Legislation applying in Somalia offshore waters

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LEGISLATION APPLING IN SOMALIA OFFSHORE WATERS

BY

ALI ABDULLE SABRIE
WORLD MARITIME UNIVERSITY
Malmö, Sweden

LEGISLATION APPLYING IN SOMALIA
OFFSHORE WATERS

BY

ALI ABDULLE SABRIE

A paper submitted to the faculty of the World Maritime
University in partial satisfaction of the requirements
for the awards of a

MASTER OF SCIENCE DEGREE
IN
GENERAL MARITIME ADMINISTRATION

The contents of paper reflected my personal view and
are not necessarily endorsed by the University.

Signature:

Date:

Supervised and assessed by:
Professor Alistair D. Couper
World Maritime University: Malmö-Sweden

Co-assessed by: Professor E. Gold
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ACKNOWLEDGEMENT

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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>TSC</td>
<td>Territorial Sea Convention</td>
</tr>
<tr>
<td>LOSC</td>
<td>Law of the Sea Convention</td>
</tr>
<tr>
<td>CSC</td>
<td>Continental Sea Convention</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>United Nations Commission in International Trade Law</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organisation</td>
</tr>
<tr>
<td>SDR</td>
<td>Somali Democratic Republic</td>
</tr>
<tr>
<td>IOC</td>
<td>Intergovernmental Oceanographic Commission</td>
</tr>
<tr>
<td>SIDA</td>
<td>Swedish International Development Agency</td>
</tr>
<tr>
<td>SAREC</td>
<td>Swedish Agency for Research Cooperation</td>
</tr>
<tr>
<td>SMP</td>
<td>Somali Marine Product</td>
</tr>
<tr>
<td>NWCFDP</td>
<td>North West Coast Fishery Development Project</td>
</tr>
<tr>
<td>NECFISH</td>
<td>North East Coast Fishing</td>
</tr>
<tr>
<td>DANIDA</td>
<td>Danish International Development Agency</td>
</tr>
</tbody>
</table>
UNCLOS III Third United Nations Conference on the Law of the Sea

JONSDAP Joint North Sea Data Acquisition Project

WMO World Meteorological Organisation

ODAS Ocean Data Acquisition Systems

IGOSS Integrated Global Ocean Station Systems

UNEP United Nations Environment Programme

UNCTAD United Nations Conference on Trade and Development

WIPO World Intellectual Property Organisation

IMO International Maritime Organisation
I wish to express my everlasting gratitude to General Manager of Somali Shipping Cooperation Ahmed Hagi Gal for spuring me to pursue this Course.

I am particularly indebted, to Professor Alastair Couper, who despite a very busy time table, found time to check my progress and give the necessary assistance.

Finally I would like express my gratitude to my Mother, Father, Brothers, Sisters and my son who provided me a great hand during my study.
Somalia is located in norther-eastern coast of Africa known as the Horn of Africa. It has a coastline of 3,300 Km, extending between the boundaries of Djibouti in the North and Kenya in the South. About 1,300 Km, of it falls within the Gulf of Aden, which opens to the Indian Ocean in the east and to the Red Sea in the west, while 2000 Km face the Indian Ocean. Somalia has an Exclusive Economic Zone (EEZ) of 200 in width, and a total continental shelf area of about 39,000 Km².

Somalia is a developing country where the level of industrialization and urbanization is still relative modest. Consequently, marine pollution is caused by domestic wastes mainly in urban areas along the coast and may develop into a serious pollution problem in the future. In some coastal locations of Mogadishu, raw sewage is directly discharged into the coastal waters and this is a potential hazard to the human health and marine environment. Although no systematic survey of present waste management practices by coastal communities appears to have been carried out the problem is there. Town planning laws and a sanitary code do exist but they contain no antipollution measures. There are laws on water, ports and industries but these contain little on the control of pollution.

The Maritime Code of Somalia was written during the Italian protectorate and up to present time only some amendments have been made so the main part of the code...
still remains unmodified.

The code has 252 articles, and is divided into six parts:

1) administration organization of navigation;

2) ownership and fitting equipment of vessels,

3) obligation relating to the operation of vessels,

4) procedural provisions,

5) maritime crimes

6a- provisions governing discipline

6b- transitory and final provision.

A great many of presidential Decrees have made amendments to the maritime code but the code itself has not been revised.
Now a rational commission has been appointed to draft a new maritime code since the Somalia Government has ratified the International Conventions which deal with maritime matters as i.e SOLAS 1960 Convention and Load Line Convention of 1966.
The government is also considering ratifying more IMO conventions such SOLAS 1974, MARPOL 1973 and the International Convention on Civil Liability for Oil Pollution and the United Nation’s Convention on the Law of the Sea.
Chapter I

This presents the definitions of internal waters, legal status of internal waters, the right of access to ports and jurisdiction in internal waters. It also describes the territorial sea, the development of the concept, the breadth of the territorial sea and the right of innocent passage. It also describes the problem of delimitation between opposite and adjacent state, legal status of the continental shelf and the rights of coastal states.

Chapter II

This chapter deals with the offshore resource in Somalia, such as Fishing, Mining, Oil and Gas. It also deals with living resource distribution, research, policy, strategy, planned projects, production and marketing.

Chapter III

This chapter deals with the evolution of the EEZ, its delimitation and the rights and duties of the coastal state in the EEZ. It also describes Marine Scientific Research and Settlement of disputes.

Chapter IV

This deals with the problem of prevention and combat of marine pollution, tanker traffic in the region and Regional combating of marine pollution.
This chapter also describes legislation relevant to marine pollution, Aid to Navigation in Somalia and hydrographic survey.

Chapter V

This chapter is the conclusion of the study with some recommendations to suggest improvement in the maritime legislation of the Somali Democratic Republic.
CHAPTER I

INTERNAL WATERS

Definition:

Internal, national or interior waters are those waters which lie on the landward side of the baseline from which the territorial sea and other maritime zones are measured. Thus internal waters of maritime character mostly comprise bays, estuaries ports, and waters enclosed by straight baselines.

1.1 Legal status

The principal legal definition of internal waters is a description contained in Article 5(1), of the convention on Territorial Sea and the Contiguous Zone:

Waters on the landward side of the base line of the territorial sea form part of the internal waters of a state. Article 5(1).

Based upon conventional law, the two essential elements of internal waters are that (a) they are located immediately adjacent to the land territory of a state and (b) because of their proximity to the state, the state exercises competence to prescribe and enforce its laws in a manner that
is practically identical to its national jurisdictional competence.

The application of the two elements, can be observed by discussing the "claim" made by states in order to have the right to control access to their internal waters as well as to apply their authority to vessels in ports.

1.1.2 The right of access to ports

Firstly, the main reason why states claim the right to control access to their internal waters is that these internal waters provide accessibility to a state's land territory. Therefore, the concern is for self-defence and security against intrusion or encroachment. In connection therewith, and for the purpose of providing a basic awareness of the divergent opinions, there are at least three viewpoints regarding the claim to control access, namely, (a) to allow open access, (b) to handle right of entry into ports, also implying the right to load and unload cargo and to embark and disembark passengers as well, and (c), State practice in recent centuries affords no indication that states may demand access to the ports of other states as a matter of right.

Judicial precedent on the subject is practically non-existent. There is one arbitration case which held that every state must open ports to foreign merchant vessels except in time of war. (Ref. DUNBER the Law of Terr. water)

Thussofar, the "access" discussion has been limited to a coastal state's jurisdictional competence but the problem
of access to internal waters (i.e., ports, harbours and roadsteads) also involves land-locked States. In this regard, Art.3 of the Convention on the High Seas provides:

"In order to enjoy the freedom of the sea on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end State situated between the sea and a State having no sea-coast shall by common agreement with latter and in conformity with existing International Convention accord (a) To the State having no sea-coast on a basis of reciprocity, free transit through their territory."

It is apparent that it is unwise for States not to require access to ports with land-locked States. Since this right is provided by "terms agreed" under conventional law, it persists may be of limited benefit.

I am adding "access" claim; it is necessary to note that the viewpoint that is adhered to by a coastal state (or a "special interest" of an archipelagic state or "mid-sea archipelago") regarding access should be considered in the light of a state's desire to promote international commerce and navigation as much as possible. To deny access would mean an end to international maritime trade.

1.1.3 Jurisdiction in internal water

By entering foreign ports, ships put themselves within the territorial sovereignty of the coastal state. Accordingly,
that state is entitled to enforce its laws on the ship and those on board, subject to normal rules concerning sovereign and diplomatic immunities, which arise chiefly in the case of state owned ships. But since ships are more or less self-contained units having not only a comprehensive body of laws – those of the flag state – applicable to them while in foreign ports, but also a system for the enforcement of those flag state laws through the powers of the captain and local consul, coastal states commonly enforce their laws only in cases where their interests are engaged; whereas matters relating solely to the "internal economy" of the ship are left to the authorities of the flag state. When discussing jurisdictional authority, it is essential to first categorize vessels as warships, merchant ships, and private or governmental ships. Warships are treated as aspecial category or class because they embody the symbolic sovereignty of a state. Nevertheless, the sovereign coastal state can impose reasonable entry requirements prior to entry into ports (e.g. length of permitted time in port, etc).

Government ships other than warships are treated in the same manner as warships. Under customary international law, government ships (whether owned or operated) have no greater access to internal waters than warships.

Coastal states will of course, exercise their jurisdiction in matters which do not solely concern the "internal economy" of foreign ships. Pollution, pilotage and navigation laws are routinely enforced upon such vessels and as we have noted, ships may be arrested in the course of civil proceeding in the coastal state. But states do not exercise their jurisdiction in respect of the internal
affairs of foreign ships in their ports even though, as a matter of strict law, they are entitled to do so because of the voluntary entry of those ships within their Territorial Jurisdiction. This reasoning will clearly not apply to ships driven into internal waters by force majeure or distress. Accordingly international law demands that they be given a degree of immunity from coastal state jurisdiction. They are entitled to be excused from liabilities which inevitably arise from their entry in distress, for example, liability to pay import duties on their cargoes, or liability to arrest.

1.2 Territorial sea

The legal definition of territorial sea is stated in the Article 1 and 2, convention on the Territorial Sea and Contiguous Zone.

Article 1

1. "The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea."

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2 "The sovereignty of a coastal State extends to air space over the territorial sea as well as to its bed and subsoil."
There are two problems concerning the definitions of Article 1 and 2, namely, (a) there is no definite distance agreed upon (i.e. some states claim 200 miles, other states claim three miles, etc.); and (b), the wording of Article 1 ("The sovereignty of a State extends") particularly, allows a coastal state complete competence to prescribe and enforce its rules over the breadth of the territorial sea. The implication of the failure of states to agree upon a distance and uniformity regarding jurisdictional authority is sufficient to say that each time a state is wishes to expand its jurisdictional authority seaward, it asserts a unilateral declaration that invariably increases the breadth of its territorial sea from three miles, for example, to 50 or 100 or 200 miles. The declaration is made in order to gain exclusive access to minerals, fish and other resources available in areas of the high seas. Ultimately, this lack of uniformity could conceivably cause the termination of every law of the sea doctrines in international law.

1.2.1 Development of the concept

Although recent legislation in several states, such as Guyana, Pakistan and the Seychelles, declares that the state’s sovereignty extends and has always extended to its territorial sea, such statements are historically incorrect, because the true picture of the development of the concept is rather more complex. Since the replacement of the Holy Roman Empire by a system of independent sovereign states with definite boundaries—which was termed the birth of territoriality in the sixteenth century—it has been
generally accepted that coastal states enjoy certain rights to regulate in their own interests activities in the sea adjoining their coasts. Even during the great debates in the seventeenth century between Grotius, an advocate of the freedom of the seas, and the proponents of "closed seas", this much was agreed. Groutius, for example, did not claim that all the seas were open to use by all men. Borrowing a distinction drawn by the Italian civil lawyer, Baldus in the fourteenth century, between rights of property (dominium) and rights of jurisdiction or control (imperium) in the sea, Grotius argued that there could be property rights in the high seas but he seems to have admitted the existence of jurisdiction without property rights in coastal waters, which could be effectively controlled from land. Grotius' position was developed during the seventeenth century by writers, such as Pontanus in Holland, Welwood in Scotland, and Meadlowes in England, who abandoned his distinction between property and jurisdiction rights in the marginal belt. On the basis that property rights demand the existence of jurisdiction for protection and that the right to exclude, for example, foreign fishermen by the exercise of the jurisdiction is tantamount to the existence of property rights. The idea gained ground from a simple distinction between the high seas, free and open to all, and coastal waters susceptible to appropriation by the adjacent states. By the end of that century this idea was well established: for instance, the influential work by Bynkershoek, De Dominio Maris published in 1702, was based upon the twin pillars of the freedom of the high seas and the "sovereignty" of the coastal state over its adjacent sea.

Although Bynkershoek himself regarded this "sovereignty" as complete, and as including the right to deny
foreign ships passage through the territorial sea, his view was not generally shared and was not to survive. Vattel whose treatise Le droit des gens published in 1758, declared that ships of all states enjoy the right of innocent passage through the territorial sea. While the exact scope of this right has been questioned in several respects, such as its extension to warships, its existence has not been seriously challenged since the early nineteenth century.

As the distinction between the high seas and the territorial sea (or Territorial waters, as it was and is commonly known) crystallised, two matters remained unresolved: first, the question of the width of those waters, and second, the question of the precise jurisdical nature of coastal States rights over the territorial sea. Some writers claimed that coastal States either had proprietorial rights in their territorial seas, or at least enjoyed sovereignty or plenary jurisdiction over them. The practice of many states supported this view: for example, by the early nineteenth century British and American jurisdiction claims were premised upon the existence of a belt of a maritime territory surrounding a state, and the civil codes adopted in the middle of that century by several Latin American States which treated territorial seas as integral parts of the State. On the other hand, States such as France and Spain did not claim ownership or sovereignty over the territorial sea but merely jurisdictional competence of adjacent waters for specific purposes notably defence and the regulation of customers and fishing. These two broad approaches coexisted for several decades. They were considered by the English Court for Crown cases Reserved in the Franconia case (R.V.1876), in which the question of the status of the territorial sea arose. Keyn was the Commander of the German ship, Franconia, which
collided with the British ship Strathclyde, two and a half miles off Dover beach, causing the death of thirty-eight of the passengers on Strathclyde. Keyn was prosecuted for manslaughter and convicted by an English court. He appealed on the grounds that the court lacked jurisdiction to try him, because he was a foreigner and that he had at the material time been sailing on a foreign ship on the high seas. The crown maintained that the collision, having occurred within three miles of the shore, had occurred within the realm and so within British jurisdiction. After an extensive review of the conflicting authorities, contained in a set of judgments of great learning, the Court for Crown Cases Reserved decided, by a majority of seven to six (a fourteenth judge would have joined the majority, but died before judgment was given) to allow the appeal. The common thread running through the majority of the judgments was the view that even though Great Britain might be entitled to claim a territorial sea, it had not expressly done so, and until legislation repaired the omission, British jurisdiction did not extend to foreigners and foreign ships beyond British shores. Some judges went further and argued that Britain could not, consistently with international law, apply all of its criminal law to foreigners in the territorial sea.

The Franconia decision was clearly not expected by British government, and two years later English law was brought back into line with the view of international law which Great Britain had taken throughout the nineteenth century, by the enactment of the Territorial Waters Jurisdiction Act, 1878. (Ref. CHURCHILL the Law of the Sea 1983)

That Act reaffirmed the "Rightful jurisdiction, of the Crown over territorial waters, which were deemed by inter-
national law to be within the territorial sovereignty of Her Majesty'.

Doubts concerning the juridical nature of the territorial sea survived into the present century. States, such as France, Italy, Russia and the Ottoman Empire continued to claim separate jurisdictional zones for various purposes, rather than sovereignty and plenary jurisdiction over a belt of maritime territory as was claimed, for example, by the countries of the British Empire (which had agreed upon a single three-mile limit for all jurisdictional purposes at the 1923 Imperial Conference), the United States, the Netherlands and the Scandinavian States. Jurists were similarly divided in their views, as is evident, for instance, from the debates of the international law association and of the committee of experts preparing for the Hague Codification Conference, both in the 1920s. And in the twenty years preceding the 1930 Hague Conference the question had arisen in several connections notably in relation to the limits of neutrality and naval warfare during World War I; the work of the 1919 Conference on Aerial Navigation concerning the disputes over the application of the United States liquor laws to foreign ships, and the preparation for the Hague Conference itself. In each case, it was evident that support for the principle of coastal State sovereignty over the territorial sea was growing.

The replies of governments to the schedule of points circulated before the Hague Conference showed that most respondents preferred the sovereignty doctrine. Some countries, such as France and Poland, considered the juridical status of the territorial sea unsettled; and other states which had not replied to the schedule, such as
Greece and Czechoslovakia, argued at the conference against the ascription of sovereignty to the coastal state. There was a general agreement that the principal of coastal sovereignty should be included in any draft treaty. The final text forwarded to the conference by its Territorial Waters Committee accordingly provided that:

The territory of a State includes a belt of sea described in this convention as territorial sea, sovereignty over this belt is exercised subject to the conditions prescribed by the present Convention and the other rules of international law.

The Maritime Code of Somalia 1957 article 1, defined the limits of the territorial sea in the following terms:

"the sovereignty of the territory embraces the zone of the sea to the distance of six nautical miles along the continental and insular coasts. Distance is measured from the coastline by the low tide."

This paragraph was however amended and replaced by article 3 of the Law No. 7 of 1 November 1966, which read as follows:

"Subject to the generally accepted rules of International Law, the portion of sea to the extend of twelve nautical miles within the continental and insular coasts shall be under the sovereignty of the state. The extent shall be measured from the coastal line along the low-water mark". This itself was amended by article 1 of Law No. 37 of September, 1972, to the following effect:
"The Somali territorial sea includeds the portion of the sea to the extent of 200 nautical miles within the continental and insular coasts;"

Therefore, the existing law extends Somali sovereignty to a distance of 200 nautical miles.

We have, however, signed the United Nations Convention on the Law of the Sea but have not ratified it yet. Though we still support the convention we will not let any state question our already acquired rights under Law No. 37 of 10 September 1972.

1.2.2 The breadth of territorial seas

Throughout the entire history of the territorial sea, the question of its breadth has been a matter of controversy. Early practice and doctrine, their sixteenth and seventeenth century, used vague criteria, such as the limits of visibility to determine the extent of the waters over which control was claimed. Later, writers, such as Grotius and Fynkeshoek did much to promote the tendency, already evident in the practice of some states, to replace this unsatisfactory criterion with the rule that a coastal state’s rights over marginal water extended up to the point at which those waters could be controlled by shore-based cannon. This "cannon shot" doctrine was probably not intended to support the establishment of a continuous belt of maritime territory along the whole coast, but rather to acknowledge the possibility of "pockets" of control by actual cannons present at various places on shore, this being in accordance with Dutch and Mediterranean state practice of the day. Scandinavian states, on the other hand, did not employ the cannon shot rule, but claimed maritime dominium over fixed distances from the shore along the whole coastaline,
regardless of the presence or absence of shore batteries. These distances were progressively narrowed from those claimed around the sixteenth century and had largely settled at a four-mile Scandinavian "league" by the mid-eighteenth century.

The "cannon shot" and fixed distance approaches coexisted for several generations and eventually came together. The decisive move towards fusion of the two approaches came at the end of the eighteenth century. In 1782 Galiani suggested that it would be reasonable to adopt a three-mile limit along the whole coast, rather than await the establishment of coastal batteries at any particular point. The three-mile limit was adopted for neutrality purposes by the United States at the beginning of the war of the Coalition in 1973. The three-mile rule gained widespread and rapid acceptance; it was recognised, for example, by Lord Stowell in the Anna (Great Britain, 1805). The survival of this distance throughout the nineteenth century, despite increases in the range of artillery, is explicable by the interest of the major naval powers, which were its main supporters in preserving the maximum freedom of navigation for their merchant fleets and warships.

The 1930 Hague Conference attempted to reach agreement upon the width of the territorial sea, but failed. At the final meeting of its Territorial Waters Commitee, twenty states sought territorial seas of three miles, twelve sought six miles and the four Scandinavian states sought recognition of their own historic four-mile claim, of these states, several wanted the right to claim contiguous zones beyond the territorial sea. No general agreement was reached. Consequently Gilbert Gidel four years later
expressed the view that there was no rule of international law fixing the limit of the territorial sea except in the negative sense that the validity of claims of up to three miles could not be denied. Subsequently both the First (1958) and the Second (1960) UN Conferences on the Law of the Sea tried to agree upon a limit without success.

Although a proposal for a six-mile territorial sea coupled with an additional six-mile fishery limit failed to be adopted at the second UN conference by only one vote, it is evident that such a compromise would have been short-lived even if it had been adopted. Whereas in 1960 approximately twenty two states claimed territory of three miles, and eighteen more claimed between four and ten miles eleven claimed twelve and two more than twelve miles. This pattern is now radically different. At present, approximately twenty states claim three miles, six claim four or six miles, eighty-one claim twelve, and twenty-five more than twelve miles.

The Law of the Sea Convention sets the limit of territorial waters at twelve miles (art.3) in accordance with the clearly dominant trend in state practice. Accordingly, the present position in international law appears to be as follows: For parties to the Law of the Sea Convention, and all other States recognising the lawfulness of territorial sea claims up to at least twelve-miles, the twelve miles limit will prevail, and wider claims will not be recognised, except as between states making or otherwise recognising such claims, for example 200-mile claims on be apposable to Argentina and Brasil, both of which claim 200-mile territorial seas, but not to say, India, which claims only twelve miles. States making narrower
claims notably the remaining three-mile States and which have persistently objected to wider claims (the United States appears to be the only one) will not be bound even by the twelve-mile claims, until they become parties to the Convention or otherwise recognise the legality of twelve-mile claims. (A.V. LOWE the Law of the Sea 1983)

1.2.3 The right of innocent passage

The existence of a right of innocent passage through the territorial sea for foreign ships was widely conceded throughout the period in which the concept of the territorial sea began to crystallise, and particularly since the time of vattel. This was no well defined right, around which nations of coastal sovereignty collected. The concept of innocent passage and coastal sovereignty developed in parallel, each helping to mould the other. The definition of "passage" is a relatively easy matter. It includes not only actual passage through the territorial sea, but also stopping and anchoring in so far as this is incidental to ordinary navigation or rendered necessary by force majeure or distress (TSC, Art. 14 "3"). The Law of the Sea Convention expressly extends the distress exception to cases where a ship seeks to assist another ship, person or aircraft in danger or distress (LOS C, Art 18 "2"). Otherwise ships are not allowed to "hover or cruise around in the territorial sea because, regardless of whether or not they are "innocent" and under the Law of the Sea Convention they certainly would not be innocent, because they would be engaged in passage: passage must be "continuous" and expeditions (LOS C, Art. 18 "2"). All submarines and other underwater vehicles must navigate on surface
(TSC, art. 14 "26") (LOSC, art 20). These conventional definitions are in accordance with a long and consistent general among states. The 1930 Hague Conference articles introduced a new element into the definition of passage not previously adopted in State practice, by including ships travelling through the territorial sea to on from internal waters within the scope of the right of innocent passage. This was not because it was considered to be any right, analogous to innocent passage, to enter or leave internal waters; thus coastal states retained the right to take, impose and enforce conditions for admission to internal waters (TSC,art.16 "2"); (LOSC,art.25 "2"). Rather, it was done for the convenience of bringing such ships within the legal regime of ships in innocent passage, for general purpose of coastal State control and jurisdiction. The territorial Sea Conventions adopted the same position, in article 14(2), and that article has been carried over into the Law of the Sea Convention, modified slightly so as to include also ships navigating the territorial sea in order to call at roadsteads or port facilities outside internal waters, within the scope of "passage" (LOSC,art.18 "1").

- INNOCENCE -

For long the criterion of innocence lacked any clear definition, and probably any clear meaning. Thus, during the nineteenth and early twentieth centuries, Anglo-American practice and some jurists, such as Schucking, whose reports prepared the ground for the 1930 Hague Conference, appear to have regarded innocence as a question distinct from that of compliance with coastal State laws.
From their point of view it was not necessary that any coastal law should have been violated in order that innocence be lost. It was enough that vital coastal interests, such as security, be prejudiced. Conversely, it would seem innocent character, but only those which did have such a prejudicial effect. Further more if prejudice to coastal interests were the criterion, it would not be necessary to point to any particular act of the foreign ship as being incompatible with innocence and the mere presence of the ship could be enough to threaten the coastal State. On the other hand, other States, and most other jurists, drew no such distinction, either expounding the law as if the duty to comply with local laws was in essence the same as the duty to remain "innocent" during passage, or taking no clear position on the question.

The 1930 Hague Conference adopted a text somewhat between these views, namely.

"passage" is not innocent when a vessel makes use of the territorial sea of coastal state for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interests of the State.

Although the more flexible approach of the International Court was fresh in the minds of the International Law Commissioners when they began preparing draft articles on the territorial sea, most of them preferred the approach adopted in the 1930 Hague draft, in which non-innocence was defined by reference to acts prejudicing coastal State interests. The final Commission text provided that passage was innocent so long as the ship did not commit any acts prejudicial to the security of the coastal state or contrary to the present rules, or to other rules of international law. The term "present rule" was understood, as the
commentary makes clear, to refer to the duty which was imposed by another of the draft articles to comply with coastal state legislation on the matters, such as public health, immigration, customs and fiscal matters, navigation, fishing and the protection of the products of territorial sea, these being the interests which the coastal state was entitled to protect in its territorial sea.

The Commission's draft article was not accepted by the 1958 Conference. The United States proposed an amendment stating that "passage" is innocent so long as it is not prejudicial to the security of coastal state. Other states objected to this on two main grounds: first, that deletion of the reference to acts of the passing ship gave too much latitude to the coastal state in the determination of innocence and (which is more difficult to accept) was contrary to existing international law, and secondly that interest other than security deserved protection. A compromise text was eventually adopted as article 14(4) of the Territorial Sea Convention, which reads:

(4): "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 these articles and with other rules of international law."

1.3 Continental shelf

1.3.1 Delimitation between opposite and adjacent state

Formulas for the determination of the outer limit of the continental shelf and for the delimitation of the con-
continental shelf between apposite or adjacent states were first provided by the Geneva Convention on the Continental Shelf, 1958. Under this Convention, legal continental shelf was defined as the seabed subsoil of the submarine areas adjacent to the coast but outside the territorial sea to a sea water depth of 200 meters or beyond that limit to where the depth of the superjacent waters permitted the exploitation of natural resources of the seabed and subsoil. There was thus an automatic entitlement to a depth of 200 meters but further extension of this entitlement was dependent upon technological capacity.

Since 1958 three important decisions on delimitation issues have been given. Two were by the International Court of Justice in the North Sea Continental Shelf case 1969, and the Continental shelf (Tunisia, Libya) case 1982, the third by a Court of Arbitration in the Angola-French Continental Shelf case 1977-78. The North Sea Judgment (based on international customary law) has proved to be particularly influential in state practice and in the drafting of a new definition of legal continental shelf in the 1982 Convention.

The definition of the continental shelf in the 1982 Convention is complex and, like much of the convention, it is the product of the compromise.

The continental shelf of a coastal state compromises the seabed 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 continen-
tal margin does not extend up to the distance (Article 76 para.1).

It is clear from this definition that a coastal state has an automatic right to a continental shelf out to 200nm, irrespective of the breadth of the continental margin. It is in relation to the delimitation of the outer limit in a situation where the continental margin extends beyond 200nm that a complex formulation is provided.

In the matter of delimitation of continental shelf between apposite or adjacent states, the 1958 Geneva Convention embodied a three point formula under which such delimitation were to be effected (Article 6): (a) by agreement which failing (b) by application of the equidistant principle.

1.3.2 The legal status of the continental shelf

In the early years of the present century in the period leading up to the Hague Codification Conference of 1930, it became generally accepted that possession of a territorial sea bestowed on the coastal state proprietary rights over the resource of that sea including its bed and subsoil. There were much older claims to the resources of the subsoil, exploited by tunnelling from the shore as in the United Kindom which had long claimed such a right in relation to the submarines off Cornwall. But the significance of the twentieth century development of the law on this matter was that it drew a clear distinction between the bed of the territorial sea, which automatically pertained to the coastal state, and the bed of the high seas, which did not. The bed of the high seas could, however, be subject to the effective occupation by a state, which was
sufficient to give that state title to its resources. Mining from the coast was one way of achieving effective occupation, resulting in proprietorial rights to parts of the subsoil. Regular exploitation of, and the assertion of rights of control over, specific areas of the surface of the bed could similarly give such rights to such areas. This was fairly common practice. The United Kingdom, for example, claimed sovereign rights in respect of pearl and chank fisheries off Ceylon, and France in respect of sponge fisheries beyond the territorial sea of Tunis. Such claims were widely recognised, and did not compromise the legal regime of the high seas, since the freedom of fishing and navigation in the superjacent waters were unaffected. However, some authorities disputed the right of states to appropriate areas of the sea bed, on the ground that it was in law res communis, and therefore incapable of unilateral appropriation, rather than res nullius, in which case it would have been open for appropriation by the first state establishing effective occupation. Nevertheless exclusive rights to harvest the resource of specific areas of the sea bed, apart from claims to ownerships of the bed itself, seem to generally have been admitted.

1.3.3 The rights of the coastal state

Since the continental shelf was originally the bed of an area which remained in the high seas (CSC, art.3), it was inevitable that coastal state rights in the area should be strictly limited. This position has been modified by the establishment of the EEZ as an area of maritime jurisdiction, and it is now necessary to consider separately coastal state right over the shelf within the 200 mile zone (where the continental shelf regime and EEZ regime coex-
ist) and beyond the 200 mile zone (where only the continental shelf regime applies).

Rights within the 200 mile zone

The basic principle which has always governed coastal state rights is that these rights are limited to the exploration of the shelf and exploitation of its natural resources. In other words, the shelf is not regarded as part of the territory of the coastal state. Rights to all the natural resources of the bed are however, attached to the coastal state.

The sovereign rights attached to the coastal state cover all the natural resources of the shelf, that is, mineral and other non-living resources of the sea bed and subsoil together with living organisms belonging to sedentary species, i.e. organisms which, at the harvestable stage, either are immobile on or under the sea bed or are unable to move except in constant physical contact with the sea bed or the subsoil (CSC, Art. 2 "4", LOSC, Art. 77 "4"). The coastal state has sovereignty for the purpose of exploring the shelf and exploiting its natural resources (CSC, Art. 2 "1", LOSC, Art. 56 "1", 77 "1"). These rights are exclusive in the sense that no state can undertake such activities without the consent of the coastal state (CSC, Art. 2 "2", LOSC, Art. 77 "2"), and the rights do not depend on occupation or proclamation but are automatically attach to the coastal state (CSC, Art. 2 "3", LOSC, Art. 77 "3"). It follows that it is for the coastal state, although it has its own laws and regulations to define the conditions under which such exploration and exploitation are to be conducted. A wealth of such legislation, particularly in relation to offshore oil and gas and sedentary fisheries exists. The coastal state’s rights are not,
however, unlimited. In earlier practice (and under the Continental Shelf Convention) the superjacent waters were the high seas, and the freedom of navigation and fisheries were preserved. However now the latter freedom has disappeared in the EEZ, but it still provides that:

The exercise of the rights of the coastal state over the continental shelf must not infringe with navigation or result unjustifiable interference with other rights and freedoms of other states as provided in this Convention (LOSC, Art. 78 "2").

Rights beyond the 200 miles zone

Coastal state rights over the shelf beyond the 200 miles zone are slightly different, since the superjacent waters are in that area of the high seas, rather than part of the coastal state's EEZ. Generally the same rights exist in relation to exploration, exploitation, establishment of installations, the same obligations regarding respect for the freedom of pipeline and cable laying and of navigation. Nevertheless there is significant difference. First, in relation to living resources the question of what is comprised within the category of sedentary species becomes critical. While sedentary species still remain exclusively under the rights of the coastal state, non-sedentary species fall under the regime of free fishing, as one of the freedoms of the high seas. Accordingly if commercial fisheries are found at such distances from land, disputes over whether a particular species is sedentary could arise as they have done in the past. Secondly, and more important, exploitation of non-living resources is subject to additional restrictions under the
Law of the Sea Convention. Where such resources are exploited in this outer portion of the shelf, the coastal state which, of course, has the exclusive right to engage in such exploitation — would have to pay to the International Sea Bed Authority a proportion of the value or volume of the production at the site after the first five years of exploitation. The proportion would rise from one percent in the sixth year to seven percent in the twelfth and following years. The authority would distribute any such payments to states parties to the Convention: on the basis of the equitable sharing criteria, taking into account the interest and needs of a developing state, particularly the least developed and land-locked among them. (LOSC, Art. 82 "4"). Developing countries which are not importers of the minerals exploited would be exempt from the obligation to pay. (LOSC, art 82 "3".)
2.1. Fishing

The development of fishery resources is being given high priority in Somalia primarily as a source of exports. Emphasis is also being given to the development of fisheries to provide food and to form the economic base for fishing cooperatives and the resettlement of people displaced by drought. By 1981 there was an estimated figure of 4000 full-time and 10,000 part-time fishermen in 29 cooperatives.

Fisheries production increased substantially during the early 1970's and then fell due to the withdrawal of the Soviets from the industrial fishery and lack of spare parts for the powered artisanal boats. Between 1982 and 1984 the total catch increased from 8,733 tonnes to an estimated 18,000 tonnes. The artisanal contribution to the total production was 52.7 percent in 1982 and 44.4 percent in 1984. This does not necessarily mean that artisanal fisheries are playing a decreasing role, industrial fisheries have grown in production mainly through an "open door" policy which encourages foreign vessels to fish in Somali waters under licence royalties. From these licences Somalia earned some 481,000 US dollars which represents an estimated 20 percent of the value of the fish caught in 1984. In terms of employment, food production for domestic needs and contribution to GDP, artisanal fisheries may well play a far more important role than industrial fisheries.
Fish exports were valued at 434,286 US dollars in 1984. The development of the export market is limited by the type of fish available and efforts are being made to produce high quality—high value exports which can compete in the world market.

Within the Ministry of Fisheries there is the "coastal Development Agency" which was set up to implement the development and resettlement fishering communities in Adale Brava, El-Ahmed near Merca and Eil. This agency also trains fishermen and helps existing fishing communities to improve catches and marketing. The responsibilities of this agency extend well beyond fisheries and include the provision of health clinics and education at the four resettlement sites.

Donor assistance to the fisheries sector has taken different forms ranging from gifts of sophisticated vessels to the provision of cold storage facilities, ice-making plants, jetties, etc. The impact of these projects has generally been positive and no coastal management issue of any major significance have resulted. However, there is a general lack of information about the relationship between the coastal and marine environment and fisheries resources. For example the shrimp fishery in the Juba Delta is identified as a valuable resource but there is no basic information available as to life cycles of the shrimp, nursery areas, food sources etc.

The only extensive stock assessment carried out in Somali waters deal with offshore fisheries. However, major donor assisted projects have been implemented which rely basically on inshore fish stocks. An example is the fish processing plant at Kismayo. Originally this project was based on assessments of offshore fish stocks and the management plan calls for the development of this part of the fishery. However, due to unforeseen cultural factors,
there are few prospects of local fishermen extending fishing efforts into offshore waters. Therefore the project derives the bulk of its fish and lobsters from coral reef related fisheries. This means that projects are being planned with inadequate information on fishery resources and their medium to long-term economic viability is at risk if the fish stocks are subject to unsustainable harvesting pressure or reduced due to poor environmental management such as dumping of dredge spoils near coral reef areas. Fisheries management at present can only be related to potential controls over harvesting pressure. Without more detailed environmental information to explain the resources base of the fishery, it will be impossible to institute a management programme which can promote the sustained development of the resources.

2.1.2 Resource, research, policy and strategy

The marine living resources distribution

Large pelagic fish

These are the species of tuna and big marckerel, mainly yellow tuna (Thunnus albacares), long tail tuna (Thunnus tonggol), bigeye tuna (Thunnus obesus), bonito (Sarda orientalist) skipjack (Katsu worus pelaimis) and Spanish mackerel (Scomberomorus commersoni). Their main area of distribution is at the north-east coast between Bosaso and Ras Asir, and are usually caught inshore. The seasonal variation in abundance is considerable, confirming the oceanic migratory pattern of the species. There are two peaks in the landings, viz in November and in March. During the south-west monsoon the abundance of tuna is assumed to be low. (Ref. FAO, Fishery survey S.D.R).

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Or the south-east coast big pelagic fish such as Spanish mackerel and tuna make importante contributions to the artisanal catches. The primary season for Spanish mackerel is from March to June and for tuna October and November.

Small pelagic fish.

The dominating species are Indian oil sardinella, rainbow sardine, scads, mackerel, horse mackerel and lesser quantities of anchovies. The main distributional area of these species are on the north-east coast between Ras Matber and Ras Asir, part of the stocks can make seasonal migrations into the Bosaso Ras Asir region. Outside these two regions the presence of small pelagic fish is scattered and does not form a basis for any fishery. (Ref. FAO)

Demersal fish (bony fishes)

The demersal fish fauna of Somalia consist of several hundred species. The diversity of species is highest in the coral reef region from Adale to the Kenya border. The commercial demersal species make importante contributions to the artisanal fisheries all along the coast. However, on the basis of the very limited information available, no permanent areas of high densities of demersal fish can be pointed out. Sharks and Rays (Elasmobranches)

Sharks play an important role in the Somalian tradicional fishery. They are present all along the coast but are caught mainly off the north coast and espacially in the southern part of the east coast where they often represent 40 percent of the catch. The principal species are

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hammerheads (sphyraenidae), grey sharks and mako shark.

A variety of spiny lobster of the genus *Panulirus* is found off the entire coast of Somalia. They are caught by divers in shallow waters and occasionally by gill nets. The highest densities are found among the coral reefs on the south east coast. Two species of deep sea lobsters are also present, *Puerulus sewelli* and *P. Carinatus*, which are encountered at depths between 150 and 400 m along the east coast.

**Shrimps**

Small quantities of penaeid shrimps are found in the shallow waters in south-east Somalia, particularly between the mouth of the Juta river and the Kenyan border. Presence of deep sea shrimps was reported by a Spanish research vessel in 1981. The shrimps were located on the east coast in the 100-200m bottom depth zone particularly south of Mogadishu.

**Marine Turtles**

The main marine turtles are the green turtle (*Chelonia mydas*) and hawksbile turtle (*Eretmochelys imbricata*). The turtles are consumed locally and the shells are sold to tourists for a good price. During the sixties a turtle canning factory was operational in Kismayo. During 1967-68, 6800 turtles were caught off Hordio, close to Ras Hafun.

**Policies and Strategies.**

The Ministry of Fisheries and Marine Resources has the
overall management responsibilities for the sector. The Ministry is led by a minister who is a politician and top policy maker, assisted by a vice-minister. The ministry also has a permanent secretary who is a civil servant and top administrator assisted by a director general. The ministry has six departments and a number of agencies and companies under it. The agencies and the companies have autonomous status and though they operate within the framework of the ministrical policy directives, are nonetheless free to take the day to day decisions of their organizations with complete independence.

Since fisheries development is of recent origin, and since such a development has to start from scratch, the burden of laying the foundation for a viable fisheries programme fell upon the Ministry and consisted initially of:

a) Establishing of coastal fisheries communities and their organization in the form of cooperatives
b) The introduction and supply of artisanal fishing boats.
c) The procurement and supply of fishing gaers
d) The establishment of the coastal development project charged with responsibility of extending services to the fishing communities
e) The establishment of the necessary infrastructure, preservation and processing facilities, and fish transport means etc.
f) The establishment of bank credit facilities
g) Programming for and authorization for the exploitation of deepsea fishing resources within the Somali waters.

The basic strategy in the fisheries sector is the creation of planning, professionalism, management and technical skills that are indispensable to the emergence of reliable and viable sector. It is also the creation of the necessary infrastructure and other basic facilities, such as jetties, proper fishing boats, cold storage and processing facilities, marketing arrangement and the creation of an environment conducive to sound future development.

The policy of the Ministry is to facilitate and encourage the emergence and viability of the artisanal fisheries through provisions of securing market outlets, the application of market determined prices and the availability of extension services.

The Ministry will encourage the involvement of the private sector both national and foreign in artisanal and deepsea fishing and in establishing of processing facilities.

The State of Fisheries Research in Somalia

The Ministry of Fisheries has a Department of Research which is headed by a director and is divided into three sections.

1) Laboratories and research

2) Library and documentation
3) Translations.

The department has no laboratories and is at present not carrying out any research activities. Documentation from previous surveys is in many cases lacking, and reports have disappeared from the department. There are no modern copying facilities available for internal or external spreading of information. No personnel with background training in fisheries science are at present working in the Department of Research. There are for the time being no concrete plans for survey activities in Somali waters except for Japan, will carry out a limited survey in the region of Brava-Mogadishu. The Department of Research does not carry out any biological sampling in fishery harbours or at fish markets.

During a joint IOC/FAO/SIDA/SAREC marine science mission to Somalia in September 1977, plans for an institute of marine research under the administration of the Ministry of Fisheries were presented (IOC/UNESCO 1978). A site north of Mogadishu was chosen for the new building and 55,000 US dollars were allocated for equipment. The institute, which in 1977 was expected to be completed in 1980, has not been built and during the visit of another mission in 1980 no plans for the institute were presented.

2.1.3 Planned Projects

Three main developments, Somali Marine products (SMP), north west coast fishery development NWFD and the North East Coast Fishing Enterprise (NECFISH), are run as agencies under the Ministry of Fisheries and they all have coastal settlements as development targets.
The core in this project is a 750 ton cold store located at Kismayo. The freezing capacity is up to 10 tonnes/day, and ice machines can produce up to 4 tons of ice a day. The project has two transport vessels to collect fish from the coastal settlements in the lower Juba region. The installations include three outpost stations, at Kulmis, Burgao and Ras Chiamboni, with cooling facilities and fuel tanks to provide fuel to the fishing fleet. The project is run as an agency under the Ministry of Fisheries and was initiated through grant aid of the Federal Republic of Germany. Its objectives are as follows:

a) to provide buildings, machinery and equipment for the use of the fisheries cooperatives of the region, fishermen and companies and to engage in the processing, storing and marketing of marine products in both domestic and export markets

b) to promote increased domestic fish production through regular supplies of good quality marine products to local markets at reasonable price

c) to improve the socio-economic status of the fishing communities through the establishment of on-shore facilities and organized marketing, which will be provided by the project

d) to increase foreign currency earnings from the export of greater volumes of marine products, processed and stored in accordance with sound commercial practice.
The North West Coast Fishery Development Project (NWCFDP)

This is a project situated on the north west coast, and is intended to develop the artesianal fisheries in the region by establishing a basic infrastructure for collecting, storing and distributing fish to local markets. Training and workshop facilities are also available to the fishermen. The project, which is run under the Ministry of Fisheries, receives financial support from the UNDP to lay down the infrastructure. Technical and management experts are provided by FAO in the initial period. A 400 tonne freezing store is under construction in Berbera as a grant aid from DANIDA.

North-East Coast Fishing Enterprise (NECFISH)

This project, run as an agency under the Ministry of Fisheries, was established in 1984 and receives funds from IDA for the start up process. A 25 percent share in the project, initially to be covered by the Arab Development Fund has been taken over by DANIDA. The project aims is to initiate fisheries development in the region Bosaso–Kandala Adale in a programme that has two components:

a) to develop an industrial fishery on the small pelagic resources off the north-east coast.

b) to stimulate the artesianal fisheries in the region by raising an infrastructure for collecting and processing high quality fish, intended for the export market, and by providing technical assistance and training to the local fishermen.
2.1.4 Production and Marketing

Fishing efforts is considerably reduced during the period of the south west monsoon and the artisanal fishermen usually restrict their activities to the limited area inside the reefs.

Production of lobster is planned to be increased by 168 percent, groupers 600 percent and of snappers and big pelagic fish by 660 percent. On the other hand the less commercial valuable fish groups reef fish sharkis will be reduced by 8 and 32 percent respectively.

In total, the production is planned to be increased by 112 percent. The shelf area from Brava to Ras Chiamboni is approximately 2,400 km. This gives an annual optimum yield of between 480 and 1200 tonnes of the commercial species.

If the maximum sustainable yield is reached in the near future the introduction of several trawlers into the projects, they can have socio-economic side effects. The purpose of the trawlers seems to be to smooth out the seasonal fluctuations in the production as they are able to operate also in the monsoon season. But if the combined effort from the trawlers and the artisanal fisheries gives overcapacity in relation to the resources, problems of distributing the fishing effort between the two categories might arise. This shows the necessity of assessing the true level of resources as soon as possible.

There is a report mentioning the annual artisanal catch in the area (Bosaso-Adale) at the present of the level of 100-200 tonnes, also there is a plan for annual production of 1600 tonnes and should be fully developed
upto 4000 tonnes after 7 years (World Bank 1984).

2.2 Mining

2.2.1 Mining and quarrying

The only significant mining and quarrying activity in the coastal area at this time is the extraction of limestone blocks and sand from quarries close to the shore line near the main towns on the south eastern coast. No detailed information is available concerning the total area or volume of materials that is being removed.

The Harbour Master Department within the Ministry of Marine Transport and Ports is responsible for controlling these quarrying activities within 400 m of the high water mark.

Although these quarries constitute a very small percentage of the total coastal land area, their impact can be very significant. Some of the sites formed large open excavations of up to 10m depth extending over an area of 20-30 hectares. Many of the sites extend from the main coastal road south of Mogadishu to within a few metres of the sea and the level of excavation is below the high tide mark. In several cases the remaining unexcavated materials, separating the quarry from the sea has been breached and pools of stagnant sea water were found.

There appears to have been no effort to reinstate the land and many of the quarries are located at the foot of destabilized sand dunes. Reports on the problem of shifting sand dunes cite quarrying as a factor leads to the
reactivation of formerly stabilized dune systems.

The Harbour Master’s Department is attempting to instute tighter controls over quarrying operations seeking reinstated of the sites once operations have ceased. Black sands were observed on the team. Samples were taken for analysis. If these prove to be mineral rich sands and the deposits prove to be economic at some future date, sand mining may be attempted.

2.2.2 Oil and Gas

Oil and gas exploration has taken place in on-shore and offshore areas. Some 34 wells have been drilled with only limited evidence of oil or gas 15 of wells. No offshore drilling is taking place at present although agreements with Shell, Chevron and Occidental contain rights to drill for oil in northern coastal land and water areas.

In discussion with the Ministry of Mineral and Water Resources the opinion was expressed that, if oil and gas exploration expands, the focus of operations will be in inland locations within the northern region. The Ministry of National Planning’s report on the state of the Somali Economy (1984) makes reference to attempts to delimit a natural gas field near Afgoi inland of Mogadishu in the southern region. However, there are no current plans to develop this potential energy source.

Between 1979 and 1984 the UNDP funded a project to strengthen the National Geologic Survey which produced the following results.
establishment of a modern geo-chemistry laboratory

- establishment of minerological-periological laboratory

- establishment of a cartographic facility

- mineral exploration

- preparation of new geological maps at a scale of 1:100,000 and man-power training.

There is also some conflict of interest between the Harbour Master’s Department at the Ministry of Marine Transport and Ports and Ministry of Mineral and Water Resources concerning the exploitation of limestone and sands near the coast. The Harbour Master’s authority over the 400m wide belt of coastal land gives him greater powers over mineral operations than the Ministry of Mineral and Water Resources. This conflict may be exacerbated if mineral sands are exploited in coastal areas.
CHAPTER 3

The Exclusive Economic Zone

3.1 Evolution of the EEZ

The exclusive economic zone (EEZ) is a zone extending up to 200 miles from the baseline, within which the coastal state enjoys extensive rights in relation to natural resources and other jurisdictional rights, and third states enjoy the freedoms of navigation, overflight by aircraft and the laying of cables and pipelines. The EEZ is a concept of recent origin. While its historical roots lie in the growing trend since 1945 to extend the limits of coastal state jurisdiction ever seawards (particularly the Truman and other continental shelf proclamations, and the resource oriented claims of Latin American and African states to broad territorial seas and fishing zones), its more direct and immediate origins lie in the preparations for UNCLOS III. The concept of the EEZ was put forward for the first time by Kenya to the Asian - African Legal Consultive Committee in January 1971. Kenya's proposal received active support from many Asian and African states. At about the same time many of the Latin American states began to develop a rather similar concept of the patrimonial sea. The two lines of approach had effectively merged by the time UNCLOS began, and the new concept - the EEZ
being the preferred name had attracted the support of most developing states and was beginning to attract support from some developed coastal states, such as Canada and Norway. The EEZ is a reflection of the aspiration of the developing countries for economic development and desire to gain greater control over the economic resources off their coasts, particularly fish stocks, which in many cases were largely exploited by the distant-water fleets of developed states. At same time the EEZ could be seen as something of a compromise between those states that claimed a 200 mile territorial sea (some Latin American and African states) and those developed states (e.g. Japan, the USSR and the USA) which were hostile to extended coastal state jurisdiction. The fact that the EEZ could be seen as a compromise proposal led to its rapid acceptance in principle at UNCLOS by most states, although many land-locked and geographically disadvantaged states, at least initially, rather reserved towards the EEZ because it reduced the area of high seas open to use by all states.

3.1.2 Delimitation of the EEZ

The inner limit of the EEZ is the outer limit of the territorial sea (LOSC, art. 5.). The zone’s outer limit shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured (LOSC, art. 57). The wording of this provision suggests that, while 200 miles is the maximum breadth of the EEZ, it would be quite possible for a state, if it so wished, to claim an EEZ of some lesser breadth. In many regions states will be unable to claim a full 200 mile zone because of the presence of neighbouring states, and it will therefore and in many cases has already become necessary to delimit the EEZ of opposite and adjacent sta-
Article 74(1) of the Law of the Sea Convention provides that such delimitation 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. If no such agreement can be reached within a reasonable period of time, the states concerned are to resort to the procedures for the settlement of disputes (LOSC, art. 74(2). Pending agreement, the states concerned are to make every effort to enter into provisional arrangement of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement (LOSC, art. 74(3).

Although it is generally desirable that EEZ and continental shelf boundaries should coincide, the fact that article 74 of the Law of the Sea Convention stipulates that such boundaries should represent an equitable solution will in many cases make it more difficult to agree on a common boundary: a boundary that might be equitable for EEZ purpose may not be equitable for continental shelf purposes because of the different considerations that are relevant to achieving an equitable solution in each case. For example, the location of fish stocks in the case of the EEZ, the geological characteristics of the sea bed and the location of sea bed mineral deposits in the case of the continental shelf.
3.1.3 The rights and duties of the coastal state in the EEZ

The coastal state’s rights and duties are set out in broad terms in article 56 of the Law of Sea Convention. The coastal state’s rights relate essentially to the natural resources of the EEZ.

1) Non-Living resources. First, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the non-living natural resources of the sea bed and subsoil and the superjacent waters. With the exception of the provisions relating to conserving and managing superjacent waters, the rights accorded to the coastal state are exactly the same as it enjoys in respect of sea bed resources under the 1958 Geneva Convention on the Continental Shelf and customary international law. Furthermore, these rights are to be exercised in accordance with the provisions of the Law of the Sea Convention relating to the continental shelf.

2) Living Resources: Article 56 provides that the coastal state has sovereign rights for the purpose of exploring and exploiting conserving and managing the living natural resources of the sea bed and subsoil and superjacent waters.

3) Other economic resources: Article 56 gives the coastal state sovereign rights with regard to other activities for economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.

4) Construction of artificial islands and installations
Article 56 provides that the coastal state has jurisdiction as provided for in the relevant provisions of the Law of the Sea Convention with regard to the establishment and use of artificial islands, installations and structures.

The rights of the coastal state in respect of artificial islands, installations and structures are subject to certain duties. Thus the coastal state must give due notice of the construction of artificial islands, installation and structures, must maintain permanent means for giving warning of their presence and must remove, in whole or in part, those installations and structures no longer in use, to ensure safety of navigation (LOSC, art. 60(3)). Furthermore the coastal state must not construct artificial islands, installations and structures, where interference may be caused to the use of recognised sea lanes essential to internation navigation.

5) Marine scientific research: Article 246(1) provides that the coastal state has the right to regulate, authorise and conduct scientific research in its EEZ. The coastal state must normally give its consent to pure research by other states in its EEZ, but it may withhold its consent to resource-oriented research (LOSC, art. 246(3), (5).

6) Pollution control: Article 56 confers on the coastal state jurisdiction as provided for in the relevant provisions of this convention with regard to the protection and preservation of the marine environment. The relevant provisions of the convention are to be found in part XII. This part gives the coastal state legislative and enforcement competence in its EEZ to deal with the dumping of waste, other forms of pollution from vessels and pollution from sea bed activities. (Ref. CHURCHILL the Law of the Sea)
3.2. Marine Scientific Research and Transfer of Technology

3.2.1 Scope of the competence to conduct marine scientific research.

Until the middle of the twentieth century no legal control on the conduct of marine scientific research was perceived to be necessary, and indeed the Law of the Sea literature up to this time contains virtually no mention of scientific research. This may be explained partly by the generally prevailing attitude that scientific research should be free of governmental control, and partly by the modest scale and limited practical application of marine scientific research.

It is the great increase in marine scientific research since the Second World War, together with a better appreciation of its practical application to resource and military purposes, that has led the international community to introduce control on marine scientific research, first in the Geneva Convention and later, and rather more extensively, in the Law of the Sea Convention. The 1958 rules. Under the Geneva regime marine research are generally regarded as being a freedom of the High Seas, eventhough not mentioned in the list of freedoms in article 2 of the High Seas Convention. However, this list is expressly stated not to be exhaustive, and in its commentary on the draft article, which eventually became article 2, the International Law Commission specifically referred to marin research as an example of a freedom not mentioned in the article. Furthermore, scientific research has been conducted on the high seas by the vessels of many diffe-
rent states for the past century or more without giving rise to any recorded protest.

The restrictions on marine research laid down in the Geneva Convention relate to research in the territorial sea and on the continental shelf. As regards the former, the territorial sea is subject to the sovereignty of the coastal state, and the only right which third states enjoy is the right of innocent passage. It therefore follows that research in the territorial sea will be permissible only where the coastal state has given its consent, and subject to only to any conditions which the coastal state lays down. The Law of the Sea Convention, UNCLOS III was faced with much stronger demands for control over marine scientific research than the Geneva Conference had been. These demands came chiefly from the developing countries and were inspired by two principal factors. First, the developing countries felt that they would be unable to benefit fully from the right to exploit the resources off their coasts, which the introduction of 200 mile EEZ would give them unless they had control over the research in those waters that might have application to resource exploitation. The second factor was the suspicion among at least some developing countries that research vessels, particularly those of the major military powers, were often used for espionage.

As far as the high seas are concerned, marine research is now specifically mentioned as a freedom of the high seas (art. 87). In comparison with the Geneva regime, it must be borne in mind that under the Law of the Sea Convention the sea bed and subsoil of the high seas beyond
the continental shelf are now the international sea bed area. All states have the right to engage in research in the area, provided that it is carried out exclusively for peaceful purposes and for the benefit of mankind as a whole (LOS Convention, art. 143(1)).

The basic principle that research in the territorial sea may be conducted only with the consent of, and subject to the conditions laid down by the coastal state is affirmed by the Law of the Sea Convention (art. 245). Although not specifically stated in the convention, the same principle applies to research in archipelagic waters.

3.2.2 International Co-operation in marine research
Much marine research is carried out on a purely national basis, but international co-operation does take place, and indeed is encouraged by the Law of the Sea Convention (see in particular Arts. 143 and 242). Such co-operation may be on an ad hoc basis for specific projects: for example, the Joint North Sea Data Acquisition Project (JONSDAP), which involved twenty-one European and American Oceanographic research vessels between May and June 1976 making observations and collecting data in the North Sea. Much international co-operation is institutionalised, in both non-governmental and intergovernmental international organisations. The former, which includes the International Council of Scientific Unions and its subsidiary, the Scientific Committee on Oceanic Research, fall outside the ambit of international law. Within this ambit, however, are the considerable number of intergovernmental organisations concerned with marine scientific research.

At the global level there are several UN bodies of the specialised agencies, the Food and Agriculture Organisa-
tion (FAO) undertakes a good deal of fisheries research; much of the work of the World Meteorological Organization (WMO) is concerned with weather observation at sea; and in 1960 UNESCO established an Intergovernmental Oceanographic Commission (IOC) to promote scientific investigation with a view to learning more about the nature and resources of the ocean through the concerted action of its members. The IOC has subsequently organised and co-ordinated a number of co-operative investigations, particularly in the Indian Ocean, eastern central Atlantic, the Mediterranean and the Pacific. It has also studied the legal problems connected with ODAS and freedom of research, and established various ocean services, such as the Integrated Global Ocean Station System (IGOSS), which provides member states with information on the state of the oceans. Apart from the UN's specialised agencies and UN Environment Programme (UNEP), which supports the scientific work of other organisations, there are also bodies co-ordinating the activities of the various parts of the UN system concerned with marine scientific research: two such are the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) and the Intersecretariat Committee on Scientific Programmes relating to Oceanography. Outside the UN system but still on the global level is the International Hydrographic Organization established in 1970 as the successor to the International Hydrographic Bureau. Its functions are to co-ordinate the activities of national hydrographic offices, to bring about the greatest possible uniformity in nautical charts and documents, to adopt reliable and efficient methods of carrying out and exploiting hydrographic surveys, and developing hydrographic sciences and the techniques employed in descriptive oceanography.
3.2.3 The transfer of marine Technology

In general terms, of course, transfer of technology has a compass going far beyond the law of the sea. Developing countries have long felt that one of the more important reasons for their economic back-wardness is that they lack much of the technology which developed countries enjoy, and that without a substantial transfer of technology their economics will not adequately develop. Whatever the level of technology it is that developing countries require and the more radical development economists have suggested that it is generally intermediate, labour-intensive technology, rather than advanced high-capital technology, the developing countries have sought to make transfer of technology one of the central features of the New International Economic Order. Thus the declaration on the Establishment of a New International Economic Order of 1974, noting that the benefits of technological progress are not shared equitably by all members of the international community, states that one of the principles of the New International Economic Order should be to give to the developing countries access to the achievements of modern science and technology, to promote the transfer of technology and the creation of indigenous technology for the benefit of the developing countries. The programme of action on the Establishment of a New International Economic Order goes on to call for the formulation of an international code of conduct for the transfer of technology, giving developing countries access on improved terms to modern technology and adopting commercial practices governing the transfer of technology to the requirements of developing countries. In pursuance of this programme of action, UNCTAD in 1978 produced a draft
International Code of Conduct on the transfer of technology. This draft, which seeks to facilitate the transfer of technology as well as reduce its cost to developing countries, has subsequently been discussed at a number of diplomatic conferences, but agreement has not yet been reached on all its provisions, notably on whether the code should take the form of voluntary guidelines or become a binding treaty. To deal with some of the difficult questions raised for the transfer of technology by patents and other aspects of intellectual property law, the World Intellectual Property Organisation (WIPO) a UN specialised agency has undertaken a revision of the 1883 International Convention for the Protection of Industrial Property. Although it has been discussed at two sessions of a diplomatic conference in 1980 and 1981, agreement has not yet been reached on the proposed revision.

While UNCTAD and WIPO have been engaged in work on the transfer of technology in general terms, UNCLOS III has dealt with transfer of marine technology. This matter is referred to in the Law of the Sea Convention in two places: first, and more concretely, in the provisions on the international sea bed regime, and secondly in part XIV. As regards the former, art 4 and 5 of Annex III require any one who applies to engage in mining in the international sea bed area to undertake in certain circumstance to transfer sea-bed mining technology to the enterprise and/or developing countries. In addition, articles 144 and 274 require the International Sea Bed Authority to train nationals of developing countries, to make technical documentation on sea-bed mining available to developing countries and to assist such countries in the acquisition of sea-bed mining technology.

The second part of the Law of the Sea Convention dea-
ling with the transfer of technology is part XIV. Article 266 calls on states, directly or through international organisations, to co-operate in promoting the development and transfer of marine science and technology on fair and reasonable terms and conditions.

Some international organisations are engaged in transfer of marine technology: for example, the FAO has done considerable work in facilitating the transfer of fisheries technology to many developing states, while IMO provides technical assistance to developing states in the fields of shipping safety and pollution, as well as assisting in the training of maritime personnel. However for some uses of the sea, such as oil and gas extraction and the construction of offshore ports, there is no very obvious international organisation to promote and facilitate transfer of technology. If there is to be transfer of technology in these areas, therefore, it will have to be through direct co-operation between states, something which may not be easy where, as in the case of oil, the technology is largely concentrated in the hands of a few multinational companies. Another factor which may prove to some extent to be limiting is article 302 of the Law of the Sea Convention, one of its general provisions, which stipulates that a state may not be required to supply information the disclosure of which is contrary to the essential interests of its security.

3.3 Settlement of disputes

3.3.1 Settlement of disputes under the Law of Sea Convention

It lays down a basic scheme for the settlement of disputes arising from the interpretation and application
of the Convention, and makes exceptions from this for certain categories of dispute. The exceptions are largely motivated by the fact that states are particularly unwilling to allow some kinds of dispute, which touch their vital interests more than others, to be determined by third-party procedures, and to a lesser extent by the need to provide specialist panels to adjudicate on some questions.

The basic framework (LOSC, part XV)

Conciliation: states must settle disputes by peaceful means (LOSC, art. 279), and are always free to agree to adopt some means other than that prescribed in the Convention (LOSC, art. 280). Some states have bound themselves to the other procedures, the EEC states, for example, must submit fisheries disputes arising among them to the European Court of Justice under the terms of the EEC Treaty and this obligations supplant those in the Law of the Sea Convention (LOSC, art. 282). If the parties to a dispute fail to reach a settlement through agreed procedures, one of them may invite the other to submit to the conciliation procedure (LOSC, art. 284). If this invitation is accepted, each party chooses two conciliators of which one may be one of its nationals, from a list to which each state party to the Convention is entitled to nominate four people. The four conciliators chosen select a fifth, who acts as chairman. The panel has one year within which to hear the parties and report, making any recommendations which it sees fit. If the report is accepted and implemented, all is well. But if it is not, the conciliation procedure is deemed to be terminated (LOSC, Annex V).

Compulsory settlement: Any dispute not resolved under the
foregoing provisions is to be referred for compulsory settlement (LOSC, art. 286). States may, on signing the Convention or at some later date, choose one or more of the following forums to decide disputes: (1) the International Tribunal for the Law of the Sea; (2) the International Court of Justice; (3) an arbitral tribunal constituted under Annex VII of the convention; or for specified kinds of disputes, (4) a special arbitral tribunal constituted under Annex VIII (LOSC, art. 287).

Application of dispute settlement procedures

The exercise of coastal states sovereign rights or jurisdiction is subject to these procedures only in so far as it is alleged that they have interfered with freedoms of navigation, overflight or immersion, or other internationally lawful uses of the EEZ, or where such jurisdiction can only be exercised consistently with international standards concerning pollution, have contravened those international standards (LOSC, art. 297(1)).

Marine scientific research: States may, but are not obliged to, submit disputes arising from decisions to refuse permission to engage in scientific research in their EEZs or continental shelves to the procedures under article 287. If not, such disputes must be submitted to the compulsory conciliation procedure under section 2 of Annex V (LOSC, art. 297(2)).

EEZ fisheries: States are not obliged to accept article 287 procedures in relation to disputes concerning their sovereign right over EEZ fisheries, including those arising from failures to determine total allowable catches and coastal harvesting capacities, the allocation of surpluses to other states, and terms of conservation mea-
sures. But where it is alleged that the coastal state has manifestly failed to ensure that the maintenance of EEZ fish stocks is not seriously endangered, or that there has been an arbitrary refusal to determine total allowable catches or harvesting capacity or to allocate a surplus to other states, the compulsory conciliation procedure is to operate (LOSC, art. 297(3)).

The international sea bed: Special procedure are laid down for the settlement of dispute arising from the exploration and exploitation of international sea bed area and its resources (LOSC, part XI, section 6). These provisions are complicated, not least because not only states, but also the authority and its organs, the Enterprise, and individual contractors (which may be state-owned industries or commercial operators), may all be parties to disputes, which may concern not only the Convention but also rules laid down by the Authority and terms of contracts and licences. The provisions are unclearly drafted, but their general effect is that in the absence of agreement upon some other means of settlement, disputes are to be referred to the Sea Bed Disputes Chamber, or an ad hoc chamber thereof, apart from disputes concerning contracts which would be submitted to commercial arbitration under UNCITRAL rules. (A.V. LOWE the Law of the Sea 1983)

Optional exceptions: Parties to the Law of the Sea Convention are entitled to declare on or after signature, that they will not accept any or all of the article 287 procedures in respect of any or all of three specified categories of dispute (LOSC, art. 289.). Two of these disputes concerning military activities and disputes in respect of which the UN Security Council is exercising its functions are rooted in the need for deference to states sovereign
rights and to international settlement procedures. These categories are subject only to the general obligations to
reach a settlement by peaceful means agreed by the parties.

The third category is that of delimitation disputes, which are excepted from the general regime because of lack of agreement on delimitation criteria and procedures at UNCLOS III. If a state declares that it will not accept compulsory settlement of disputes over the boundaries of its territorial sea, EEZ or continental shelf, it must nonetheless accept compulsory conciliation, if no agreement is reached within a reasonable time. Furthermore, disputants are obliged to negotiate an agreement on the basis of the conciliation commission’s report; if they do not do so, they must agree upon some other procedure for settling the dispute a rather insubstantial obligation.

3.3.2 General Principales applicable in dispute Settlement

Locus standi

Not every state will have the right to institute proceedings in respect of any violation of Law of the Sea Convention which might arise. Generally, a state must show that it has some particular legal right, such as the right of innocent passage, or the freedom of navigation on the high seas, which has been infringed. An international tribunal would not accept a complaint by a state that some other state’s rights have been infringed: the state would not have locus standi to present such a case sensible as this rule is in cases where at least one state is in fact directly affected, it hampers the enforcement of the law when only a community interest is at stake. For example, it is usually difficult to show that any state’s legal
rights are infringed by pollution of the high seas and so, although the world at large may suffer such pollution, it may be that no state has locus standi to bring proceedings in respect of it. The question of defending community interest was raised, but not resolved, in the Nuclear Tests Case (1974), where Australia and New Zealand based their claims in part upon the right of the international, community to be preserved from radioactive fall-out, apart from any direct infringement of their own rights.

Deciding the case

Disputes arising under the Law of the Sea Convention or any other international treaty will usually be decided by the interpretation of the treaty in question. The rules for interpretation are conveniently summarised in the 1969 Vienna Convention on the Law of Treaties. The basic rule is that the treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the treaty’s object and purpose: context here includes not only the treaty and its preamble and annexes, but also any other instruments, as must any subsequent practice of parties in the application of the treaty which establishes their agreement concerning its interpretation.

Disputes over matters not regulated by treaty would be determined by the application of customary international law, as established by the general practice of states. Customary law may be supplemented by general principles of law recognised by civilised nations (such as the rule that no one may profit from his own wrong).
Where neither treaty nor customary law contains rules determining the dispute, it is necessary to fall back upon certain presumptions. The most significant are those concerning maritime jurisdiction: in the absence of other rules, coastal state are presumed to have complete jurisdiction over ships of all flags in their territorial sea, and ships on the high seas are subject only to the jurisdiction of their flag state. (R.R. CHURCHILL the Law of the Sea 1983)
CHAPTER 4

Prevention and Combat of Marine Pollution.

4.1 Tanker Traffic in the Region.

The world-wide demand for oil of all kinds is continuously increasing with crude oil production rising to actual figure thousand million tons a year. Increased crude oil production will result in a continuous increase in the total amount of crude oil and oil products that are processed and transported each year. Most of this material is transported and stored several times between the production well and the point at which it is consumed. While incidents involving the massive discharge of oil into the sea are fortunately rare, smaller quantities of crude oil and also oil products frequently enter seas, estuaries, harbours and rivers as a result of accidents to vessels, tanks, pipelines, etc, and as a consequence of operational practice at sea.

The Indian Ocean is the heaviest oil tanker traffic route in the world. Approximately 550 million tons of oil per year are transported from the Middle East to Western Europe and America. On any one day there is an average of 224 tankers within the East African Region. At the same time the horn of Africa lies within the big shipping lane connecting Europe and America via Suez to the Gulf, south East Asia and Far East. The various forms of possible pollution from ships, oil pollution is the most prominent. This is particularly in Somalia which borders the Indian Ocean on its east and Red Sea on its north. Oil carried by
ships may be discharged by one way or the other. At this point it is necessary to define what is called pollution: Pollution is the introduction by man, directly or indirectly, of substances or energy to the marine environment resulting in such deleterious effects as harm to living resources; hazard to human health; hindrance of marine activities including fishing; impairment of the quality of sea water; and reduction of amenities. Oil carried by ships may be discharged either accidently or deliberately, and, understandably, it is the accident episodes that are well known, particularly since the Torry Canyon incident of March 1967. That incident raised strong public awareness and indeed several more catastrophic incidents followed. Fortunately, the Somalia coast has not experienced many of the catastrophes. The closest have been two incidents: the first one was the grounding of the 227700 ton Japanese super tanker, Showa Maru at the strait of Malacca in January 1975. The second one was the collapse of the 250000 ton Spanish super tanker Castillo DE Beever, 25 km off the Cape of Good Hope in August 1983. In both cases the loads of crude oil from the Middle East were lost. The grounding of the container ship M/V Ariadne in Mogadishu harbour in August 1985 posed a great chemical hazard to the entire city of Mogadisho. Fortunately the dangerous cargo was removed in time.

The probability for a major accident in Somalia territorial waters, should perhaps be indirect proportion to the number of tanker traffic. The second mode of discharge is the deliberate type largely through tank washing and deballasting, especially as the tanker approach the sheltering areas surrounding the home of crude oil in the Middle East. In some case the tank washing is done close to the east coast of Africa. The same is true for cargo

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ships. All ships may need to take ballast water when travelling unladen or in bad weather. Ballast tanks occupy cargo spaces and are limited in size, so additional ballast may be carried in empty fuel tanks and when this is discharged it carries oil to the sea. Bilage water is pumped overboard and invariably contains oil from the ship's engines. Individually the quantity of oil released may be small, but since Somalia lies between two busy shipping lanes, the total amount entering the sea is considerable. That discharge adds up with the persistent practice and shows clear evidence inform of tar balls or oily deposits which are prevalent on the East Coast of Africa.

4.1.2 Regional Combating of Marine Pollution

It is necessary for the countries of East Africa to establish a joint regional pollution combating policy with a maximum priority given to the navy and air surveillance. This may take different forms:

- policy duties: monitoring, prevention, reporting offenders and even rerouting or interception.

- assistance: assistance to shipping navigation aids;

- relief: which covers both assistance and rescue, antipollution measures, pollution control etc. Some of these actions would seem to require priority. This is the case:

- the protection of natural resources with special reference to defence of the fish pollution.

- the detection and prosecution of deliberate acts of pol-
ution which contravene existing national and international regulations. This concerns mainly the detection of illegal discharges of oil at sea and the collection of evidence for prosecutions search, rescue and assistance to shipping.

There are other actions which may be carried out in addition to or in conjunctions with these priority tasks such as scientific surveys concerned either with basic research or prospecting for natural resources, the observation of special situations arising from the discharge of domestic or industrial wastes, with or without waste pipes, or the discharge of cooling water from high capacity power stations situated along the coast etc.

In addition to prosecutions for operational discharge from tankers should be added all actions designed to counter the effects of widespread pollution resulting from an accident at sea for example.

Consequently, the consideration of the facilities necessary to carry out these tasks require that a certain number of factors should be taken into account.

- Environmental factors: geographical characteristics of the zone surveyed (area, clean lines), area meteorological and oceanographic conditions, existing infrastructure (airfields, logistic facilities), resources, i.e. the economic interest of the zone, and possibly local political conditions.

Particularly in Somalia, the navy bears the brunt of maritime surveillance assignment, particularly where anti-pollution and depollution measures, control of shipping and surveillance of ocean fishing are concerned.
It should be noted at some time that the facilities available to the navy for civilian surveillance of the economic zone are not always such as to enable it to carry out satisfactorily the assignments of which it is allocated. The sophistication of observation equipment on aircraft are ill-suited to civilian surveillance and greatly increase the cost of intervention.

4.1.3 Legislation Relevant to Marine Pollution

Pollution by ships

The existing regulations relating to the pollution by ships are very limited and concern the pollution in ports or within the vicinity of the ports. These regulations are contained in the existing Maritime Code and in the port regulations (presidential decree No. 67 of 15 April 1978) and the Somali is only part to two International Conventions relating to marine pollution of which IMO is depository. But, Somalia became a member of IMO on 4 April 1978 by depositing an instrument of acceptance of the IMCO Conventions of 1948. Many amendments have been made to the latter Convention (which also changed the name of the organization which would be known as the International Maritime Organization IMO). It would be desirable for the Somali Government to ratify these amendments which raise no particular technical problem.

(a) Operational Discharges by Ships

Port Regulations
Presidential Decree No. 67 of April 1978
Section 17: Ships in ports or at anchorage or within the vicinity of the ports are not under any circumstances allowed to discharge oil and other substances causing pollution or waste into the sea.

Section 21: Ships in the port are not permitted to throw or discharge refuse, waste, garbage or other disposable matter into the port waters or over-board.

Section 22: Normally each port provides a garbage service at cost. The use of that service is compulsory where garbage is not run by agents or contractors duly authorised by the port Manager.

Section 77: Prescribes fine Sh. Sh. 200 to Sh. Sh. 5000 for any violation of the provisions of the regulations. The fine shall be imposed by the port Manager.

The Somali Government has no specific regulations which applies out of the ports or the vicinity of the ports. The OILPOL 1954 Convention was the first international instrument relating to operational discharge by ships. The matter is now dealt with by the Convention MARPOL 1973/1978. The purpose of this Convention is to control operational spills of oil, noxious substance, sewage water or garbage.

The Convention applies to all ships flying the flag of a party to the Convention, and to all substances considered as harmful.

One of the effects of these general provisions is to reinforce the rights and the possibilities of effective surveillance of the coastal state and port state which is party to the convention. The Somali Government should have advantage to be party to this Convention.
(b) Accidental Discharge by Ships

(i) The Prevention of Maritime Accidents

The main legal instrument for the prevention of accidents and by the way to prevent discharge into the sea of oil or other hazardous substances are the IMO Conventions on maritime safety.

- The International Convention on Load Line (LL 1966)
- The International Regulations for preventing Collisions at Sea (COLREG 1972).


The Somali Government should have advantage to ratify COLREG 1972 and SOLAS 1974 with its 1978 protocol as amended. COLREG 1972 is a code of good conduct at sea which could be ratified without problems and should be introduced into the national legislation. SOLAS 1974 the main objective of the SOLAS convention is to specify minimum standards for the Construction, equipment and operations of ships, compatible with their safety. Moreover in the interest of the safe handling of dangerous good, the Somali harbour regulations should take full account of the provisions of Regulations A 435 (XI) on the safe transport, handling and storage of dangerous
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(ii) Prevention and Control of Pollution after maritime accident.

Somali legislation to prevent and control marine accidental pollution is limited.

Port regulations 15 April 1978.

Section 30: In the event of a vessel being grounded or stranded the master or the person in charge shall take immediate steps and reasonable precautions to prevent pollution.


Article 26: In case of submersion of goods or other materials in ports, the person concerned must provide for their immediate removal. Should they fail to fulfil this obligation, causing danger or hindrance to navigation, the authority will order that removal to be carried out. If the Somali Government will adopt a new law concerning the territorial sea with a limit of 12 nautical miles it would be interesting for Somalia to ratify the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties (Brussel, 1969) and its 1973 Protocol relating to intervention on the high seas in cases of pollution by substances other than oil.
(iii) Contingency plan to combat accidental pollution. The Somali Government has not yet a national organisation and a national contingency plan for dealing with a major pollution of the sea by oil or other hazardous substances.

At occasion of the Ariadne accident the Somali Government should adopt an appropriate national organisation and a national contingency plan in a view to take immediate and preliminary action in case of emergency. That means for Somalia to be prepared as a first step to request and organize international assistance and to cooperate in the framework of the regional agreements concerning co-operation in combating marine pollution in case of emergency. (Protocols to the Red Sea and the Gulf of Aden Convention and East Africa Convention), then Somali Government have to ratify soon the two Regional Sea Conventions and their Protocols.

(iv) The liability and compensation for pollution damage. Except few provisions in the maritime code concerning the liability of the master of the ship relating to shipping activities Somalia has no specific law in this matter, and it seems that it would be the common law on the liability which would be applied.

Somalia has interest to ratify the relative conventions and to adopt appropriate national law in this field. Those conventions are:

--- International Convention on Civil Liability for Oil Pollution Damage 1969 (entry into force 19 June 1975)

--- Protocol of 1984 to amend the International Covention on Civil Liability for Oil Pollution Damage 1969 (not
yet in force).


The existing Somali Legislation relating to pollution by ships is out of date, incomplete and inadequate. The existing maritime code deals mainly in great details with the questions of private law and state ownership.

4.2 Navigation

4.2.1 Aids to Navigation

The Ministry of Marine Transport and Ports has the responsibility of Aids to Navigation in Somalia. The Marine Department of the Ministry of Marine Transport and ports operate about more than 34 light-houses and beacons, spread along Somalia's 3500km long coast line, and comprises about 7 major light-houses and 27 other beacons. Some of the beacons were out of operation as a result of either lack of fuel or spare parts.
On the 34 light-houses and beacons, 11 are powered by kerosen, 6 by propane gas, having been converted from kerosen, 1 powered by acetylene gas, and the rest by mains electricity. Most of these lights are very old, with some of the kerosen operated ones having been installed over many years ago.

Despite their age, and the fact that most of their mechanisms and equipment are very old and out of production, and thus making it difficult to obtain essential spare parts, the light-houses and beacons are well maintained and kept in good working condition except when some are put out operation while waiting for fuel replenishment like kerosen, propane) a process which often takes a number of weeks or even months, due to fact that both propane and acetylene gas have to be imported from abroad, through a long process of import procedures.

Repair and maintenance work are mostly carried out in Mogadishu where a small moderately equipped maintenance work shop is in operation. However, due to the long distances, poor road conditions to and from Mogadishu, and the mostly difficult acces facilities to most of the light-houses and beacon locations, repairs and maintenance operations often take a long time.

As production of most of the beacons have been discontinued, it has become difficult to obtain essential spare parts for them and as each year goes by, this beacons increasingly more difficult. The Ministry is already aware that poor performance of aids to navigation, weather bouys, beacons, radio, or electronic aids resulting from inadequate resources to effectively maintain them or failure of the authorities to inform shipping rapidly of incidents.
such as missing buoys reduced performance, or break down of lights etc, soon destroys the credibility of the system and it becomes entirely counter productive, and this state must not be allowed to occur.

A major problem facing the Ministry's Marine Department which has the responsibility of providing and maintaining aids to navigation in Somalia, is the frequency and difficulties faced in getting materials such as gas cylinders and drums of kerosen to and from most of the light-houses and beacons locations. Because the only way to get materials to most of these locations is by camel and through physical handling; process which often takes several days or weeks.

The prevailing severe weather, and climatic conditions such as frequent sand storms, excessive heat, high winds and rough seas during the monsoon seasons etc, rough terrain, remote locations and extremely difficult access facilities to most of these light-houses and beacons have resulted in the Marine Department Authorities finding it very difficult to either recruit or retain the 75 light-houses keepers and maintenance men needed for servicing and operation of the beacons.

Although efforts are being made by the Ministry of Marine transport and ports to modernize or replace some of the older kerosen operated lights with propane or acetylene gas operated ones, the process has been slowed and has not been without some problems.

Despite their age and type of equipment in operation most of the existing light-houses and beacons are still in good operation condition. However, discussions with some
ship masters who frequently sail along the Somalia Coast revealed that most of the lights, and in particular those operated on kerosen, are very low intensity and range, therefore the Ministry is taking and effort to up grading those lights.

There is also need for some new aids to navigation such as leading lights, beacons, radio and electronic aids etc, to be provided inorder to further enhance safety of navigation of coastal and international shipping and to form with modern maritime safety practices.

Communications between the major light-houses and beacons and the Marine Department in Mogadishu is extremly inadequate. Due to lack of adequate direct communications; all message have to be sent by telephone or telegrame from the nearest town or settlement with such facilities; and these are often several kilometers away and takes some times a long period of time to do so. Lack of adequate communication facilities has also made it difficulti to warn ships and of other immediate dangers they may be heading into along the coast. It is therefore necessary, that in modernizing and improving aids to navigation in Somalia, all necessary associated radio communications facilities needed for operational support purpose, emergencies, and for navigational warning should be included.

4.2.2 Hydrographic Survey

Another provision which comes under the responsability of Ministry of marine Transport and ports is Hydrographic Survey.
Efficient aids to navigation to assist the safe and easy passage of ships to and from ports, coasts movements within ports, at approaches to ports and ships anchoring in the vicinity of ports are an essential element to port safety and to maritime safety in general. However, in order to determine whether aid to navigation buoys and beacons are correctly and accurately positioned, there will be need for accurate charts showing accurate up-to-date water depths which can only be got through regular hydrographic surveys.

Maintenance of sea ports their approaches and adjacent sea lanes, in order to keep them constantly open to deep sea traffic and deep draught ships, depends on proper charting through adequate hydrographic surveys. Periodic surveys to find out how much change, if any, has occurred and to what degree it affects shipping, is very necessary.

Dredged channels need periodic survey to ascertain the maintenance of correct depths, and there is need to survey and re-survey at intervals at more critical areas of ports especially where there are known or suspected siltation or shoaling problems, and information gained from the surveys made available to organisations such as the International Hydrographic Organisation (IHO) and to ports users and mariners.

The last hydrographic survey of the Somali coast water, and Somali ports was carried out by Italian old vessels during late 1930’s. But that hydrographic survey, now could not be reliable any more. Therefore the Ministry authorities suspect some shoaling or siltation in and around of some ports and along the Somali coast, and this, without doubt, gives great cause of concern.
The Marine Department of Ministry of Marine Transport and Ports has a small hydrographic office, unfortunately that office, for time being, has neither the qualified personnel or the equipment and facilities to undertake surveys, and also there is lack of accurate hydrographic information.

In 1985 a high ranking official from the International Hydrographic Organization (IHO) visited Somalia to discuss the provision of technical assistance in the field of hydrographic survey with Somali Maritime Authority. The government of the Somali Democratic Republic requested the Federal Republic of Germany to carry out the hydrographic survey and aids to navigation for the Somali coast. The Federal Republic of Germany is still studying the request.

An expert from IMO who also visited Somali suggested that the maritime authorities, for safety reasons, and in order to avoid possible shallow waters or shoaling related accidents by ships, should endeavour as a matter of urgency, to undertake a study on both the short-term and long-term hydrographic needs of Somali coastal waters and Somali ports and as soon as possible endeavour to undertake hydrographic survey of the major ports and their surrounding waters.
CONCLUSION AND RECOMMENDATIONS

There are at present three ongoing fishery projects in the country, all with prospects for considerable future expansion. The need for assessment of the resources is therefore evident. Fishery research in Somalia is at present virtually non-existing, and major investments in education, training and research facilities seem necessary before the country can undertake the necessary activities to monitor and manage its own marine resources on a scientific basis. Until this happens, few or and less costly activities should be carried out such as systematic collection of previous reports and data, and a certain minimum collection of new data. This should at present be linked to the ongoing fishery development projects in the country, which themselves would benefit from the scientific activities. It would be useful for the following main steps to be taken.

A) Collect reports and back-ground data from all resources surveys carried out in Somalia and establish a system for coping, filing and securing storage of these data. This could be done as follows.

(a) Contact all relevant institutions and request a list of reprints and data related to fisheries research in Somalia

(b) On the basis of the list received, request copies
of important missing reports and data.

B) Make a critical evaluation of the reports and use them to assess the quantity of the resources.

(a) Request a fishery resource assessment expert to evaluate the reports and see what further use can be made of available data, and if recommended carry out further analysis of data. Assess the resources on the basis of available information.

C) Carry out systematic trawl surveys.

(a) In cooperation with NECFISH plan and carry out a trawl survey with one of the trawlers now operating in the project area in the exploratory phase of the programme.

(b) Request, through FAO, one of the countries with traditions in fishery science for assistance from and associated expert to be stationed in Kismayo.

(c) In cooperation with Somali Marine Product and Ministry of Fisheries this expert would carry out trawl surveys in the Kismayo region with one of the new 10 meter trawlers that soon will be included in the project.

(d) The expert is also to be responsible for carry out sampling of the catches at the fish plant in Kismayo and for using the available data for stock assessment/monitoring of the stocks.
D) Select promising candidates to form a future core of Fisheries scientist in Somalia, set up an educational program for these candidates and give them education and training aboard.

(a) Request assistance from FAO on which criteria to select candidates. Test candidates motivation and capability for training in Fisheries biology at higher level.

(b) Train the students for future work in fisheries biology and use them as national counterparts in future joint surveys.

E) Select a team of people to form the future core for collecting fisheries statistics in Somalia and train these candidates in statistical techniques and basic fish taxonomy/classification.

(a) Set up a training course in fisheries statistics, sampling methods and fish taxonomy.

(b) Select candidates for further placement in Berbera, Bosaso, Mogadishu, and Kismayo and with sufficient background to attend the course.

In general the domain of responsibilities in the fields of marine pollution and coastal area management are not clearly defined and established. There is a possibility of overlapping. There is no marine environment policy as such and no Ministry of Environment. Often, Ministries and Agencies carry out their activities independently and without consultation with other agencies.
concerned.

Marine environment and coastal area management are a field where many Ministries and Agencies operate or would operate, therefore this field need an interministerial coordination machinery. Coordination and liaison between ministries and agencies would have to be strengthened and institutionalized.

Two Ministries seem to be in a position to assume a lead role on this field, these are: The Ministry of Marine Transport and Port and the Ministry of Justice and Religious Affairs.

Except for the off-shore oil exploration and exploitation and for fisheries, there is a lack of specific regulation. As regards the International Conventions and Regional Agreements Somalia has signed a very limited number of them and has ratified and even smaller number. International Conventions provide basic standards, and it is the interest of Somalia to ratify such Conventions and I strongly recommended the Government should be taken the following steps.

1) National Organization.

(a) Each ministry or agency should consider the environmental aspect in its field of responsibility, and the responsibilities of ministries and agencies sector by sector should be clearly established by laws. Special unit within the ministries concerned could be created. Budget consideration will have to be taken into account when legislation defining ministerial responsibilities and necessary
resources should be provided.

(b) An Interministerial coordination machinery should be created. This machinery should have two components: (i) An Interministerial Commission at technical level and (ii) an Interministerial Committee at the political level.

(i) Interministerial Commission

The interministerial Commission chaired by the permanent Secretary of the Ministry of Marine Transport and ports, would be composed of representatives of all ministries and agencies concerned. The permanent secretary would be assisted by a permanent staff.

The purpose of Interministerial Commission would be:

Propose to the Interministerial Committee objectives for a national policy relating to marine environment and coastal area management.

Establish the framework of a national action plan and propose actions for the implementation.

Study and examine draft laws and regulations (law, decrees, directives).

Control the implementation by ministries of the decisions taken by the Interministerial Committee.

Coordinate the participation to the regional action plans of the ministries and agencies concerned and coordinate the implementation of those action plans.
(ii) The Interministerial Committee.

The Interministerial Committee chaired by the president would be composed of all Ministries concerned. This committee meets twice per year, more if necessary. The purpose of the Interministerial Committee would be:

- Adopt the objectives and actions proposed by the Interministerial Commission and the necessary resources in terms of budget and personnel.

C) to establish a national organisation and national Contingency plan: dealing with a major pollution of the sea by oil or other hazardous substances. Therefore it is in the interest of Somalia to ratify to a number of international conventions.

Firstly, the Government of Somalia should ratify the Regional Seas Conventions:

The Convention for the Conservation of the Red Sea and Gulf of Aqaba Environment and the Protocol Concerning Regional Cooperation in Combating Pollution by Oil and other Harmful Substance in case of Emergency.


Finally, the Government of Somalia should ratify the International Conventions relating to marine pollution of which IMO is depository:

MARPOL 1973/78
COLREG 1972

SOLAS 1974

CLC 1969 and Protocol 1984

FUND 1971 and Protocol 1984

Conventions relating to intervention on the high seas in case of pollution (Convention 1969 and Protocol 1973)

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ANNEX 3.

TRAWLABLE AREAS OF SOMALIA

TRAWLABLE AREAS