1985

Delimitation of the areas of maritime jurisdiction of Gabon

Joseph M. Etoughe-Obame

WMU

Follow this and additional works at: https://commons.wmu.se/all_dissertations

Recommended Citation
https://commons.wmu.se/all_dissertations/973

This Dissertation is brought to you courtesy of Maritime Commons. Open Access items may be downloaded for non-commercial, fair use academic purposes. No items may be hosted on another server or web site without express written permission from the World Maritime University. For more information, please contact library@wmu.se.
THE DELIMITATION OF THE AREAS OF MARITIME JURISDICTION
OF GABON AND ESPECIALLY HER TERRITORIAL WATERS

BY

Joseph Marie ETOUGHE OBAME

A Paper submitted to the World Maritime University as part of the requirements in General Maritime Administration for the award of a Master of Science Degree.

Paper directed by:
Professor Gunnar Stubberud
The World Maritime University

APPROVED:

DATE: May 1985
THE CONTENTS OF THIS PAPER REFLECT MY OWN PERSONAL VIEWS AND ARE NOT NECESSARILY ENDORSED BY THE WORLD MARITIME UNIVERSITY OR THE INTERNATIONAL MARITIME ORGANIZATION.
TO ALL MY FAMILY
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td><strong>Chapter I</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section I -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presentation and Definition of the Territorial Sea</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>1 - Historical</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>2 - Definition</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>3 - Rights and Duties of the Coastal States</td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Section II -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Contiguous Zone</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>1 - Historical and Definition</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>2 - Rights and Duties of the Coastal States</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>Section III -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Exclusive Economic Zone (E.E.Z.)</td>
<td></td>
<td>27</td>
</tr>
<tr>
<td>1 - Definition and Historical</td>
<td></td>
<td>27</td>
</tr>
<tr>
<td>2 - Rights and Duties of the Coastal States</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>3 - Rights and Duties of other States</td>
<td></td>
<td>37</td>
</tr>
<tr>
<td>Section IV -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Continental Shelf</td>
<td></td>
<td>39</td>
</tr>
<tr>
<td>1 - Definition and Historical</td>
<td></td>
<td>39</td>
</tr>
<tr>
<td>2 - Rights and Duties of the Coastal States</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>3 - Rights and Duties of other States</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td><strong>Chapter II</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The &quot;Raison d'Etre&quot; of the Unilateral extension of Gabon's Territorial Waters</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Section I -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Section II -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal status of the Gabonese Extension of Territorial Waters</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td>Section III -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Socio-Economic Factors</td>
<td></td>
<td>51</td>
</tr>
<tr>
<td>Section IV -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Geographical Factors</td>
<td></td>
<td>56</td>
</tr>
<tr>
<td>Section V -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Security Factors</td>
<td></td>
<td>58</td>
</tr>
<tr>
<td><strong>Chapter III</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Problems of Delimitation of Maritime Boundaries</td>
<td></td>
<td>61</td>
</tr>
<tr>
<td><strong>Conclusion</strong></td>
<td></td>
<td>70</td>
</tr>
<tr>
<td><strong>Annexes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex I -</td>
<td></td>
<td>Maritime Zones</td>
</tr>
<tr>
<td>Annex II -</td>
<td></td>
<td>The Gulf of Guinea</td>
</tr>
<tr>
<td>Annex III -</td>
<td></td>
<td>Gabonese Western North Coast</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

I would like first of all to thank Professor Gunnar Stubberud in charge of the General Maritime Administration Course 1983, and director of my Project, for his disponibility and advice.

Special thanks to my colleague, Hans Ewarg from Cameroon, for his help and the time he allowed me despite his own work.

I would also like to thank the Gabonese Authorities for having agreed to designate me to follow this two-year Course in General Maritime Administration. By this I have in mind the following:

His Excellency, Mathieu Nguema, Minister of the Department of Merchant Marine

Messrs: Georges-Aime Mathas, Director General of the Merchant Marine
Blaise Auguste Soungani, Deputy Director General of the Merchant Marine
Benoit Ekomie, Director of the Division of Maritime Affairs
Pierre Sockat, Director of the Division of Safety of Navigation and Seafarers
Nziengui Nziengui, Director of the Merchant Fleet.

I am grateful to the International Maritime Organization (IMO) and to all the Staff of the World Maritime University:

Professors - resident or visitors, Secretaries and the Administration with special thanks to the English Laboratory Section.

Secondly, this work is not intended to be exhaustive and complete. Consequently much of what follows will be superficial and very selective. All that is attempted is a rapid overview of a particular aspect of the Law of the Sea.

Finally, English not being my mother language, I would like to ask the indulgence of the Jury for the errors and gaps which they will observe in this work.

Joseph Marie Etoughe Obame
May 1985
INTRODUCTION

The purpose of my study is to analyse the reasons or motivations which led most of the developing countries to claim wider maritime jurisdiction areas than those they had traditionally. My study is going to be limited to the case of Gabon a country from which I come from consequently well informed of than any other. But, being a developing country, the factors influencing the situation in Gabon could be applied in every developing country.

For this study, I was widely inspired by the work done by my defunct fellow-country man and best friend, René ONDO NGUEMA, for his master's degree thesis: "Le Gabon et la mer : l'enjeu maritime d'un Etat Africain Côtière" (Gabon and the Sea: the goal of an African Coastal state), defended publicly in June 1981 in Bordeaux (France). I also analysed the different legal texts existing in this matter in Gabonese legislation. Finally, I used the 1958 Conventions and the convention on the law of the Sea 1982; and books from well known authors who wrote about the law of the sea and the third world's demand for a new international maritime order.

The developing states' claims can be summarised in two points:
1) inadequacies of the 1958 Geneva Conventions and;
2) the socio economic factors.

Besides these two facts some others must be taken into account such as the security factor and the geographical situation and particularities of some states. For all these reasons, the new maritime states felt, that it was an imperative necessity to establish a new international maritime order if they wanted to meet with the challenges presented by developed countries.
As a matter of fact, the developing states were in any case dissatisfied with the results of the previous law of the sea conferences, which they considered to be legalistically conceived and still oriented towards smaller world of major maritime powers. Some of these states had taken their own unilateral action in vastly enlarging their coastal ocean areas.

However they finally realised that the freedom of navigation benefits more the developed Nations whose economies depend on maritime transportation. Again it is the carriers who, through the conference system, impose their freight rate to the third world. This realisation of the principle of freedom of navigation led to the UNCTAD Code adopted in 1974.

On the other hand, the 1958 Convention on the fishing and conservation of living resources of the high seas received a little general support, as illustrated by the fact that late 1971 only 27 countries had ratified it. Moreover, few of the major fishing countries were among those twenty-seven. Though many countries applied conservation principles, it was clear that the world community did not consider the rules laid down in the 1958 Convention adequate to meet overall objectives of future.

Besides being a valuable protein resource, fish have proven to be a very valuable economic resource being, obtained from the seas. Gross revenues, world wide, from the annual harvest of living resources have been estimated at approximately, several billion dollars. As a consequence more and more countries both for food and for revenue, demanded a share of the world's fisheries. This was particularly true of developing countries that saw large sophisticated foreign fishing
fleets operating, processing, canning and freezing catches, off their coasts and frequently depleting stocks that local fishermen had historically fished.

These countries were well aware of the fact that the distant-water fleets could move over thousands of miles from one fishery to another, while their own fishermen suffered because they could not move beyond local fishing grounds. In short, a great number of countries came to the conclusion that a coastal state's economic interest had to be recognised, as well as, its interest in conservation. The Gabonese representative in the sea-bed committee summarised it in the following terms: "for Gabon a coastal State must be the exclusive owner of its coasts, in order to put into effect a better control, in order to ensure its security; control the vessels crossing its waters in order to guarantee the respect of its commercial, financial and political interests. It also has to have the monopoly of exploiting the resources, off its coasts in order to ensure the subsistence of its population".

These factors are the underlying reasons why the 1958 Conventions was not better supported and why there was a deepening demand for a new regime for high seas fisheries. Then some states, particularly in Latin America, claimed complete sovereignty over waters adjacent to their coast by extending their territorial seas, primarily to obtain full jurisdiction over the fisheries off their coasts. But the problem of the fisheries was not the only one which faced developing countries, there was also the thorny problem of the delimitation of the breadth of the territorial sea.

The problem of the territorial sea and her breadth is a question on which, up to the new law of the sea conference, there
has been no general consensus. Some brief "flashes" will give to us more than any speech, an idea about the situation.

In 1958 the U.N. convened at Geneva, the first U.N. conference on the law of the sea. The conference adopted four international conventions covering the territorial sea, the high seas, the Continental Shelf and the fishing and conservation of living resources and one protocol for the settlement of conflicts, but the thorny problem of the delimitation of the territorial sea was not solved. Each state kept sovereign rights on her continental shelf, defined as the area extending up to 200 meters depth or beyond, "as far as the sea-bed could be exploited". The technology's being almost daily, the limit was pushed outwards every day.

The second Conference, in 1960, grounded on the same problem: for lack of one vote, the conference could not adopt anything. It failed to produce any substantive agreement on the limits of the territorial zone and fishing rights. In the meantime several States had taken unilateral decisions to push the limit of their territorial waters up to 200 miles.

In 1967, Ambassador Arvid Pardo of Malta, told the U.N. General Assembly's first committee that technological and other changes in the world required the international community to address the matter of laws governing the seas beyond national jurisdiction. In his speech and draft resolution, he urged the exclusion of the sea-bed and ocean floor "beyond the limits of present national jurisdiction" from national appropriation and the establishment of an international Agency to regulate, supervise and control all ocean bed activities beyond such limits. A 35 member ad-hoc committee was set up by the Assembly to study the matter. The ad-hoc committee grew to 41 members and
was renamed "committee on the peace-full uses of the sea-bed and the Ocean-floor beyond the limits of national jurisdiction", in 1968.

As a result of the Sea-bed Committee's work, the General Assembly adopted a, "Declaration of Principles governing the sea and ocean floor, and the subsoil thereof, beyond the limit of national jurisdiction". These areas are declared the "Common heritage of mankind", and their exploration and exploitation should be done in the whole of mankind's interest, independently of states' geographical situation, which were coastal or not.

But, during the sea-bed committee's work, developing countries stated to call in question again all the classic international law, especially the dispositions related to the territorial Sea, under the pretext that they had not participated in its elaboration, being at this time colonised.

Thus it was in order to solve all the legal question related to the sea, the first session of the third U.N. Conference on the law of the sea was convened again in 1973 at Geneva. The Conference adopted a 180 pages document including 320 articles, 8 annexes and one explanatory memorandum. Its title was "Draft convention on the law of the sea". This project was amended several times and in 1982, at the eleventh session in New-York, the conference voted a number of amendments to the draft convention. Finally, at the request of the united-states, there was a recorded vote and the convention was adopted by 130 States to, 4 Against, with 17 Abstentions. The convention was signed early december 1982, in Caracas, Venezuela.
This historical background showed us that it was difficult to find a precise delimitation of the breadth of the territorial sea. In fact it is only after 25 years that a general consensus on this matter was reached.

However, it is important to notice that while the clearly dominant trend in state practice was the 12 nautical miles territorial sea and admitted implicitly as defining the limit of the sovereignty of the state in the open sea from its coast; this rule has known a limited application both in the space and in the time.

**Limited application in the space:**

Among 86 State-parties to the 1985 Geneva Convention, 88 in 1960, unless 40 of them have conserved for their territorial sea, a breadth comprised between 6 to 12 miles.

On the African scope and among 17 Center-Western coastal States of the Atlantic, three (3) of them only had joined the four (4) Geneva Conventions. These States are:


Concerning the breadth from 6 to 12 miles, six (6) African States apply it - Gambia, Ghana, Tunisia, Libya, Morocco and Egypt. But parrayly these states have exclusive fishing zones beyond their territorial waters.

**Limited application on the time:**

This is illustrated by the fact that Senegal which was a party to the 1958 Geneva Convention denounced them in 1970.
On the other hand, at Yaounde's regional seminar on the law of the sea, in 1972, although a consensus on a limit of the territorial sea relatively narrow was set up, while this consensus laid on the creation for each coastal-state of an exclusive economic zone, no agreement was concluded on a precise breadth of the territorial sea. This lack of consensus illustrated the statu quo which still existed at Geneva in 1958 and 1960 on the precise delimitation of the territorial sea.

Then for Gabon and some other developing countries, this gap, this vagueness in the international law could not exist indefinitely. It is in view of the above that Gabon had no choice, but to define her own maritime boundaries. This was to make up for the lack of any consensus at that time.

The unilateral extension of Gabonese territorial waters had to be considered as conservative measure. Nevertheless, while waiting to find a settlement of the situation, this extension was necessary to protect the marine environment and the living resources.

Gaton in taking this measure took account the fact that it was imperative, since she depends much on the ocean resources lying off her coast and maritime transport facilities for its trade. However this manifestation of sovereign rights should not jeopardize the rights of other states. To sum-up I can say that this measure was edicted by the two reasons I listed previously, and in order to analyse in detail the gabonese motivations for such measure, I am going first to define the maritime areas of national jurisdiction (Chapter I); then the reasons for the unilateral extension of Gabonese territorial waters (Chapter II) and; finally the consequences of this act that is to say the problems of the delimitation (Chapter III). But before going on, I must
first of all, present generally my country, Gabon.
Superficie : 267.000 kilomètres carrés
Population : Environ 1 million (estimation)
Capitale : Libreville (200.000 hab)
Villes principales : Port-Gentil (79.000)
                   Franceville (35000)
Principales richesses : Pétrole, manganèse (3ème producteur mondial)
                        Uranium (6ème producteur mondial), bois...
Produit Intérieur Brut : (1979) 532 milliards
                        200 000 000 de francs C.F.A.
Balance commerciale (1979) 377 milliards de Francs C.F.A.
d'exportation.
11 131 milliards C.F.A. d'importation
Located in Central Africa, Gabon is bounded in the south and the East by the People's Republic of Congo, in the North by the Republic of Cameroon and Equatorial Guinea and in the west by the Atlantic ocean and the Republic of Sao Tome and Principe.

The whole surface of its territory is about 267,000 km² for an estimated population of one million inhabitants. The main towns according to their importance are Libreville (capital), Port-Gentil and Franceville.

Gabon is one of the biggest raw material producers in Africa such as oil (member of OPEC), manganese (3rd producer in the world); Uranium (6th producer in the world), Timber (2nd in Africa) etc... On the other hand, the country has numerous unexploited natural resources such as Iron, baritine, zinc, rubber... At least Gabon has the second highest, income per capita, after the Republic of Libya, in Africa.

Covered by 80% of the forest which has played a leading role for a long time in economic development, Gabon has an equatorial climate, hot and humid. The climate is tempered due to the fresh winds from the sea which spread over a low-flat coastal area, covered by lakes and estuaries extending from 30 to 300 kms inland.

Gabon has 800 kms of maritime front which represents about 38% of the total maritime front of the states of Guinea gulf (Congo, Cameroon, Zaïre, Equatorial Guinea, Sao Tomé and Principe). Emphasizing the comparison, Gabon has also 45% of the
total continental shelf surface of the same states. Speaking about the E.E.Z., its represents about 22% of the total of these states, either 62,300 km. It is twice of the total E.E.Z. of Congo and Cameroon.

The forest (timber) and raw materials were for a long time, the only factors of Gabon's riches. The sea as an economic factor having always played a modest role. Fishing for example served only for self consumption of the population.

So in view of diversification of its ressources, Gabon looks resolutely to the sea, which considered as a single navigational area has become a genuine aim. It is in view of the above Gabon has to move progressively from a simple coastal state to a maritime state.

Gabon has to become a maritime state in order to make use of the maximum of her living ressources for the well being of its citizens and also to bring about an increase in economic growth.

In becoming a maritime state, Gabon will export her primary products and benefit from international trade. Thus the creation in 1976, of the national shipping Company (SONATRAM).

Being a developing country with heavy dependance on the resources of the sea, Gabon has to pay particular attention to the evolution of an international law of the sea, previously a monopoly of developed countries. Basically built on their concepts and for their interests, the classic law of the sea appeared to
developing countries as favouring or promoting the supremacy of the old maritime nations.

The 1958 Convention did not safeguard the interests of all States, especially those states which, at that time, were still under colonial domination. This inequality perpetuated by the inadequacies of the law was later on challenged by the new maritime nations. Gabon has always contributed in international forums to the finding of an equitable solution to this problem.
Section I - Presentation and definition of the territorial sea.

1) HISTORICAL

The oceans cover 70% of the earth's surface. And yet man has over three millennia not only attempted to conquer this endless continent by navigation it with his frail craft, but has also tried to appropriate large areas of it for his own varied uses.

Then medieval Venice claimed the entire Adriatic sea. The Republic of Genoa claimed not only the Ligurian sea but also the Gulf of lions. Elsewhere other states followed suit Norway and Denmark, decided the parts of the North sea were under their sovereignty, and England claimed existensive belts of water around the british isles, including the Atlantic Ocean from North Cape to Cape Finisterre. The culmination of this territorial expansion was probably reached when in 1943 Pope Alexander VI Borgia divided the Atlantic Ocean, from pole to pole, between the two iberian "superpowers", spain and Portugal, who had also steadily expanded their jurisdiction.
After this era of revindications of sovereignty over the entire seas, it necessary appeared to let to the state, over a coastal maritime Area, sovereignty in view of her security: it is the famous rule of 3 miles, created by the Dutch publicist Cornelis Van Bynkershoek, in his work "De dominio maris" (1701), drawned from the cannon-shot rule, considered for a long time as the breadth of the territorial sea.

Despite agreement on the nature of the coastal state's authority in the territorial sea, the question of its scope has remained unsolved. In fact throughout the entire history of the territorial sea, the question of its breadth has been a matter of controversy.

Early practice and doctrine, in the sixteenth and seventeenth centuries, use vague criteria such as the limit of visibility and the range of cannons on shore to determine the extent of the waters over which control was claimed. By the last quarter of the eighteenth century the cannon-shot rule was in force in western and southern Europe.

During the first half of the nineteenth century, the 3 miles limit had achieved considerable support in state practice. At first Great-Britain and most of its colonies adopted the 3 mile limit, mainly by a process of assimilating and expanding on the one cannon-shot rule. The rule was further affirmed in later cases and legislation.

During the latter half of the century, some states attempted to assert general jurisdiction beyond 3 miles, but they were strongly opposed in their claims. Therefore, the cannon-shot
rule and the 3 mile limit were generally regarded as synonymous in the practice of states supporting a 3 miles rule.

In recent times, there has been a consistent failure to reach any sort of lasting agreement on this issue and the differing views seem to grow further apart as new claims are made and new settlements attempted.

By the beginning of the twentieth century, a zone limited to 3 miles had been established by most of then existing states, including Great-Britain, the United States, Germanay, France, and many other maritime powers. Then the 3 mile limit had been positively adopted as law by twenty of the twenty one states were acknowledging on claiming a territorial sea at that time. These states were: Argentina, Austria, Hungary, Belgium, Brazil, Chile, Denmark, Ecuador, El Salvador, France, Germany, Great-Britain, Greece, Honduras, Italy, The Netherlands, Norway, Russia, Swenden, Turkey and the U.S.A. Spain, the twenty first state, claimed six miles. Prior to 1910, Mexico, Japan and Portugal joined the "three miles club". Thus by the beginning of the twentieth century, the legal concept of the 3 mile territorial sea was well established in international law.

Within a very short time, however, the situation was changing as many states began to extend their claims to distances up to 12 miles. Some claimed absolute, others limited, jurisdiction in these new areas. The new claimants were a mixture of coastal states which had altered their marine policies in favour of an extension of sovereignty and coastal states which not being maritime states themselves were challenging the unfettered rights of the maritime states.
In 1979, the situation was the following; 19 states claimed 3 miles; 4 states claimed 4 miles; Yugoslavia claimed 10 miles, 73 states claimed 12 miles; some states claimed more than 12 miles: Cameroon and Tanzania 50 miles; Gabon 100 miles; Benin, Ghana, Guinea, Sierra Leone 200 miles.

More than ever to day, state practice exhibits a variety of claims and a lack of stability, as the claims are changing almost daily. Therefore, the new convention on the law of the sea has solved this problem.

The law of the sea convention sets the limit of the territorial waters at 12 miles in accordance with the clearly dominant trend in state practice. For parties to the law of the sea convention, and all other states recognising the lawfulness of the territorial sea claims up to at least 12 miles, the 12 mile-limit will prevail. Wider claims will not be recognised, except as between states making or otherwise recognising such claims. States making narrower claims, notably the remaining 3 mile states, and which have previously persistently objected to wider claims (U.S.A.), will not be bound even by the 12 mile limit until they become parties to the convention or otherwise recognize the legality of 12 mile-claims.

At least, it is recognised that international agreement on a 12 mile territorial sea is both desirable and inevitable; it seems likely that the practice of all states will, in the near future, be brought into line with this limit. This is the aim of the new convention of the law of the sea.
**Definition of the territorial sea:**

The Art. I of the 1958 convention and the Art. II of the new convention of the law of the sea define the territorial sea. But the Art. II of the new convention is wider because it introduces the case of an archipelagic state. It states "the sovereignty of coastal state extends beyond its land territory and internal waters, in the case of an archipelagic state; its archipelagic waters, to an adjacent belt of sea, described as the territorial sea."

From this definition it appears that the territorial sea of a state is the belt of ocean which extends seaward from the shoreline or the outward limit of internal waters.

Territorial seas are seawards of rivers, most bays, some gulfs, lakes, ports and roosteads all of which are considered to be internal, or national waters.

It is important to note the difference between territorial seas and internal waters, because separate rules govern them. Internal waters are characterized by the fact that the state of which they lie exercises complete sovereignty over them in the same manner that it exercises sovereignty over its land mass. Included, is the right to deny their use to foreign ships. By usage, the term territorial waters, includes both the territorial sea and internal waters.

The law of the sea convention sets also the limit of the territorial sea at 12 miles, in accordance with the clearly dominant trend in practice. Art. 3 states "Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding
12 nautical miles, measured from baselines determined in accordance with this convention" (for the problem of baselines, see chapter III).

The sovereignty of the coastal state "extends to the airspace over the territorial sea as well as to its bed and subsoil "(Art. 12). But this sovereignty" is exercised subject to this convention and to other rules of international law". What are the rights and duties of the states over its territorial sea?

Rights and duties of the coastal state over the territorial sea

Each state has its territory on which it may exercise its sovereignty, or perhaps it is easier to say its jurisdiction. This sovereignty extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea, but also to the seabed, subsoil of the territorial sea and to the airspace over it.

Generally, a coastal state possesses the same sovereign rights in territorial waters that he has in its internal waters, with the very important exception that territorial waters are subject to a right of free and innocent passage by merchant vessels of all nations which must, however, conform to the law and regulations of the state claiming the waters. Ships, thus have the right of passage although they are within the coastal state's jurisdiction.

The coastal state has to make regulations on matter such
as public health, immigration, customs and fiscal matters, navigation, fishing and the protection of the products of the territorial sea, protection and preservation of the marine environment.

In respect to the above, the coastal state may reserve fisheries for its own nationals and it may exclude foreign vessels from navigation and trade along the coast. There is a general power of police in matters of security, customs, fiscal regulations and sanitary and health controls. Customary law recognises the right of "innocent passage" through the territorial sea (but not through internal waters).

Article 17 of the law of the sea. Convention states that "subject to this convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea".

Art. 18 gives a definition of "passage": passage means navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a port facility outside internal waters, and also the proceeding to or from internal waters or a call at a port facility. Passage shall be continuous and expeditious but stopping and anchoring are permitted if the ship is in distress or if rendering assistance to persons, ships or aircraft in distress or danger.

At the 3rd U.N. conference on the law of the sea, the right of "innocent passage" was a matter of particular interest. The maritime states, faced with expanding claims to territorial seas affecting many seaways, were concerned to provide firmer outlines for the right. In Art. 19 of the law of the sea convention the meaning of "innocent passage" is stated: passage is "innocent" so long as it is not prejudicial to peace, good order or security of the coastal state. Such passage shall take place in conformity with convention and with other rules of international law: "what
would make passage prejudicial to the peace, good order, or security of the coastal state and therefore not innocent?"?

Generally, any threat or use of force against the coastal state. More specifically, exercising with weapons of any kind, collecting information to the prejudice of the defence or security of the coastal state, engaging in intelligence activities, using propaganda aimed at affecting the defence or security of the coastal state, loading and unloading of the defence or security of any commodity, currency or person contrary to the customs, fiscal immigration or sanitary laws and regulations of the coastal state, the act of wilful and serious pollution, or, interfering with any systems of communication or any other facilities or installations of the coastal state.

In respect to the above, the coastal state may adopt laws and regulations in the following areas: the safety of navigation and the regulation of maritime traffic, the resources, the prevention of infringement of the fisheries laws and regulations, the preservation of the marine environment of the coastal state and the prevention, reduction and control of pollution, marine scientific research and hydrographic survey and the prevention of infringement of the customs, fiscal, immigration or sanitary laws.

These laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

A coastal state shall give due publicity to all such laws and regulations, and foreign flag ships while on innocent pas-
passage shall comply with these laws and regulations, and all generally accepted international regulations relating to the prevention of collisions at sea.

Therefore, if the foreign ship ceases to be innocent, or steps outside the scope of passage, it may be excluded from the territorial sea. Accordingly, it is provided that "the coastal state may take the necessary steps in its territorial sea to prevent passage which is not innocent" (Art. 25 (1)).

In addition, ships which have stepped outside the right of innocent passage are subject to the full jurisdiction of the coastal state and may be arrested by the coastal state for any violation of its law. It is a logical consequence of this right that states should have the right to suspend passage altogether where the passage of any ship would prejudice its peace, good order or security. This right may be exercised without discrimination in form or in fact among foreign ships.

After seeing the specific rights and duties of a coastal state and ships in transit, it is also important to examine a coastal state's authority to exercise criminal or civil jurisdiction over persons in ships in transit.

The criminal jurisdiction of the coastal state should not be exercised on board foreign ships passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage except when one of the following conditions pertains:
1) The consequences of the crime extend to the coastal state.

2) The crime disturbs the peace of the coastal state or the good order of its territorial sea.

3) The ship's master or diplomatic agent (consular officer) of the flag state requests the assistance of the local authorities.

4) Such a measure is necessary for the suppression of illicit traffic in narcotic or psychotropic substances.

When a ship is passing through a territorial sea after leaving internal waters, the above conditions do not apply. Under those circumstances, the coastal state has the right to arrest or investigate according to its own laws.

When one of the above conditions does obtain, the coastal state shall, if the captain so requests, advise the diplomatic agent of the flag state of the situation before taking any steps and will assist in establishing contact between such agent and the ship's crew.

When a ship is in passage through a territorial sea and is not leaving internal waters, the coastal state may not stop or divert her for the purpose of exercising civil jurisdiction in relation to a person on board. Nor may the coastal state arrest a ship in passage for the purpose of instituting any civil proceeding, except in regard to obligations or liabilities incurred by the ship in the course of, or for the purpose of, her voyage through the waters of the coastal state.
A matter of great interest is the passage of warships through the territorial sea. Art. 17 states "ship of all states enjoy the right of innocent passage". Several opinions of considerable authority deny the right of passage of warship in peace time. Other views allow such a right when the territorial waters are so placed that passage through them is necessary for international traffic.

It is clear, however, that a majority of states require prior authorisation for the passage of warships.

If a warship does not comply with the laws and regulations of the coastal state concerning passage, through the territorial sea and disregards any request for compliance which is made to it, the coastal state may require it to leave the territorial sea immediately. With such exception, nothing in the convention affects the immunity of warships and other government ships operated for non commercial purposes.
SECTION II - THE CONTIGUOUS ZONE

50) Historical and definition

Separate from the territorial sea is a zone that borders, or is contiguous to, the territorial sea. Then it is a zone of sea contiguous to and beyond the territorial sea in which states have limited powers for the enforcement of customs, fiscal, sanitary and immigration laws.

It has its origin in the 18th century "Hailing Acts" enacted by Great Britain against foreign smuggling ships hawking within distances of up to eight leagues (i.e.; 24 miles) from the shore. These Acts, which had effect from 1736 until their repeal by the 1876 "CUSTOMS CONSOLIDATION Act", were at the time regarded as permitted by "the common courtesy of nations for their convenience", as Lord Stowell put it in the case of Le Louis 1817. However, this was at a time when practice had not yet given the 3 mile limit for the territorial sea, the force of a rule of law.

A dispute with Spain in the early years of the 19th century over seizures of British ships within the 6 mile Spanish customs zone, among other incidents, focused attention on the extent of maritime claims.

By the mid-century, the 3 mile limit for the territorial sea, combined by the exclusivity of the flag state jurisdiction on the high sea beyond, was well established in Anglo-American practice and served well the interest of free navigation. Great Britain recognised that its wider customs zones were inconsistent
with the 3 mile rule.

The seizure of the French ship the "Petit Jules", twenty-three miles off the Isle of Wight in 1950, was the last occasion on which the hovering. Acts were enforced against a foreign vessel beyond the marine league. From then on, the 3 mile rule was applied in Britain and its dominions and colonies.

Thus, by the early part of 20th century, there were three main approaches to the question of jurisdiction beyond the 3 mile limit. First, States which denied that such jurisdiction existed, except where given by treaty or under the doctrine of hot pursuit and construction presence. Second, states which claimed a variety of jurisdictional zones; and third, states which claimed a jurisdiction zone, usually for customs and security purposes, which was clearly distinct from the territorial sea.

In the year between the Hague and Geneva Conferences, state practice remained divided between those states such as the United Kingdom, which did not recognise the validity of the contiguous zone claims, and the increasing number of states which made such claims.

During this period the notion of a territorial sea distinct from other jurisdictional zones became generally accepted, although a few states, such as Cuba, Spain and Greece still kept the idea of a territorial sea whose width varied according to the purpose for which jurisdiction was exercised. But most states claimed special customs and sanitary and immigration zones on the high seas contiguous to their territorial sea. Claims to fishery zone also became common place, and state practice does not seem to have distinguished between the legal character of these zones and that
of other contiguous zones.

The 1958 Conference agreed upon the establishment of a contiguous zone which could not extend for more than 12 miles measured from the baseline. The WORDING now according to new convention in it Art. 33 states that "the contiguous zone may not extend beyond 24 miles measured from the baseline."

What are the rights and duties of the coastal state over this area?

(2) Rights and duties of the coastal state over the contiguous zone

Within its contiguous zone, a coastal state may exercise control to prevent infringement of its customs, fiscal, sanitary, or immigration laws. When a coastal state's customs, fiscal, sanitary regulations have been violated within its territory or territorial sea, it may punish the offender in the contiguous zone. The consequence of this right is that the coastal state may exercise the right of hot pursuit which is valid under International law.

The doctrine of hot pursuit pertains to the situation in which a ship violates the law of a coastal state while in that state's territorial sea, and a coast guard cutter or warship goes out to seize her.

To amplify the above, a coastal state may act not only when a ship has in fact violated its law, but also when it has good reason to believe that a ship has done so.
SECTION III - THE EXCLUSIVE ECONOMIC ZONE (E.E.Z.)

I - Definition and historical

The exclusive economic zone is an area adjacent to the territorial sea and extending 200 miles seaward from the lines that served for measuring the territorial sea (Art.55 of the law of the sea convention).

The E.E.Z. is a concept of recent origin. The E.E.Z. was put forward for the first time by Kenya to the Asian-African legal consultative committee in January 1971 and at the U.N. Sea-bed committee the following year. Kenya's proposal received active support from many Asian and African states.

In 1971 the Organisation for African Unity (O.A.U.) endorsed a recommendation for member nations which stated that "212 nautical miles would constitute the national economic limit in the oceans surrounding Africa". Emphasis was placed on the word "economic" giving a completely functional connotation to the proposed zone, an "exclusive economic zone", which was to serve the economic development of African coastal states through jurisdictional expansionism of a non-territorial kind.

These proposals were further consolidated by the African states at the regional seminar on the law of the sea, held in Yaoundé, June 1972. At about the same time many of the Latin American states began to develop the rather similar concept of the "patrimonial sea" (Declaration of Santo-Domingo 1972).

The two lines of approach effectively merged by the time UNCLOS began and the new concept. The E.E.Z. being the pre-
ferred name—had attracted the support of most developing states and was beginning to attract support from some developed coastal states such as Canada, Australia, New Zealand and Norway.

The E.E.Z. is a reflection of the aspiration of the developing countries for economic development and the 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 the same time the E.E.Z. could be seen as something of a compromise between those states that claimed a 200 mile territorial sea (some African and Latin-American States) and those developed states (e.g. Japan, U.S.S.R. and U.S.A.) which were hostile to extend coastal states jurisdiction.

Basically, the purpose of the E.E.Z. concept is to safeguard the economic interests of the coastal States in the Waters and Seabeds adjacent to their coasts without unduly interfering with other legitimate uses by other states.

Within that zone specific rights and jurisdiction accrue to the coastal state and freedom of other states are governed by the regime in its entirety. Its central thrust is economic in character and essentially provides for sovereign rights over resources, both living and non-living, on and in the ocean floor as well as in super-adjacent waters. It also has rights over other activities that could have a bearing on its economic exploitation and exploration, such as scientific research, the establishment and use of artificial islands and control of pollution.

We are going to examine first the rights and duties of the coastal state, then the rights of the other states over this area.
2 - Rights and duties of the coastal state

The coastal state's rights and duties are set out in broad terms in Art. 56 of the law of the sea convention, and amplified in later articles. The coastal state's rights relate essentially to the natural resources of the E.E.Z. and fall under 6 broad headings:
1) non-living resources
2) living resources
3) other economic resources
4) construction of artificial islands and installations
5) marine scientific research
6) pollution control.

2.1) Non living resources and other economic resources

The coastal state has Sovereign rights for the purpose of exploring and exploiting, conserving and managing thenon living resources of the sea bed and subsoil and the superadjacent waters. Although the production of energy from the water, currents and winds is not yet in reality, a coastal state's rights in its E.E.Z. include that of controlling such production.

2.2) Living resources

Art. 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 the superadjacent waters. These rights together with certain duties imposed on the coastal state are spelt out in detail in Art. 61 - 73 of the law of the sea convention.

The management of fisheries is, by far, the most significant
control exercised by a coastal state in its exclusive economic zone. Having sovereign rights over fisheries, a coastal state determines not only how much harvesting should be done, but who should do it and under what circumstances. In doing so it has the obligation, based on the best scientific evidence, to ensure that the living resources are not endangered by over-harvesting.

Coastal stocks of fish move back and forth between adjacent states or jurisdictions. When there are many neighbouring states with relatively small coast lines and therefore narrow E.E.Z. as it is the case in the North Sea and off the west coast of Africa, the need for cooperation and co-ordinating is obvious. Consequently coastal states are required to exchange statistics in order to arrive at common or similar conservation measures, and the best way of doing that is to create subregional or regional organisations.

It is incumbent upon a coastal state that does not have the capacity to harvest the allowable catch in its E.E.Z. to permit other states to harvest, on terms agreed upon, the particular stock of fish under its control. Within the limits of good conservation, this principle, known "optimum utilization" is followed because it is far better to catch and use excess fish than to allow them to lie fallow and be of no use to mankind.

The art. 62 of the convention draws up the conditions that a coastal state, in implementation of the principle of optimum utilization, could impose on foreign fishermen. The conditions are complex and extensive. They include the coastal state's rights to board, inspect, arrest and conduct judicial proceedings as it deems necessary to ensure compliance with its laws and regulations.
2.3) **Construction of artificial islands and installations**

The law of the sea confers to the coastal state not "sovereign rights" in this matter, but more jurisdiction. The coastal state has exclusive jurisdiction over such artificial islands, installations and structures, and has the right to establish safety zones.

The coastal state has the exclusive right to construct or regulate the construction and operation of artificial islands (Art. 60). It has also exclusive rights to construct or regulate the construction and operation of installations and structures used for economic purposes, or which may interfere with the exercise of its rights, inter alia fishing and oil drilling.

The rights of the coastal states 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, installations 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. 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 international navigation" (Art. 60-7). Though installations of the type under discussion come under the jurisdiction of the coastal state, they do not have the status of island and, consequently, do not have territorial sea of their own.

2.4) **Marine Scientific research**

In the E.E.Z. the coastal state has jurisdiction with re-
gard to certain areas on which marine scientific research are conducted. The marine scientific research could be conducted in these areas only with the consent of the coastal state.

The convention specifies the right of a coastal state to require consent as a prerequisite to scientific research in its E.E.Z. ; beyond that zone, all states are free to conduct scientific research subject to the generalized duty of promoting international co-operation.

Art. 246 of the law of the sea convention related to marine scientific research in the E.E.Z. and the continental shelf states: "coastal states in the exercise of their jurisdiction, have the right to regulate authorize and conduct marine scientific research in their E.E.Z. and on their continental shelf in accordance with the relevant provisions of this convention.

Marine scientific research in the E.E.Z. and on the continental shelf shall be conducted with the consent of the coastal state".

Further the convention in the same Art. 246 states that "Coastal state, shall, in normal circumstances, grant their consent for marine scientific research projects by other states or competent organisations in their E.E.Z. or on their continental shelf to be carried out... exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind".

However, "in their discretion, coastal states may with hold their consent to the conduct of a marine scientific research
projects of another state or competent international organisation in the E.E.Z. or on the continental shelf of the coastal state if that project:

a) is of direct significance for the exploration and exploitation of natural resources, whether living or non living:

b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment:

c) involves the construction, operation or use of artificial islands, installations and structures referred in articles 60 and 80.

d) Contains information communicated pursuant to article 248 regarding nature and objectives of the project which is inaccurate or if the researching state or competent international organisation has outstanding obligations to the coastal state from a prior research project.

Before the consent is given by the coastal state, states and competent international organisations which intend to undertake marine scientific research shall, "not less than 6 months in advance of the expected starting date of the marine scientific research project, provide that state with a full description of

a) the nature and objectives of the project;

b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;

c) the precise geographical areas in which the project is to be conducted;

d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its
removal, as appropriate;

e) the name of the sponsoring institution, its director, and the person in charge of the project; and

f) the extent to which it is considered that the coastal state should be able to participate or to be represented in the project "(Art. 248).

Finally, a coastal state "shall have the right to require the suspension of any marine scientific research activities in progress within its exclusive economic zone or on its continental shelf if:

a) the research activities are not being conducted in accordance with the information communicated as provided under article 248 upon which the consent of the coastal state was based; or

b) the state or competent international organisation conducting the research activities fails to comply with the provisions of article 249 concerning the rights of the coastal state with respect to the marine scientific research project" Art. 253.1).

2.5 Pollution control and preservation and protection of the marine environment

Article 192 of the law of the sea convention provides a general obligation for all states: "states have to protect and preserve the marine environment. Implicit in that obligation is the fact that man's activities create the larger polluting effect against the delicate balance of ocean chemistry.

In carrying out the duty noted above, all states are required to use the best practicable means at their disposal, including joint actions with neighbouring states, to ensure that pollution arising from incidents or activities under their jurisdiction does
not spread beyond the areas where they exercise sovereign rights. This means that they must protect and preserve the marine environment from, among other things, pollution caused by the release through the atmosphere or by dumping of toxic, harmful, and noxious substances from land-based sources; and from pollution by ships, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation, and manning of ships.

Pollution from installations and devices used in exploration or exploitation of the resources of sea-beds and subsoil is also specifically included, as is pollution from other installations and devices operating in the marine environment.

In carrying out this broad duty to protect the marine environment, all states are requested to refrain from unjustifiable interference with activities of other states, and to co-operate on both global and regional basis in formulating consistent rules, standards and procedures to meet the threat of pollution. The requirement to co-operate on a regional basis carries with it the need for neighbouring states to develop and promote joint contingency plans to respond to pollution accidents.

States are obliged to establish to ships flying their flag, laws for the prevention and control of pollution. These laws must be generally consistent with rules that are accepted internationally as a result of diplomatic conferences or the work of such International Organizations as I.M.O. (MARPOL 73/78).

A state may make compliance with particular pollution controls a condition for the entry of foreign ships into its ports and internal waters, or for visits to its offshore
terminals. When it does so, it is under obligation not only to advise competent International Organizations but to also give publicity to the controls so that ships may be aware of them before they attempt to enter.

Within its E.E.Z. a coastal state may establish laws for pollution control so long as they are in conformity with generally accepted International Rules. If, however, it has reasonable grounds for believing that an area of its E.E.Z. has characteristics that make it particularly susceptible to pollution, it may resort, through International Forums, to special mandatory methods of control. Accordingly, pertinent coastal states have the authority to establish extra stringent laws and regulations within their E.E.Z.

State must ensure that ships flying their flag or registered under their law comply with international rules for the control of pollution. This requirement includes prohibiting such ships from going to sea unless they can proceed in compliance with applicable international rules and they carry valid certificates showing that necessary inspection for seaworthiness have been made.

Should a ship violate an international rule regarding pollution, her flag state must, without prejudice to the rights of other states, provide for an immediate investigation and, where appropriate, cause proceedings to be taken against her, regardless of where the violation occurred. A flag state must, at the request of another state, investigate any violation alleged to have been committed by one of its ships. If the evidence is sufficient so to warrant, the flag state has a duty to conduct the necessary proceedings.
When a coastal state has clear grounds for suspecting that a ship navigating in its E.E.Z. has violated applicable international or national rules, based on international norms, it has the right to require that ship to provide her identification, port of registry, last and next port of call, and other information required to establish whether a violation had occurred.

Again, if there was a violation in the E.E.Z. and it resulted in a substantial discharge causing or threatening significant pollution, the coastal state may order the ship to stop and physically inspect her, if the ship has refused to give information or if there is a variance between the information given and the evident factual situation. In the more damaging case where the discharge from the ship causes major damage or threatens major damage for the coastline or ressources of the coastal state, it may, if the evidence warrants it, take action, including detention in accordance with its laws.

In exercising its rights ans performing its duties under the convention in the exclusive economic zone, the coastal state shall have due regard to the rights and duties of other states.

(3) - Rights and duties of other states over the E.E.Z.

The rights and duties of other states over exclusive economic zone are set out in Art. 58 of the law of the sea convention. They are all essentially concerned with international communications and are those high seas freedoms that have survived the demands of coastal states.

Thus other states have the freedom of navigation, overflight,
and of laying of submarine cables and pipelines. Article 58 States "In the E.E.Z., all states, whether coastal or landlocked, enjoy, subject to the relevant provisions of this convention, the freedoms referred to in article 87 of navigation and overflight and of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this convention".

However, the freedom of laying cables and pipelines is not absolute. According to article 79.4 the coastal state may establish conditions for cables and pipelines entering its zone. Besides this, certain articles of the high sea regime are applicable.

On the other hand, the rights of the land-locked countries over the exclusive economic zone have been one of the difficult questions to be solved at the law of the sea conference. This question was related both to the living resources, and to the non-living such as oil and gas.

In article 69 it is stated that "land-locked states shall have the right to participate, on an equitable basis, in the exploitation of the exclusive economic zones of coastal states of the same sub-region or region, taking into account the relevant economic and geographical circumstances of all states concerned".

Art. 70.2 defines the "states with special geographical characteristics". It means "coastal states, including states bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other states in the subregion or region for adequate supplies of fish for the
nutritional purposes of their population or parts thereof, and coastal states which can claim no exclusive economic zones of their own."

Finally, the rights of the land-locked states, according to article 69, is limited only to the surplus. The terms shall be established by the states concerned through bilateral, sub-regional or regional agreements.

SECTION IV - THE CONTINENTAL SHELF

1) Definition and historical

In general geographic terms, a continental shelf is the underwater extension of the land mass of a territorial country to the outer edge of the continental margin beyond which is the deep seabed. The article 76.1 gives a definition of the continental shelf: "the continental shelf of a coastal state comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

The width of the shelf may vary from a mile or so to some hundreds of miles and the depth ranges from 50 to 550 metres. The average depth of the edge is between 130 and 200 metres.

Because the tremendous wealth of resources, particularly
oil and gas of continental shelves, the question of their legal extent and precise limits has been one of the more difficult issues in negotiations on the law of the sea.

The international regime of the continental shelf developed gradually. As long as the bed of the sea was not technically susceptible to occupation by any state, the general rule was that it was free as the seas above it.

The situation started to change when, in 1944 an Argentina Decree created zones of mineral reserves in the epi-continental sea. A decisive event in state practice was a United States'proclamation on 28 September 1945 relating to the natural resources of the subsoil and sea-bed of the continental shelf as subject to its jurisdiction and control. The lines of the Truman's proclamation where then, in the coming years to be followed by other states.

Growing out of this major development certain facts and factors became apparent:

1) an area of the sea bed and subsoil had been successfully occupied;

2) according to the technology of the 1940s, the only way to get the resources from the subsoil was by the use of oil and gas rigs planted on the ocean floor;

3) the presence of stationary oil or gas rigs could constitute a menace to free navigation;

4) and because continents extend under the sea littoral, nation's claims to subsoil resources should have priority over all others. The right to this priority is based on what is known as the "theory of contiguity".
It is interesting to note that the United states has not claimed any sovereignty, title, or ownership in the continental shelf itself, but directed its jurisdiction and control to the natural ressources of the shelf.

In exercising control over these ressources, however, it created what might; in some instances, be considered physical impediments to navigation (offshore oil rigs). This development may appear to contradict what President Truman said in his proclamation of 1945; "The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way affected".

The factor that created this apparent contradiction was the physical presence of the rigs. Thus an accommodation to provide for the new (off shore rigs) and the old (freedom of navigation) use had to be made. This was accomplished through the mechanism of the 1958 Geneva convention on the continental shelf.

As previously stated above, after the Truman proclamation, numerous coastal states made similar claims to their continental shelves and used similar equipment to extracting oil and gas. Thus, a coastal state has also the right to install oil rigs or other devices extending to the surface of the high seas in order to exploit the natural ressources of its continental shelf. With regard to artificial islands, installations and structures on the continental shelf, article 60 of part V of the law of the sea convention, exclusive Economic Zone, as may be amended, applies. This means that the coastal state regulates the construction, operation and use of:
- artificial islands, installations and structures for economic purposes
- Installations and structures which may interfere with the exercise of the coastal state in the zone.

The coastal state has "the exclusive right to authorise and regulate drilling on the continental shelf for all purposes", (also research drilling (Art. 81). It may also establish safety zones for the mutual protection of shipping and the installation itself. The state concerned is obliged, however, to maintain permanent navigation warning of the presence of zones and installations.

Ships of all nationalities must respect such safety zones, provided the coastal state has given due notice of their creation and of the installations they protect. No installation may be established in a recognised sea lane where its presence could interfere with international navigation. Though installations of the type under discussion come under the jurisdiction of the coastal state, they do not have the status of islands and, consequently, do not have territorial seas of their own.

Through common practice in the international community it became recognised that a coastal state had sovereign rights over its continental shelf for the purpose of exploring and exploiting the natural resources thereof. The Law that developed was codified in the 1958 Geneva convention on the continental shelf and received wide support in the world community. It was reinforced by the new law of the sea convention.

As previously stated above, after the Truman proclamation, numerous coastal states made similar claims to their
continental shelves and used similar equipment for extracting oil and gas.

(2) Rights and duties of the coastal state

The coastal state exercises sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources. According to the 1958 Convention the sea area above the continental shelf is high seas and, therefore, a part from the express provisions of the continental shelf convention 1958 (Art. 2). The freedom of the high seas is preserved in respect of navigation, fishing, the laying of submarine cables and pipelines, and flying over the high seas.

Thus, the exercise of sovereign rights over the continental shelf does not alter the legal status or the superadjacent waters of the air space above those waters. Nor, does it affect the right of all states to lay submarine cables and pipelines across the Continental shelf of any state subject to and measures taken by the coastal state to prevent and control pollution and Exploitation of the natural resources of its shelf.

In article 77 of the law of the sea convention, the rights of the coastal states over the continental shelf is described. These rights "are exclusive" in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake it. On the continental shelf beyond 200 nautical miles from
the baselines, that is outside the E.E.Z., the coastal state shall make payments or contribution annually with respect to all production at a site after the 5 years of production at the site. (Art. 82). This article states also that "a developing country which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource". The payment or contributions shall be made through the "Authority".

In exercising its rights and duties over the continental shelf the coastal state must not infringe or unjustifiably interfere with navigation and other rights and freedom of other states.

(3) Rights and duties of other states

In article 79 it is stated that "all states are entitled to lay submarine cables and pipelines on the continental shelf", and subject to its right to take measures for the:
- exploration
- exploitation
- and the prevention, reduction and control of pollution from pipelines.

For more extensive explanation, see rights and duties of other states in the E.E.Z.

To summarize this chapter we can say that since over the millenias man has always tried to appropriate large areas of the sea for his own varied uses. This has been true in the past and is still true to day. The motivations (economic purposes, security) have been the same. Only the means to achieve these objectives have changed.
From the time of the Roman Empire until approximately the fifteenth century, various states laid claim to vast ocean areas. These claims were cyclical, were generally ill-defined, and the reasons for making them were not clear. There does not appear to have been any consensus or uniform practice regarding such claims.

By the fifteenth century states had begun to abandon extensive claims and substitute claim only to waters contiguous to their coasts. During the following century the term "territorial seas" began to emerge when the publicist Alberico Gentili, in his text "De jure BELLi", published in 1558, advanced the proposition that a sovereign could legitimately treat waters adjacent to his state in the same way he treated his land territory.

The genesis of this concept appears to have been based on control over piracy and other acts that might threaten the security of a sovereign. That same concept applies to day when we speak of protecting the peace, good order, or security of the coastal state.

If, in the past, the main reason for claiming a vast ocean areas was the security, to day more than ever, the main motivation is economic. In this respect, the new maritime countries (developing countries), tried over the recent years to challenge the developed countries which traditionnaly made these claims.

The new maritime states which have risen or re-emerged over this period have themselves undergone many fundamental changes in social, political and economic terms, and to day, some coastal states ambitions are as suspect as the ambitions of the dominant maritime states were in an earlier period of
history. However if these new ambitions result finally in a more equitable division of the resources of the sea, in greater responsibilities for conserving resources now endangered by the action of man, and last but not least in a more tolerable world economic order, then the end will have justified the "3000 years struggle" for reason and equity.
CHAPITRE II

The "raison d'être" of the Unilateral extension of Gabon's territorial Waters

Section I - INTRODUCTION

The general movement which characterises the unilateral claims of territorial waters results both from economical factors and lacunae observed at the 1958 Geneva Conference. These drawbacks were related to the lack of agreement on the limit of the territorial sea.

Most of the developing countries were in any case dissatisfied with the results of the previous law of the sea conferences, which they considered to be legalistically conceived and still oriented towards a smaller world of major maritime powers. Some of them had taken their own unilateral action in spatially enlarging their coastal ocean areas. This is the case of Gabon who extended its territorial waters up to 100 nautical miles.

It is no exageration to say that the two Truman's declarations of 28 September 1945, the one on the continental shelf and the other on fishing, are the origin of the confusion which still exists to day in the law of the sea. (The new convention being not yet into force).

These american declarations must be considered as a catalyst for the establishment of sovereign zones and reserved fishing zones which are not acceptable to the United States of America, to day.
If the United States' declaration confirmed that they had no intention of extending their territorial waters beyond 3 miles, the south American countries will try to justify their unilateral decision to extend their territorial sea for 200 nautical miles. This will, further, led to a so called south American doctrine of the law of the sea, manifested, first of all, in the Santiago Declaration in 1952, confirmed in Lima in 1954 an reiterated in the "Principes de Mexico sur le regime juridique de la mer" adopted by the council of the Organisation of American states (O.A.S.) in Ciudad Trujillo, in 1956.

However, the position of the Latin American states was not unanimous, because some states claimed extension of maritime jurisdiction in extreme form, a full hundred territorial sea, and enshrined it in their national Constitution. These states are: El Salvador, Argentina, Costa-Rica, Chile, Nicaragua and Uruguay.

Another group of these states claimed only a territorial sea and exclusive fishing zones of 12 miles. These states are the neighbouring of the Caribbean: Colombia-Venezuela-Mexico-Trinidad and Tobago-Jamaica-Santa Domingo-Haiti-Cuba-Guatemala and Honduras.

Then, besides this doctrine spread to other continents where many nations, especially the newly independent countries of Africa, unilaterally extended their Territorial sea beyond the 3 mile limit: Gabon 100 - Ghana, Sierra Leone 200 etc... This was because no unanimous decision had then be taken on the official limit of the territorial sea. Thus there was no regular rule and the fancy prevailed because, after all, no legal obligation prescribed the legal status of the territorial sea.
The aim of this unilateral extension was to reserve the exploitation of the living resources to their nationals who hitherto could not fully exploit these areas for lack of adequate technology or equipment. It was for the developing countries an economic inspiration, and, at the same time, the desire to have an effective control on the economic resources in their coastal waters.

It was therefore, the socio-economic imperatives and the lack of any unanimous decision on the 1958 Geneva Conference, considering also the geographical and security factors Gabon was therefore obliged to extend its territorial waters to 100 miles.

I shall examine first of all, the legislative texts which empowered Gabon to take these actions, before seeing the reasons themselves.
Section II - LEGAL STATUS OF THE GABONSE EXTENSIONS
OF TERRITORIAL WATERS

The texts which extended the limit of the gabonese ter-
riitorial waters are not Acts of Parliament. Considering the emer-
gency situation at that time, they were mainly Ordinances of the
President of the Republic having the status of national laws ("lois
de l'Etat") i.e., laws passed by Parliament. These extensions took
place in 3 phases:

First of all, limited traditionally at 3 miles, the law N°
10/63 of 12/1/1963 creating the gabonese merchant shipping code
in its Article 5 paragraph 5 fixed the breadth of the territorial
sea as followed: "the territorial waters of Gabon are fixed
up to a distance of 12 nautical miles, measured from the low
water line along the coast".

It was the ordinance N° 55/70 PRMTACT of 5 October
1970 which extended the limit of the gabonese territorial waters
from 12 up to 25 miles. More specifically, its article 1 stated,
instead of "the territorial sea is fixed up to 12 nautical miles",
but "the limit of Gabonese territorial sea is fixed at 25 miles
from the low water line".

Another ordinance dated of 5/1/1972 extended this limit
up to 30 miles.

Finally, the ordinance N° 58/72 of 16/7/1972 which repla-
ced the above ordinance stated in its Art. 1 "the limit of the
territorial sea of Gabon, fixed at 30 nautical miles by the ordinance
Nº 1/72/PR of 5/1/72, is extended up to 100 nautical miles from the low water line.

Some comments have to been made after that. First of all, it is important to notice that Gabon did not adhere to the Geneva Convention on the territorial sea. In this effect the Gabonese extensions were not a violation of this Convention.

Secondly and finally, these extensions have to be considered as the manifestation of the sovereignty of the coastal state over its territorial sea and other maritime zones of its jurisdiction. The territorial sea of a state is a part of its public property, thus the state has over it the same rights as it has in its land territory. These extensions were motivated mainly for economic purposes and this is what will be analysed in the next section.

SECTION III - The Socio-Economic Factors

In my Introduction I had tried to place the sea in a purely socio-economic text. In fact, unlike the land resources most of which are limited, the sea is characterised by the fact that its resources, especially the biological ones, are renewable. But it is also proved that an over-exploitation to the limit of plundering, constitutes a potential factor of depletion.

Meanwhile Gabon, as many other developing states, bases her actual or future economy on the resources of the sea. It is therefore this socio-economic aspect which pushed Gabon to extend its territorial sea up to 100 nautical miles.
For Gabon the economic development is the first element which determines the sovereignty. Then the gabonese extensions tried to preserve the predominance interest of fishing.

In fact, fish nowadays is the basic element of food for most of Gaboneses. Fish furnishes about 32% of animal proteins. Otherwise, fishing activities constitute also an negligible source of currencies for the country. On the other hand, a study made by the F.A.O. proved that the importance of fish in the consumption in Gabon is about 40%.

It is also important to notice that many people depend upon fishing activities for their work. Some others deal with this activity for over the centuries, especially those living on the coastal areas. We must also remember that Gabon has 800 kms of coastline. Then we can see the impact of this activity over the population and the need of protecting it.

It is in this respect the council of Ministers of 12 August 1970, which decided to extend the gabonese territorial sea from 12 to 25 miles, defended this measure as "protecting the nationals' fishing activities."

The Memorandum addressed on 25/1/1971 by the Gabonese Embassy in Rome to the understanding of all diplomatic and consular representations gave a more complete justification of the modification of the breadth of the territorial sea. The gabonese government evoked to this purpose "the increasing number of foreign fishing vessels which fish without authorization within gabonese territorial waters and thereby depleting the coastal shoal of fishes". This measure was preceded by a law (law N° 18/70 of 17/12/1970) fixing the scale of penalties applicable to
foreign ships fishing without authorization in the Gabonese territorial waters.

The extension of the territorial sea up to 100 miles is in fact a new extension of the fishing exclusive zone. Then the outer limit of the territorial sea should therefore overlap with the limit of the exclusive fishing area. We can wonder why Gabon is pre-occupied to extend its territorial sea instead of speaking more specifically of the extension of its fishing zone?

Some considerations have to be taken into account for maintaining the notion of the territorial sea. First of all, the maintaining of this term serves to emphasize the private character of the resources within the area. It is also a kind of strategic motivation: for problems related to the delimitation, the unilateral extension could be considered as a tactic, a kind of conservative measure in looking forward to an equitable solution.

Another hypothesis has to be envisaged: the Gabonese's legislation have never defined explicitly a contiguous zone, the appeal to the notion of the territorial sea for the extension of its adjacent waters appears as one possibility to enjoy, only in principle, the prerogatives generally recognized to the coastal state, in its contiguous zone. That is the possibility for exercising the necessary control in view of preventing and punishing the infringement of laws and regulations related to the police, fiscal, custom, and sanitary matters.
More generally, the extension of maritime zones for fishing purposes registers in the global development strategy adopted by the United Nations General Assembly, resolution AG 1863 (XVIII) 14 December 1962, confirmed by the 2158 (XXI) resolution of 15 November 1966. The resolution stated that the riches and their natural resources must be exercised in the national development interest and the well being of its people.

It still remains even for Gabon that the immediate application of its sovereignty over its biological resources by an exploitation in a large scale, is not yet put into effect. But the reservation of a sufficiently large area for future exploitation was a necessity. The reserved fishing zones cover a future perspective and have an aspect of conservation of the living resources.

There is not only the problem of fishing but also, the fact that Gabon exploits the oil coming from its subsoil. The exploitation offshore oilfields represents actually the 2/3 of the gabonese oil production. It is to say that its place in the economy is preponderant, an important factor of development as its commercialisation gives a fiscal revenu for the financing of big industrial and agricultural projects.

While in 1965, all crude oil was produced on land, the offshore production, was already about 41% of the total production of the country in 1971.

In 1977, the maritime oil fields produced 86% of the total crude oil production. This rate was about 83% in 1979, over a global production of 9,798,571 tons, being about 8,132,813 tons. On
the other hand, the total surface for the exploration and the exploitation of the oil covers 219,970 km² making 124,000 km² at sea. This wide dependance of Gabon vis-à-vis the sea is one of the reasons of the extension of its territorial sea in order to have an effective control and the possibility to protect better the maritime oil fields. This was necessary because oil plays an important role in our economy.

Finally, Gabon depends mainly from about 90% of the sea for its international trade. In effect, most of its importation and exportation is done by sea. The sea transport is a mean for crossing the main commodities of a country, especially raw materials, between different stages of production of commodities at different geographical points.

International trade has a matchless intensive role to play in any contribution to economic development. Quantitatively, most of the developing countries have a high ratio of foreign trade to national income. For example Gabon exports raw material such as timbers, oil and other agricultural products, which are easy to carry by sea. At the same time for its industrialization it imports, finished and semifinished goods, from the developed countries, by the same mean (sea).

This dependance will be greater in the future because Gabon will export its manganese and its iron (which is not exploited yet) through its national ports by the end of 1988. Nowadays the production of manganese passes through the People's Republic of Congo for lack of means of transport from the inland to the coast. This lackness will disappear in few years after the construction
of the national railway (transgabonais) in 1987. The railway will permit also to carry the uranium production and to increase the volume of timbers which passes through our national ports.

But if the justification for the extension was principally socio-economic reasons, there is also the geographical factors to be considered.

SECTION IV - THE GEOGRAPHICAL FACTORS

In this connexion we must examine the Gabonese coastal line. It presents the characteristic, especially in its north-west part, of being deeply indented and forming a bay (Bay of Corisco or Mondah) in its bordering part. The presence of fringe islands and islets around the bay leads to what we call "special circumstances".

For this reason Gabon in determining the breadth of its territorial sea had used the method of straight baselines preconised by the Geneva convention on the territorial sea 1958, although being not a party to this.

In fact, it is for Gabon, as well as many other developing countries, not to reject systematically the classic law of the sea in its totality, but to exploit it in maximum for their benefit. It is a kind of selective approach.

It was once established that where the entrance to a bay or a gulf is six miles or less in width, territorial seas commence on a baseline drawn between the seaward tangents of the entrance. All waters inside that line are internal waters. In practice and by
treaty the same rule has been applied to bays whose entrance width is ten or twelve miles, and some states have laid claims to much wider bays. If a claim has been of long standing and other states have acquiesced in it, a precriptive title over the bay can be advanced. So called historical bays fall into this category.

Then, for Gabon all circumstances were established to do what it did i.e. the use of straight baselines which are contested for the Republic of Equatorial Guinea for measuring its territorial sea. Gabon argued for geographical circumstances and the classification of the bay of Mondah as historical.

The extensions of Gabonese territorial sea was a necessity due to the general direction of the coast and its geographical localisation in the Gulf of Guinea. Situated in this area and surrounded by many countries, Gabon couldn't use the equidistance principale which consists in drawing a median line outwards, from the boundary on the shore vis a vista the republic of Equatorial Guinea. In doing so, it would be in an unfavourable situation comparing to the length of its coast and its surface comparing to its neighbours.

In using the straight baselines Gabon was is conformity with the international regulation. Because the convention itself introduced the possibility to adapt the international law according to concrete geographical particularities. It is for this reason that Norway for example extended its exclusive fishing zone (we will examine this case in the next chapter). The international court of justice (I.C.J.) confirmed this unilateral extension. By its decision the I.C.J. took the view that the system of straight base lines following the general direction of the coast had been consistently applied by Norway. To sum up, the geographical factors due to the
configuration of the coast and the localisation of Gabon in the Gulf of Guinea contributed also to the extension of gabonese territorial sea. But to conclude this chapter, I must analyse another important factor i.e. national security factors.

SECTION V - NATIONAL SECURITY FACTORS

One of the most important factors influencing the extension of the territorial sea has been and remains that of national security. Could it be otherwise bearing mind that the territorial sea has been recognised as being an integral part of the national territory: that, one if the main preoccupation of the state remains that of defending the national territory?

The best method or one of the best conclusive is it that of extending its national territory? According to the Gabonese delegates at the sea-bed committee, "the extension of the territorial sea served to determine the zone of national security". The determination of this zone pushed the frontier outwards in order to avoid foreign maritime powers coming too close to gabonese coast line.

This protective measure: was imposed due to geo-political considerations. Gabon is bound on all side by countries which ideologically are different from it (Sao Tome and Principe, Congo, Equatorial Guinea in the past) and who more often have fishing and military agreements with countries of the Eastern block (USSR-CHINA). Then the necessity of an extended coast line in order to increase the zone of surveillance was felt.
This role was given to national navy forces which is the competent body or authority to play this role i.e. surveillance, control, arresting of foreign ships which violate the national regulations. It is assisted in this task by the "Gendarmerie Nationale" and the air forces.

The extension of the territorial sea at 100 nautical miles corresponded to the will and possibility to exercise the national sovereignty in a more efficient way. It is against this set-up than an "arrêté" of 10/6/64 concerning the procedure of exercising the port state control within gabonese territorial waters stated in its article 1 that: "all ships or vessels found in gabonese territorial waters have, at all times to prove their nationality and their right to fly the flag of a particular state by presenting when asked by the authority their official documents delivered by the flag state".

Article 3 of the same "Arreté" served to disperse all suspicions of a discriminatory legislation, since it provided that "all people exercising a function or embarking on a foreign or gabonese vessel have to conform to legislation, to the police, immigration, fiscal, custom and the safety of navigation". There is therefore an equality in dealing with all ships and the preoccupation to obey international regulations on navigation.

However, the extension of gabonese territorial sea for security reasons is a king of protective measure for the integrity of the national territory and for the security of its nationals. So it is not a discriminatory measure as long as it does not infringe the rules of navigation within the territorial waters.

In conclusion of this chapter, therefore, I shall simply say that the unilateral extension of the gabonese territorial sea was a
catalyst in view of the emergence of a more flexible law of the sea which could adopt easily and take into account the interests of all states. These particularities could be either economic, security or geographic. This is the aim of the new Law of the Sea.

The 200 miles E.E.Z. rule created by the new convention is nothing but a combined result of the initiative of both developed and developing states. It is therefore difficult to conclude on the illegality of the unilateral extensions of the near waters since these extensions are less than 200 nautical miles. I believe that Gabon which has always contributed in international forums to the finding of an equitable solution will review soon its legislation to adapt it in accordance with the new law of the sea.

Despite the above the unilateral extension has brought forward problems of delimitations of maritime boundaries and conflicts which are going to be the main content in the coming chapter.
CHAPTER III

PROBLEMS OF DELIMITATION OF MARITIME BOUNDARIES

Since 1946, disputes involving zones of the sea have regularly given rise to conflicts. The number of disputes has continued to increase as more attention is focused on the sea as a source of food and scarce mineral resources, and coastal states have asserted jurisdiction over wider zones.

Questions giving rise to disputes include the validity of baselines, the method of delimitation between opposite and adjacent states, ownership of rocks and islands, rights of fishing, rights of access, and now the incipient disputes over resources beyond the zones of national jurisdiction.

One of the main legal problems involved in dividing areas of the sea-bed is the principle of equidistance. This basically means that a median line drawn from the coasts of opposite states, but it is complicated by the geographical characteristics of the coasts, especially where the presence of islands and bays may give one state an advantageous baseline.

The International Court of Justice (in North Sea case) has said that there should be an application of "equitable principles," but also that there is no legal limit to the considerations which states may take into account to ensure the application of these principles. It is clear that problems of dividing sea areas may easily lead to conflict.

The situation which prevails in the Gulf of Guinea is characteristic of this kind of problems. Indeed, almost all states
of the region are in conflict more or less with each other. Thus:

- Cameroon-Nigeria
- Gabon-Equatorial Guinea
- Gabon-Sao-Tome and Principe
- Equatorial Guinea - Sao-Tome and Principe
- Zaire - Angola
- Cameroon-Equatorial Guinea

The causes of these disputes are mainly:
- the method of delimitation of each state's territorial waters.
- the unilateral extensions of territorial waters without taking into account the interests of the other states.
- disputes on fisheries zones, islands and islets.

The case between Gabon and the Republic of Equatorial Guinea sums-up all these problems. Three main problems arise from:

1) The determination of the owner of the islets situated between Gabon and Equatorial Guinea.
2) The method of delimitation and therefore the determination of the baselines.
3) Disputes over the fisheries zones.

But we are going to concentrate only on the problem of delimitation of the baselines. For this purpose, some considerations related to the geographical situation and configuration of these two states have to be taken into account.

The Republic of Equatorial Guinea is constituted in addition to its continental part called Rio-Muni by an island part the island of FERNANDO-POO which comprises two islets ELOBEY
GRANDE AND CHICO and CORISCO. More seawards from the gabonese coastal line is ANNOBON, an island dependent also from the Republic of Equatorial Guinea.

It is important to notice that two of these islands are situated in Gabon's continental shelf: CORISCO AND ELOBEY are respectively distant from Gabon for 22 and 12 miles. On the other hand, annobon island is situated at about 350 kms from the guinean coastline and Fernando-Poo at few kilometers from the Republic of Cameroon.

The above fact permits us to understand why the Republic of Equatorial Guinea has carried out its delimitation and therefore determined its baseline.

As a matter of fact, the guinean Authorities used the method of drawing a line joining the outermost points of the outermost islands belonging to the Republic of Equatorial Guinea. That is to say that the baseline begins from the islands situated in the gabonese continental shelf. Thus the islands constitute the opposite coast to Gabon. Consequently, the maritime boundary must be situated between the gabonese coastline and the islands by using the equidistance principle.

We must bear in mind that the Republic of Equatorial Guinea is not an archipelagic state but a continental state owning islands. The article 42 of the law of the sea Convention defines the archipelagic state as a "state constituted wholly by one or more archipelagoes and may include other islands". As we can see, this definition does not apply to the Republic of Equatorial Guinea. Thus it was not acceptable for Gabon to accept this kind of delimitation.
For gabonese Authorities this method gives to the Equatorial Guinea an unduly wide area and refuses Gabon access to the major part of its bay. This method appears to be disadvantageous to Gabon.

Gabonese proposal is, taking into account these islands situated in its continental shelf and also the special circumstances prevailing in its North coast, to use the method of straight baselines across the bay and then using the principle of equidistance from this line.

But the problem is not so easy to solve due to the fact that three islets: BANE, CONGA and COCOTIER, abounding in oil, and situated in the delimitation area are claimed by both states. Gabon has always considered these islets as part of its national territory because they are situated in the bay of Mon-dah. Thus these islets are an integral part of its territory:

To reinforce its position, Gabon argues that the islets are located at only 18 kilometers from its coast and up to 33 kilometers from the Guinean coastline. This problem led in 1972 to a military occupation of these islets by Gabon after gabonese fishermen were maltreated by the guinean military forces.

The guinean Authorities turned down gabonese proposal arguing that in accepting it, the islets would become gabonese property. The problem is now to know what could be the solution. For that it is important to examine the doctrine and the jurisprudence.

According to the international law, in determining the extent of a coastal state's territorial sea and other maritime zone,
it is obviously necessary first of all to establish from what points on the coast the outer limits of such zones are to be measured. This is the function of the baselines.

The baseline is the line from which the outer limit of the territorial sea and other coastal zones (contiguous zone, the exclusive fishing zone and the E.E.Z.) is measured. The water on the landward side of the baseline are known as internal waters. Thus the baseline also forms a boundary between internal waters and the territorial sea.

If all coastlines were relatively straight and unindented, the question of ascertaining the baseline would be a simple one. All that would be necessary to select the high or low tide mark as the baseline.

In practice, however, the position is not nearly so straightforward: many coasts are not straight, but are indented or penetrated by bays, and have islands, sandbanks and harbour installations off them. It is necessary, therefore, to have rules on baselines which deal with a wide variety of geographical circumstances. At the same time, it is desirable that the rules should be formulated in as precise and objective a way as possible.

The article 3 of the territorial sea convention and the article 5 of the law of the sea Convention provide in identical words that "the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large scale charts officially recognised by the coastal state".

The low water line is described in both territorial sea and the law of the sea Convention as the "normal baseline", but the variety of geographical circumstances for which special provisions
are laid down makes it doubtful, whether in practice, the low water line is thenormal baseline for most states. The special geographical circumstances for which particular rules are laid down are: straight baselines for coasts deeply indented or fringed with islands; BAYS, RIVER mouths; harbour works; low tide elevations; islands and reefs.

As illustration we can mention the Anglo-Norwegian Fisheries case (1951).

Much of the coast of Norway is penetrated by fjords and fringed by countless islands, islets, rocks, and reefs known as "skaergaard" (skärgård = archipelago and skerries).

Instead, from the mid nineteenth century onwards, Norway used as the baseline a series of straight lines connecting the outermost points on the "skjaergaard". In the 1930s the United Kingdom began to object to this method of drawing the baseline, arguing that it was contrary to international law. The U.K.'s objections were motivated by the fact: the effect of using such straight lines as the baseline, rather than the low water mark, was to extend farther seawards the outer limit of the Norwegian territorial sea, thus reducing the area of high seas opened to fishing by British vessels.

After a series of incidents involving British vessels, the United Kingdom took the case before the International Court of Justice by unilateral application, asking for the award of damages for interferences with British fishing vessels outside the permissible limits.

The Court took the view that the system of straight base-
lines following the general direction of the coast had been consistently applied by Norway and had encountered no opposition on the part of the other states. The Court believed that the Norwegian system was, as a matter of principle, in accordance with international law.

In the opinion of the Court, certain basic considerations as to the nature of the territorial sea provided criteria by which the validity of systems of delimitation could be determined. First, because of the close dependence of the territorial sea upon land domain "the drawing of baselines must not depart to any appreciable extent from the general direction of the coast".

Secondly, a close geographical relationship between sea areas and land formations is a "fundamental consideration" in deciding "whether certain sea areas lying within the baselines are sufficiently closely linked to the land domain to be subject to the regime of internal waters". The Court stated that the other consideration is "that of certain economic interests peculiar to a region, the reality and importance of which are evidenced by long usage".

After the analysis of the doctrine, it appears that the method adopted by Gabon was in conformity with the international law. In using this method Gabonese Authorities were inspired by the above case. But instead of recognizing the validity of the method used by each state or to determine which state is wrong or not, some considerations must be taken into considerations in formulating solutions.

Indeed, we must bear in mind that Equatorial Guinea and
Gabon have a long traditional history together. Then, fishermen of both countries have always fished for centuries over the debatable area. This fact is extremely important to be considered in spite of the interests of each state. On the other hand, these peoples have the same customs and most of them speak the same language and come from the same tribes, but separated by boundaries inherited from colonisation. In summing-up, I can say that these two peoples are brothers.

Then, it is important to find an equitable solution for the wellbeing of both peoples and the peace between the two countries. To reach this equitable solution, it is important that:

1) both states undertake first of all, bilateral negotiations to clarify the situation which still exists up to now. These negotiations might be followed by a memorandum of agreement containing all the details concerning the area, charts of the zone, the revendications of each state. This document must also contain provisions for the settlement of the dispute by the mean of an international organisation, such as the International Court of Justice. It must also be included in the document a clause binding the parties. The I.C.J. has a long practice and experience for this kind of problems. It was the case for example in the dispute between Greece and Turkey; Tunisia and Libya; Canada and the United-States...

2) both states adopt the new principle of the law of the sea Convention to settle their dispute, in a spirit of mutual understanding and cooperation, as this convention appears to be an important contribution to the maintenance of peace, justice and progress for all peoples of the world.

Gabon for its part, has already, in 1984, adopted and ratified the new convention. Therefore, it is imperative that the Re-
public of Equatorial Guinea does the same for the finding of an equitable solution.

3) both states may undertake negotiations under the supervision of the "Conférence ministérielle des États de l'Afrique de l'Ouest et du Centre", which is the body dealing with all maritime questions for West and Central Africa States and the Organisation for African Unity (O.A.U.).

4) For their mutual interests, it is important to create a bilateral organisation to exploit these areas, bearing in mind the particularities and the interests of each state. Several such agreements exist, for example, those between Norway and the U.K. concerning the Frigg gas field in the North Sea (1976), between Japan and South Korea concerning the area south of the Korea Strait (1974), and between Abu Dhabi and Qatar concerning the Persian Gulf (1969).

These agreements vary in form: for example, some, such as the Dutch-German Ems-Dollard treaty (1960), envisage co-operation between concessionaires of both States, while others, such as the Japan-South Korea agreement, allow a single concessionaire to exploit the resources on behalf of both States. The system adopted is entirely a matter for the agreement of the parties. International customary law does not yet seem to yield any precise rules applicable in the absence of such an agreement, although some writers have advanced general solutions based on a mixture of basic principles of law, previous treaty practice and robust expediency.
CONCLUSION

To conclude my study, it is important to draw the consequences of the above developments and their perspective. In studying the situation of a developing coastal state, my aim was to show that the attitude of Gabon vis-à-vis the classic rules of the law of the sea shows its will to integrate the sea in the global strategy of its economic development.

Considering its geographical situation (800 kms of coastline) and its economic resources, the sea constitutes in fact, for Gabon an essential trump in the conquest of its economic independence, as well as, in the assertion of its presence in international commercial exchanges.

This attitude is illustrated by the necessary revision by Gabon of the traditional law of the sea rules, especially of the determination of its maritime jurisdiction, in order to adapt them to the realities and imperatives of nowadays. Thus the gabonese will is in the right thread of the global third world's revendications for a new legal maritime order, corollary of the new international economic order.

It was a question of a non reversible process of which the third U.N. Conference of the law of the sea had focused its attention and drawn the consequences. The traditional freedom of the seas, law less and unequality, has mainly favoured the hegemony of a small number of states at the expense of the large majority of them. This is why the appropriation of the sea and its resources, by some states, must be understood mainly as a means to stop the untidy and over-exploitation of the living resources which are so vital to all coastal states.
The international community, taking into consideration the claims of the developing countries, has elaborated the new law of the sea Convention. It is therefore left to these states to adopt, ratify and implement it, in order that the provisions of the Convention be effectively applied. Gabon and a few other developing countries have already ratified it. But it is imperative for most of them to do the same, otherwise their reivindications would still remain useless. Indeed, the 1982 Convention of the law of the sea constitutes a legal frame for the advent of the new maritime order, claimed by the developing countries.
Coastal State Territory & Internal Waters

12 N.M. Cont. Zone

Ter. 24 Sea N.M.

200 N.M. Economic Exclusive Zone (E.E.Z)

Continental Shelf

Continental Slope

Continental rise

Deep Sea Bed

High Seas

ANNEX I - MARITIME ZONES
ANNEX II - THE GULF OF GUINEA.
I - International Law for Seagoing Officers - 4th Edition
   by Burdick H BRITTIN

II - Droit de la Mer - TOMES I & II
    by E LANGAVANT, Editions CUJAS

III - The Law of the Sea
    by R R CHURCHILL & A V LOWE

IV - Le Gabon et La Mer: l'Enjeu d'un Etat Maritime Africain Cotier
     by René ONDO NGUEMA

V - 1958 Conventions on the Law of the Sea


VII - Revue Science et Vie, June 1982

VIII - United Nations Chronicle, June 1982, Volume XIX, No. 6

IX - Gabonese National Newspaper, March 1983, !l'Union"

X - The Times Atlas of the Oceans
    Edited by Alastair COUPER

XI - Maritime Transport
    by Edgar GOLD

XII - Marine Policy and the Coastal Community
      (The Impact of the Law of the Sea)
      by Douglas M JOHNSTON

      by Professor Gunnar STUBBERUD