years old should not be permitted in their economic zones. Portugal in fact applies these illegal requirements and did not permit into its economic zone the tanker *Moskovskii Festiwal*, which belongs to the Novorossiisk Steamship Company and operates under the Maltese flag.

All the aforesaid States are parties to the 1982 United Nations Convention on the Law of the Sea. Therefore, as Kolodkin justly notes, if these States consider necessary the stiffening of navigation standards, let us strive to amend the United Nations Convention on the Law of the Sea in the established procedure. Freedom of navigation exists even for warships. So long as amendments are not made, the actions of the EU member-States with respect to single-hull ships violate the rules of navigation and international law.\(^{18}\)

Malta, under whose flag the tanker *Moskovskii Festiwal* sails, filed a respective protest at the International Maritime Organization in London.

Important provisions of the 1982 Convention are those concerning the duties of States to ensure compliance by ships sailing under their flags or of their registry to comply with applicable international rules and standards established through international organizations or general diplomatic conference and their own laws and regulations for the prevention, reduction and control of pollution of the marine environment. In so doing flag States should take such measures irrespective of where the violation was committed. In particular, they should ensure that vessels sailing under their flag or of their registry are prohibited to sail until they are in a state to put out to sea in compliance with the requirements of international norms and standards with regard to the prevention of pollution, including requirements with regard to design, construction, equipment, and manning of vessels. Moreover, the flag State ensures that their ships have on board the certificates required by international norms and standards and issued according to those norms and standards. They must carry on a periodic inspection of their ships with a view to verifying the conformity of those certificates to the actual condition of the ship. Such certificates are accepted by other States as documents concerning the state of the vessel if there are no obvious grounds to believe that the last in significant degree do not correspond to the information on those certificates.

If a ship commits a violation of international rules and standards, the flag State should take investigative measures without delay. Such investigation should be conducted by the flag State at the request of any State if the vessel of the flag State has committed a violation of rules and regulations which may lead to pollution at sea.

The 1982 Convention put the task of creating a universal treaty foundation for agreeing the actions of States and international organizations against encroachments on the ecological situation in the World Ocean. In our view, in principle a balance has been found between ecological measures with regard to the protection of the marine environment and the freedom of navigation, which constitutes the foundation of the international legal regime for the protection and preservation of the marine environment.

The functioning of the regime for protection of the marine environment against pollution from ships is effectuated by means of the interaction between the jurisdiction of the flag State, coastal State in its territorial waters and economic zone, and the port State to which a foreign vessel voluntarily is situated. The combining in the Convention of functional and zonal criteria condition the nature of the powers to be exercised by States in the domain of protection of the marine environment against pollution and thereby ensure the achievement of the aims of the Convention.

All provisions of the 1982 United Nations Convention considered provide for rather effective measures for preventing pollution of the marine environment from ships and respective punishment of the guilty for such a violation. These questions did not give rise to special disagreements among the representatives of States at the Third UN Conference.

More complex to agree was the question of ensuring the fulfillment of national laws and regulations, as well as international norms and standards, by port States for the entry of a foreign ship. After extensive discussions on this question, Article 218 of the 1982 United Nations Convention was agreed, which provides that if a ship voluntarily is in one of the ports of any State, this State may undertake investigations and institute proceedings in respect of any discharge from that vessel in violation of international law outside the internal waters, territorial sea, or economic zone of the port State, that is, on the high seas. If the violation was committed in internal waters, the territorial sea, or economic zone of another State, the proceedings may not be instituted. Such proceedings may occur only at the request of this State, the flag State, or State which suffered or was subjected to danger as a result of the violation, or if such violation did not cause nor threaten pollution of the internal waters, territorial sea, or economic zone of the State instituting the proceedings (Article 218). If a request is received from any State concerning the investigation of a violation of international norms and standards connected with a discharge that was committed in internal waters, the territorial sea, or economic zone of this State or caused, or threatens cause, damage to
it, the port State is endowed with the right to conduct the investigation. It also is endowed with such right in the event of a corresponding request from the flag State.

When considering the provisions of the 1982 United Nations Convention regulating the regime of the protection of the marine environment one should have in view that the term used in the Convention (Article 211 and others) ‘generally accepted international rules and standards’ is the ‘lower’ limit determining the legislation of States with regard to the protection of the marine environment against pollution from ships sailing under their flags. At the same time, the term ‘generally accepted international rules and standards’ is the ‘upper’ limit of legislation of States with regard to the protection of the marine environment of the economic zone against pollution from foreign ships, and also the environment of the territorial sea when foreign ships exercise the right of innocent passage, which affects the design, construction, equipping, and Manning.

Article 220 of the 1982 United Nations Convention also is devoted to the question of ensuring the fulfillment of international norms and standards by coastal States. This Article provides that the coastal State may institute proceedings for a violation committed in its territorial sea or economic zone when a vessel is voluntarily within a port or off-shore terminal. Where there are clear grounds for believing that a vessel navigating in the territorial sea has during its passage violated national laws and regulations or applicable international rules and standards for the prevention of pollution from vessels, the coastal State may undertake physical inspection of the vessel and, where the evidence so warrants, institute proceedings, including detention of the vessel. It may conduct the actual inspection of the vessel in its economic zone if the vessel committed the violation therein connected with pollution of the marine environment. If such violation in the economic zone led to serious damage or threat of such damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or economic zone, it may institute proceedings, including detention of the ship, in accordance with its laws.

Certain of the cited provisions of the 1982 United Nations Convention concerning the enforcement of national and international norms and standards by coastal States can not be deemed to be satisfactory. These provisions grant, in our view, rights to the port State that are too broad, as well as to coastal States, which may in principle cause serious damage to international navigation. Among such provisions, in particular, are those that the State in whose port a foreign vessel has put in, may institute proceedings for a violation committed beyond the limits of its internal waters, territorial sea, or economic zone, and also the provision relative to granting such right to the port State at the request of any other State for a violation in its internal waters, territorial sea, or economic zone (Article 218). These provisions of
the 1982 United Nations Convention granting excessively extensive powers to the port State and coastal States in the event of a violation committed beyond the limits of internal waters, territorial sea, and economic zone of these States, that is, in essence, on the high seas, in practice may lead to infringements on the sovereign rights of the flag State and to a violation of the interests of international navigation. If a violation is committed beyond the limits not only of internal and territorial waters, but also beyond the limits of the economic zone of the State in whose port the offending vessel is voluntarily situated, the port State, as Speranskaia justly noted, may only then institute an investigation when the flag State so requests.19

In this connection one should consider the conception ‘jurisdiction of the port State of entry of the vessel’, according to which a foreign ship when entering a port may be subjected to sanctions under the laws of the coastal State for any violation in any area of the World Ocean. This conception was not supported by the majority of delegations at the diplomatic conference in London during 1973, at which the Convention for Prevention of Pollution of the Sea from Ships was adopted.

However, a sharp increase in the intensiveness of international navigation under conditions of scientific-technical progress in maritime transport gave birth to two interconnected global phenomena: the problem of ensuring safety and the problem of preventing pollution of the marine environment in the process of navigation. Despite the rather large number of special treaties the losses of the world merchant fleet as a result of accidents and catastrophes continues to increase from year to year and the pollution of the marine environment in the process of navigation grows steadily. Therefore, at present, the problem of intensifying control over compliance with existing international norms and standards established by treaties takes on decisive significance for ensuring the prevention or reduction of pollution of the marine environment.

With a view to creating ‘an improved and harmonized system of control’ in order to suppress the use of substandard vessels, that is, ships not meeting the requirements of treaties, the maritime authorities of the Common Market countries, as well as Portugal, Finland, Sweden, and Norway on 26 January 1982 signed at Paris a Memorandum of Understanding on Port State Control.20 Commencing from 1 July 1982, the Memorandum introduced control over foreign merchant ships entering the ports of the States-parties on the

subject of their compliance with the treaties enumerated in the Memorandum on a broad range of issues, among which were: (1) ensuring safety of navigation (with respect to conformity with the 1966 International Convention on Load Lines, 1974 International Convention for the Safety of Life at Sea and the 1978 Protocol to this Convention; 1972 Convention on the International Regulations for Preventing Collisions at Sea; and 1978 International Convention on Standard of Training, Certification and Watchkeeping for Seafarers); (2) prevention of pollution of the marine environment (with respect to compliance with the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the 1978 Protocol to this Convention); (3) ensuring appropriate conditions for the labor and life of seamen (with respect to the conformity to the 1976 Merchant Shipping (Minimum Standards) Convention).

The authorities of the States-parties to the Memorandum should apply only those treaties which had entered into force and to which their State was a party. They are obliged to verify the certificates and documents relating to the requirements of the said treaties. In the event of the discovery on the ship of the failure to comply with international regulations which represent an obvious risk for safety, human health, and the environment, the authorities of the port State ensure that this risk is eliminated before the ship is authorized to put out to sea and for this purpose respective measures are taken, up to and including detention of the ship.

If the said failures to comply can not be eliminated in the port of inspection, the vessel may be authorized to sail to another port on condition of compliance with any appropriate terms so as not to subject to unjustified risk the safety, human health, or environment.

According to the Paris Memorandum, the authorities of the port State “will ensure that no more favourable treatment is given to ships of non-Parties …”. In other words, this provision means the right of local authorities to apply the provisions of the respective treaties specified in the Memorandum also to the ships of third countries.

From the standpoint of international law of the sea, the idea of control of port authorities over foreign vessels is not new. This right to exercise control and take necessary measures with respect to foreign vessels which do not meet the requirements for safety and prevention of pollution of the marine environment is expressly provided for by the aforesaid treaties, which apply for this purpose control by the parties to the Paris Memorandum. For example, Chapter I, Regulation 19, of the 1974 International Convention for the Safety of Life at Sea provides that

\[\text{every ship … is subject in the ports of the other Contracting Governments to control by officers duly authorized by such Governments in so far as this control is directed towards verifying that there is on board a valid certificate. Such certificate shall be accepted unless there are clear grounds for believing}\]
that the condition of the ship or of its equipment does not correspond substantially with the particulars of that certificate. In that case, the officer carrying out the control shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew.

International legal doctrine recognizes that the sovereignty of the coastal State over its internal waters serves as the legal grounds for the jurisdiction of port authorities, including measures of control with respect to foreign ships. Proceeding from the principle of sovereignty, the authorities of the coastal State have the right to exercise control with respect to any foreign merchant ship in its port.

Ivanov noted in this connection that

in the domain of administrative jurisdiction the principle operates of full competence of the authorities of the coastal State, and exceptions from it are completely impossible since they would be contrary to the very idea of sovereignty of the coastal State.21

The Paris Memorandum, however, in comparison with international conventions regulating various aspects of safety of navigation and prevention of the pollution of the marine environment in the process of navigation, expands the grounds for actual inspection of foreign ship. Treaties in force, as a rule, provide that the grounds for a careful inspection of foreign merchant ships is the absence on the vessel of valid certificates or other documents. In accordance with provisions of the Memorandum, the inspection of a vessel may occur not only in that instance, but also if there are “… clear grounds for believing that the condition of a ship … does not substantially meet the requirements of a relevant instrument …”. The respective report or notification of other authorities is regarded as ‘clear grounds’; the report or complaint not only of the master or crew member, but of any other person or organization, and also other indicia of serious deficiencies (point 3.2). It seems in this connection that the inspection of ships of States who are not parties to the Memorandum on grounds not expressly provided for by the respective treaties is unlawful and correspondingly a violation of international law.

The ‘harmonized system of control’ provided for in the Memorandum also gives rise to doubts. Since, as noted above, each party to the Memorandum has the right to apply for the purposes of control the requirements merely of those treaties, to which their State is a party, the State which is not a party to any conventions mentioned in the Memorandum is forced respectively to limit its requirements vis-à-vis foreign vessels. As a result, in the absence in the Memorandum of a single concept of ‘substandard ship’ the situation is not excluded when the same ship, depending upon the port of so-

journ, may be regarded as meeting international norms and standards, or classified as substandard.

In this connection the question arises of the need to establish a single legal order in the domain of effective control with respect to foreign vessels in ports. The unification of norms concerning port control over foreign merchant ships exercised on a global scale, first, would promote the determination of the necessary minimum of international norms and standards whose absence enables a ship to be classified as substandard. Second, such unification would enable the agreed amount of and procedure for control of foreign vessels on the part of authorities of the port State to be determined and concretized. Third, the adoption of such a universal act may give significantly greater guarantees that unilateral and regional approaches to the creation of control systems would be excluded.22

3.1.4 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage

The International Convention on Civil Liability for Bunker Oil Pollution was adopted at a diplomatic conference of the IMO on 23 March 2001. The Convention enters into force one year after the date on which eighteen States, including five States, each of which has a fleet whose total gross tonnage is not less than one million tons, have signed the Convention without a reservation concerning ratification, acceptance, or approval, or has handed over for keeping documents concerning ratification, acceptance, approval, or accession to the Secretary General of the IMO.

The Convention consists of nineteen Articles and one Annex containing the form of an insurance certificate or other financial guarantee of civil liability for bunker oil pollution damage.

The need to adopt this Convention was conditioned by the increasing number of cases of leakage or discharge of bunker fuel from ships at sea and respectively the aspiration of the world community to establish responsibility for such pollution of the sea and effective compensation of damage caused by pollution.

The contemporary international legal regime of liability and compensation in connection with pollution of the sea by oil established by the 1969 International Convention on Civil Liability for Damage from Oil Pollution, as

modified by the 1976 and 1992 Protocols does not establish rules on civil liability and compensation for damage with respect to oil which is not a cargo, but is bunker fuel. In accordance with Article 1(5) of the 2001 Convention, bunker fuel is understood to be any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.

This Convention applies to damage from pollution caused from in the territory of a State-party, including its territorial sea, and in the exclusive economic zone (Article 2).

Liability for damage from pollution caused by bunker fuel which is on a ship is borne, as a rule, by the owner of the ship. However, the owner does not bear such liability in the following instances: (1) the damage resulted from an act of war, civil war, insurrection, or a natural phenomenon inevitable and insuperable in nature; (2) damage was caused by the action or omission of third persons committed with the intention to cause damage; (3) damage was wholly caused by negligence or other unlawful action of the Government or other authorities responsible for the maintenance of lights or other navigational aids in the exercise of that function; (4) damage was entirely or partly the result of the action or omission of a person who suffered the damage committed with the intention to cause damage, or arose through the negligence of this person. The burden of proof of all the said reasons for pollution the Convention places on the owner of the ship (Article 3).

To cover his liability for damage from pollution the owner of a ship is obliged to effect insurance or provide other financial security, for example, the guarantee of a bank or analogous financial institution for an amount equal to the limits of liability under applicable national or international limitation of liability regimes; however, in all cases not exceeding an amount calculated in accordance with the 1976 Convention on Limitation of Liability for Maritime Claims (Article 7).

To each ship which has registered its liability a certificate shall be issued attesting the existence of insurance or other financial security. The conditions of issue and operation of such certificate shall be determined by the State of registration of the vessel.

Certificates issued by States-parties to the Convention shall be recognized by other States-parties as having the same force as certificates issued by it (Article 7[7]).

A State-party to the Convention shall not permit a ship under its flag to operate if it does not have such a certificate (Article 7[11]).

A demand concerning compensation of damage from pollution may, according to the Convention, be presented directly to the insurer or person who has provided financial security for the liability of the owner of the ship for damage from pollution.
3.2 Prevention of Land-Based Pollution of Marine Environment

The problem of land-based pollution of the marine environment, which everywhere has material significance for the deteriorating quality of the marine environment, is inadequately regulated at the international legal level. This position is caused, on one hand, by the location of respective sources of pollution within the limits of national sovereign territories of States and, on the other, by the lack of necessary legislation on the part of many States regulating the use and removal of wastes of various production entities and municipal-domestic economies.

The chief danger here are heavy metals, chloro-organic formations, pesticides, and plastics. For example, of three million tons of lead produced annually, 200,000 tons fall into the sea through rivers and approximately the same amount from the atmosphere. Up to 5,000 tons of mercury, one of the most dangerous pollutants, in the course of a year is received in the ocean. About 55% of the total quantity of oil polluting the sea comes from land-based sources.23

In Canada and especially the Canadian province of British Columbia, the problem of the discharge of mining wastes in the mining industry is exacerbated. On the southern coast of the province such discharge has been effectuated at a copper mine for nearly 80 years in succession. The sedimentation formed as a result of the discharges are especially pernicious for the bottom organisms. As a result the indigenous population can not now take shelf species of fish since as a result of the pollution by mining wastes the population and feeding habitat of these organisms is practically destroyed. According to the calculations of specialists, more than one decade is needed for the complete natural regeneration of the initial state of the environment in these places.

The problem of pollution of the marine coastal belt by various types of land-based pollutants also sharply confronts the States of Western Europe. As the English scholar Johnson noted,

> the offensive against coastal areas is known to us all. Industry sought to exploit there since the possibilities were open to discharge wastes into the sea. People want to use these areas to build for the purpose of organizing leisure. Electric power stations are placed on the coast because of the need to use enormous quantities of water for cooling. The time is not far away when the coast of Europe will be transformed into a breeding ground for the realization

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of projects not thought through and which in practice deprive the future genera-
tions of the wealth of the heritage of nature.24

This conclusion reflects the real situation in the countries of western Europe. Thus, the polluted rivers of Germany, France, and other western European States in which all living organisms have long since perished seriously influence the ecological state of the southern and northern seas of Europe. The French ecological commission established the fact of the complete perishing of fish and other marine organisms as a result of the discharge of unpurified sewage waters into the bay of the port of Toulon for an area of 100 square hectares. In the course of the effectuation of the National Program to study the pollution level of the coast in the south of France twenty-five beaches were relegated to class D with 'unsatisfactory water quality' and 100 beaches to class C, which means they are unsuitable for swimming. This pollution of the coastal waters of France leads to enormous losses for the country.25

The level of development of international legal regulation of pollution of the marine environment from land-based sources of pollution depends to a significant extent on the development of national legal institutions concerning the regulation of marine aquatories, fresh water river basins, the atmosphere, and also the use and removal of wastes.

At present, many coastal States have adopted respective legislative acts regulating questions of the struggle against land-based pollution. At the same time, one can not assert that those industrially-developed States in which during recent decades a series of laws in this domain were introduced, are successfully resolving the problem of pollution of the World Ocean. A rather large number of normative acts relating to the protection of the marine environment from land-based sources of pollution may create, at first glance, in the systems of national legislation of these States the image of an effective mechanism of legal regulation of relations in the domain of protection of the marine environment. In reality, this effectiveness proves to be illusory. The extensive practice of these States with regard to introducing national legal measures in this domain is a belated reaction to an ecological crisis which ensued as a result of a predatory attitude towards nature.26

For all the importance of municipal norms in regulating pollution of the marine environment from land-based sources, under modern conditions an effective resolution of this problem can only be facilitated by international

law for the following reason. First, far from all coastal States have adopted national laws for the prevention of land-based pollution of the sea. Second, in recent years transboundary consequences are manifesting themselves more often in the majority of types of sovereign activities of States, causing serious transnational damage.27

The modern level of international legal regulation of the general problem of land-based sources of pollution of the marine environment may be characterized as follows. First, there is no special universal treaty. Second, precise criteria and/or norms for land-based discharges of various pollutants into the World Ocean or individual areas thereof are lacking. Third, special international legal norms have a limited territorial sphere of application.

These gaps and shortcomings in international legal regulation give the task of prevention of land-based pollution of the marine environment special urgency.

International legal norms regulating pollution of the marine environment from land-based sources are concentrated basically in regional treaties. Among such treaties are the 1974 Paris Convention on Prevention of Pollution of the Marine Environment from Land-Based Sources. This Convention, concluded by States of the northeast Atlantic, including Denmark, Norway, Sweden, Spain, and Finland, extends to the high seas and territorial sea of States-parties in areas of the Atlantic and Northern Arctic Ocean within boundaries of 36° N. lat. Northward and between 42° W. and 51° E. long., excluding the Baltic and Mediterranean seas.28 This document, being the sole special treaty on the problem under consideration, has a number of material shortcomings. Among them are: the absence of a precise definition of pollutants coming from land; the lack of prohibitory norms with respect to land-based discharges of even very dangerous pollutants; the absence of norms and procedures concerning the responsibility of States for damage caused; the use of very general formulations with respect to the obligations of States. This Convention thus requires serious revision of its basic provisions so that it can facilitate the effective prevention of pollution of the sea expanses of the northern and northeastern Atlantic.29

29 See E. A. Nesterenko, Глобальная проблема защиты окружающей среды в процессе формирования всеобъемлющей международной безопасности (международно-
The Protocol on Protection of the Mediterranean Sea Against Pollution from Land-Based Sources, adopted at Athens on 17 May 1980, is of interest from the standpoint of protection of the marine environment against pollution from land-based sources.

Those factors which facilitate the pollution of the Mediterranean Sea are noted in the Protocol. Among them are: the rapid growth of industrialization and urbanization of the area of the Mediterranean Sea, the seasonal increase in the number of people visiting coastal areas, which is linked with the development of tourism. Also indicated in the Protocol are those serious problems which arise in coastal waters in connection with the discharge of unpurified or inadequately purified substances or the unlawful siting of domestic and industrial wastes.

The parties to the Protocol assumed the obligations to take all necessary measures for the prevention and reduction of pollution of the Mediterranean Sea and to coordinate their activities for control over and the struggle against such pollution.

On the basis of the questions considered in this section concerning the protection and preservation of the marine environment, one may draw the following conclusions.

First, international legal practice in this domain lags behind the requirements dictated by the high rates of scientific-technical progress and activation of the diverse activities of man on the World Ocean;

Second, this backwardness, as well as the subordinate nature that has lasted for years of the function of protection of the marine environment, objectively slow down the forming of respective international legal structures and the adoption of necessary international legal norms capable of ensuring the preservation and protection of the marine environment against pollution.

Third, the numerous universal and regional treaties analyzed in this domain have important significance for the protection of the marine environment. However, for all their diversity, they all the same do not resolve fully the tasks arising in the regulation of this complex integrated problem. These treaties, except for the 1982 United Nations Convention on the Law of the Sea, do not extend to all the numerous sources of pollution of the marine environment. The 1982 United Nations Convention eliminates this gap and encompasses all the principle sources of pollution of the sea, including those which are not touched upon in treaties in force.

Fourth, when resolving the complex problem of the protection and preservation of the marine environment the basic provisions of the contemporary international law of the sea regulating these questions are not always complied with or are improperly complied with by States. In particular, a reason-
able combination of the interests of protection of the marine environment and interests of the development of international navigation is not always ensured. This is explained by the fact that an extensive number of States do not participate in all conventions for the protection of the marine environment and the universal application of these treaties is inadequately ensured. An important task in the cause of the protection and preservation of the marine environment in this connection is the improvement of the treaty basis of international legal regulation of protection of the marine environment. The principal demands advanced on this plane come down to an expansion of the treaty foundation by concluding new and improved documents ensuring, in particular, the participation therein of all parties concerned; expansion of the composition of parties to existing treaties by concerned parties or those previously for some reason discriminated against; and revision of obsolete treaties.

Fifth, in the nature protection legislation of industrially-developed States there are normative legal acts regulating measures for the protection of the marine environment. However, the practice of these States with regard to introducing certain national legal measures in the domain of protection of the marine environment is merely a belated reaction to serious pollution of the World Ocean.

Sixth, the process of the progressing pollution of the World Ocean can be halted only by combining the efforts of all members of the international community in the struggle against pollution of the marine environment on the universal, regional, subregional, and national levels. The greatest tasks confront the international law of the sea, which must, in our view, work out timely effective legal measures directed towards ensuring the protection and preservation of the marine environment.

The International Code for Management of the Operation of Ships and Prevention of Pollution, adopted by the Assembly of the IMO in 1993, also is directed towards protection of the marine environment against pollution. Since the Code is recommendatory, the IMO Assembly in Resolution A.741(18) of 4 November 1993 requested the governments of member-countries of the IMO to implement the Code in national legislation, especially those provisions which relate to passenger ships, tankers, and gas carriers.30

One purpose of the Code is to prevent damage to the marine environment. The system of safety and management provided for in the Code is directed towards ensuring the fulfillment by the maritime administrations of member States of the IMO both binding norms and recommendations adopted within the IMO framework. One such recommendation is, for example, the recommendation to shipping companies to work out a policy in

30 See Ivanov, note 21 above, pp. 131-132.
the domain of safety and protection of the environment in accordance with international law and legislation of the flag State. Companies meeting the requirements of the Code receive a so-called document of conformity issued by the maritime administration. This document, issued for a period of up to five years, must be annually confirmed.

If the shipping company and the management on the ship act in accordance with the safety management system, a Certificate on safety management is issued to the ship. Ships not certified in accordance with the Code are regarded, according to a Special Resolution of the IMO (A.848[20]) as not meeting the requirements of the 1974 Convention for the Safety of Life at Sea (SOLAS-74). The importance of conforming to the requirements of SOLAS-74 is that this Convention contains such special sections concerning the protection of the marine environment as “Carriage of Dangerous Goods” (Chapter VII), “Nuclear Ships” (Chapter VIII), as well as requirements for the construction and equipping of ships carrying processed nuclear fuel (Part D, Rule 15).

3.3 Prevention of Radioactive, Chemical, and Bacteriological Contamination of Marine Environment

As noted above, radioactive contamination of the marine environment is especially dangerous for mankind. Placing radioactive substances in the World Ocean may cause the poisoning and perishing of an enormous number of fish and other living marine resources, create obstacles for international navigation, inflict serious material damage to the population of the planet, and lead to enormous human casualties. The consequences of testing nuclear weapons on the high seas, conducted by the United States before 1963 in the area of the Bikini and Eniwetok atolls near the Marshall Islands, testify to this. As a result of these tests, hundreds of tons of fish caught by Japanese fishermen proved to be poisoned with radioactive substances and the incidence of radiation sickness sharply increased among the population of Japan from the consumption of these fish. Human casualties occurred as a result of the radioactive contamination of ships which sailed in these areas of the high seas.

A serious danger of radioactive pollution of the marine environment arises as a result of the dumping of wastes on the seabed practiced by many States. References of certain specialists to the fact that such dumping in metal containers is not dangerous are not convincing since the metal covering of containers may be destroyed (and is destroyed) as a result of the high pressure and corrosive properties of sea water. Therefore, this type of radioactive contamination of the marine environment ultimately is inevitable.

Many other sources of radioactive contamination exist, which were enumerated above.
Measures directed against the prevention of radioactive contamination of the marine environment have been provided in a number of treaties, in accordance with which a norm prohibiting actions connected with the type of contamination has been confirmed in international law.

The first multilateral treaty containing a general norm providing for the duty of States not to permit radioactive contamination of the marine environment is the 1958 Geneva Convention on the High Seas, which in Article 25 provides:

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or airspace above, resulting from any activities with radioactive materials or other harmful agents.

The International Atomic Energy Agency (IAEA) and the International Maritime Organization (IMO), within the United Nations system, are the competent international organizations.

These provisions of the 1958 Geneva Convention directly concern the high seas. However, the inadmissibility of the discharge of radioactive wastes in the territorial sea and internal waters also is not the subject of doubt. First, as Khlestov justly noted, “the sea is a single whole, and there are no boundaries within it which would obstruct the dissemination of radioactive substances”. Second, international law contains a number of norms concerning the prohibition of pollution of the sea which extend to all legal criteria of sea expanses (high seas, territorial sea, and internal waters), and certain of them expressly indicate the inadmissibility of the pollution of coastal waters.

Of great significance for the prevention of radioactive contamination of the environment, including marine environment, is the 1963 Moscow Treaty on the Prohibition of Tests of a Nuclear Weapon in the Atmosphere, Outer Space, and Under Water. In accordance with this Treaty, each State-party is obliged to prohibit, prevent, and not perform any tests of a nuclear weapon and any other nuclear explosions in the atmosphere, beyond its limits, including outer space, and under water, including territorial waters and the high seas.

An important international act having enormous significance for the prevention of radioactive contamination of the marine environment is the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and

Other Weapons of Mass Destruction on the Seabed and Ocean Floor and in the Subsoil Thereof. This Treaty provides for the inadmissibility of placing on the seabed and ocean floor or subsoil thereof beyond the limits of the territorial sea a nuclear weapon or other type of weapon of mass destruction, as well as structures, launching installations, or any other facilities specifically designed for storing, testing, or using such weapon (Articles I, III).

The provisions of the 1971 Treaty were augmented by a 1972 Convention for the Prevention of Pollution of the Sea by Discharges of Wastes and Other Materials. In accordance with Annex I, point 6, of the Convention, a complete prohibition was introduced against leaving in the sea radioactive wastes from ships, aircraft, platforms, and artificial structures with a high level of radiation or other radioactive substances with that level of radioactivity that, according to the IAEA definition, would be inadmissible to discharge into the sea from the standpoint of public health, biological, and other grounds.

A series of treaties was concluded on the question of the prevention of radioactive contamination of the marine environment as a result of the operation of nuclear-powered ships and the carriage of radioactive substances by sea. Among such treaties are, above all, the 1960 London Convention for the Safety of Life at Sea, the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships, the 1963 Vienna Convention on Civil Liability for Nuclear Damage, and the 1971 Brussels Convention on Civil Liability in the Field of Maritime Carriage of Nuclear Materials.

The 1960 London Convention provides for the duty of the flag State of a nuclear ship to take measures for the prevention of unreasonable radiation and other nuclear hazards to the crew, passengers, or public, and also to waterways and food or water resources. On every passenger or cargo nuclear vessel there must be a safety certificate issued by the Government of the flag State in which it is indicated that the ship meets the requirements of Chapter VIII of the 1960 London Convention (Chapter VIII, Regulation 6).

Information concerning the safety of a nuclear ship must in accordance with Chapter VIII, Regulation 7, of the 1960 Convention be submitted in advance to the governments of those countries whose ports the nuclear ship intends to visit. The right of control of the nuclear ship by means of verifying the existence on board of a safety certificate, the radiation level, and the operating manual of the nuclear-powered installations, examination of entries concerning the quantity and activeness of radioactive wastes kept on the ship, and eliciting the means of their removal from the ship has been granted to the port State of entry of this ship.

A special section of the 1960 Convention concerns the actions of nuclear ships in distress at sea. According to Chapter VIII, Regulation 12, of the 1960 Convention, in the event of any accident likely to lead to an environmental hazard, the master of the nuclear ship must immediately inform the
competent authorities of that State in whose waters the ship is situated or the waters of which it is approaching.

The international legal acts considered testify to the fact that radioactive contamination of the sea is inadmissible. This arises, first, from general principles of the international law of the sea (freedom of high seas, protection of biological resources of the sea, and others); second, from the principle of the inadmissibility of the use of one’s territory to cause harm to other States; and third, from norms concerning radioactive pollution of the sea directly (Article 25, 1958 Geneva Convention on the High Seas; Chapter VIII, 1960 London Convention for the Safety of Life at Sea; 1971 Moscow Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, 1959 Antarctic Treaty, 1972 London Convention, and others).

Norms prohibiting radiation contamination of the seas have been called upon to regulate relations directed towards the protection of rights of both individual States and the international community as a whole. These norms of a prohibitive nature in and of themselves serve as an important means of legal provision for the prevention of radioactive contamination of the marine environment. However, they encompass far from all aspects of the problem and require further improvement. Specialized norms regulating questions of the prevention of radiation contamination concern either some specific sources of pollution (for example, the 1972 London Convention – the deliberate discharge at sea from ships and aircraft; the 1960 London Convention – the operation of nuclear ships; the 1963 Moscow Treaty – nuclear explosions, and so on) or certain areas of the World Ocean (for example, the 1959 Antarctic Treaty).

In this connection, as Malinin justly noted, the further regulation of the prevention of radiation contamination of the sea is essential. He suggests three courses: (a) the conclusion of an all-encompassing special convention prohibiting any types of radiation contamination; (b) working out a number of international agreements, each of which will embrace one or several sources of pollution; (c) ensuring radiation safety within the framework of a general convention on the prohibition of pollution of the World Ocean.

The institution of international and national control is an important legal means for not permitting radiation contamination of the sea expanses. The procedure, forms, and extent of national control in this domain with respect to the activities of both juridical and natural persons under the jurisdiction of

the State and also with respect to the activities of foreign juridical and natural persons, is provided for in national legislation. The forms of international control (information, accountability, inspection, and others) and the procedure for and extent of control functions must be precisely regulated in respective international legal documents.

Of all the international acts here considered, questions of control have been formulated in greatest detail in the 1960 London Convention for the Safety of Life at Sea. Chapter VIII of this Convention, “Nuclear Ships”, provides, in particular, the issuance to each passenger or cargo nuclear ship of a special safety certificate. This certificate, in which it is indicated that the ship meets the requirements of Chapter VIII of the 1960 London Convention, is issued by the government of the flag State only after a careful assessment of the ship (Regulation 10).

When a nuclear ship visits foreign ports, information concerning safety of the ship must be submitted in good time to the governments of those States whose ports the nuclear ship intends to enter. The State in whose port the nuclear ship puts in has the right of control over this vessel by means of, first, verification of the existence on board of a safety certificate and, second, verification of the actual radiation level on the ship (Regulation 11). Moreover, in accordance with Annex C to the 1960 Convention, the authorities of the entry port of the nuclear ship have the right to verify the operating manual of the nuclear reactor, entries concerning the quantity and activeness of radioactive wastes kept on the vessel, and elicit the means of their removal from the ship. In the event of discovering unfitness of the ship and danger of radiation, the port authorities may require the nuclear ship to leave port.

Wastes of the nuclear activities of States discharged at sea are a great threat to the seas and oceans. The dumping of radioactive wastes at sea, which are especially harmful substances, may not only create impediments to navigation and other types of activity at sea, but also are dangerous for the marine ecosystem of the planet.

On the international legal plane, questions of the dumping of radioactive wastes at sea are regulated first and foremost by the 1972 Convention for the Prevention of Pollution of the Sea by Discharges of Wastes and Other Materials, signed at London, and entered into force on 30 August 1975. The Russian Federation is a party to this Convention, which entered into force for it from January 1976.

In accordance with this Convention, the parties assumed the obligations to take all possible measures to prevent pollution of the sea by discharges of radioactive wastes and other materials which may represent a danger for human health, cause damage to living resources and life at sea (Article 1). The discharge of radioactive wastes with a high radiation level also is prohibited (Article IV).
For the period from the moment of entry into force of the 1972 London Convention a number of consultative meetings of representatives of the States-parties to the Convention were held. The consultative meeting of representatives in 1983 adopted Resolution LDC.14 appealing to refrain from dumping radioactive wastes at sea of all types. In 1985 by named ballot Resolution LDC.21 was adopted in favor of a voluntary moratorium against dumping at sea all types of radioactive wastes until an evaluation of all aspects of their impact on human health, the marine environment, and life at sea was completed. It should be noted that the USSR during the voting on this resolution abstained, that is, the official position of the USSR, stated during the discussion of the moratorium, came down to the fact that the USSR did not make, does not make, and does not plan to make any discharge of radioactive wastes at sea for the purpose of dumping.

The majority of States favored the prohibition against dumping all types of radioactive wastes at sea, having regard to the growing concern in the world and in individual countries about pollution of the marine environment by radioactive wastes.

The United States, France, Great Britain, and Japan took a special position on the dumping of radioactive wastes, without rejecting the idea of the moratorium itself but insisting on a transition period during which it would be possible to resolve all issues of treating such wastes, their utilization, storage, and burial in land sites.

In 1992 the United Nations Conference on the Environment and Development (Rio de Janeiro) favored cessation of the practice of dumping radioactive wastes at sea. The Conference supported the initiative of Denmark, Spain, and Norway to adopt a recommendation prohibiting the dumping of radioactive wastes at sea. This recommendation, adopted by consensus by about 150 States (including Russia), was reflected in the position of many States.

In that same year a Convention was signed (with the participation of Russia) for the protection of the marine environment in the northeast Atlantic. This Convention provides, in particular, the possibility to Great Britain and France to reduce step-by-step the discharges of radioactive wastes in the sea before 2018.

Together with radioactive contamination of the marine environment, a special danger is represented by chemical and bacteriological contamination. The use of chemical and bacteriological weapons is the principal source of such contamination. Therefore in 1925 the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and Bacteriological Methods of Warfare was adopted (the Protocol did not prohibit the development of chemical and bacteriological means or their production or storage, and did not provide for the destruction of stockpiled stocks).
Despite the requirements of the Protocol, certain States until recently used chemical weapons. For example, the United States in the war in Vietnam extensively used chemical weapons that led to the perishing of the civilian population and damaged the environment. The Military Junta in Salvador extensively used chemical weapons against partisans and the civilian population during the 1980s.

An important step towards the complete prohibition of these types of weapon of mass destruction was the 1971 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (entered into force 26 March 1975). Article I of the Convention provides that its parties undertake never in any circumstances to develop, produce, stockpile, or otherwise acquire or retain microbiological or other biological agents, or toxins whatever their origin or method of production, types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, and also weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

In accordance with the Convention, the parties must destroy or divert to peaceful purposes all agents, toxins, weapons, equipment, and means of delivery to which the prohibition extends. All necessary precautionary measures must be taken to protect populations and environment (Article II).

Article III of the Convention also prohibits the transfer of a bacteriological weapon to anyone or to assist in the manufacture thereof.

In the event of a violation of the Convention provisions, any party may make a complaint to the United Nations Security Council, which in accordance with the United Nations Charter, may conduct an investigation and inform the parties to the Convention about the results thereof (Article VI).

In 1993 the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction was adopted. This Convention, unlike the 1925 Geneva Protocol, provided for not a partial, but a comprehensive prohibition of chemical weapons similar to that for bacteriological weapons.

In connection with a consideration of the prevention of radioactive, chemical, and bacteriological contamination of the marine environment it is appropriate to point to the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. This Convention at the universal level prohibits military or any other hostile use of environmental modification techniques possessing a destructive potential comparable with a weapon of mass destruction.
4 Responsibility for Pollution of Marine Environment

Pollution of the marine environment, especially on a large scale, usually caused serious harm to the coastal State and its natural and recreational resources and entails significant expenditures for the elimination or reduction of the pollution. The obligation from the causing of harm arises with the owner of a ship or oil derrick guilty of such pollution, that is, the duty to compensate the coastal State and/or its natural and juridical persons for damage caused or expenses sustained in connection with the pollution, and from persons who have incurred losses – the right to demand compensation of damage and losses.

The question of responsibility of the State and its natural and juridical persons for pollution of the marine environment is the most complex and least regulated in the international law of the sea.

The 1969 Convention on Civil Liability for Oil Pollution Damage is devoted to issues of civil responsibility for damage caused by pollution of the sea by oil, signed at Brussels on 29 November 1969. This Convention establishes that liability for damage caused on the territory (or in the territorial sea) of States-parties to the Convention and costs connected with the prevention or reduction of such damage are borne by the owner of the ship. When the owner of the ship is a State, responsibility is placed on the ship-possessor operating the vessel. Responsibility of a ship-possessor does not ensue if he succeeds in proving that: (a) the damage was caused as a result of insuperable force (act of war, hostilities, civil war, insurrection, or natural phenomenon); (b) the damage was caused by an act or omission of third persons with a clear intent to cause this damage (c) the damage was caused by the negligence or other wrongful act of a government or authority responsible for the maintenance of navigational aids in the exercise of that function.

It is evident from what has been said that the Convention proceeds from the presumption of guilt of the possessor of the ship but grants to him extensive possibilities to be relieved from responsibility for damage from pollution.

The 1969 Convention establishes the liability of a ship-possessor conditioned by specific rules. First, responsibility is limited by an amount determined by the calculation of 2,000 francs for each ton of the ship’s tonnage. However, this aggregate amount must not exceed 210 million francs for each incident of pollution (the franc here and in the conventions on liability for pollution of the marine environment is understood to be a monetary unit consisting of 65.5 milligrams of gold of millesimal fineness nine hundred). Second, if the ship-possessor intends to limit his liability, he is obliged to create a fund in court or other competent authority of any of the States-parties to the Convention equal to the limit specified in the Convention. Such
fund may be created at the discretion of the ship-possessor by means of placing the determined amount on deposit, or by providing a bank guarantee, or by another security acceptable under the legislation of the State in which the fund is created and considered to be adequate by the court or another competent authority.

In creating such a fund in the court of any State-party to the 1969 Convention, the ship-possessor is guided not only by the need to limit his liability, but proceeds from the fact that creditors, according to the Convention, do not have the right to satisfy their demands at the expense of any other property of the ship-possessor. Moreover, if the arrest against a vessel or other property of the ship-possessor in connection with the arising of his obligation to compensate harm as a consequence of pollution by oil was all the same imposed, the court or other competent authority in which the fund was formed must give an instruction to vacate the arrest.

In comparison with treaties in force at the moment of adoption of the 1969 Convention, in particular, the 1957 International Convention Relative to Limitation of Liability of Owners of Ships, the 1969 Convention significantly increases the liability of shipowners for oil pollution damage caused on the territory of the coastal State, including the territorial sea. The Convention, in particular, contains the following basic provisions.

First, so-called ‘objective shipowner liability’ is established for pollution damage. The owner of a ship bears the liability provided in the Convention for any losses from pollution which is the result of the leakage or discharge of oil as a result of an incident with the ship. Exclusion from liability is provided only in strictly limited instances specified in the Convention itself (Article III) (act of war, civil war, insurrection, act of insuperable force, omission or intentional act of third persons, negligent actions of a government or other authority responsible for the maintenance of signals or other navigational aids, intentional acts or negligence of victim of damage). The burden of proving circumstances precluding fault is placed on the ship-possessor.

Second, the limit of liability of a ship-possessor with respect to one incident is calculated by multiplying 2,000 gold francs by the registered tonnage of the ship and in total may not exceed 210 million gold francs. But this limitation does not extend to cases where the incident occurred through the fault of the ship-possessor (Article V).

Third, the liability of the ship-possessor carrying in bulk more than 2,000 tons of oil as cargo must be insured or otherwise guaranteed for an amount comprising the limit of his liability. Such ships must have respective insurance documents, and States are obliged to watch after their presence. State ships must have certificates confirming that the ship is in the ownership of a State and guaranteeing the liability for damage provided for by the Convention (Article VII).
The 1969 Convention does not extend to warships and to vessels belonging to a State and used by it for noncommercial service (Article XI).

The 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage is in essence an addition to the 1969 International Convention on Civil Liability for Oil Pollution Damage. The principal purpose of establishing an international fund was, first, to more fully ensure compensation of damage to victims of oil pollution and, second, to exempt ship-possessors from part of the financial burden imposed on them by the 1969 Convention on Civil Liability. The assets of the fund are formed from contributions, initial and annual, paid by the recipient of oil carried by sea.

The fund so created was called upon to pay compensation to persons who incurred damage from pollution if they did not receive necessary compensation under the 1969 International Convention on Civil Liability for Oil Pollution Damage. Such a situation might arise when the ship-possessor bears responsibility for damage or is insolvent, or the amount of damage exceeds the limits of ship-possessor liability provided for by the 1969 Convention.

The amount of compensation to be paid by the fund is limited. The total amount of such compensation for each incident in principle comprises 450 million gold francs, but under certain conditions the maximum limit of compensation may reach 900 million gold francs.

Besides providing financial compensation for damage to a victim of oil pollution, the fund also renders necessary assistance to provide specialists, materials, and services to take measures with regard to reducing pollution damage, and also provides credit to take such measures.

The fund in principle also may compensate a ship-possessor for part of the amounts paid by him to the victim of oil pollution of the sea if this amount exceeds 1,500 gold francs for each gross ton. However, such additional compensation to ship-possessors by the fund is possible only if it is proved that the pollution damage was not caused by actions of the ship which violated any requirements of the 1954 International Convention for the Prevention of Oil Pollution of the Sea, 1960 International Convention for the Safety of Life at Sea, 1966 International Convention on Load Lines, and 1960 International Rules for the Prevention of Collisions of Vessels at Sea. This provision applies to all ships, irrespective of whether the State under whose flag they sail is or is not a party to the Convention on the fund or a party to the above mentioned international legal acts.

As defined in the 1969 Convention and the Convention on the creation of the fund, ‘pollution damage’ means “loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures”. By ‘preventive measures’ is understood “any reasonable
measures taken by any Person after an incident has occurred to prevent or minimize pollution damage.” The definitions in the Convention on the fund do not answer the question as to what should be understood by ‘loss or damage’. The interpretation of these terms must, in our view, be worked out on the basis of international practice for the settlement of incidents connected with oil pollution of the sea, judicial practice, and national legislation. The parties to this Convention are interested in a uniform approach and interpretation of the term ‘loss or damage’ and, consequently, in what kind of suits are accessible under the Convention on the fund.

An analysis of fund practice with regard to the consideration of certain incidents at sea shows that with respect to the following types of damage claims were accepted as undoubted instances of ‘loss or damage’. Among such cases are: costs for cleaning up the coast; private claims of owners of boats; damage caused to fishing.

The possibility for compensation by the fund of loss in the event of pollution depends on the period for loss or damage to ensue. Fund practice so far contains no requirements on the part of plaintiffs with respect to lost advantage or potential revenue in connection with a temporary remoteness of the ensuing of consequences from pollution.

The liability of the fund to pay compensation usually arises in accordance with Article 4 of the Convention on the fund, that is, for pollution damage which exceeds the limit of liability of the owner of the boat under Article V of the 1969 Convention. Consequently, one may anticipate that the fund commences to pay compensation only after establishing the right of the owner of the vessel to limit liability. However, since such a procedure is, as a rule, rather lengthy, a so-called accelerated procedure for compensation has been worked out in the fund enabling payments to begin before establishing the right of the owner to limit liability. A procedure of advance payments also has been worked out before the instituting of a limited fund and partial payments before reaching agreement on all points of the suit.

Two other documents regulating issues of compensation of oil pollution damage from ships are branch industry agreements. The first is the Voluntary Agreement of Tanker Owners on Liability for Oil Pollution Damage, which entered into force in 1969. This document in principle fulfills functions similar to the functions of the 1969 Convention. The second document is the 1971 Treaty relating to temporary addition to liability of tanker owners in the event of oil pollution (KRISTAL), which provides services similar to those provided by the Convention on the fund.

Before 1976, until the adoption of the 1976 Convention on Limitation of Liability for Maritime Claims, within the group of demands for which the right was granted to limit liability were demands relating to oil pollution damage. With the adoption of this 1976 Convention on limitation of liability for maritime claims, its provisions do not apply to “claims relating to oil pol-
lution damage in the meaning of the 1969 International Convention on Civil Liability for Oil Pollution Damage or any amendments or any protocol to it which is in force”. In other words, the rules of the 1976 Convention should not apply “to claims comprising the subject of regulation of the 1969 International Convention on Civil Liability for Oil Pollution Damage or national legislation adopted to implement this Convention”. On the whole, the 1976 Convention meets the interests of States-parties to the 1969 Convention. However, the problem of liability for pollution of the marine environment by oil is a ‘delicate’ question for many States who are not parties to the 1969 Convention, among whom many have established in their municipal legislation rules on liability for oil pollution of the sea which differ from the Convention and therefore wished to exclude the application to such liability of both conventions, that is, the 1969 Convention and the 1976 Convention. At present all demands concerning compensation for oil pollution damage have been excluded from the 1976 Convention as this damage is defined by Article I of the 1969 Convention. The rules of the 1969 Convention are applied only when such damage was caused to the territories of the States-parties to the Convention, including the territorial sea.

The use in the 1976 Convention of references to the 1969 Convention established a certain link between these conventions since the reference made the 1969 Convention binding for future parties to the 1976 Convention with respect to determining the damage from oil pollution, even if they were not parties thereto. On the whole, the 1976 Convention was worked out by taking into account the possible improvement in future of the legal regulation of liability for oil pollution established in the 1969 Convention which had the purpose to avoid in future a ‘competition’ of treaties.

As regards compensation of nuclear damage, the 1976 Convention also does not apply to “demands falling under any international convention or national legislation regulating or prohibiting a limitation of liability for nuclear damage” (Article 3).

A special threat to the marine environment is the various types of pollution which result from the exploration and exploitation of the seabed. This source of pollution was mentioned in the 1958 Geneva Convention on the High Seas (Article 24). The question of the responsibility of States for pollution of the marine environment as a result of its activities with regard to exploitation of seabed resources is rather complex since the general problem of the responsibility of States has been inadequately worked out in international law. One aspect of this problem is that a State does not in all instances bear responsibility for the actions of its juridical and natural persons beyond the limits of its territory. Another aspect of the problem is determining those instances when State responsibility ensues, if it should ensue at all. A third aspect of the issue is the forms of such responsibility. Working out the provisions on State responsibility with regard to the exploitation of seabed re-
resources requires special studies. In principle a State should bear the said responsi-

bility since seabed resources are in the common use of States and damage

caused to them means damage to the interests of other States. Even

more evident is the problem of responsibility arising, for example, when in-
stallations for the exploitation of the ocean floor, polluting the marine envi-

ronment, damage the living resources of the continental shelf of a coastal

State. The degree of damage under which responsibility ensues remains un-
clear. Also unclear is to whom responsibility ensues in the event of material

damage being caused to fauna and flora in oceanic spaces.

The interest of all States in the domain of the use of the seabed and ocean

floor makes international-legal regulation of this activity essential. In this

connection it seems important to consolidate the principle under which the

activity of States with regard to the use of the seabed and its subsoil beyond

the limits of national jurisdiction should be exercised in strict accordance

with international law and with due account of mutual interests. The States

must bear international responsibility for national activities with regard to

the use of the seabed and ocean floor and subsoil thereof beyond the limits

of national jurisdiction of coastal States irrespective of whether it is exer-
cised by governmental agencies or juridical persons of States.

5 International Cooperation in Protection and Conserving of Marine Environment

Events of recent years convincingly show that the process of total pollution

of the World Ocean can be suspended only on the basis of close international

cooperation, when all members of the international community combined

their efforts against pollution of the marine environment at universal, re-

gional, subregional, and national levels.

The veritable crisis situation of the marine environment and its resources

in aggregate with other phenomena of the global ecological problem is un-
dermining the natural base for the further development of mankind, is a

threat to all peoples of our planet, and predetermines the need for collective

efforts for rescue of the marine environment and its resources.

The institutional foundation of inter-State cooperation in the domain of

the protection and preservation of the marine environment embracing global,

regional, and subregional levels has been virtually formed at present.

International cooperation in the domain of the protection and conserva-
tion of the marine environment includes the following orientations: (a) work-

ing out and application of norms, standards, regulations, and recommenda-
tions; (b) joint actions of States for the prevention, reduction, and elimina-
tion of the consequences of pollution; (c) exercise of ecological control and
assessment of the state of the marine environment; (d) rendering of technical assistance.\textsuperscript{33}

Especially to be singled out is such an important orientation of international cooperation with regard to protection of the marine environment as cooperation in the domain of ecological education and enlightenment since the human factor has great significance in the prevention and averting of pollution of the marine environment by all types of pollution.\textsuperscript{34}

The following levels may be singled out in the cooperation of States in the domain of protection of the marine environment: (a) cooperation within the framework of the United Nations system through specialized agencies of the United Nations: the International Maritime Organization (IMO) with headquarters in London; the Food and Agricultural Organization (FAO) with headquarters in Rome; the International Atomic Energy Agency (IAEA) with headquarters in Vienna; and also through regional commissions of the United Nations; (b) cooperation within the framework of intergovernmental programs of a regional or subregional character (for example, Black Sea Economic Cooperation); (c) direct cooperation of States within the framework of multilateral treaties (for example, the 1976 Convention for Prevention of Pollution of the Mediterranean Sea, 1974 Convention for Pollution of the Marine Environment of the Baltic Sea Area, and others); (d) cooperation of States on a bilateral basis (for example, Agreement on Cooperation of the USSR and United States in the Struggle Against Pollution in the Bering and Chukchi Seas in Extraordinary Circumstances, of 11 May 1989).

The basic powers with regard to international cooperation in the domain of protection of the marine environment have been placed on the IMO, whose purpose is
to provide machinery for cooperation among governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from ships …

The principle of multilateral conventions, as well as regulations, codes, manuals, recommendations, orders, and other documents are the basis for norm-creation activity of the IMO.

\textsuperscript{33} Мировой океан и международное право: Защита и сохранение морской среды [World Ocean and International Law: Protection and Preservation of Marine Environment] (M., 1990), pp. 54-55.

Resolution of the problem of protecting the marine environment requires the interaction and coordination of international legal norms of a universal and local nature. The effectiveness of a resolution to this problem, as Barsegov stresses, depends upon combining national measures and international cooperation on a bilateral or multilateral basis. In other words, the coordinating role in the sphere of protection of the marine environment against pollution belongs to international law. The effectiveness of the functioning of international law in a particular sphere depends, in our view, on the conformity of prevailing international legal norms to the requirements and needs of the international community in this sphere and the working out and adoption of new norms at the international level. The interest of the international community in protecting the World Ocean against pollution has conditioned the objective necessity of establishing a certain legal order for the activities of States in the domain of protection of the marine environment.

It is evident that account should be taken of the fact that when deciding an important and complex problem of protection of the marine environment the basic provisions of the international law of the sea were not always duly complied with, in particular a reasonable combining of the interests of protection of the marine environment and the interests of the development of maritime navigation, fishing, and nature-resource activity was not always complied with. This is to be explained by the fact that a wide group of States does not participate in all conventions for the protection of the marine environment (except the 1982 United Nations Convention), and the universal application of these acts is thereby inadequately ensured. In addition, many developing States so far have not adopted respective national laws directed towards the protection of the marine environment.

In conclusion it should be noted that despite the fact that a certain positive experience of nature-protection cooperation has accumulated in the world and there are examples of successful resolution of certain ecological problems on the national level, the trend towards the progressing destruction of the biosphere of the ocean has yet to be overcome. Under these conditions a high level of interaction of States and peoples is necessary in the domain of the protection and preservation of the marine environment and the working out and creation of international ecological security systems in the World Ocean. Within the framework of this system the working out and adoption of a unified strategy of international nature-protection cooperation is assumed, the adoption of basic principles and norms of the behavior of States, the introduction of international control over compliance and the establishment of responsibility for a violation of these principles and norms. In so doing the maximum use of existing international norms and mechanisms considered here to ensure the fulfillment thereof is not excluded.

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35 Iu. G. Barsegov, note 5 above, p. 50.
Certain international organizations also may serve as one of such mechanisms of the system of international ecological security in the World Ocean on condition of improvement of their activity, with account taken of new geopolitical realities. Not only the United Nations has unique opportunities on this plane, but so too do specialized agencies – the IMO, FAO, UNEP, MOK, UNESCO, and WMO, which fulfill a significant amount of informational, regulatory, control, and operational functions in the sphere of the prevention of pollution, preservation of the environment, and rational resource use on the World Ocean. The Seabed Authority in Jamaica also may render great assistance in the cause of protection of the marine environment against pollution, which realizes the international legal regime applicable to the Area and its resources fixed in the 1982 United Nations Convention. The effective use of the creative potential in these organizations, and also the effectuation of such projects as the creation attached to the IMO of a center for urgent ecological assistance, the creation of an outer space laboratory for monitoring the marine environment, holding a series of international conferences devoted to the protection of the marine environment against pollution would further the prevention of an ecological catastrophe on the World Ocean.

Additional Information

Judicial practice with regard to the protection and preservation of the marine environment treated below confirms the principles in accordance with which the questions considered in this Section are regulated in the international law of the sea.

Gat Dam Case
In 1903 Canada without agreeing the question with the United States built a dam on the St. Lawrence River not far from the boundary with the United States. This structure caused an unexpected rise in the water level of the River itself and the basin of Lake Ontario, which divides the two States. In the course of time this circumstance in turn repeatedly led to flooding and erosion of the lake shores, which caused great damage to farms in Canada itself and in the United States.

Recognizing that by its actions it has caused ecologically harmful consequences, Canada destroyed the dam in 1953; however this did not satisfy the United States, and it brought a demand for compensation for damage caused to American citizens.

An international arbitration tribunal, having considered the case, satisfied the claims of the United States, deemed Canada to be at fault in causing damage to the United States, and obliged it to compensate the damage, the amount of which was established by arrangement between the parties on the basis of the arbitration award.
In this case, the principle was affirmed of the inadmissibility of causing damage to the territory of another country by the activity of the State on its territory. States bear responsibility for ecologically harmful consequences of their economic activities beyond the limits of their territories under their jurisdiction.

**Fukuru-Maru Case**

In March 1954, the United States conducted nuclear weapons tests in the area of the Marshall Islands in the Pacific Ocean. As a result of the tests, pollution of the atmosphere and marine environment occurred in enormous expanses from which both American citizens and inhabitants of the Rongenlap Atoll and Japanese fishermen suffered.

The tests took place in a danger zone established in advance with a radius of 50,000 square miles in the Pacific Ocean within the limits of which vessels were recommended not to sail. Both the Japanese fishing trawlers and the Rongenlap Atoll were at the moment the tests were conducted outside the danger zone. However, they suffered from the fact that the force of the explosion was incorrectly calculated and unexpectedly the direction of the wind changed.

The Government of the United States immediately rendered free medical care and paid monetary compensation to the victim American citizens and inhabitants of the Rongenlap Atoll.

As regards the Japanese citizens, the contamination affected Japanese fishermen on the ship Fukuru-Maru, which received radiation from the fallout of radioactive dust, as a result of which one of the fishermen died. The fish which were caught in this area at the time by other Japanese ships were contaminated, and after coming to market, the number of victims increased. Thus, the economic damage was significant.

The Japanese citizens who suffered brought numerous claims against its own Government with a request to recover through diplomatic channels compensation from the United States for damage sustained.

Japan demanded the Government of the United States pay US$2 million by way of compensation for damage caused and to settle in full any claims against the United States on the part of victim citizens of Japan.

The United States promptly transferred to Japan the amount requested by way of ‘good will’, without elucidating additional questions concerning the number of victims, and so on.

The significance of the case is that the principle is affirmed according to which under international law, State responsibility for ecologically harmful activity manifested beyond the limits of its territory is objective, that is, does not depend on fault. For it to arise, it is sufficient that there exist damage to territory and persons beyond the limits of the jurisdiction of the particular
State caused by the activities (lawful or unlawful, own or private persons) on its territory.\textsuperscript{36}
16. International Maritime Organizations

1 Role of International Organizations in Sphere of Exploitation of World Ocean

The role of international organizations in the sphere of exploitation of the World Ocean is constantly growing. Without these organizations it would be virtually impossible under present conditions to satisfactorily resolve the questions connected with working out the legal regime of the World Ocean and the normative regulation of all types of activities of States in the expanses thereof, including the rational use of its resources and preservation of ecological equilibrium. The activities of international organizations specializing in the use and research of marine expanses and their resources is of greatest interest on this plane. These organizations have received the name of international maritime organizations. The concept of international maritime organizations includes organizations engaged with questions of the use of marine expanses and international rivers (for example, the International Maritime Organization (IMO), the International Seabed Authority) and organs specializing in maritime questions of international organizations having broad competence (for example, the Committee for Navigation of UNCTAD, the Intergovernmental Oceanographic Commission of UNESCO (IOC)).

Besides international maritime organizations, such international organizations as the International Labor Organization (ILO), UNESCO, IAEA, World Health Organization (WHO), Food and Agricultural Organization (FAO), International Civil Aviation Organization (ICAO), UNCTAD, UNIDO, PROON, UNITAR, OECD, and others also are concerned with maritime questions.

As noted in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, international maritime organizations are increasingly being trans-
formed into an integral part of the legal regime of the World Ocean. These organizations not only participate in working out the principles and norms of the international law of the sea and recommendations for their application and the most rational procedures for the use of marine expanses, but themselves actively operate in this direction. International maritime organizations effectuate and/or organize and control all the principal types of activity on the seas and oceans, taking an active part in implementing the basic provisions of the international legal regime of expanses of the World Ocean. Under modern conditions international maritime organizations thereby can be considered to be a special mechanism functioning within the framework of the legal regime of the World Ocean and playing an important role in the international legal regulation of international relations in the domain of the use of expanses and resources of the World Ocean.

Historically, international maritime organizations came into being simultaneously with the forming of the international law of the sea. The Athenian Maritime Union was created in Greece during the fifth and fourth centuries B.C.; it was engaged with maritime questions and ancient Greek international arbitration. Mixed conciliation commissions which were concerned with the settlement of disputes with foreign States connected with maritime trade and navigation were well-known. Nor can one fail to mention in this connection the Hanseatic League, which in the fourteenth century issued codes and collections of laws on navigation and trade. The development of maritime navigation and maritime trade in the nineteenth century led to the creation of a number of international maritime organizations: the European Danube Commission (1856), the International Meteorological Organization (1873), the International Union of Marine Insurance (1874), the International Maritime Committee (1897), the Permanent International Association of Navigation Congresses (1894), and the International Council for Exploration of the Seas (1902).

As Bekiashev and Serebriakov note, there are at present more than 60 international associations whose activity is to some extent connected with maritime navigation.

The development of marine fishing in the twentieth century served as grounds for the creation of a large number of fishing organizations, intergovernmental fishery organizations, and international scientific research maritime organizations.

1 UN General Assembly Res. 2749 (XXV), 17 December 1970.
In connection with the expansion in recent years of cooperation of States on questions of the use of expanses and resources of the World Ocean and the working out and realization of a new legal regime for its expanses, the significance of international maritime organizations is growing.

Basic parameters by which international organizations are characterized in the theory of international law are inherent in international maritime organizations. Among such characteristics determining the legal nature of international organizations are their law-creation activities, treaty legal capacity, competence, powers, purposes, and functions, and the legal nature of acts issued by international organizations.

The specific content of these characteristics will be considered by using the example of the principal international maritime organizations, above all the International Maritime Organization (IMO), concerned with navigation safety, protection of the marine environment against pollution, and other uses of maritime expanses. Also covered are the International Seabed Authority, engaged with the activities of States in the domain of the exploration and exploitation of resources in the International Seabed Area., the International Maritime Satellite Communications Organization (INMARSAT) and the International Tribunal for the Law of the Sea.

2 International Maritime Organization (IMO)

The IMO was founded in 1958, when the Convention on the Intergovernmental Maritime Consultative Organization, adopted at a Maritime Conference convened by the United Nations in 1948 (hereinafter: IMO Convention), entered into force. An obligatory condition of the entry of the said Convention into force was the adoption thereof by 21 States, among whom at least seven must possess a fleet of not less than one million gross registered tons.

The said Convention was actually the Charter of the IMO. The headquarters of the IMO is in London.

The purposes of the IMO, in accordance with the Convention, are: to promote cooperation between States in the field of governmental regulation and practice relating to technical matters of international commercial shipping and to work out and promote the adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation; to consider any questions of shipping referred to it by specialized agencies or other organs of the United Nations; and to provide governments with information on matters under consideration.

After the wreck of the *Torrey Canyon* in 1967, the IMO began to occupy itself with such legal questions as the responsibility of shipowners and States for pollution of the sea by oil.

Thus, the IMO was called upon to fulfill the role of an organization ensuring the cooperation of States for the purpose of working out and adopting international administrative, legal, and technical norms for safety of navigation, safety of life at sea, and protection of the marine environment against pollution.

In accordance with the Convention on the IMO, any State may become a member of this organization on condition of accepting or acceding to the Convention on the IMO.

Members of IMO may be full-fledged or associate. Members of the United Nations, States not Members of the United Nations but whose representatives were invited to the United Nations Maritime Conference in 1948 and other States which have petitioned to join on condition of approval thereof by not less than two-thirds of IMO members may be full-fledged members. Non-self-governing territories may join the IMO as associate members if the United Nations or full-fledged member of IMO having responsibility for its foreign relations declares that the operation of the Convention on the IMO extends to these territories. An associate member does not have the right to vote and may not be elected to executive organs of IMO.

Among the IMO organs participating in the working out and adoption of decisions of that organization are the Assembly, Council, Maritime Safety Committee, Legal Committee, Marine Environment Protection Committee, and Technical Cooperation Committee. Each of these organs may create for the detailed consideration of questions within their competence and preparation of a draft decision subcommittees, working groups, and other auxiliary organs. However, it is the Assembly, Council, and four named committees who have the right to formulate a final decision of a particular organ that is subject to being sent to the Assembly, Council, Members of the IMO, or States-Parties to the respective treaty on questions within the competence of this organization.

The *Assembly* is the plenary organ in whose work all members of the IMO have the right to participate. In accordance with the Convention on IMO (Article 14), regular sessions of the Assembly take place once every two years.

During a session of the Assembly, the two main committees are usually created of the full membership: Committee I (for administrative, legal, and financial issues) and Committee II (for technical questions). Various subcommittees and working groups may when necessary be created together with these two main committees by the IMO Assembly.
Decisions are adopted at the IMO Assembly, as a rule, by a majority of those empowered representatives of Members who are present and voting. Each delegate has one vote. The voting procedure, unless stipulated otherwise in a treaty, is identical in all IMO organs. In accordance with the IMO Convention (Article 62), decisions are adopted by a majority of members of the IMO present and voting. When a majority of two-thirds is required to adopt a decision, the decision is adopted by a majority of two-thirds of those present.

The adoption of decisions by the Assembly by a simple majority may lead to a decision actually being adopted by a minority of members of this organization. A quorum, for example, of the Assembly, in accordance with the Convention on IMO (Article 15), comprises a simple majority of members of the organization, that is, 76 of 151 States who have joined the IMO. If one imagines that 100 delegations are present at a session of the Assembly, and that 50 voted for the adoption of a decision, 20 against, 20 abstained, and 10 were absent during the voting, the decision would be adopted even though less than one-third of the IMO members voted in favor. Proposals to revise the procedure for the adoption of Assembly decisions by providing for a broader group of questions whose decision requires a qualified majority of two-thirds of the votes have long been made by specialists. However, the procedure for the adoption of decisions by the IMO Assembly has not as yet been changed.

Resolutions of the IMO Assembly are of two types. The first type of resolution concerns the essence of IMO activity. They are addressed to members and have as annexes norm-establishing acts of the IMO (codes and standards having the character of recommendations for members). Such recommendations concern issues of safety at sea and the prevention and control over pollution of the sea from ships and other problems within the competence of the IMO.

The second type is a resolution of the Assembly, which is binding but concerns only internal organizational issues and comprises a so-called ‘internal law’ of the IMO. Among this type of resolution is, for example, an Assembly resolution concerning the approval of long-term work programs of the organization and confirmation of the budget and financial measures of the IMO.

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In addition to the resolutions mentioned above, the IMO adopts ‘other decisions’ which concern questions such as the election of the chairman and deputy chairmen of the Assembly, confirmation of the agenda, election of members of the Council, confirmation of IMO reports, and the like.

The Council is the executive organ of the IMO. In accordance with the Convention on the IMO (Article 17) as amended in 1979, the Assembly elects a Council composed of 32 representatives of States, being guided by the following criteria: (a) 8 members are representatives of States with the largest interest in providing international shipping services; (b) 8 members are representatives of States having the largest interest in international seaborne trade; (c) 15 members are representatives of States not elected under (a) or (b) but having a special interest in maritime transport or navigation and whose election to the Council will ensure broad geographical representation.

The Council is convened as necessary upon one month’s notice. The convening of the Council is effectuated at the initiative of the chairman or at the request of not less than four members of the Council, as required by the Convention on the IMO (Article 20). A quorum of the Council is 21 members. Decisions of the Council are adopted by a simple majority of votes.

The heads of the Council are elected at a session of the Assembly for a term of two years and may be re-elected for a new term.

The Council forms the auxiliary organs, which may be permanent or temporary. The Technical Cooperation Committee and the Facilitation Committee are among the permanent organs.

In the interval between sessions of the Assembly the Council coordinates all activities of IMO. In so doing the Council possesses rather broad powers. The Council may consider and adopt decisions on any question within the jurisdiction of IMO, except making recommendations to members of the organization on the adoption of regulations and norm-establishing acts concerning the competence of the IMO.

The Council receives reports, proposals, and recommendations of the IMO committees and transmits them to the Assembly, and in the interval between sessions of the Assembly, to members of the IMO for consideration.

The Council may conclude agreements covering the relationship of the IMO with other organizations, which must subsequently be approved by the Assembly of the IMO (Article 26, IMO Convention).

Thus, the Council, just as the Assembly, participates in working out decisions regarding the substance of IMO activities and works out rules of the ‘internal law’ of the IMO.

The Maritime Safety Committee has within its competence: aids to navigation, construction and equipment of vessels, manning, rules for the prevention of collisions of ships at sea, carriage of dangerous and radioactive cargoes, and others (Article 29, IMO Convention).
The Maritime Safety Committee in accordance with the IMO Convention (Article 32) meets at least once a year and may meet in extraordinary sessions upon the written request of not less than 15 members sent to the Secretary General of the IMO.

The Committee fulfills functions which may be placed upon it “... by or under any international convention or other instrument ...” (Article 32, IMO Convention). These functions, as a rule, are connected with the adoption of amendments to such conventions or instruments. Amendments to conventions approved by a majority of members of the Committee present and voting and by other participants with the right to vote are transmitted to States for adoption in accordance with their constitutional procedures. Such practices of the IMO are testimony to the autonomous role of the Committee in law-making.

A quorum of the Maritime Safety Committee is 20 members. The even number of members complicates the adoption of decisions by the Committee. If there is a tie vote, the voting is repeated at the next session of the Committee. If again there is a tie vote, the proposal is considered to be rejected.

The procedure and mechanism for the adoption of decisions in other committees of the IMO is virtually identical with the procedures of the Maritime Safety Committee. Only the range of questions to be considered in these committees differs.

Thus, all legal questions relating to the competence of the Organization are the prerogative of the Legal Committee. Accordingly, the Marine Environment Protection Committee considers issues of the prevention and control of pollution of the sea from ships and other floating craft. The Technical Cooperation Committee deals with issues of technical cooperation relegated to the competence of the IMO, including the rendering of assistance to developing countries.

At their sessions the committees approve the draft resolutions and recommendations worked out by them, and send proposals to the Council of the IMO for subsequent discussion at the Assembly. In other words, documents formed in the respective committees are the foundation for drafts and resolutions of the IMO.

Norm-creation activities of the IMO are, as generally in legal science, understood to be the creation of law, that is, an activity whose result is the establishment, change, or repeal of norms in force. It is generally recognized that norms of international law may be created by means of bringing the wills of its subjects into concordance. The process of the creation of international legal norms consists of two stages: bringing the wills of subjects of international law into concordance relative to the content of rules of behavior;
recognition of the prescriptions contained therein to be legally-binding norms.\(^7\)

Norm-creation of international organizations is an integral part of international norm-creation generally. Consequently, the principal approaches to the last and its principles are applicable to this type of intergovernmental organizations. At the same time, one can not fail to take into account the factor that norm-creation of international organizations has its distinctive features which, as repeatedly pointed out in doctrinal writings, are conditioned principally by the specific nature of the intergovernmental organizations themselves as ‘secondary’ (derivative) and ‘limited’ subjects of international law.

The nature of norm-formation and the forms of participation therein by intergovernmental organizations is directly linked with their legal personality since the very existence of international organizations, the possibility of using rights and duties, and the fulfillment of various functions (including norm-creation) is conditioned by the fact they have this special quality. Accordingly, the extent of legal personality, and likewise the types, orientation, and extent of norm-creative powers of any international organization, is fixed in the treaty on its creation or in other documents supplementing it. The most typical forms of consolidating such powers are: (a) express mention of specific types and forms of norm-creation activity in the constitutive act; (b) the exposition of functions and powers of the organization whose interpretation enables one to speak definitively about the organization having norm-creation competence; (c) an indication of the types and forms of norm-creation in agreements to be concluded between members or between members and the particular international organization, which can be regarded as an addition (or clarification) of the constitutive act; (d) a general statement in multilateral treaties of a universal type about the particular norm-creation capacity of certain categories of international organizations (for example, the 1986 Vienna Convention on the law of treaties between States and international organizations or between international organizations).

Each international organization may participate only in that type of norm-creation which is authorized by its charter.

The day-to-day activities of the IMO, as noted above, are directed towards the universal ensuring of navigation safety, regulating the use of resources of the World Ocean, protection of the marine environment, and the agreement, rationalization, and normative regulation of these issues. These aims the IMO realizes both by resolving specific special tasks within the framework of its competence and by participating in the norm-creation process in the course of international conferences and meetings, as a result of the participation of representatives of the IMO in similar measures carried on by

other international organizations; the coordination, encouragement, and rationalization of various types of use of sea expanses; the organization and management of certain types of activity on the World Ocean or the direct effectuation of such activities; working out recommendations with regard to the application of legal norms and control over their fulfillment, and so on.

Decisions of the IMO are adopted basically in the form of recommendations and standards. Recommendations of the IMO further the correct interpretation and uniform application of legal norms. In individual instances, especially when recommendations concern issues of navigation safety unregulated by specific legal norms, such IMO recommendations, in light of the above, are binding. Of all the international maritime organizations, only the IMO has the right to establish recommendations at the international level which in practice have the force of international legal norms. These recommendations concern the routes and traffic separation schemes for ships in international straits, recommended lanes for navigation in other areas of the ocean, routes for ships with special characteristics, or with large draught, and so on. These norms and principles have been consolidated, in particular, in the 1960 International Convention for the Safety of Life at Sea. The working out of IMO recommendations concerning the establishment and use of lanes and traffic separation schemes for ships is considered in Chapter V of that Convention.

To date the IMO has confirmed more than 100 traffic separation schemes for ships and recommended them to States for compliance. States have adopted respective national laws and regulations on routes for navigation and traffic separation schemes for ships on the basis of IMO recommendations in accordance with the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone (Article 17) and the 1982 United Nations Convention on the Law of the Sea (Article 41). Thus, the 1982 United Nations Convention provides that States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits which are adopted beforehand by an international organization. It is emphasized that “ships in transit shall respect applicable sea lanes and traffic separation schemes established in accordance with this article” (Article 41). Therefore, with the entry of the 1982 Convention into force, a generally-recognized international legal norm received formal confirmation, in accordance with which States bordering straits establish with the approval of the IMO routes and traffic separation schemes in international straits. For the masters of vessels and shipowners violations of the IMO recommendations entail those same legal consequences as a violation of international legal norms. Maritime arbitration commissions also consider a violation of the said IMO recommendations to be a violation of international legal norms.

Standards are another form of administrative regulatory acts of the IMO. The IMO standards are unilateral acts of that organization, the result of its

The procedure for adopting IMO standards is of interest to specialists; it may be divided into two parts. The first is the preparation of the text of the future act. The initiative for raising the question of working out a particular document containing a standard may emanate from any organ (including any committee) of the IMO. However, in accordance with the IMO Convention (Article 15), the Assembly of the IMO is endowed with the right to determine the list of problems with regard to which after study it is advisable to adopt standards. After the adoption of the decision on the need to work out the determined documents, the IMO organs (Assembly, Council, functional committees: Maritime Safety Committee, Marine Environment Protection Committee, Technical Cooperation Committee, and other auxiliary organs) begin to occupy themselves with these questions in accordance with their competence. The principal burden of work with regard to working out standards lies with the Maritime Safety Committee. In accordance with the IMO Convention (Articles 28 and 29, IMO Convention), this organ considers any questions within the competence of the IMO and concerned with aids to navigation, construction and equipment of vessels, manning, rules for the prevention of collisions, handling of dangerous cargoes, hydrographic information, and others.

When preparing documents, the materials of various international intergovernmental and nongovernmental organizations with which the IMO actively cooperates, are taken into account.

Cooperation of the IMO with the United Nations and its specialized agencies, as well as with other international organizations, is usually established by means of the conclusion of special agreements on the basis of which the parties (a) consult one another on problems of mutual interest and participate without the right to vote at sessions of the principal and auxiliary organs of the UN; (b) cooperate in the preparation of IMO standards; (c) use the results of IMO work in their national legislation and practice.

8 The term ‘standards’ is preferentially used in the 1982 United Nations Convention (Articles 197, 208, 210, 211, 217, and others).

9 For details about the procedure for drafting IMO standards, see V. A. Nadeinskii, Структура и деятельность межправительственной морской консультативной организации [Structure and Activities of Intergovernmental Maritime Consultative Organization] (M., 1972).
organs; (b) establish joint committees and working groups to resolve the respective tasks; (c) exchange necessary information and documents. Among the principal international intergovernmental organizations with which the IMO interacts are the International Labor Organization (ILO), the Food and Agricultural Organization (FAO), and the International Atomic Energy Agency (IAEA). The legal foundation for such cooperation is the IMO Convention (Articles 45 and 46), which empower the IMO to cooperate with any specialized agencies of the United Nations system.

No less active is the cooperation of the IMO with nongovernmental maritime organizations. The International Chamber of Shipping, the International Marine Insurance Union, the International Federation of Shipowners, and the International Association of Lighthouse Authorities constantly consult the respective committees of the IMO and carry out extensive preparatory work when IMO international maritime standards are worked out.

The information received from States and international organizations is summarized in the subcommittees of the IMO and working groups. Studies may be conducted when necessary. The draft decisions so prepared are sent for consideration to the respective IMO committee and also are circulated to all members of the IMO for information. The IMO committee, in the event the draft is approved, sends it to the Council of the IMO for discussion. The Council is the key organ in the process of working out the draft text. First, the Council may reject any decisions of the committee and, second, make any amendments to the decision, up to and including material changes in the materials prepared by the committee. Third, and most important, the highest plenary organ, the Assembly, does not have the right in accordance with the IMO Convention (Article 15) to reject documents approved by the Council. The Assembly may merely refer back documents to the Council with its observations.

Such extensive powers of the IMO Council, consisting of the representatives of 32 States, are, in our view, hardly justified. It has been justly noted in doctrinal writings that the procedures are clearly undemocratic for the adoption of standards, where the Council with a limited membership may more materially influence the content of the documents prepared than may the committees that include the representatives of all members. Nor can one deem to be justified the fact that the Assembly of the IMO, in confirming standards, does not have the right to reject draft documents submitted by the Council.

Despite these problems of a procedural nature, the Assembly is the highest organ bearing responsibility for the working out and adoption of international standards in the IMO. The fact that the standards of the IMO express

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10 Bekiashev and Serebriakov, note 4 above, pp. 225-229.
11 Ganiushkina, note 6 above, p. 11.
the will of the general meeting of members of the IMO – the Assembly –
imparts great importance to those acts. The more so since, as noted above,
before the confirmation of standards by the Assembly the drafts thereof are
submitted for the consideration by IMO members, which makes it possible
for the last to analyze in detail the draft document and make their observa-
tions.

Confirmation of an act by the Assembly signifying its final adoption as a
unilateral act of the IMO is the second stage of the adoption of an interna-
tional standard.

Thus, the norm-creation function of the IMO is effectuated in two basic
forms: (1) in the form of participation in the auxiliary processes of norm-
formation not completing the creation of international legal norms but in its
practical expression in the adoption of recommendations or resolutions of
the Assembly, which contain rules, codes, and standards on questions within
the competence of the IMO, as well as in working out within the framework
of the IMO international conventions on these questions and amendments to
such conventions. Only States may complete the norm-creation process thus
commenced by means of adopting treaties; (2) in the form of indirect par-
ticipation in the creation of norms of law binding upon the addressees. This
form of the norm-creation function finds its expression in the conclusion of
treaties by the IMO with States and other international organizations, and
also in working out and adopting norms of ‘internal law’ of the IMO.

In connection with the norm-creation activities of the IMO the question
arises as to whether the IMO (or its organs, since the IMO realizes its legal
personality through its organs) adopts norm-containing decisions. The issue
of the legal classification of decisions of international organizations in gen-
eral and of the IMO in particular has for many years been controversial in
the science of international law. Neshataeva noted, in considering individual
resolutions of intergovernmental organizations of the United Nations system
to be without doubt sources of public international law: “for resolutions of
this type it is characteristic that they, first, are adopted on the basis of provi-
sions of the constitutive documents (charters) and, second, consolidate rules
of behavior of States having a legally binding character”.12

Ignatenko adheres to the same position, considering that “States are em-
powered, acting in accordance with the charter of an international organiza-
tion, to use as a form of norm-formation … resolutions … of the organs of
an organization”13.

12 T.N. Neshataeva, Международные организации и право. Новые тенденции в
международно-правовом регулировании [International Organizations and Law. New
13 G.V. Ignatenko, Международное право и общественный прогресс [International Law
While concurring in principle with the possibility of the adoption by representative organs of international organizations of norm-establishing decisions (if such right arises from the constitutive act), it should be emphasized that, as the analysis of the basic documents concerning the creation of the organization shows, as well as the content of the decisions themselves, the majority of the last do not have the character of sources of international law. When adopting such decisions, the bringing of the will of members of the organization into concordance does not occur directly. These acts are, in essence, the result of the unilateral expression of will of the international organization.

Since the progressive development of international law depends upon the rapid and effective creation of necessary norms, the normative decisions of international organizations play the role of an effective instrument for the creation of necessary rules of behavior in the modern world. In doctrinal writings the term ‘soft law’ is used to designate this normative phenomenon – the creation by organs of international intergovernmental organizations of sources of international law in the form of decisions. Decisions of international organizations relegated to ‘soft law’ fulfill a number of important functions: they often fill the gap between treaty acts and customary law. Moreover, norms of ‘soft law’ enable international law to be more ‘flexible’, adapting itself both to the relations being regulated and to the interests of the subjects acting in these relations. As Lukashuk justly noted, norms of ‘soft law’ facilitate the bringing into concordance of divergent positions of States and create a broader framework than do treaty and customary international legal norms.

Standards adopted by the IMO are, in accordance with the IMO Convention (Article 2), recommendations. However, these standards have from the moment of their adoption by the IMO greater legal importance than administrative-regulatory acts of many other intergovernmental organizations. The participation of States in the preparation of such acts in respective IMO committees is in essence the bringing into concordance of the will of subjects of international law with respect to the content of the standards. States thereby agree to these acts being binding.

IMO recommendations are based on generally-recognized maritime practice and therefore must be executed not only by members of the IMO but also by States which are not in the organization. This is understandable since

14 See R.A. Kolodkin, Международные рекомендательные нормы (на примере резолюция-рекомендаций 2A/ ООН) [International Recommendaory Norms (the Example of Recommendaory Resolution 2A/UN)] (М., 1986), pp. 8-16 (Abstract of cand. diss.)

the IMO adopts such standards without whose compliance by absolutely all States it is impossible to ensure legal order on the World Ocean. A violation, for example, of traffic separation schemes in narrows and straits by merely one vessel may lead to serious consequences (accident, perishing of ships and people, leakage of oil, loss of dangerous cargoes, and so on).

The bindingness of IMO standards for States may ensue when either of the two following legal acts arises: (1) if the standards become generally-recognized. The 1982 United Nations Convention on the Law of the Sea (Article 211) refers to such standards; (2) if there is a general norm relating to the bindingness of the said rules in any international agreement.16

Generally-recognized maritime standards are considered to be those standards which, first, have been worked out by a competent international organization. The IMO is such an organization which adopts an act concerning safety at sea and the protection of the marine environment in accordance with the 1982 United Nations Convention.

Second, these standards have firmly entered the practice of international shipping and are voluntarily executed by all States when effectuating various types of activity at sea.

Among such generally-recognized maritime standards are: the 1965 International Maritime Dangerous Goods Code; the 1974 Code of Safety for Fishermen and Fishing Vessels; the 1993 International Safety Management Code; and many other IMO documents.

The duty of States to ensure compliance with IMO standards is in many instances fixed in multilateral treaties. Thus, for example, the bindingness of IMO standards concerning questions of the prevention, reduction, and control of pollution of the marine environment from vessels was formulated in the 1982 United Nations on the Law of the Sea (Article 217). The bindingness of the 1993 International Code for the Management of Safe Operation of Ships and Prevention of Pollution as fixed in Chapter 9 of the 1974 SOLAS International Convention. Thus, the duty of States to ensure compliance with such IMO standards arises not from the legal force of the standards, which as noted above are recommendations, but from the prescriptions of the norms of general multilateral treaties.

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3 International Seabed Authority (Authority)

Before the adoption in 1982 of the United Nations Convention on the Law of the Sea, the legal regime of the high seas extended to the bed of the seas and oceans. In connection with the development of new technologies for working out the resources of the seabed the conception of international legal regulation of the activities of States with regard to the exploitation of the seabed beyond the limits of national jurisdiction was officially put forward at a session of the United Nations General Assembly. In 1970 the General Assembly adopted the Declaration of Principles Regulating the Regime of the Bed of Seas and Oceans and its Subsoil Beyond the Limits of National Jurisdiction, in accordance with which this area and its resources are the ‘common heritage of mankind’ and not subject to appropriation and it remains to establish the international regime for the exploration and exploitation of the resources in that area.17

The ‘common heritage of mankind’ became the subject of sharp discussions during the Third United Nations Conference on the Law of the Sea. Ultimately, the conception was adopted at the Conference and embodied in Part XI of the 1982 United Nations Convention. In accordance with the 1982 Convention, the exploitation of seabed resources beyond the limits of national jurisdiction is to be effectuated for the benefit of ‘mankind as a whole’. No State may claim or exercise sovereignty or sovereign rights over any part of the Area or its resources (Article 137[1]). This provision, as noted above, is in essence the lynchpin of the ‘common heritage of mankind’ with regard to the seabed. Access to the Area and its resources occurs through the International Seabed Authority (Authority) acting in the name of ‘mankind as a whole’ (Article 137[2]). As Vylegzhanin has correctly observed: this provision of the Convention is vulnerable from the legal point of view. First, the activity in the Area is effectuated not only by the Authority, but also by all parties to the 1982 United Nations Convention. Second, in accordance with the 1969 Vienna Convention on the Law of Treaties (Article 35), and also proceeding from the principle of the sovereign equality of States, the Authority does not have the right to act in the name of States who are not parties to the 1982 United Nations Convention.18

The basic principles for activities of the Authority are set out in the 1982 United Nations Convention (Article 157). In accordance with this Article of the Convention, the Authority is an organization through the medium of

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18 See A.N. Vylegzhanin, Морские природные ресурсы (международно-правовой режим) [Marine Natural Resources (International Legal Regime)] (М., 2001), pp. 145-146.
which States Parties shall organize and control activities in the Area, particularly with a view to administering its resources (Article 157[1]). The Authority is based on the principle of the sovereign equality of all its members. All States Parties to the 1982 United Nations Convention are ipso facto members of the Authority. Moreover, the Authority has the right to participate in any commodity conference in which producers and consumers of resources recovered from the seabed take part (Article 151(1)[b]).

Industrial production in the Area may not commence until the operator submit to the Authority an application and receives from it a production authorization. This application for a production authorization may not be submitted nor such authorization issued earlier than five years prior to the planned commencement of commercial production of seabed resources (Article 151[2]).

Thus, in accordance with the 1982 United Nations Convention, the powers of the Authority provide for the adoption of decisions binding upon States Parties to the Convention in the sphere of activities relating to the exploration and exploitation of resources in the International Area of the seabed. The rules, regulations, and procedures adopted by the Authority in accordance with the Convention are binding upon members of the Authority and on the Authority itself.

As the principal organs of the Authority the 1982 United Nations Convention (Article 158) founded the Assembly, Council, and Secretariat. The Authority carries out its functions through a specially-founded Enterprise. The Enterprise operates in accordance with rules, regulations, and procedures of the Authority (Article 170).

The principal role in the process of working out and adopting rules, regulations, and procedures is allocated to the Council – the chief executive organ of the International Seabed Authority. The 1982 United Nations Convention (Article 162) endows the Authority with the powers “to establish … the specific policies to be pursued by the Authority on any question or matter within the competence of the Authority”.

When exercising its normative and other powers, the Council relies on the work of its functional commissions – the Economic Planning Commission and the Legal and Technical Commission. These commissions play an important role since in essence the preparatory work with regard to the preparation and adoption of binding decisions of the Authority.19

In accordance with the 1982 United Nations Convention (Article 161), the Council consists of 36 members elected by the Assembly for four years on the basis of the principle of equal representation for five geographical regions and four categories of States with special interests.

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Important decisions are adopted in the Council by consensus, that is, without any official objection. Thus, decisions are adopted with regard to the rules, regulations, and procedures of the Authority which relate to the prospecting, exploration, and exploitation of Area resources and the management of the financial and internal administrative management, including the establishment of procedures for the adoption of decisions by commissions of the Council. Priority is accorded to the adoption of rules, regulations, and procedures with respect to the exploration and exploitation of polymetallic nodules.

Draft rules, regulations, and procedures also are adopted by consensus for subsequent confirmation by the Assembly of the Authority relative to the just distribution of financial and other economic benefits received from activity in the Area, and also payments and contributions of States from the operation of mineral resources of the continental shelf beyond 200 miles from shore. 20

All decisions of a norm-establishing character are after approval by the Council considered to be provisionally in force until their confirmation by the Assembly of the Authority. The Assembly may not revise or repeal decisions of the Council in the event of disagreement with a draft, in particular, providing for: administrative procedures concerning prospecting, exploration, and exploitation in the Area, as well as various operations, including the size of the Area, duration of operations, renunciation of areas, reports concerning the course of work, provision of data, transfer of technologies, standards and practice relating to safety and protection of the marine environment, qualification standards for applicants, determination of commercial production, financial questions, creation of a compensation system, establishment of limitations on the level of recovery of minerals in the Area besides polymetallic nodules, and others.

Thus, the Council is the principal link in the norm-formation process, during which rules, regulations, and procedures should be worked out and adopted that are binding upon members of the International Seabed Authority. 21 Only final confirmation of rules, regulations, and procedures for activities in the Area adopted by the Council is entrusted to the Assembly of the International Seabed Authority.

The 1982 United Nations Convention (Annex III) in general form has laid down the basic conditions for prospecting, exploration, and exploitation in the Area, which must be made specific and developed in the rules, regulations, and procedures.

Within the system of the Authority an important political role is allotted to the Assembly. The functions and powers of the Assembly come down to

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the following: (1) elections of members of the Council and Secretary-General, as well as members of the Governing Board of the Enterprise and its Director-General; (2) consideration of general matters of activities of the Authority and reports of the aforesaid organs and the making of recommendations with a view to promoting international cooperation; (3) the consideration of budgetary and financial questions; (4) consideration of problems of a general character arising in connection with activities in the Area, especially for developing countries, as well as landlocked and geographically disadvantaged countries; (5) consideration of the question of a system of compensation for developing exporter countries of those minerals which are recovered in the Area.

These powers of the Assembly of the Authority reflect its nature as the most representative plenary organ in which the representatives of all States of the world are called upon to consider the principal issues of the activities of the Authority. Endowing the Assembly with important general and specific functions and powers and their close interlinkage with the functions of the Council and provisions of the 1982 United Nations Convention enable this principal organ to occupy an important place in the system of the International Seabed Authority and exert a serious impact on the development of international cooperation and implementation of respective provisions of the 1982 United Nations Convention.22

4 International Maritime Satellite Communications Organization (INMARSAT)

The increase in the volume of international trade and development of new types of use of the expanses and natural resources of the World Ocean predetermines the growth in the maritime fleet and intensiveness of maritime navigation. Accordingly, the incidence of accidents of ships is growing, often leading to human casualties at sea.

With a view to ensuring navigation safety and the protection of life at sea a decision was adopted in 1971 within the framework of the IMO to create and introduce into operation a maritime satellite system, for which it was essential to work out and introduce into operation a respective treaty.23 An expert group on maritime satellites created in 1972 on the basis of this decision worked out the draft Convention on the International Maritime Satellite Organization (INMARSAT).

23 IMCO Doc. MSC XXIII/19, section 75.
The Convention on INMARSAT, adopted in 1976, provided that the provision of maritime communications with the use of retransmission artificial satellites for humanitarian purposes, especially to enhance navigation safety and the safety of life at sea, should be placed on the intergovernmental organization. To this end the Conference adopted an Operating Agreement on INMARSAT which was to have been signed either by interested governments or by national organizations (‘Signatories’) designated by them.

On the ‘Parties’ to the INMARSAT Convention was placed the deciding of policy issues of principle and of the activities of INMARSAT. The decisions on financial, technical, operations, and other specific matters within the competence of INMARSAT is placed on the ‘Signatories’ of the Operating Agreement. In so doing, according to the Convention (Article 4) the Parties, that is, the States Parties to the Convention, do not bear responsibility for obligations arising under the Operating Agreements. However, the Parties do bear responsibility for the activities of the signatory organizations designated by them. In other words, the activities of national organizations with regard to the realization of the tasks of INMARSAT may be effectuated with the authorization of respective governments and under their direct control. This combination in INMARSAT of international legal responsibility of States Parties to the INMARSAT Convention with the material responsibility of juridical persons on whom practical matters of the activities of INMARSAT have been placed guarantees that this organization as a whole and all of its members will strive for strict compliance with the provisions of the Convention and the Operating Agreements on INMARSAT.24

Operational and administrative expenses, as well as expenses for the technical servicing and modernization of the outer space segment of INMARSAT, are covered from payments by users of services provided by this organization under specially agreed tariffs. The initial expenditures connected with the acquisition of elements of the space segment25 and for expanding the maritime satellite communications system as a whole were covered from contributions of the Signatories.

The amounts of contributions (or participatory shares), reviewed annually, are determined and confirmed on the basis of the amount of use by ships and shore stations of services of the INMARSAT communications system.26

25 The space segment of INMARSAT is the property belonging to this organization or leased by it: satellites, devices for tracking, telemetries, management, control, and observation and means necessary to ensure the work of earth artificial satellites.
26 For details, see A. L. Kolodkin, “О работе Подготовительного комитета по созданию ИНМАРСАТ”[On the Work of the Preparatory Committee for the Creation of INMARSAT],
The executive organs of INMARSAT are the Assembly, Council, and Directorate. The representatives of all Parties, each of which possesses one vote in this organ, are members of the Assembly.

The Assembly, whose sessions are convened once every two years, considers the general policies and works out recommendations for the Council. The Assembly is empowered to also consider questions of the mutual relations of INMARSAT with States and other international organizations.

The Council, whose session is held not less than three times per year, bears responsibility for provision of the space segment, establishes the requirements for maritime satellite communications, determines the criteria and procedure for the provision of maritime satellite communications services, and also determines the financial policies of the organization. The Council usually consists of 22 Participants, of which 18 are members on the basis of the largest participatory share, and four are elected by the Assembly, taking into account the principle of just geographical representation. The number of representatives of the Signatories in the Council may be larger if several Signatories with equal participation shares claim to occupy a vacant place.

Decisions with regard to matters important for the functioning of INMARSAT are adopted on the basis of ‘weighted’ voting. The ‘weight’ of the vote of each Participant is determined in proportion to its participation share but may not exceed 25% of the total number of votes of the other Signatories on the Council. If the participation share of each Signatory exceeds this limit, the Signatory must propose to other members of the Council to assume the payment in full of the entire excess or part thereof. When the proposed excess will not be assumed for payment by other Signatories or not paid in full, the weight of the vote of the possessor of the excess may exceed the 25% ceiling by the amount of the undistributed part of the participation contribution.

The executive organ of INMARSAT is the Directorate, headed by the Director-General. The Director-General is appointed by the Council for a six-year period. By decision of the Council the Director General may be removed from office before the expiry of the term of office.

From the moment of commencement of the practical work of the maritime satellite communications system, serviced by satellites leased by INMARSAT (1 February 1982), virtually all areas of the World Ocean from the standpoint of navigation were covered by maritime communications. The global range of maritime communications is ensured by shore receiving and transmitting stations located on virtually all continents of the world, the sectors of ‘responsibility’ being divided among them.

INMARSAT cooperates with a number of intergovernmental organizations relevant to its principal activity. In particular, close cooperation is effectuated with its related organization, the International Space Communications Consortium (INTELSAT), the IMO, the World Meteorological Organization, the International Telecommunications Union, and others.

5 International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea was created in accordance with the 1982 United Nations Convention (Article 291). The seat of the Tribunal is in the city of Hamburg (Germany).

The jurisdiction of the Tribunal encompasses all disputes with regard to questions regulated by the 1982 Convention. In accordance with the Statute of the Tribunal, it consists of three chambers: the Sea-Bed Disputes Chamber, the Fishing Disputes Chamber, and the Marine Environment Disputes Chamber. In addition, on 20 December 2000 at the request of Chile and the European Union the Tribunal formed a special chamber composed of four judges headed by Judge Rao to consider cases connected with the conservation and use of tagged fish stocks in the southeastern Pacific Ocean.  

In accordance with the Statute of the Tribunal (Article 15), by agreement of the States the Tribunal may form special chambers composed of three or more judges for any disputed matters of maritime activity provided for in the 1982 United Nations Convention.

Any cases connected with the application of the 1982 United Nations Convention on the Law of the Sea may be referred to the Tribunal for consideration. As of 1 January 2003, the Tribunal had considered eleven cases. These cases were connected principally with the request of each State for the prompt release from arrest and detention of vessels in accordance with the 1982 United Nations Convention (Article 292) (five cases); jurisdiction of the coastal State in internal waters, territorial sea, and exclusive economic zone; hot pursuit of ships which violated legislation of the coastal State; the use of flags of convenience; and with the conservation and rational exploitation of living marine resources.

Unlike the International Court of Justice, the Tribunal has the right to consider disputes not only between States, but also between such parties to a contract as State enterprises and natural and juridical persons. We refer to those persons who have the citizenship of a State Party to the 1982 Convention or who are under the effective control of this State or citizens thereof.

27 www.itlos.org/sfart2.en.thml
(Articles 153 and 187, 1982 Convention). Thus, in two instances having important significance for ensuring the interests of States and their natural and juridical persons (seabed disputes and prompt release of ships and crew) participation in the 1982 Convention is an essential condition.

Decisions with regard to disputes are adopted by a majority vote of the members of the Tribunal who are present. Decisions of the Tribunal must be substantiated in detail. Judges who do not concur with the decision of the Tribunal have the right to a dissenting opinion.

A decision of the Tribunal is final and must be fulfilled by all the parties to the dispute. Its decisions have legal force only for the parties to the dispute. The Tribunal has no means or possibilities to ensure the fulfillment of its decisions.

The Tribunal consists of 21 independent judges elected by secret ballot by the States Parties to the 1982 United Nations Convention. Each State may nominate up to two judges who are recognized specialists in the international law of the sea. Judges are elected on the basis of the principle of geographical representation. The Tribunal in particular adheres to the position that each group of States determined by the United Nations General Assembly (African States, Asian States, States of Eastern Europe, States of Latin American and the Caribbean basin, States of Western Europe) should be represented by not more than three judges.

A party to a case under proceedings in the Tribunal which does not have a judge from its State may nominate a so-called judge ad hoc, who participates as an equal with other judges in the consideration of the case. In accordance with the 1982 Convention (Article 289), the Tribunal may invite to its sessions up to two scientific or technical experts to sit at a session of the Tribunal without the right to vote.

Judges are elected for a term of 9 years and may be re-elected to a subsequent 9-year term. The term of office of one-third of the judges (7 persons) expires every three years. The President of the Tribunal is elected by the judges themselves from among their membership. On 1 October 2002 Dolliver Nelson (Grenada) was elected to be President of the Tribunal.

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30 At present judges are on the Tribunal from Argentina, Brazil, Bulgaria, Great Britain, Ghana, Grenada, Germany, Italy, India, Cameroon, China, Lebanon, Russia, Republic of Korea, Senegal, Trinidad and Tobago, Tunisia, Cape Verde Islands, Croatia, France, and Japan.
In accordance with the Statute of the Tribunal (Article 10), the members of the Tribunal, when engaged on the business of the Tribunal, enjoy diplomatic privileges and immunities. The remuneration and various allowances and compensation of elected judges of the Tribunal is free from all types of taxation (Article 18(8), Statute of Tribunal).

The United Nations General Assembly at its LVI session in December 2001 considered questions connected with the activities of the International Tribunal for the Law of the Sea and noted its great contribution to the peaceful settlement of disputes in accordance with Part XV of the 1982 United Nations Convention. Its important role and authority on questions of the interpretation and/or authority of the 1982 Convention was emphasized.31

Conclusion

This book is devoted to a consideration of the theoretical questions of the contemporary international law of the sea from which conclusions are drawn having a profoundly practical importance.

In an era of scientific-technical revolution of marine technologies, States enter into legal relations not only with regard to the use of the surface of the World Ocean, but also in connection with the exploitation of natural resources in the water column and seabed. The spatial sphere of regulation by the international law of the sea is extremely broad, which conditions the need to classify the basic principles of contemporary international law. In this connection issues connected with the study of such institutions of the law of the sea as the exclusive economic zone, continental shelf, seabed beyond the limits of coastal State jurisdiction, and others require further elaboration.

An investigation of international-legal norms and national laws regulating the activities of States in the seas and oceans, as well as on the seabed, mentioned in this book show that the laws of certain States are different from and also are contrary to the norms of universal treaties. After the signature of the 1982 United Nations Convention on the Law of the Sea, a number of coastal, strait, and archipelago States unilaterally declared their intention to adopt national legislation contrary to the Convention which limits the freedom of navigation in straits and overflights of aircraft and freedom of navigation in the territorial sea and exclusive economic zones.

Even after the entry of the 1982 Convention into force, the legislation of certain States-parties to the Convention was not brought into conformity with the Convention provisions. The international legal principle of cooperation which obliges States to combine their efforts to implement the 1982 United Nations Convention, that is, to ensure on their territories and in their relations with other States the operation of all provisions of this universal treaty, is of exceptional urgency in this connection. This is vital in connection with globalization, with the ever increasing interdependence of States under conditions of scientific-technical revolution when effective exploitation of the World Ocean is possible only by taking into account the interests
of all States. Only on this basis is the rational use of resources of the World Ocean possible, the creation of such branches of the ocean economy as food, fuel, energy, mining – all vitally necessary for many States. In the future the dependence of man on ocean wealth will continue to grow. Land resources are rapidly being exhausted. Reserves of nickel and cobalt, for example, are depleting. By the mid-twenty first century up to 70% of the recovery of these metals will be not on land, but from the seabed. In Japan, England, and other States exploitation of technologies to obtain uranium from sea water has in recent years been actively developed, and the seabed recovery of phosphate ores pursued. Scholars from Japan and the United States are carrying on work in Hawaii to obtain electric power by using temperature differences in various strata of sea water.

However, the exploitation of marine resources, just as the development of maritime navigation, is accompanied by rapid pollution of oceanic waters, which is fraught with the most serious consequences for mankind.

Considerable attention is devoted in this book to an analysis of prevailing international-legal norms regulating the preservation of the marine environment and the prevention by the polluting thereof by the basic pollutants. An analysis of international-legal acts in this sphere enabled the author to approach a resolution of the issue by combining the aspiration of mankind for future global exploitation of the ocean with the legitimate aspiration not to permit the pollution and impoverishment of ocean waters. The author is convinced that a system of international cooperation is essential both in the sphere of navigation and economic exploitation of oceanic resources and in other spheres of human activity connected with the World Ocean. The ocean is the common weal of the peoples of the world, and the exploitation and protection thereof, is the common cause of mankind as a whole.

Despite the fact that the principal emphasis in this book has been on considering the legal regime of the principal categories of sea expanses and their classification in the 1982 United Nations Convention, a separate section was devoted to considering the legal status and regime of the Caspian Sea, which is not regulated by the 1982 United Nations Convention. The practical significance of the study of the contemporary international-legal status of the Caspian Sea caused no doubt. Today the international legal status of the Caspian formed in the 1921 Treaty between Russia and Persia is binding not only upon Russia and Iran, but also new subjects of international law and the new Caspian States – Azerbaydzhan, Kazakhstan, Turkménistan – inasmuch as: first, by virtue of the fact that under international law the status of marine expanses formed is binding upon the newly emerging States and, second, by virtue of the law of treaties. A violation by new Caspian States of the said
treaty norms should be classified as a violation of international law, which entails international legal responsibility.\(^1\)

Taking into account the signature by Russia of treaties with the new Caspian States, in particular in 1998 with Kazakhstan on dividing part of the seabed of the Caspian, which undermined in essence the status of the Caspian Sea that had been formed, the contemporary positions of all Caspian States with respect to the legal status of the Caspian have been considered and the conclusion drawn that all Caspian States incline towards the variant of the status of the Caspian proposed by Russia: “the seabed of the Caspian to be divided, the waters to be common”.

In the context of the mass of international legal materials analyzed which regulate contemporary international relations with regard to use of the expanses and natural resources of the World Ocean, one may predict the further development of one of the most complex branches of international law – the international law of the sea.

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