UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982 AND THE SUDANESE PRACTICE

By

Amani Mohammed Khalil Kheire

Supervised by

Professor Akolda Man Tier

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Chapter One

Historical Background

Codification of international law as whole, including the law of the sea, can be dated at the eighteenth century. Jeremy Bentham, at the last quarter of that century, proposed such a codification. He suggested that an international code should be codified and proposed plan for such codification based upon the existing international law. Since his time, numerous attempts have made by private individuals, learned societies and government for codification.  

The first serious attempt to codify the principles of the international law of the sea was made at the Congress of Paris in 1858. The Congress agreed on a number of principles relating to maritime law in the time of war. 2

The Hague Peace Conference of 1899 showed that parts of the law of the nations might be codified. This conference succeeded in producing two important conventions. The results of the Second Hague Conference of 1907 are much more important from the point of view of law of sea as it produced thirteen conventions, codifying parts of law of sea. 3

The end of the First World War witnessed the establishment of the League of Nations, which endeavored to codify various matters of law of sea. Several conferences were convened under the auspice of the League of Nations. The work of codification undertaken by the League was greatly assisted by the Committee of experts.4

1. The Hague Codification Conference 1930:

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3. Id., at 230.
(i) **Experts Committee:**

On 22 September 1924, the Assembly of the League of Nations issued an important resolution appointing a committee of sixteen experts known as the Experts Committee. This resolution made an important advancement in the codification and development of international law. The committee was not instructed to prepare codes, but to prepare a list of subjects regarded as sufficiently ripe for codification, and also as to how their codification could best be achieved, and to examine the comment of governments on the list.

At the first session of the committee, in April 1-8, 1925, a provisional list of eleven subjects in the public international law of peace were adopted. A sub-committee, usually of three members was created for the examination of each of these subjects to determine whether an international agreement can be reached upon it. At the second session, the expert committee received a report from each sub-committee and selected seven of the eleven topics with which to proceed further. Three of those topics related to the law of the sea, namely (a) territorial waters; (b) piracy; (c) exploitation of the resources of the sea. The committee also studied and considered ripe for international regulation the "legal status of governmental ship employed in commerce", but recommended to the Assembly to take no further action at that time. The committee examined the replies of governments on those reports and in April, 1927 it submitted its report to the General Assembly.

In 1927 the Assembly took into consideration the committee's report and decided that a conference should be held at The Hague for the purpose of

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5 Hudson, supra note 4, at 66.
codifying the following subjects: (a) nationality; (b) territorial waters; (c) responsibility of states for damage done in their territory. The Council of the League of Nations then instructed a preparatory committee to consider and recommend to the Council what action should be taken in execution of the Assembly resolution. 7

(ii) The Preparatory Committee:

The preparatory committee for codification conference was instructed by the Council of the League of Nations to consider and recommend the procedure to be followed in preparing for the conference. The committee met at Geneva from January 28th to February 17th, 1929. It examined the replies made by the governments to the requests addressed to them for information upon the three topics on the program of the proposed conference. Replies were received from twenty-nine governments. As a result of this examination, the committee drew up bases of discussion for the use of the proposed conference. The committee at its May 1929 session prepared draft rules for the conference. Naturally, these rules must be regarded merely as proposal. These draft rules had been prepared to facilitate the work of the conference. Finally, the preparatory committee completed its work and submitted the documents it has prepared to the Council of the League. 8

The conference was held at The Hague from 13 March to 12 April 1930. It divided itself into three committees for each of the three topics for the

7Hudson, supra note 4, at 660.
8Conference for the Codification of International Law, 1-9AJIL:24 (1930).
consideration of which the conference had been convened. Forty-seven Governments participated in this conference. 

(iii) **Failure of the Conference:**

The conference succeeded in adopting a convention and three protocols concerning the matter of nationality, which have been ratified by a number of states, including Great Britain. The convention and three protocols came into force in 1937 following the receipt of the tenth ratification. Regarding the territorial waters, the conference was unable to adopt a convention as no agreement could be reached on the question of the extent of the territorial waters and the problem of contiguous zone. There was, however, some measure of agreement on such questions as the legal status of the territorial waters, the right of innocent passage, and the base line for measuring the territorial waters.

The chief difficulties in reaching an agreement related to (a) the breadth of the territorial waters; (b) the right of a state to take measures outside this breadth in an adjacent and contiguous area; and (c) the definition of the nature of the rights states are entitled to exercise over the territorial sea.

Although the conference was unable to reach an agreement on the subject of the territorial waters, it succeeded in preparing a draft convention on the "Legal Status of the Territorial Sea" for further consideration. 

(iv) **The Draft Text:**

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9 Oppenhiem, *supra* note 1, at 62.

The conference was successful in preparing a draft text, which embodied in the Final Act of the conference. Notwithstanding the fact that it is only a draft, it constitutes an important document in the history of codification. Articles 1 and 2 of the draft covered the legal status of the territorial sea, the air space over the territorial sea and the seabed and subsoil thereof. The draft recognized the right of innocent passage through the territorial sea, providing general rules governing the exercise of this right. Although the draft failed in determining a specific breadth to the territorial sea, it explained the methods of measuring the territorial sea in normal coast and in special cases, where there is a bay or island or a group islands near the coast.

2. The First United Nations Conference on the Law of the Sea:

(i) The Work of the International Law Commission:

On 31 January 1947, the General Assembly of the United Nations, according to Article 13 of the Charter of the United Nations initiated a committee for the purpose of encouraging the progressive development of international law and its codification known as the "Seventeenth Committee". The General Assembly in pursuance to the aforesaid committee’s order established on November 21, 1947, an International Law Commission with a

\[11\text{ Id., at 69.}\]
view of selecting topics for codification and submitting its recommendation to the General Assembly.\textsuperscript{12}

The Commission, which meets annually, is composed of 34 members elected by the General Assembly for five year terms and who serve in their individual capacity, not as representative of their Government. The first meeting of the committee was in April 1949. \textsuperscript{13}

Most of the commission work involves the preparation of drafts on topics chosen by the commission and others referred to it by the General Assembly. Usually an international conference is convened to draft articles into a convention, which is then open to states to become parties of the commission work. \textsuperscript{14}

At its eighth session in 1956, the International Law Commission drew up its final draft on the territorial sea, incorporating a number of changes derived from the replies of Governments. At the same session, it drew up a final report on the subject relating to the high seas. Thus a final report on the law of the sea, containing seventy-three articles and commentaries thereon, was submitted to the General Assembly in 1956. \textsuperscript{15}

In pursuance to the International Law Commission recommendations, the first United Nations Conference was convened in Geneva with a participation of eighty-six delegations from February 24, 1958 to April 28, 1958. The conference consisted of five committees namely: (a) the Territorial Sea and Contiguous Zone Committee; (b) High Seas Committee-General Regime; (c) High Seas Committee-Fishers and Preservations of the living resources of the

\textsuperscript{13} Id., at 5.
\textsuperscript{14} Id., at 34.
\textsuperscript{15} Id., 35.
high seas; (d) Continental Shelf Committee; (e) Free Access of the land-locked states to the Sea Committee.

Each committee submitted a report to the general session of the conference, which accepted drafts proposed by these committees with a little amendment. The conference at the conclusion of its work adopted "Final Act" incorporating four conventions dealing with: (a) Territorial Sea and Contiguous Zone; (b) the High Seas (c) Fisheries and preservation of the Biological Resources of the High Seas; (d) the Continental Shelf. The conference adopted also an optional protocol on the settlement of disputes, and nine resolutions.\textsuperscript{16}

In spite of the valuable preliminary work accomplished by the International Law Commission and careful preparation, the conference failed to reach agreement on two of the most important questions submitted to it: the breadth of the territorial sea and the related question of fisher's limits. The conference adopted resolution at the conclusion of discussions inviting the United Nations General Assembly to convene a new conference to deal with the unsettled points. Despite this failure, the 1958 United Nations Conference on the Law of the Sea was extra ordinary successful and far-reaching codification of much of the law of the sea.\textsuperscript{17}

\textsuperscript{16} Colombos, \textit{supra} note 10, at 35.

\textsuperscript{17} Id., at 96.
(ii) **Territorial Sea and Contiguous Zone Convention:**

The Convention on the Territorial Sea and Contiguous Zone was adopted at the law of the sea conference at Geneva on 29 April 1958 by 61 in favor to none, with 2 abstentions. It came into force on 10 September 1964.  

The convention consists of two parts and thirty-two articles. The first part deals with the area of the territorial sea. Article one of this convention gives coastal state sovereignty rights over a belt of the sea adjacent to its coasts described as the territorial sea. This sovereignty extends to the air space over the territorial sea as well as to the sea-bed and the subsoil thereof. This sovereignty is exercised subject to the provision of these articles and to other rules of international law.

One of the most important restrictions is the right of innocent passage. Article 4 defines this right and determines the rules governing its exercise.

Moreover the convention emphasizes that the coastal state has a number of rights over its territorial sea such as the right to enact laws and regulations relating to transport and navigation, the right to execute these laws and regulations and the right to establish safety zones in the territorial sea. Section II shows methods of measuring the territorial sea in the normal coast and in particular cases.

Part II of the convention covers the "Contiguous Zone" area. It gives the coastal state several rights over a zone of the high seas contiguous to its territorial sea, determines in article 24(2) and(3) its breadth and explains the method of measuring the Contiguous Zone between two opposite or adjacent states.

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(iii) **High Seas Convention:**

This convention was adopted by 65 votes in favor to none, with one abstention. It came into force on 30 September 1962. ¹⁹

The convention consists of 37 articles. In its first article, it defines "high seas", while article 2 of the convention emphasizing that high seas being open to all nations and no state can subject any part of them to its sovereignty, recounts the freedoms exercised over the high seas.

Land-lock states according to article 3 of this convention have a right of free access to the sea. Every state, whether coastal or land-lock has the right to fly ships under its flag on the high seas and to fix the conditions necessary for granting its nationality. War ships are not justified in boarding foreign merchant ship on the high seas unless there is a reasonable ground for suspecting that these ships are engaged in piracy or slave trade. Article 23 speaks about the right of hot pursuit and the conditions required for establishing this right.

There are some obligations binding on the coastal states which are provided in this convention such as the obligation to take measures to prevent pollution of the seas and the obligation not to impede lying or maintenance of cables or pipelines.

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¹⁹ Id., at 9.
(iv) **Fishing and Conservation of the Living Resources of the High Seas Convention:**

This convention was adopted by 24 votes to 1 with 18 abstentions on 29 April 1958. It came into force on 20 March 1966. The convention consists of 22 articles. All states according to article 1 of this convention have the right of fishing on the high seas and have a duty to adopt measures for the conservation of the living resources.

Any dispute which arises between states as regard measures taken for conservation of the living resources in the high seas shall according to article 9 of this convention, at the request of any of the parties, be submitted for settlement to especial commission of five members, the decisions of this commission is binding to the states concerned.

(v) **Continental Shelf Convention:**

The Continental Shelf Convention was adopted by 57 votes to 3 with 8 abstentions on 29 April 1958. It came into force on 10 June 1964. The convention, which consists of 15 articles, defines the continental shelf in its first article, gives a coastal state in its second article a sovereignty right over its continental shelf, whether the coastal state explores or does not explore its continental shelf. Article 4 of this convention provides that the right of the coastal state over its continental shelf does not affect the legal status of the superjacent water as high seas.

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20 Id., at 15.
21 Id., at 20.
The coastal state must not impeding or maintenance of submarine or pipelines on the continental shelf and it has the right to establish safety zones around its installations on the continental shelf.

These safety zones according to article 5 may extend to a distance of 500 meters, provided that due notice must be given of the constructions of such installations.


In a renewed attempt to reach agreement on the two matters which had been left undecided by the 1958 conference viz, the breadth of the territorial sea and the related problem of the fishing limits, the United Nations summoned a second conference, which was held at Geneva from March 17th to April 27, 1960 and attended by representatives of eighty-eight states. 22

The conference also failed to reach an agreement on either of two matters for which the conference was convened and failed to acquire the two-thirds majority required for adoption of joint Canadian – United States initiative for maximum territorial sea breadth of six miles with an adjacent six miles fisheries zone. Consequently, no agreement emerged from the second United Nations Conference on the Law of the Sea. 23

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22 Colombos, supra note 10, at 99.
23 Id.

The unresolved two problems, the breadth of the territorial sea and the fisheries matters, combined with new issues, such as the legal regime for mineral resources of the deep ocean floor beyond national limits and the world wide movement for protection of the environment, led to a Third United Nations Conference on the Law of the Sea (UNCOLOS III), which was convened in 1973 in accordance with the General Assembly Resolution 3067 (XXVIII). 24

The first session of the conference met in New York between 3 and 5 December 1973. This session was of an organization nature. The conference constituted a General Committee, Drafting Committee and Credentials Committee. 149 governments were invited to the conference.

It appears that two procedural problems faced the UNCOLOS III. Firstly, the conference had no any basic text before it on which to work. Instead there was a vast mass of conflicting proposals, amendments and texts of differing status. And secondly, the General Assembly had adopted a "gentlemen's agreement" to the effect that in the conference there should be no voting on such matters until effort at consensus have failed. 25

The substantive work of the conference which covered a wide, complex and controversial issues fell into two parts. The first part was the consideration and adoption of treaty, for the area of the seabed and ocean

25 Id., at lvii.
floor, and the subsoil thereof beyond the limits of national jurisdiction. The second one was review and revision of the existing law of the sea.

The first part would entail the drafting of a new law, while the second part would deal with other relating issues of the law of the sea affected by the new proposal regarding the source of the sea-bed and ocean floor beyond national jurisdiction as well as those issues which the two previous conference of 1958 and 1960 held under the United Nations auspices had failed to dispose of satisfactorily or which would call for review to fit in with the needs and realities of the contemporary world. 26

Despite the inability to reach universal agreement on a new regime and machinery for deep seabed mining, UNCOLOS III and the resulting convention have made an enduring contribution to the codification and progressive development of international law. It is of course, always possible that the seabed mining problem will be resolved at some time in the future permitting an even broader effect from the convention. 27

(i) **The Ad Hoc Committee:**

The United Nations General Assembly, by Resolution 2340 (XXXII) on 18 December 1967, established an Ad Hoc Committee to study the peaceful use of the seabed and ocean floor beyond the limits of the national jurisdiction. Over a year, the Ad Hoc Committee held three sessions. A year later on 21 December 1968, the Ad Hoc Committee became the committee on the peaceful uses of

26 Id., at 4-5.
27 Id., at xxviii.
the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction i.e. "Sea-bed Committee". 28

(ii) The Preparatory Committee:

On 21 December 1968 the United Nations General Assembly resolution 2467 A (XXIII) established the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond Limits of National Jurisdiction. It was enlarged by Resolution 2750 (XXXV) to 86 members, (later 91) to become the Preparatory Committee. It was requested to prepare draft treaty articles and a comprehensive list of items and matters for the conference on the law of the sea. The committee held six sessions and a number of additional meetings between 1971 and 1973. 29

The classical procedure followed for the adoption of multi lateral conventions, such as the four Geneva Conventions of 1958, and many other conventions, usually begin with a set of draft articles produced by some highly competent body like the International Law Commission, which normally appointed Rapporteur for the subject. The draft articles were submitted to governments for comment and referred to the general assembly of the conference to serve as the basic text for its work, to which amendment and additions proposed by delegations. Finally the convention would be adopted by voting. In the case of UNCOLOS III, the preparatory work was not assigned to the International Law Commission. Instead, United Nations General

28 Id., at xxx.
29 Id., at 47.
Assembly assigned the preparatory work to the United Nations Sea-bed Committee, by paragraph 6 of Resolution 2750 C (XXV). 30

From 1968 to 1970, the United Nations Seabed and Ocean Floor Committee examined issues relating to seabed and ocean floor beyond national jurisdiction. In 1970 the United Nations General Assembly adopted a declaration of principles governing the international management of the deep ocean floor (General Assembly Resolution 2794 (XXV)). After the adoption of this declaration, it was thought that it is necessary to prepare a comprehensive draft. After 1972, the First Sub-Committee of the Sea-Bed Committee began to focus its work on the preparation of a uniform draft of articles on the regime of the deep seabed.

The Second Sub-Committee (General Issues) was responsible of the general law of the sea. It completed in 1972, "a list of issues" for conference consideration.

The Third Sub-Committee (Marine Environment and Scientific Research) was responsible for the subject of ocean pollution and scientific research. During the meetings in 1973, it received thirteen proposals on pollution and seven on scientific research. 31

At the end of 1973, the United Nations Seabed Committee failed to produce a single preparatory text. Instead, it submitted to the twenty-eighth session of the General Assembly (1973) a report of six volumes consisting of a hundred of individual proposals and draft articles proposed by member states as well as other documents and reports of the three sub-committees. In fact, the final draft articles of the Sea-Bed Committee constitute merely a description of various alternative suggestions all assuming equal weight. Notwithstanding

30 Id., at lix.
this fact the General Assembly Resolution 3067 (XXVI) confirmed the convention of the conference in that year.

(iii) The United Nations General Assembly Resolution 3067 (XXVIII) 1973:

On 16 November 1973, the General Assembly issued resolution 3067 (XXVIII). 32 According to this resolution, the General Assembly decided the following:

a) To convene the first session of the Third United Nations Conference of the law of the sea in New York from 3 to 14 December 1973 for dealing with matters relating to organization of the conference;

b) To adopt a convention dealing with all matters relating to the law of the sea taking into account the list of subjects and issues formally approved on 18 August 1972 by the Committee of the Peaceful Uses of the Sea Bed and the Ocean Floor beyond the limits of the National Jurisdictions.

c) To convene the second session for the purpose of dealing with the substantive work of the conference for the period of ten weeks from 20 June to 29 August at Caracas;

d) To refer to the conference the report of the committee of the peaceful uses of the sea bed and the ocean floor beyond the limits of the national jurisdiction on its work and all other relevant documentation of the General Assembly and the committee;

e) To request the Secretary General to invite states members of the United Nations or members of specialized agencies on the International Atomic Energy Agency and states parties to the International Court of Justice, in order to achieve universality of participation in the conference;

f) Decided that the secretary General of the United Nations shall be the Secretary General of the conference and authorized him to appoint a special representative to act on his behalf.

g) Requested the General Assembly of the United Nations to prepare appropriate draft rules of procedure of the conference;

h) Invited the states participating in the conference to submit their proposals, and requested the Secretary General to circulate the replies received by him;

i) And finally dissolved the Committee of the Peaceful Uses of the Seabed and Ocean Floor beyond the Limit of National Jurisdiction.

Resolution 3067 (XXVIII) is one of the important resolutions issued in relation to the Third United Nations Conference on the Law of the Sea. The most important decisions taken by this resolution was the convening of the conference though the preparatory work of the conference was uncompleted and the dissolution of the Committee of the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the National Jurisdiction.

(iv) **The Main Committees of the Conference:**

The conference in its first session constituted a General Committee consisting of 48 members, a Drafting Committee consisting of 23 members - the membership of the both committees was based on the principle of
equitable geographical distribution; and finally Credentials Committee consisted of 9 members.  

In the second session at Caracas, the conference revived the three sub-committees of the Sea-bed Committee, so that they could continue their discussions with the background and experience they acquired during the six preparatory years.  

**d) The First Committee (Deep – Sea):**

The First Committee dealt with the seabed and ocean floor and their subsoil beyond the limits of national jurisdiction. By 17 July 1974 during the second session of the conference 66 nations had debated issues relating of the deep sea bed to discuss the 21 draft articles. Many proposals were still received even after formal and informed meetings and therefore many draft articles on the sea bed were accompanied by the alternative suggestions.  

At this session, the committee established a working group, which was later converted to negotiating group consisting of 50 delegations. At the fourth session of the conference an open-ended working group to which any delegation could participate was created by the committee. Moreover, on 21 August, just before closing of the conference, a negotiating group of 50 nations was established on the question of the exploration of the deep-sea bed.  

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33 Id. at 19- 58.  
34 Id., at 5.  
35 Oda, supra note 31, at 155.  
36 UNCOLOC III, supra note32, at 93.
e) The Second Committee (General Issues):

The Second Committee was concerned with the general law of the sea, including in particular the territorial sea, straits, economic zone, continental shelf, high seas, land-locked state's access to the sea, archipelagoes, regime of islands, and enclosed or semi-enclosed seas. The second committee examined 15 items of the total 25 items listed by the seabed committee. No less than 99 Nations made statements as regard the economic zone, and 80 new proposals were submitted regarding these questions. At the informal committee's meetings, the chairman of the second committee recommended the members to minimize the number of the alternative suggestions. However, the members were unable to carry out this recommendation, and the committee's work remained complex and confused till the conference closed.

Finally, after two revisions, thirteen informal working papers were consolidated into a "main trends" document containing over 40 provisions on the second committee topics.

f) The Third Committee (Marine Environment and Scientific Research):

This committee dealt with the marine scientific research and transfer of technology. In this committee, negotiations took place directly, as well as in the two informal working groups created by the committee. The first working

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37 Id., at 156-7.
38 UNCOLOS -1982, supra note24, at xxxvii.
group dealt with scientific environment, while the second dealt with scientific
research and the development and transfer of technology.

At the March 1975 meeting in Geneva, the conference decided that the
chairman of each main committee should prepare an informal "Single
Negotiating Text" on the items before his committee. The single negotiating
text that emerged was circulated at the end of the Geneva session. 39

**g) The Plenary Committee:**

An informal group of settlement of disputes formed the nucleus for
informal plenary which became in effect of a fourth main committee of the
conference and dealt with some other unallocated issues. 40 The Plenary
Committee operated in two distinct levels. In its formal plenary meetings the
committee dealt with matters concerning the organization of the conference,
the election of officers, the allocation of the agenda items and the adoption of
the rules procedure. The plenary also met in informal meetings under the title
of the informal plenary. It dealt with settlement of disputes, the general
provision, the final provision and the Final Act. The informal plenary also
received the report of the seven negotiating group and of the drafting
committee and transmitted the results of the informal deliberation to the formal
meetings of the conference. It acts in the capacity of informal plenary as a
main committee. 41

Most importantly, when an issue was ripe for negotiation, the president
would convene a small number of delegations representing these countries,

39 Id., at xxvii.
40 Id., at xxvi.
41 Id., at 91.
which had strong interests on the matter, as well as the various points of view in the conference. In general, the conference showed a marked preference to work in informal atmosphere and the absence of records enabled delegations to take a more flexible stand than in formal meetings. 42

(v) **The Agenda of the Conference:**

The agenda of the Third United Nations Conference on the Law of the Sea was of a wide and comprehensive scope, that is to say, it covered all fields of the law of the sea. While the focus of the United Nations was originally limited to the seabed and the ocean floor beyond the limits of national jurisdiction and the concept of the common heritage of mankind, this scope was widened in 1970 in the conference. General Assembly Resolution 2750 (XXV) of December 1970 listed the following topics to the conference: the regime of the high seas, the continental shelf, the territorial sea including question of its breadth and then question of international straits and contiguous zone, fishing and conservation of living resources of the high seas including question of the preferential right of the coastal states, and the preservation of the marine environment including *inter alia* the preservation of pollutions and scientific research. 43

The list of the subjects and issues, formulated by the Sea-bed Committee after due negotiation, served as the bases of the conference agenda. It listed no fewer than 25 different items:

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42 Id., at 92.
43 Id., at 31-2.
1. International regime for the sea-bed and ocean floor beyond national jurisdiction;
2. Territorial sea;
3. Contiguous zone;
4. Straits used for international navigation;
5. Continental shelf;
6. Exclusive economic zone beyond the territorial sea;
7. Coastal state's preferential rights or other non exclusive jurisdiction over resources beyond territorial sea;
8. High seas;
9. Land-locked countries;
10. Rights and interests of shelf-lock states with narrow shelves or short coast;
11. Rights and interest of states with broad shelves;
12. Preservation of the marine environment;
13. Scientific research;
14. Development and transfer of technology;
15. Regional arrangements;
16. Archipelagoes;
17. Enclosed and semi-enclosed seas;
18. Artificial islands and installations;
19. Regime of islands;
20. Responsibility and liability for damage resulting from the use of marine environment;
21. Settlement of disputes;
22. Peaceful uses of the ocean space, zone of peace and security;
23. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction;
24. Transmission from the high seas;
25. Enhancing the universal participation of states in multilateral convention relating to the law of the sea. 44

This list of subjects and issues was prepared in accordance with the General Assembly Resolution 2750 (XX V). Further, the Official Records of the General Assembly stated that: "The list is not necessarily complete nor does it establish the order of priority for consideration of the various subjects and issues". 45

(vi) Procedure Rules Concerning Taking of Decisions:

The traditional procedure concerning taking decisions was the simple majority voting. A special majority, such as a two-thirds majority, may be required for decisions on substantive questions. Both the Hague conference of 1930 and the First United Nations Conference on the Law of the Sea followed classical procedures. These classical procedures usually begin with a set of draft articles, produced by a competent body like the Expert Committee in The Hague 1930 conference or the International Law Commission in the First Conference on the Law of the Sea, to which the governments gave their comments. The articles are referred to the conference and serve as the basic text for its work, to which amendments and additions are proposed by delegations. The articles are first discussed article by article by the main

45 UNCOLOS-1982, supra note 24, at 32-36.
committee of the conference, and then referred to a draft committee. The
drafting committee was usually entrusted with the task of working with the text
even before its final consideration by the main committee, and then work again
before final adoption by the plenary. The Third United Nations Conference
preceded in a different manner departed from the classical procedure
discouraged the taking of decisions by voting. The General Assembly
expressed the view that the conference should make every effort to reach
agreement on substantive matters, and that there should be no voting on such
matters until all efforts at consensus have been exhausted "gentlemen
agreements".

However, the absence of a basic single text and the large number of the
participants to the Third United Nations on the law of the sea and their widely
varying interests made it difficult to follow the classical procedure and the two-
thirds majority voting rule would not be satisfactory if any alternative to it were
available. These considerations had been present in the mind of the
representative preparing for the conference, and consequently the first
committee of the General Assembly arrived at the gentlemen’s agreement
adopted by United Nations on 16 November 1973 by the rule procedure of the
conference (A/CONF/62/30/Rev. 3). Before voting several procedures were to
be invoked: firstly the president would defer the taking of a vote for a period of
time, during this period the president would make every effort to facilitate the
achievement of general agreement. Secondly no voting was to be taken on any
substantive matter less than two working days after an announcement is made
that the conference is going to vote on the matter.

46 Id., at lix.
47 UNCOLOS III Vol., supra note 33.
48 UNCOLOS-1982, supra note 24, at 100.
The rule procedure (A/CONF/62/30/Rev. 3) provided that, on all matters of substance, including the adoption of the text of the convention as whole, decisions were to be taken by two-thirds majority of the representatives present and voting. In all procedural matters, decisions were to be taken by majority of representative present and voting (simple majority). 49

(vii) **Duration of the conference:**

Taking into account the work of the Sea-bed Committee, the conference continued fourteen years, from 21 December 1968, when the Sea-bed Committee was established, to the signing session on 10 December 1982. This long duration of the conference may be imputed to several factors:

(a) The large number of states which participated in the conference and their varying and conflicting interests.

(b) Complicated procedures concerning taking decisions.

(c) Absence of a draft text before the conference, but a vast mass of conflicting proposals.

(d) The conference was intended to be a comprehensive. In other words, to cover all the law of the sea including classical matters previously discussed in the previous conferences and new issues.

(viii) **Informal Text:**

As mentioned previously, this conference commenced without a preparatory text, but with a very large number of proposals and the documents

49 Id.
of the Sea-bed Committee. Later on, it became clear that the conference would not be able to move forward without a draft text.

In March 1975 in Geneva, the conference decided that the chairman of each committee should prepare an informal "single negotiation text" (SNT), on the items before his committee. The informal single negotiating text appeared on the last day of the third session in 1975, and in July 1975, the president of the conference presented an informal text on the settlement of dispute. The SNT was originally intended to be the base of the negotiations. At the end of the fourth session, appeared the Revised Single Negotiating Text (RSNT), which contains only a brief introductory note by the president and a brief note by the chairman of the second committee, due to the decision that the chairman should revise the SNT. The general approach in revising the four texts was to analyze the SNT article by article in the three main committees. Afterwards, the committee chairman revised the SNT and it became the RSNT.

At the 29th meeting of the General Committee, the president proposed the procedure for preparing the Informal Composite Negotiating Text (ICNT) in consultation with the chairmen of the three main committees, the chairman of the drafting committee and the Rapporteur General. Each chairman would be responsible for the provisions of the ICNT concerning his committee. In other words, it was not a joint or team effort at all. The summer 1977 session resulted in an Informal Composite Negotiating Text revised firstly in 1979 (ICNT Rev, 1) and secondly in April 1980 (ICNT Rev.2).

50 Id., at xxvii.
51 Id., at 117.
52 Id., at xxvii.
53 Id., 124.
54 Id., at 130.
During the ninth session the negotiations in the main committees and the informal plenary acting as a main committee, were concluded on 23 August 1980. The results of those negotiations were discussed during the general debate. Following the general debate, the collegiums took note of the results of the general debate. The conclusion reached by the collegiums were reflected in the revision of ICNT / Rev. 2 which appeared on 22 September 1980 under the title "Draft Convention the law of the sea" informal text.

In his explanatory memorandum, the president explained that although the title of the text had been changed from Informal Composite Negotiating Text Rev. 2 to the Draft Convention (Informal Text), he emphasized that it was still negotiating and not a negotiated text. 55

(ix) Drafting of the Convention:

At the tenth session, the conference decided to revise the draft convention (Informal Text). This revision would incorporate the recommendations of the Drafting Committee and decisions taken by the Informal Plenary on the sites of the International Sea-bed Authority and the International Tribunal for the Law of the Sea. The conference also decided that the text when so revised would no longer be an informal text; it would be the official draft convention subject to three conditions:

(a) The door would be kept open for continuation of consultation and negotiations;

55 Id.
(b) The drafting committee will complete its work and its further recommendation, approved by the informal plenary, will be incorporated in the text;

(c) The time has not arrived for application of the rule 33 of the rules of procedure of the conference. At this stage, delegation will not be permitted to submit amendments. The draft convention on the law of the sea appeared on 28 August 1981. 56

The Draft Committee of the (UNCOLOS Ill) consists of 23 members including the chairman. The membership of the committee based on the principle of equitable geographical distribution and on the principle that no state should be represented on more than one main organ of the conference. 57

The competence of the committee was to formulate drafts and give advice on drafting as requested by the conference or by a main committee.

At the seventh session of the conference the drafting committee was requested to commence work by addressing itself to the provisions of the ICNT. The work of the drafting committee can be divided into two parts: Firstly, harmonization of the word and expressions in the text and secondly, article-by-article review of the provisions of the draft convention. 58

(x) Adoption of the Convention:

At the eleventh and final session of the conference three reports issued by the president, the chairman of the second committee and the chairman of the third committee. These reports was presented to the plenary and subjected to

56 Id., at 131.
57 Id., at 135.
58 Id., at 138.
debate. The collegiums issued a memorandum containing changes that would be incorporated in the draft convention. According to Rule 37, the president informed the conference of his decision to defer taking of vote on the amendments for a period of eight days, to enable delegations to make every effort to facilitate the achievement of general agreement. The president recommended acceptance of some amendments and proposed certain modifications. After due consideration and discussion the plenary accepted all proposals and recommendation of the president. Later on United States did not support the adoption of the convention, either by consensus or without vote and requested a record vote on the convention. So the convention, its related resolutions and decisions were adopted by a recorded vote of 130 in favor and 4 against, with 17 abstentions.

The convention was opened for signatures in December 1982 in Montego Bay, Jamaica. And immediately was signed by 119 nations. Several developed nations did not sign due to dissatisfaction with the convention's deep see-bed mining regime. It was adopted on 16 November 1994 after the sixtieth ratification.

The convention introduced a number of provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones, continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes. The convention set the limit of various areas, measured from a carefully defined baseline.

59 Id., at 132.
60 Id., at 133.
Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority. Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states.

5. Conclusion:

The Law of the Sea Convention 1982 was needed owing to the weakness of the older "freedom of the seas" concept, dating from the 17th century. National rights were limited to a specified belt of water extending from coastlines, usually three nautical miles, according to the "cannon shot" rule developed by the Dutch jurist Bynkershoek. All water beyond national boundaries was considered international waters - free to all nations, but belonging to none of them (the *mare liberum* principle promulgated by Grotius).

By the end of the nineteenth century and the beginning of the twentieth century new period in the codification of the law of the sea began. At this period appeared serious attempts to codify the law of the seas, such as the attempt of the Congress of Paris in 1858, the Hague Peace First Conference of 1899, and the second at 1907 which codified part of the law of the sea.

Into the 20th century many nations expressed a need to extend national claims, in order to include mineral resources, to protect fish stocks, and to have the means to enforce pollution controls. This was recognized by the
League of Nations, and a conference was held in 1930 at The Hague, but did not result in any agreements.

In 1958, the United Nations held its first Conference on the Law of the Sea at Geneva, Switzerland. This conference resulted in four treaties concluded in 1958 namely the Territorial Sea and Contiguous Zone Convention, the High Seas Convention, the Continental Shelf Convention and Fishing and Conservation of the Living Resources of the High Seas Convention. The United Nations followed this in 1960 with its second Conference on the Law of the Sea which did not result in any international agreements. During the six-week conference at Geneva, the conference did not achieve much. Generally speaking there was no voice for countries of the third world or the developing nations.

The United Nations created a committee known as the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction "The Sea-bed Committee". In 1970 the Third United Nations Conference on the Law of the Sea was held. The conference was conducted under a process of consensus rather than majority vote in an attempt to reduce the possibility of groups of nation-states dominating the negotiations. The conference lasted until 1982 and over 160 nations participated. In 1982 the conference produced the Law of the Sea Convention which was opened for signatures in December 1982 in Montague Bay, Jamaica. The convention came into force on November 16, 1994, one year after the sixtieth state, Guyana, ratified it.
Chapter Two


Nearly three quarters of the surface of the earth is covered by water. Generally speaking of the vast area of the water a very small proportion falls within the national jurisdiction. These areas according to the Law of the Sea Convention, 1982 include inter alia: internal waters; territorial sea; contiguous zone; exclusive economic zone and continental shelf. It is important, from the point of view of international law, to emphasize that each of these classes of water has its own distinct legal status distinguished from the other classes, in spite of the fact that all these areas are subject to the national jurisdiction of the coastal state. These different areas and their legal status require careful consideration.

1. Internal Waters:

(i) The Concept of Internal Waters:

Waters within or adjacent to state land territories are called "internal waters". These waters include in addition to the waters on landward side of the base line of the territorial sea rivers, lakes, enclosed seas, semi enclosed seas, ports, bays, straits, channels and finally archipelagos. It is important to mention that each of these classes of waters has its own legal situation, but all these legal situations are entirely different from the legal situation of both the territorial sea and the high seas.
(ii) **Internal Waters Divisions:**

a) **Waters on Landward Side of the Base Line:**

Waters on landward side of the base line from which the territorial sea is measured is regarded by article 8(1) of the Law of the Sea Convention of 1982 as a part of the internal waters. In these waters foreign states cannot demand any right for their vessels or subjects including the right of innocent passage, except in the case mentioned in article 8(2) which states that:

Where the establishment of a straight base line... has effect of enclosing as national waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

In other words, the right of innocent passage should not exist when we use normal base line system nor in the waters regarded as internal waters before using the straight base line system.

b) **Ports:**

A port is an area of the coast prepared specifically for reception of ships for loading and unloading of their cargos and embarking or disembarking of passengers. Ports are subject to the sovereignty of the coastal state as a part of its internal waters. Accordingly the coastal state has the right to regulate the maritime traffic in their ports and to enact laws and regulations regulating sanitary and customary matters. Moreover, it has the right to impose fees upon

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vessels which enter its ports either national or foreign in consideration for harbor services.

It is generally agreed that ships entering a foreign port are subject to the local jurisdiction of the littoral state, but there is no agreement as to the extent of this jurisdiction. Hall held the view that the extent of the immunity of commercial ships from local jurisdiction is a matter referred to the littoral state and not imposed upon it by the rules of international law. 63 It is suggested that the jurisdiction of the coastal state over foreign vessels entering their ports is not absolute jurisdiction, but subject to three restrictions: Firstly, when the ship is compelled to enter a port in a distress to avoid a storm, or injured caused to the ship; 64 Secondly, the coastal state must not interfere in the disciplinary power of the captain exercised upon his crew or in the crimes committed by the crew unless it prejudices the good order of the state or its peace or the safety of one of its nationals. Thirdly, the flag state exercises its jurisdiction over ships flying its flag even if it was found in a foreign port side by side with the coastal state, because it is deemed as a part of the state territory.65 In time of peace commercial ports must be left open to international traffic and no port can ever be shut against a foreign ship seeking shelter from tempest or compelled to enter it in distress. Moreover no port can be shut against war or commercial ships without lawful reasons such as maintenance of its security and war secrets. Entry of warships even into commercial ports may be subject to certain restrictions both as regard the number of vessels allowed to enter and the length of their stay. Purely military ports may be

63 Hall, A Treatise on International Law, 256 ( 8ed, 1924 ).
64 Jessup, The Territorial Waters and Maritime Jurisdiction, 195 (1929).
closed to all foreign warships or merchant vessels on the ground of justifiable precaution. 66

c) **Bays and Gulfs:**

A bay is a well marked indentation whose penetration is in such proportion to the width of its mouth as to contain land locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of that indentation. 67 The status of a bay differs in pursuance to the width of the entrance. Article 10 of the Law of the Sea Convention of 1982 provides that:

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

66 "Colombos, supra note 1, at 160.
67 Article 10 (2) of the Law of the Sea Convention, 1982.
The legal status of a bay the coast of which belongs to more than one state is not obvious under the Law of the Sea Convention of 1982. As regard the writers, there are inconsistent views which may be grouped into three groups. The first group holds the view that the legal status of such a bay is determined according to the general rules of the customary international law of the sea, i.e. the territorial sea is measured from the low-water mark of the coast of the bay, Gidel, McDougal, Colombos, Artolan and Lauterpacht are among those who support this view. The second and opposite view is that such a bay is subject to sovereignty of the littoral state to which the coast of the bay belongs, if the breadth of the bay does not exceed a certain distance determined by some of them as ten nautical miles. The third view is held by Oppenhiem. According to him the water of such a bay is regarded as high seas.

These rules apply only to a bay the coast of which belongs to a single state and do not apply to the so-called historical bays. Historical bay can be defined as a bay upon which the littoral state exercises its jurisdiction internationally continuously for a long period without separating. The legal situation of such a bay is that it is subject to the jurisdiction of the littoral state regardless of its width. Good example for the historical bay is Hudson Bay in Canada.

d) Straits and Channels:

A strait is a narrow water course with a limited breadth separated between two parts of the sea, while channel is an artificial strait created for the purpose

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70 Id., at 281.
of facilitating the navigation. All straits which are not exceeding 24 nautical miles and the land of both sides of strait belong to the same state are territorial. But if the width of the strait exceeds this breadth the status is not obvious whether national or territorial or elsewhere. 71 If the two shores of the strait are boarded by the territories of different states, the legal status of the strait is determined according to the general rules of the international law, which involves the consequence that the right of innocent passage does not exist in the waters which is regarded as internal waters according to the rules of the international law, save only in the case mentioned in article 8 (2) of the Law of the Sea Convention of 1982. Whereas the littoral state exercises its sovereignty within the limits of its territorial sea, if these run into each other by reason of the narrowness of the strait, the boundary line is fixed at the middle of the strait or at the center of the mid-channel, unless a special treaty makes a different arrangement. Waters which follow the territorial seas are contiguous zones or exclusive economic zone or high seas as the breadth of the strait permits, taking into account rules governing measurement of contiguous zone and exclusive economic zone between two opposite states. 72 Transit passage of aircraft and ships must be left free through straits which are used for international navigation between one part of high seas or exclusive economic zone and other part of the high seas or exclusive economic zone, except when the strait formed by an island belongs to the territorial state and its mainland. 73

All ships whether warships or merchant ships without discrimination enjoy the right of transit passage through international straits. Thus in the Corfu

71 Colombos, supra note 1, at 180.
72 Id.
73 Article (37) and (38) (1) of the Law of the Sea Convention, 1982.
Cannel Case 1949, the International Court of Justice decided that it was internationally confirm that states have a right of transit passage for their warships through international strait without previous permission. 74

Canals are artificial straits constructed by human effort. It is generally agreed that canals constitute a part of the state territory subject to the jurisdiction of the littoral state as internal waters. Oppenhiem emphasized that canals are parts of the territories of the respective territorial states is obvious from the fact that they are artificially constructed waterways. And there ought to be no doubt that all the rules regarding rivers must analogously be applied to canals. 75 In spite of the fact that canals are regarded as internal waters they must be open for navigation of both merchant ships and warships since the purpose from their construction is to facilitate the international navigation. The respective state has the right to impose fees upon ships during their passage in consideration for what it spent in the maintaining and digging works. It has been founded necessary to exempt some maritime canals from belligerent action in order to maintain their usefulness even during hostilities and to protect them against damage or destruction. 76 The rules governing the transit passage through international straits are dealt with in part III of the Law of the Sea Convention, 1982.

e) Lakes, Enclosed and Semi-Enclosed Seas:

Lakes and enclosed seas are waters surrounded by land without a connection to the open sea or any other enclosed or semi-enclosed seas.


75 Oppenhiem, supra note 8, at 480.

76 Colmbos, Supra note 1, at 183.
Lakes waters are often fresh waters and create a source of rivers. Semi-enclosed sea is water surrounded by land with a narrow outlet or more with the open sea or enclosed or semi-enclosed sea. Theory and practice agree upon the rule that such lakes, enclosed and semi-enclosed seas if they are entirely enclosed by the land of one and the same state are part of the territory of this state, but if they are surrounded by territories of several states the majority of writers consider them as a part of the surrounding territories, while others hold the opinion that they are free like the open seas. The practice seems to favor opinion of the majority of writers, for special treaties frequently arrange that portions of such lakes and seas belong to riparian states.  

The legal status of lakes, enclosed and semi-enclosed sea, land surround which is owned by one state, is not obvious under the Law of the Sea Convention 1982, for the articles relating to the subject, i.e. articles 122 and 123, deal only with enclosed and semi-enclosed seas surrounded by two or more states, and they do not speak about lakes generally or enclosed and semi-enclosed seas surrounded by the land of one state. This legal status of enclosed and semi-enclosed seas impliedly could be understood from their definitions provided in article 122 of the Law of the Sea Convention 1982, as seas consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal state. Accordingly their legal situations is determined by the general rules of the international law, i.e. the waters of these seas either territorial or exclusive economic zones as the situation is permitted, provide that the enclosed or semi-enclosed sea is connected to another sea or ocean by a narrow outlet.

77 Oppenhiem, Supra note 8, at 477.
f) **Archipelagos:**

There are two different kinds of archipelagos: coastal archipelagos and mid-ocean archipelagos. The coastal archipelagos are usually found where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. The coastal state may use a straight base line system; joining appropriate points may be selected along the furthest seaward extent of the low-water line. The water enclosed between the strait base lines and the coast is regarded as internal water. Accordingly the right of innocent passage does not exist in these waters except in the case mentioned in article 8 (1) of the Law of the Sea Convention 1982. A good example for coastal archipelagos is the Norwegian coast.  

Mid-ocean archipelagos are defined by article 46 of the Law of the Sea Convention 1982 as:

A group of islands, including part of islands, interconnecting waters and other natural feature which are closely interrelated that such island, water and other natural feature form an intrinsic geographical, economic and political entity or which historically have been regarded as such.

An example for the mid-ocean archipelagos is the Indonesian Islands.

According to article 47 (1) of the Law of the Sea Convention 1982 archipelagos state may draw a straight archipelagic base lines, joining the outermost points of the outermost islands and drying reefs of the archipelago.

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It would seem that the legal status of the archipelagic waters, comparable with the legal status of both internal water and territorial sea, is distinct from the legal status of the former and similar to the legal status of the latter with a little difference. In other words the jurisdiction of the archipelagic state over its archipelagic water is subject to a number of restrictions mentioned in articles 51 and 53 of the Law of the Sea Convention, 1982. The first restriction is that an archipelagic state shall respect existing submarine cables laid by other states and passing through its waters without making a landfall, and shall permit the maintenance and replacement of such cables upon receiving due notice of their location and intention to repair or replace them. The second restriction is that the archipelagic state shall respect the traditional rights of other states in its archipelagic waters like the right of fishing. The third and last restriction is that the archipelagic state must not hamper the right of innocent passage through the normal passage routes of international navigation or over flight through archipelagic waters.

g) Rivers:

Rivers are divided under the international law into four distinct categories. Firstly, a river lies wholly, from the source to the mouth, within the boundaries of one state, it is generally agreed that such river is owned by the littoral state exclusively. It is called a national river, and in the absence of a treaty granting the right of navigation, the littoral state can exclude foreign vessels from its national river or admit them under certain conditions, such as payment of dues. Secondly, the so-called boundary rivers, that is rivers which separate two different states from each other, belong to the territories of the states
concerned. The boundary is a line running either through the so-called mid-channel of the river or the middle of the river itself. Thirdly, a river runs through several states, such river is owned by more than one state. Each state owns that part of the river which runs through its territory. Fourthly, navigable rivers from the open sea and at the same time are either separated or pass through several states. These rivers although they belong to the territories of the different states concerned, are named international rivers because freedom of navigation in time of peace is recognized by conventional international law.

In conclusion, it should be mentioned that the internal waters with its different classes is regarded as a part of the territory, owned by the state to which the territory belong. It is in fact legally thought not physically, equivalent to national land. Moreover, it is a matter of strict law that no foreign state can demand any right for their nationals or vessels in these waters.

7. **Territorial Sea:**

(i) **Territorial Sea Definition:**

Owing to the contradictory opinions held by publicist regarding the exact nature of the right of the coastal state in its territorial sea, it is very difficult to put uniform and comprehensive definition of the territorial sea. Instead there are several and varying definitions. As regards the international conventions it is true to say that, there is no direct definition. The related conventions

79 Colomos, supra note 1, at 204 and seq.
indicate only the right of the coastal state to exercise its sovereignty over adjacent belt known as territorial sea.

Article 1 of the draft convention of The Hague 1930, provided:
The territory of a state includes a belt of the sea described in this convention as the territorial sea. The sovereignty over this belt is exercised subject to the conditions prescribed by the present convention and other rules of international law.

Article 1 of the Geneva Territorial Sea Convention, 1958 also provides:
1. The sovereignty of state extends beyond its land territory and its internal waters to a belt of the sea adjacent to its coast described as the territorial sea.
2. This sovereignty is exercised subject to the provisions of these articles and other rules of international law.

Finally, article 2 of the Law of the Sea Convention, 1982 provides:
1. the sovereignty of the state extends beyond its land territory and the internal waters and, in the case of archipelagic state, its archipelagic waters, to an adjacent belt of the sea described as the territorial sea.
2. The sovereignty over the territorial sea is exercised subject to this convention and other rules of international law.

It is generally recognized that all the above mentioned articles hold the notion that the territorial sea is a belt running parallel to the coasts, above which the coastal state exercises its sovereignty. This sovereignty extends to the air space above the territorial sea and its sea bed and sub-soil. The sovereignty of the coastal state over its territorial sea is exercised according to the rules of the international law, in other words subject to the restrictions
imposed by these rules. From all what has been said above we conclude to the following definition.

The territorial sea is a belt of the sea adjacent to coast and around islands beyond the internal water and, in the case of archipelagic states, beyond archipelagic waters, upon which the coastal state exercises its sovereignty, according to the rules of international law and international convention. The sovereignty of the state extends to the air space over the territorial sea and its sea bed and sub soil.

(ii) **Territorial Sea Development:**

Before the seventeenth century the prevailing rule was the freedom of seas to the extent that the sea cannot be subjected to the control of any state for it is a necessary means of communication between nations and its free use thus constitute indispensable element of international trade and navigation. In other words it is a common heritage for all mankind.

Though it is apparent that the legal systems during this period generally applied the freedom of seas, some states claimed different rights in their adjacent seas. By the beginning of the seventeenth century many states claimed sovereignty over adjacent seas. For example both Denmark and Sweden claimed sovereignty over Baltic, Venice claimed the sovereignty over Adriatic, Genoa and Risa claimed the Ligroin sea and Great Britain claimed sovereignty over the Munch and Atlantic to the American coasts. 80

80 Id., at 45 – 46.
Publicists during that period expressed their countries interests. The views expressed during that century may be grouped into three groups. The first group supported the freedom of seas. According to Grotius’s work *Mare Liberum*, property required occupation which requires that moveable shall be seized and immovable things shall be enclosed. Whatever cannot be seized or enclosed is incapable of being a subject of property and this is the case with the sea. The second group held the view that the sea cannot be appropriated or possessed. Among this group was Selden who gave the English king in his *Mare Clausium* the right to appropriate the waters surrounding Great Britain, but he admitted the principle that a state could not forbid the navigation in its seas by other people. The third group supports the sovereignty right of the coastal state over its territorial sea.

During the eighteenth century the concept of the territorial sea crystallized and took its present form. Though it is apparent that there is a general agreement both in practice and theory to the extent that the coastal state exercises its sovereignty over its territorial sea, a dispute arose around the breadth of this area and the exact nature of the right in the territorial sea.

The expression territorial sea appeared for the first time in this century in the letter of President Thomas Grifithson the president of the United States to the French minister Admon Jinis in November 1793, at which he stated that:

The limit of one sea league from shore is provisionally adopted as that of the territorial sea of the United States.

During the twentieth century the area of the territorial sea was discussed in detail in the international conferences concerning the law of the sea held

82 Id.
during that century and all the conventions concluded by these conferences recognized the area of the territorial sea and the rules governing this area.

(iii) Juridical Nature of the Territorial Sea:

In an attempt to determine the exact nature of the right of the coastal state over its territorial sea several theories have been argued by publicists. In this concern there are two distinct trends. The former regarded the territorial sea, whatever the nature of the right of the coastal state, as a part of the state territory, within the state boundary, while the latter does not regard the territorial sea as a part of the territory of the state; accordingly the state territory ends where the land territory ends. The Permanent Court of Justice in 1909 in Grisbardana case between Sweden and Norway decided that the maritime territory is not separated from the land territory. 84 In reality, five different theories have been advocated by jurists in determining the exact nature of the right in the territorial sea, namely; the possession theory, the sovereignty theory, the jurisdiction theory and the right of servitude theory. It is true to say that, according to both possession and absolute sovereignty, the coastal state has absolute right over its territorial sea, including the right to exclude foreign passage through the territorial sea, in contrast to the general rules of the international law. The jurisdiction and restricted sovereignty theories try to reconcile between the absolute rights of the coastal states in their territorial seas and the rights of the international community in these seas. Moreover, both the servitude and the right of existence theories remained theoretical doctrines and did not apply in the state practice.

84 Colombos, supra note 1, at 80.
The juridical nature of the right of the coastal state in its territorial sea always exist among those issues discussed in the international conferences relating to the law of the sea, in order to determine the exact theory which constitutes the base from which the coastal state derived its right in the territorial sea. Here we can explain the situation of these conferences:

Article 1 of the Draft Articles of the Hague Conference accepted the sovereignty theory as a base for the nature of the right in the territorial sea. This article provided that:

The territory of the state includes a belt of the sea described in this convention as the territorial sea. Sovereignty over this belt is exercised subject to the condition prescribed by the present convention and other rules of international law.

The nature of the right of the coastal state over its territorial sea was discussed during the 1952 session of the International Law commission. In fact the general direction of the views preferred the sovereignty theory. During the negotiations of this session Scelle suggested the replacement of the phrase "Sovereignty right" with the word "Power". He said that "All the commission difficulties would disappear if the sovereignty is replaced by the word power". From another point of view Lauterpacht argued that "the sovereignty of the coastal state over the territorial sea had been so well established". 85

Later on, in the 1954 session, Scelle stated that "he has no objection to the term "sovereignty" but he preferred the term "jurisdiction" because the sovereignty exercised over the territorial sea was not of the same nature as that exercised over the main land territory". Lauterpacht emphasized that "the

85 Y.B.I.L.Com., 150 (1952 – 1).
regime of the territorial sea was not identical with that of other areas over which a state exercised its sovereignty. It would be dangerous to consider the sovereignty of a state over its territorial sea as identical with the sovereignty exercised over its land domain". 86

During the discussions of the conference the British delegation suggested modification of article 1 of the draft articles, emphasizing that "the article did not clearly bring out the distinction between the characters of the coastal state exercised over its sea territory". 87 It is generally recognized that there is common agreement in the delegations views toward the sovereignty theory. As regards the extent of this sovereignty, the coastal state is conferred a full sovereignty over its territorial sea provided that it granted the ships of all states the right of innocent passage and limited the exercise of its penal and civil jurisdiction to exceptional cases. 88

Article 1 of the Geneva Territorial Sea Convention, 1958 accepted the sovereignty theory as a base of the right of the coastal state in its territorial sea. This sovereignty is restricted by the restrictions mentioned in this convention and other rules of international law.

There was a total agreement both in the debates and delegations’ proposals to the Third United Nations Conference on the Law of the Sea about the restricted sovereignty theory as the base from which the coastal state derives its right over its territorial sea. It has been suggested that the sovereignty of a state extended beyond its land territory and internal waters to a belt of sea adjacent to its coast described as the territorial sea. 89 The

86 Id., 59(1954 – I).
87 UNCOLOS – I, at 8.
88 Id, at 11.
89 UNCOLOS- III, at 183.
Canadian proposal adds that this sovereignty is restricted by the right of innocent passage. Another addition has been made to the extent that the coastal state exercises its sovereignty subject to the provisions of this convention. The convention adds the phrase "and other rules of international law". Finally the provision of the related article (article 2) of the Law of the Sea Convention- reads as follows:

(3) This sovereignty over the territorial sea is exercised subject to this convention and other rules of international law.

Finally, it is true to say that, the prolonged dispute between the different theories which determined the exact nature of the right of the coastal state over its territorial sea, was ultimately settled by the Territorial Sea Convention of Geneva, 1958 and the Law of the Sea Convention, 1982 in favor of the restricted sovereignty theory.

(iv) **Juridical Nature of the Air Space over the Territorial Sea:**

The technology advancement in the air navigation during the last years of the nineteenth century, posed a question about the legal status of the air space over the territorial sea. The views expressed in this concern may be grouped into three groups. The first group saw that the air space above the territorial sea is not subject to the coastal state sovereignty; it has only a right to regulate air navigation over its territorial sea. The second group gave the coastal state an absolute sovereignty including the right to prevent air navigation through the air space over the territorial sea. The middle view and third group restrict the state sovereignty over this area by the right of innocent
passage and other servitude rights. In 1910 the conference of Aerial Navigation was held to discuss matters related to air navigation in Paris. Delegations of nineteen nations participated in this conference which failed to reach any result. Another conference was convened in Paris in 1919. This conference succeeded in producing the Air Navigation Convention of 1919. Article 1 of this convention defines the territory of the state as including the air space over the territorial sea. From the wording of this article, we can understand that the sovereignty over the airspace above the territorial sea is an absolute sovereignty since the territory of the state includes its territorial sea.

However, the Air Navigation Convention of 1922 of the League of Nations, which was amended in 1923, failed to put any rule in relation to the legal status of air space over the territorial sea. 90 In 1956 session of the International Law Commission it was observed that the sovereignty over the airspace of the territorial sea was not subject to the same restrictions as the sovereignty over the territorial sea and it should be plain that there are distinctions between the two sovereignties. 91 The same view was asserted during the first conference on the law of the sea that the sovereignty of the coastal state extended to the air space above its territorial sea. It was correct that there was no general right of innocent passage for aircraft through the air space corresponding to the right of innocent passage through the territorial sea itself a situation which was recognized by the relevant provision of 1944 Convention on the International Civil Aviation. The Territorial Sea Convention of Geneva, 1958 produced by this conference provides in article 2 that the sovereignty of the state extends to the air space over its territorial sea. It is obvious from the provision of this article that the sovereignty of the state over the air space

90 Billyou, Air Law, 17 (2ed. 1964).
91 YBILCom., 71 (1955).
above its territorial sea is an absolute sovereignty, since it is identical to that of the state over its land territory and not of the state over its territorial sea. On the other hand, this convention did not mention any restriction impose upon this sovereignty.

During the negotiations of the Third United Nations Conference a proposal has been submitted suggesting that the sovereignty of the coastal state over its territorial sea not the sovereignty of the state itself which extends to the airspace above the territorial sea. \(^{92}\) The result will be that the sovereignty over the airspace above the territorial sea is subject to the same restrictions to which the sovereignty over the territorial sea itself is subject. This proposal was rejected. Hence the Law of the Sea Convention, 1982 took the same position as the previous convention.

(v) **Juridical Nature of the Sea Bed and Sub-soil of the Territorial sea:**

During the nineteenth century the claims of states in the territorial sea extended to include the sea bed and sub soil of the territorial sea. According to Lawrence the sea can be possessed by acquisition. \(^{93}\) In favor of this view Oppenhiem saw that the subsoil beneath the territorial land and water is important on account of telegraph and telephone wires and the like, and also on account of the working of mines and the building of tunnels. It is universally recognized rule of the international law that the subsoil to an

\(^{92}\) UNCOLOS-III, at 98.

\(^{93}\) Lawrence, *Principles of international law*, 177 – 178 (7th ed 1910).
unfounded depth belongs to the state which owned the territory on the surface and territorial waters. 94

Practice and theory during that century agreed upon the rule that the sovereignty of the state extended to the sea-bed and subsoil of the territorial sea and this sovereignty is an absolute one. It is not restricted with any of the restrictions imposed over the sovereignty of the state itself. This rule applied by the Draft Articles of the Hague Convention 1930, the Territorial Sea Convention of Geneva, 1958 and the Law of the Sea Convention, 1982. 95

(vi) Rights in the Territorial Sea:

The coastal states enjoy over its territorial sea certain rights, the most commonly accepted in the international conventions are jurisdiction over foreign ships and the right in the natural resources of the territorial sea, the right to establish safety zones.

a) Jurisdiction over foreign ships:

It is universally recognized that the coastal state has exclusive jurisdiction within its territorial sea as regards matters of police and security, but it is doubtful whether this jurisdiction is an absolute or a restricted one and whether this jurisdiction is extended equally to foreign ships passing through the territorial sea. It should be emphasized that there is an

94 Oppenhiem, supra note 8, at 461 – 62.
international agreement to the extent that the coastal state can exercise its full jurisdiction over those foreign ships which breach their rights of innocent passage and over foreign ships lying in the territorial sea or passing through it after leaving the internal waters.

During the Hague discussions a serious effort was made to determine the extent of the state jurisdiction. The views during this discussion can be divided into two opposite divisions, those who support the absolute jurisdiction, and those who support the restricted jurisdiction in certain matters such as fishing and prevention of pollution. However with the failure of the conference those efforts were futile.

The first United Nations conference, accepted the proposal of the United States delegation which had been refused during the Hague Conference of 1930, which recommend that the coastal state could exercise its jurisdiction in its territorial sea, but it must not exercise this jurisdiction except in certain matters. 96 However, the convention produced by this conference determined in articles 19 and 20 the cases where the coastal state could exercise its criminal and civil jurisdiction. Indeed, the Law of the Sea Convention, 1982 is more precise in this respect, because it enumerates in article 21 (1) the matters at which coastal state could exercise its jurisdiction. These matters include inter alia safety of navigation and regulation of marine traffic, conservation of living resources, health and customs matters, preservation of immigration and scientific research, prevention of pollution and finally, protection of cables and pipeline in the territorial sea. Generally speaking coastal state should not exercise its criminal and civil jurisdiction except in certain cases.

96 3 UNCOLOS – I, at 221.
It is clear that the coastal state has the right to exercise its criminal jurisdiction in four distinct cases provided in article 23 of Law of the Sea Convention, 1982, firstly if the consequence of the crime committed on board a ship passing through the territorial sea extended to the coastal state, secondly where the crime is of a kind which disturbs the peace of the country or the good order of its territorial sea. In a total absence of an international judiciary system the determination of the kinds of these crimes considered as disturbing the peace and good order of the state is left to every state, for the act may constitute a disturbance to one state and not to another one. Thus the Supreme Court of the United States sustained the local jurisdiction in view of "gravity" of the "felonious homicide" on board the Belgian vessel which had awakened the public interests and caused public excitement. On the other hand, the Supreme Court of Justice of Mexico decided that a murder of a crew member by the captain on board a French ship anchored in a Mexican port did not constitute a disturbance of peace of the port. ⁹⁷ Thirdly, if the captain, a diplomatic agent or consular officers of the state request the assistance of the local authorities, ⁹⁸ and finally if such measures are necessary for suppression of illicit traffic of narcotic drugs. This case appeared for the first time in the Geneva Territorial Sea Convention of 1958 after the acceptance of the Pakistan proposal to the First Conference on Law of the Sea to that extent. ⁹⁹

This criminal jurisdiction of the coastal state over foreign ships passing through its territorial sea is not compulsory jurisdiction. This appears from the expression "should not" instead of "must not" which is used in the Hague Draft of 1930, and altered due to the acceptance of the aforementioned

⁹⁸ See article 27 (3) of the Law of the Sea Convention, 1982.
⁹⁹ UNCOLOS-I, at 81.

As regard the civil jurisdiction the coastal state should not according to article 20 of the Geneva Convention of the Territorial Sea, 1958 and article 28 of the Law of the Sea Convention, 1982, stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship and may not levy execution against or arrest the ship for the purpose of civil proceeding, save only in respect of obligations or liabilities assumed or incurred by the ship itself in course of or for the purpose of its voyage through the waters of the coastal state. From the provisions of these articles we conclude that any person on board a foreign ship and the ship itself is immune from the civil jurisdiction of the coastal state, save only in respect to liabilities and obligations incurred during its voyage through the waters of the coastal state.

b) The Right in the Natural Resources of the Territorial Sea:

The right in the natural resources of the territorial sea is divided into two parts, the first one is the fishery right and the second is the right in the natural resources in the sea bed and subsoil of the territorial sea. As regards the fishery right in the territorial sea, each state has the right to enact laws and regulations regulating fishing in its territorial sea, and it has the right also to exclude the foreign fishing in this part of the sea. William Welwood gave an explanation for this right, which he based on "the primitive and exclusive right
of inhabitants of a country to the fisheries along their coast, and of the principal reason for which this part of the sea must belong to the littoral state, being the risk that these fisheries be exhausted as a result of them by everybody". 100

The attempt to monopolize the resources of the adjacent seas and to exclude the foreign fishing goes back to an old date, at the beginning of the seventeenth century. Later on the fishery right appeared in a number of international treaties and agreement, such as the North Sea Convention, 1882.101 In acceding to these treaties and agreements domestic legislations of many maritime countries include a number of enactments designed for the protection of fishers in their territorial seas or forbidding foreign fishery in these seas. Generally speaking the practice of the states regarding the fishery right falls into three classes. Firstly, states which adopt exclusive right of fishing in favor of their nationals within their territorial sea. Secondly, states which grant special favors to their nationals without excluding foreigners. And thirdly, states which give liberty to all to fish, but subject to reciprocity. 102

The fishery right appeared in a number of international precedents. Thus in the Behring Sea Arbitration in 1889 the Arbitral Tribunal decided by majority that "the United States had not any right of protection or property in the fur seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-miles limit". 103

As regards the situation of the international conventions, the Hague Draft Convention of 1930 did not mention the fishery right. While the

100 Colombos, supra note 1, at 134.
101 Id., at 135-36.
102 Id., at 134.
103 Id., at 148.
Territorial Sea Convention of Geneva, 1958 impliedly indicated this right in article 14 (5) which stated that:

Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal state may make and publish in order to prevent these vessels from fishing in the territorial sea.

It is obvious from the provision of this article that the coastal state is entitled to prevent fishing vessels from any fishing activities in its territorial sea.

Article 19(2) of the Law of the Sea Convention of 1982, does, however, provide the following:

Passage of a ship shall be considered to be prejudicial to the peace, good order or security of the coastal state it engages in any of the following activities:

(iii) Any fishing activities.

Here we can understand from the provision of this article that any act of fishing in the territorial sea shall be deemed prejudicial to the right of innocent passage thus entitling the coastal state to take the necessary steps to prevent this passage.

The second part of the right in the natural resources in the territorial sea is the right to explore and exploit, conserving and mining the natural resources whether living or non-living in the sea bed and subsoil of its territorial sea. On one hand the principle of sovereignty of the coastal state over its territorial sea, means that the surface and subsoil of the sea bed under the territorial sea is also subject to the absolute sovereignty of the coastal state and that other states cannot explore or exploit the natural resource of this area except with the permission of the coastal state. On the other hand, the right of the coastal
state to explore and exploit its continental shelf which is an area outside the territorial sea implies that the coastal state has a similar right in the sea bed and subsoil of its territorial sea.

c) **The Right to Establish Safety Zones:**

There is no doubt that the main purpose of the concept of the territorial sea is the protection of the land territory from any expected attack of the sea. For this reason the breadth of the territorial sea was previously measured by the range of canon firing from the shore. The defensive areas were enacted for the first time in 1918 by United States and covered later on sixteen areas. The latest executive order of the president of the United States setting up such an area is dated June 11, 1952, and applied to Whitter in Alaska. 104

Under the Law of the Sea Convention, 1982 the coastal state has the right to suspend temporarily in special areas of its territorial sea innocent passage of ships if such suspension is essential for the protection of its security without discrimination among foreign ships. 105

In our opinion this right of the coastal state to suspend temporarily innocent passage in its territorial sea points to the right to establish safety zones temporarily in order to protect the security and safety of the coastal state. The suspension of innocent passage must be without discrimination between foreign ships.

104 Id., at 151.
(vii) **Restriction on the Right in the Territorial Sea:**

The nature of the sea as a common route of navigation for the whole world, necessitate a practical modification of the general principle of absolute sovereignty and the creation of two important restrictions over the sovereignty of the state on its territorial sea namely; the right of innocent passage and the duty not be levy charges upon ships passing through the territorial sea. The customary right of innocent passage through the territorial sea is correctly said to be a sequence of the freedom of the open sea. This international right is mentioned in all international conventions, relating to the law of the sea, starting with the Draft Convention of the Hague 1930, in article 6, Territorial Sea Convention of Geneva, 1958 in article 14 (1) and finally the Law of the Sea Convention of 1982 in article 17 for all states either coastal or land-lock states.

Passage, according to article 18 of the Law of the Sea Convention, 1982 is the navigation through the territorial sea for the purpose of traversing that sea without entering the internal waters or calling at roadstead or port facility outside internal waters or at proceeding to or from internal water or call at such roadstead or port facility. Though passage must be continuous and expeditious, it may include stopping and anchoring if incidental to ordinary navigation.

A merchant ship exercising the right of innocent passage is immune from the local jurisdiction of the coastal state. A merchant ship can be defined as a ship used for commercial purpose whether private or governmental ship. It is generally agreed that ships of all states, whether coastal or land-lock states, enjoy the right of innocent passage through the territorial sea. This immunity
includes only ships traversing the territorial sea without entering the internal waters. Those ships passing through the territorial sea after leaving internal waters are not immune from the local jurisdiction. It should be emphasized that the coastal state has a greater power over a merchant ship passing through the territorial sea after leaving the internal waters and implicitly, ships which are lying in port or in territorial sea than those which are merely passing through the territorial sea. This deferential treatment was based on the assumption that the interests of a coastal state are more directly affected by the foreign ships stationary in the territorial sea or passing through it after calling at a port than by those in continuous passage.

A merchant ship passing through the territorial sea loses its immunity from the jurisdiction of the coastal state and becomes automatically subject to the local jurisdiction upon committing any act which prejudices the good order or security of the coastal state by committing any of the activities provided in article 19 of the Law of the Sea Convention, 1982.

As regards the right of innocent passage of a warship, which is defined, for the first time, by article 29 of the Law of the Sea Convention, 1982 as "a ship belonging to the armed force of a state bearing the external mark distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the state and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces disciplines". There was no discrimination between war and merchants ships before the nineteenth century. Later on, by the end of that century disputes arose whether the right of innocent passage includes

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106 Refer to article 19(2) of the Territorial Sea Convention of Geneva, 1958 and article 27 (2) of the Law of the Sea Convention, 1982.

46Lee, supra note 36, at 81-82.
warships or not. Hall is of the opinion that the right of innocent passage does not extent to war ships. No general interests were necessarily or commonly involved to navigate the waters of other states. Westlake dissents from Hall’s opinion mainly on the ground that the territorial sovereign could well protect himself from abuse and that an unlimited power of exclusion would subject a belligerent warship to intolerable interruption. Fauchille’s view is that passage through the marginal belt of a state can only be forbidden in time of war and if the littoral state is a belligerent. Colombos on the other hand saw that the better view appeared to be that such user should not be denied in time of peace when the territorial waters are so placed that passage through them is necessary for international traffic.

The general sense of the delegations, at the Hague Conference of 1930, was opposed to laying down any absolute right for war ships passing through the territorial sea. The draft produced by this conference stipulated the previous notice for the passage of war ships and entitled the coastal state the right to impose any reasonable regulations upon foreign war ships to regulate their passage through the territorial sea.

The Territorial Sea Convention of Geneva, 1958 in article 23 provided that the coastal state may require a war ship to leave its territorial sea if it does not comply with the laws and regulations of the coastal state concerning passage. In other words the war ship has a free right of passage if it complies with the laws and regulations of the coastal state otherwise it will lose this right.

In fact, the views during the debates of the Third United Nations Conference on the Law of the Sea, 1982 can be grouped into three groups. The

108 Hall, supra note 2, at 163.
109 Colombos, supra note 1, at 122 -23.
110 Id.
first group representing the majority view supported the right of free passage without previous notice, while other states called for previous notice. The third group denied the right of passage for war ships. Adopting the view of the majority, the Law of the Sea Convention, 1982 in article 17 declares that ships of all states, without discrimination between war and merchant ships enjoy the right of innocent passage.

A war ship is absolutely immune from the local jurisdiction of the coastal state and if it does not comply with the laws and regulations of the coastal state concerning passage through the territorial sea and disregard any request of compliance the coastal state has the right to ask it to leave the territorial sea immediately. The flag state is responsible for any loss or damage to the coastal state resulting from non-compliance of their war ship.

The other restriction is the duty not to levy charges over ships passing through the territorial sea. The absolute theories, i.e., possession and absolute sovereignty, gave the coastal state absolute right in its territorial sea including the right to prevent innocent passage or the right to impose fees upon foreign ships passing through the territorial sea. By contrast, the restricted sovereignty theory imposes, in addition to the right of innocent passage, a duty not to levy any charges over ships passing through the territorial sea except in consideration for specific service rendered to them. This restriction is provided in article 7 of the Draft Convention of The Hague 1930, article 19 of the Territorial Sea Convention of Geneva, 1958 and article 26 of the Law of the Sea Convention, 1982.
(viii) **Breadth of Territorial Sea:**

The question of the breadth of the territorial sea has been always one of the most controversial matters. This is because the breadth of the territorial sea is an important matter for both coastal and land-locked states, since the economic, sanitary, security, strategic and fiscal interests of the former is closely connected with their territorial seas. So they try to extend the breadth of the territorial sea, while the latter try to diminish the breadth of the territorial sea of other states to secure its interest in the high seas and to secure free navigation for its ships. This view is supported by the great and industrial states. Various extents have been advanced in order to determine its breadth such as the range of the human sound, the range of vision and the range of cannon shot proposed by Benkershoek "the dominion of the land ends where the power of arm ends". 111 When this doctrine was introduced in the eighteenth century the range of guns, was approximately one marine league or three nautical miles, which constitute the original basis for the present three miles rule. This rule is reflected in several treaties and agreements signed during the eighteenth century such as the North Sea Fisheries Treaty of 1882. Since the end of the eighteenth century the range of cannon shot has increased due to the technical developments. Most of the states support the three miles distance as a breadth to their territorial sea, others increased their territorial seas because of the increase in the cannon shot range to four miles distance, six miles, twelve nautical miles and even to 200 miles.

In view of the divergence in the breadth of the territorial seas and the doctrines related to the exact nature of the territorial sea, the League of

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Nations was instructed to negotiate an international convention on the subject. The preparatory committee of the Hague Conference, 1930 submitted a proposal to the conference determining the breadth of the territorial sea by three nautical miles. This was opposed by several states and for this reason among others failed.

During the First United Nations Conference on the Law of the Sea, 1958 discussion, several proposals has been submitted to the conference, such as the United States proposal which recommended six nautical miles as a breadth to the territorial sea plus six nautical miles continuous zone. Actually all these proposals were refused, and the convention on the territorial sea produced by this conference was adopted without fixing the breadth of the territorial sea.

In 1960, a new attempt was made to reach an agreement on this question. Amongst the several proposals which attracted greatest attention of the conference was one put forward by Canada and United States suggesting the adoption of six miles territorial sea and twelve miles fishery zone, the proposal failed by one vote to secure the necessary two-thirds majorities. 112

The negotiations of the Third United Nations Conference regarding the matter of the breadth of the territorial sea can be summarized as follows. The great majority of states supported the twelve nautical miles. Other countries like Brazil and Peru support the Ecuador proposal asking for two hundred nautical miles as a breadth of the territorial sea. The Law of the Sea Convention, 1982 produced by this conference in article 3 provides that "Every state has the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles". The phrase "has the right" indicates the optional right of the coastal state to fix its territorial sea breadth up to a distance not

exceeding twelve nautical miles. Although this article succeeded in diminishing the disagreement around the breadth of the territorial sea, it does not terminate this disagreement, since the breadth of the territorial sea may be three miles, six miles or any distance not exceeding twelve nautical miles. It is important to say that the recent practice of states is directed towards the twelve nautical miles width of the territorial sea.

Question arises as to how the breadth of territorial sea is delimited. No difficulty arises in delimiting the territorial sea with a normal coast for inter limit of the territorial sea is the low-water line along the coast following the sinuosity of the coast. The problem, however, becomes more difficult when the shore is deeply indented, or is surrounded by islands, shoals or rocks, or if there is a river following directly into the sea, or if there is a bay or a port or in the case of archipelagic states. The outer edge of the territorial sea, according to article 4 of the Law of the Sea Convention of 1982, is a line every point of which is at a distance from the nearest point of the base line equal to the breadth of the territorial sea. For the purpose of delimiting the outer edge of the territorial sea where the coasts of two states are opposite or adjacent according to article 15 of this Convention, is the medium line every point of which is equidistant from the nearest points of the base line from which the breadth of the territorial seas of each of the two states is measured. These rules are not applied where there is historic, geographic or other circumstance requiring delimiting the territorial sea of the two states in a way which is at variance with the general rule, such as the existence of an island between two opposite or adjacent states. A coastal state must draw charts showing their base lines and shall give due publicity of these charts.
By 1967 only 25 nations still used the old three nautical miles limit, 66 nations had set a 12 nautical miles territorial limit, and eight had set a 200 nautical miles limit

8. Contiguous Zone:

(i) The Contiguous Zone Concept:

The contiguous zone is an area of the high seas contiguous to the territorial sea, in which the coastal state exercises certain limited and defined competences, mainly administrative and police functions necessary to prevent and punish the infringement of its laws and regulations within its territory or territorial sea. The concept of the contiguous zone appeared as a settlement to the serious dispute around the breadth of the territorial sea. While the traditional international law called for a narrow territorial sea, which was not sufficient to accommodate the growing interests and needs of the coastal states, states which applied territorial sea of three miles found it necessary to claim additional area, to protect their interests in the territorial sea and to enforce laws and regulations applied in the territorial sea in relation to some matters.

It is true to say that the long established right of control of smuggling within a certain distance of the coast could be regarded as the origin of the concept of the contiguous zone. The preparatory committee of the Hague Codification Conference of 1930 submitted a proposal to the conference suggesting establishment of an area contiguous to the territorial sea regarded as a part of the high seas in which the coastal state could exercise the control

113 Rembe, Africa and the International Law of the Sea, 112 (1980).
necessary to prevent infringement of its customs and sanitary regulations or any interference with its security by foreign vessels. This proposal was opposed and as a result no agreement was found to be possible on this point.\textsuperscript{114} The problem is further complicated by the question of fisheries, the most profitable of which are located more than three miles from land. The difficulties were increased when various proposals were introduced granting the coastal state exclusive fishing right in the contiguous zone.\textsuperscript{115}

Article 24 of the Geneva Convention on the Territorial Sea and Contiguous Zone of Geneva 1958, which produced by this conference ignored the fishery right in the contiguous zone and the security matters. It speaks only about the coastal state right to prevent and punish infringement of its custom, fiscal, immigration or sanitary regulations. Also article 33 of the Law of the Sea Convention, 1982 gives coastal state the same right to establish a zone contiguous to its territorial sea at which it exercises the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary law and regulations.

(iv) \textbf{Rights in the Contiguous Zone:}

Since the contiguous zone is considered as a part of the high seas, it has the same nature of the high sea. So the coastal state has no sovereign right on this area of the sea but merely a right of control necessary to prevent and punish infringement of its customs fiscal, immigration and sanitary laws and regulations within its territory and territorial sea.

\textsuperscript{114} Colombos, \textit{supra} note 1, at 95.

As regards the rights of the other states in the contiguous zone, taking into account the rules applicable to the exclusive economic zone, they enjoy freedoms of navigation, over flight and laying of submarine cables and pipelines. Though it appears that the contiguous zone is an area separated from the exclusive economic zone, which has its own legal situation, in fact it falls within the exclusive economic zone. Therefore attention should be paid to the rules applicable to this area.

(v) **Breadth of the Contiguous Zone:**

During the discussions of the first United Nations Conference on the Law of the Sea, the United States introduced a proposal suggesting six miles breadth for the territorial sea, plus six miles contiguous zone within which the coastal state has special fishery rights. A similar proposal was introduced also by Canada to the conference. 116

The suggested breadth during the Hague Conference, 1930 is the twelve nautical miles from the coast, which was clarified by the Territorial Sea and Contiguous Zone Convention of 1958 to be twelve nautical mile measured from the base line from which the territorial sea is measured. This will lead to the conclusion that the breadth of the contiguous zone depends essentially upon the breadth of the territorial sea. So a state with a three miles breadth to its territorial sea has the right in nine miles contiguous zone, a state which determines its territorial sea breadth by six nautical miles has the right to six nautical miles contiguous zone, while the state which fixed the breadth of its territorial sea by twelve nautical miles will lose its right to a contiguous zone.

Owing to the extension of the maximum breadth of the territorial sea to twelve nautical miles by the provisions of the Law of the Sea Convention of 1982, it becomes necessary to increase the breadth of the contiguous zone also. The suggested maximum breadth is provided in article 33 (2) of this convention which states that:

The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The inter limit of the contiguous zone is the base line from which the territorial sea is measured. Thus the rules applicable to the measurement of the territorial sea must be taken into account in determining the breadth of the contiguous zone, such as the existence of a bay, islands, ports… etc.

Neither the Geneva Convention on the Territorial Sea and Contiguous Zone, 1958 nor the Law of the Sea Convention, 1982 determines the outer limit of the contiguous zone. Comparable with the rules applicable to the outer limit of the territorial sea and the exclusive economic zone, the outer limit of the contiguous zone appears to be the line every point which is at a distance from the nearest point of the base line equal to the breadth of the contiguous zone.

Article 24 (3) of the Territorial Sea and Contiguous Zone Convention of 1958 provides that where the coasts of two states are opposite or adjacent to each other neither of the two states is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond median line every point of which is equidistant from the nearest point on the base line from which the breadth of the territorial seas of the two states is measured. It should be noted that the Law of the Sea Convention of 1982 is completely silent on the outer limit of the contiguous zone. But if we refer to the discussions of the Third United Nations Conference on the Law of the Sea we find that three trends
emerged as regard the measurement of the contiguous zone. The traditional view, held by the maritime countries, advocated that the contiguous zone would be only meaningful if the territorial sea does not exceed twelve nautical miles. A territorial sea of twelve nautical miles would subsume the contiguous zone. The aim of this trend is to minimize the coastal state jurisdiction beyond the territorial sea. The second trend favored the establishment of a contiguous zone within the exclusive economic zone. The last trend emphasized that the contiguous zone should be throughout the exclusive economic zone. 117

9. Exclusive Economic Zone:

(i) Development of the Concept:

The exclusive economic zone area could be regarded as a direct result of the advancement of technology during the twentieth century. Developing countries, which support the establishment of the exclusive economic zone, are aware that the advanced technology, might adversely affect their adjacent seas resources unless effective control was to be exercised to some significant distance from their coasts. Moreover the growing threat to the environment and resource resulting from the intensive uses of the sea support the developing state’s claim to exercise sovereignty over adjacent seas in order to protect its interest over these seas.

The first formulation of the concept of the exclusive economic zone expressly appeared in the claim of the Latin America States following the

117 Rembe, supra note 52, at 115.
Trueman Proclamation of 1945 which asserted right of the United States to the Latin American states like Chile, Ecuador and Peru which did not have continental shelves of their own claimed the control over adjacent fisheries resources to compensate the lack of having continental shelves. In order to reinforce their claim and attract political support they signed in 1952 the so-called Santiago Declaration, that each of them, as a principle of its maritime policy, possess sole sovereignty and jurisdiction over the area of the sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the coast. 118

The Truman Proclamation of 1945 in the view of zone writers constitutes the base of the concept of the exclusive economic zone. Pollard for example stated that:

It is difficult to deny that the Truman claims of the non-living resources of the shelf were a claim to an economic zone of exclusive coastal jurisdiction. 119

The concept of the exclusive economic zone was first put forward and discussed within the Asian – African Consultative Committee meeting of 1970 in Colombo and Lagos 1971. This concept was further developed in the Declaration of Santo Domingo of 1972. This Declaration recognized the sovereign rights of the coastal state over the exploration and exploitation of all resources over 200 miles zone designed as a patrimonial sea, over which the coastal state has the right to regulate scientific research, and take necessary measures to prevent marine pollution. Subject to these rights of the coastal state over the patrimonial sea the freedom of navigation, over flight and lying

118 Id.
119 Id., at 116.
of cables and pipelines were provided for. This Declaration is a culmination of a series of declarations which express the interests of the Third World. 120

The expression "exclusive economic zone", which prevailed over the Latin American expression "patrimonial sea", was used for the first time by the Kenyan delegate, in 1974 during the Asian-African Consultative Committee meeting. 121

The need for the protection of the African interests in the adjacent seas was stressed at various regional conferences. In particular the FAO Regional Consultation in Africa held in Casablanca in 1971 and Ibadan in 1974 brought out the threat posed by foreign exploitation and the urgency of conservation as well as the role and importance of fisheries to the well-being of the African peoples. Following the recommendation of these two meetings, the OAU adopt two important resolutions one on fisheries and the other on the territorial waters. These resolutions recommended that the African states should extend their territorial waters to 200 mile limit, establish 212 mile non-pollution zone and create a restricted national fishery zone in the 12 miles belt adjacent to the base lines of the territorial sea and urged the African countries to proceed rapidly to extend their sovereignty over natural resources of the high seas up to the limits of their shelves. Another resolution adopted by the OAU Council of Ministers in 1971 meeting on the permanent sovereignty of Africa countries over their natural resources, which reaffirmed the inalienable right of all countries, and of African countries in particular, to exercise permanent sovereignty over their natural resources in the interests of their national development. These resolutions would seem to suggest that the natural resources of adjacent marine areas were being considered part of the coastal

120 Id, at 117.

state's national wealth and resources. Thus the establishment of an economic zone was considered a legitimate act of permanent sovereignty over national resources clearly in the conclusions of the Yaoundé Regional Seminar on the Law of the Sea in 1972. These "conclusions" were the first comprehensive attempt by African states to create the economic zone in the law of the sea. It is from the "Yaoundé Conclusion" the draft articles on the exclusive economic zone to the Sea –Bed Committee and the Third United Nations Conference on the Law of the Sea have emanated. It was stated in these conclusions that states should extent their sovereignty to cover all the resources of the high seas adjacent to their territorial seas, within an economic zone to establish and which will include at least their continental shelves. Thus the economic zone would cover both living and non-living resources such as oil, natural gas and other mineral resources.

When the Third United Nations Conference on the Law of the Sea was convened, the issue was not whether the exclusive economic zone concept could emerge from the conference, for this seemed to be understood as a basic condition of general agreement. The critical issue was to secure agreement on sufficient and adequate treaty safeguards for the interest of other states and those of the international community. During the 1971 session of the Sea-bed Committee references were made to the possibility of achieving agreement involving an economic zone, called the patrimonial sea, not more than 200 miles in breadth from the baselines of the territorial sea. In that zone there would be freedom of navigation and over flight but the coastal state would have exclusive right to all resources. 122 During this session, the notion of the exclusive economic zone was included in a working paper on the

comprehensive list of subjects and issues submitted by 32 Asian – African States. This working paper was submitted as a contribution to the efforts of the sea-bed committee to draw up a list of subjects and issues related to the law of the sea pursuant to the United Nations General Assembly Resolution 2750 (XXV) under which the General Assembly instructed the Sea-bed Committee to prepare draft treaty articles on the law of the sea. The concept of the exclusive economic zone was included in this list and included in the Agenda of the conference. 123 It is true to say that most of the proposals to the Third United Nations Conference dealt with the problems involving the exclusive economic zone concept than any other. Part V of the Law of the Sea Convention 1982, which was produced by this conference, is confined to the exclusive economic zone and the rules applicable to this area of the sea.

(ii) Rights in the Exclusive Economic Zone:

The exclusive economic zone is a resource zone of an exclusive nature, created from what is regarded as high seas. But this area is neither high seas nor territorial sea. The territorial sea is an area of the sea over which the coastal state exercises its sovereignty subject only the right of the innocent passage, while the high seas concept evolves a high decree of freedoms. This mid-way nature of the concept made it difficult to determine precisely the extent of the sovereign powers exercised over the exclusive economic zone on an equal footing with the traditional freedoms.

The imprecise and different expressions such as jurisdiction, sovereignty, exclusive right, control, authority and competence which have been used in

123 Id., at 26.
the proposal submitted to the Third United Nations Conference on the Law of the Sea reflect the right of the coastal state in the exclusive economic zone made it very difficult to determine the exact nature of these rights. Whatever the expression used, it is true to say that, the main object behind this concept is to place adjacent marine resources, and the related economic activities undertaken in this area, under the control of the coastal state.

Article 56 of the Law of the Sea Convention of 1982, enumerates the rights of the coastal state over its exclusive economic zone, namely; sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for economic exploitation and exploration of the zone such as the production of energy from the water, currents and winds.

Generally speaking the coastal state can exercise its jurisdiction over its exclusive economic zone in three different matters: establishment of artificial islands, installation and instructions; marine scientific research; and protection and preservation of the marine environment. As regards the rights and duties of other states in the exclusive economic zone two different issues must be discussed in this concern; the freedoms exercised by other states in the exclusive economic zone and the rights of land-lock states. As regards the former it is true to say that one of the main reasons for which the idea of the exclusive economic zone was refused by the developed countries is that the exercise of jurisdiction over this area of the sea will affect the freedom of navigation and over flight, upon which the world trade is dependent. It has been found that in order to avoid, a contradiction between the interest of the coastal state, which usually , tries to expand the breadth of their territorial sea and the interests of the international community seeking to secure the freedom
of the high seas, by establishing an economic area over which the coastal state exercises exclusive economic rights, at the same time the international community enjoys the freedoms of navigation, over flight and laying of submarine cables and pipelines. The coastal state in exercising its rights in the exclusive economic zone shall have due regard to the right of other states in this area and shall on one hand respect the freedoms of navigation, over flight and laying of cables and pipelines, and on the other hand the establishment of the artificial islands, installation and structures and the safety zones around them shall not cause interference to the use of recognized sea lanes essential to international navigation. 124 The coastal state regulations may not be uniform for all areas of the sea and in respect of all interests. Attention must be paid to areas of heavy maritime traffic such as straits.

In fact the Law of the Sea Convention, 1982 in article 59 tries to make a balance between these two interests. This article provides: "In case where this Convention does not attribute rights and jurisdiction to the coastal state or to other states within the exclusive economic zone, and a conflict arises between the interests of the coastal state and any other state or states, the conflict should be resolved on the basis of equity and in the light of all relevant circumstances, taking into account the respective importance of the interest involved to the parties as well as to international community as whole".

The right of the coastal states to exercise sovereign rights over the living and non living resources in their exclusive economic zone recognized internationally ignored the interests of the land-locked and geographically disadvantaged states. Although many land-locked states lack the marine technology, the concept of the common heritage of mankind gave them hope

for accommodation of their interests. This led some land-locked states to object to absolute sovereignty over resources. It has been found that this problem could be solved through regional agreements.

At the third session of the Third United Nations Conference on the Law of the Sea it was proposed that those coastal states which are unable to utilize the living resources within the 200 miles economic zone fully should make them available to the fishermen of foreign countries. This idea replaced in the Single Text prepared at the final stage of this session.  

In fact the regional arrangement between coastal states and land-locked states may be only intrusions into the expanding sovereignty of the coastal state. Other access would probably depend on bilateral agreements with each coastal state, or on the granting some form of private fishing concession whereby the foreign fleet would pay for the right to fish in the economic zone.

Instead of the phrase "neighboring" states offered in the proposals of the delegations to the Third United Nations Conference on the Law of the Sea, the convention produced by this conference used the expression "state of the same sub-region" giving land-locked states in article 69 the right to participate on an equitable basis, in the exploration of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal state of the same sub-region taking into account the relevant economic and geographical circumstance. Examples for the economical factors are the poorness in the natural resources and the increase of the population and example for the geographical circumstances is that many land-locked states may neighbor

126 Id.
127 UNOLOS –III, Vol, III.
many coastal states. The terms of such participation shall be established by the states concerned through bilateral, sub regional or regional agreement. Finally developed land-locked states shall be entitled to participate in the exploitation of living resources only on the exclusive economic zones of the developed states of the same sub region or region. The geographically disadvantaged states have the same rights of the land-locked states mentioned above. The geographically disadvantaged states is defined by article 70 (2) as including coastal states bordering enclosed or semi-enclosed sea, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other states in the sub region or region for adequate supplies of fish for the nutritional purposes of their population or part therefore and coastal states which can claim no exclusive economic zones of their own. The rules applicable to land-locked and disadvantaged states do not apply in the case of a coastal state whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

(iii) Breadth and Measurement of the Exclusive Economic Zone:

There is no much to be said about the breadth of the exclusive economic zone, because since the appearance of this idea, which is regarded as a novel concept, the breadth of 200 miles is determined as breadth of this area either by Latin American states in the Santiago Declaration and by the African and Asian states in the Asian-African Consultative Meeting of 1971. The Yaoundé Conclusion did not fix any limit for the breadth of the exclusive economic
zone. It emphasized that the limit should be fixed in accordance with regional consideration, taking into account the resources of the region and the rights and interests of land-locked countries. The land-locked states proposals submitted to the Second Committee of the Third United Nations Conference on the Law of the Sea are more cautious by not making reference to the exclusive economic zone by name, or to the breadth of such a zone. The Law of the Sea Convention, 1982 in article 57 adopted the breadth proposed by the American, African and Asian states. This article provides that:

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

In the normal case the outer limit of the exclusive economic zone is the line every point of which is at a distance from the nearest point of the base line equal to the breadth of the exclusive economic zone. Although islands have their own exclusive zones measured according to the general rules of the international law, rocks which cannot sustain habitation or economic life of their own have no exclusive economic zone. The delimitation of the exclusive economic zone between states with opposite or adjacent coasts shall be affected by agreement on the basis of international law. If no agreement can be reached within a reasonable period of time the concerned states shall resort to the procedure of settlement of disputes provided for in part xv of the Law of the Sea Convention.
5. Continental shelf:

(i) Definition and Development of the Concept:

The continental shelf is the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea. The Truman Proclamation of 1945 is regarded as the origin of the concept of the continental shelf. By this Proclamation the President of the United States declared that "the government of the United States regards the natural resources of the sea-bed and subsoil of the continental shelf beneath the high seas but contiguous to the coast of the United States as appertaining to the United States subject to its jurisdiction and control". This measure was necessitated by the need to find new deposits of petroleum and natural gas and minerals lying in the sea-bed and the ocean floor and its sub-soil, to guard against a threatened shortage resulting from the depletion of world stocks during the Second World War and to avoid dependence on import supplies of these strategic raw materials. The same right was automatically created by all coastal states.

Further claims to the continental shelf had been made. In 1949 Saudi Arabia and nine Sheikhs in Persian Gulf issued a proclamation declaring the sea-bed and sub-soil beneath the high seas on the Persian Gulf adjacent to their territorial waters to appertain to their states and to be subject to their jurisdiction and control. In 1950 the Governor – General of Pakistan declared that "the sea-bed along the coast of Pakistan extending to one hundred fathom

contour into the open sea shall be included in the territory of Pakistan". In 1955 India declared that it had full and exclusive sovereign rights over sea-bed and subsoil of the continental shelf adjoining its territory and beyond its territorial waters. Several other claims to the continental shelf had been made by different countries. 131

The question of the continental shelf was examined by the International Law Commission at its third session, held in Geneva during the summer of 1951. The commission adopted a series of draft articles on the continental shelf and related subjects. While the articles have no binding force, they are of interest as being the first attempt by an official international body of jurists to formulate systematic principles in this field of growing importance. This draft reflected a substantial measure of agreement among the members of the commission, with exception of M. Scelle of France, who believed that the entire doctrine of the continental shelf was an unjustified infringement on traditional principles relating to the freedom of the sea. 132 The Commission, of which professor François was rapporteur, prepared in Part I of its draft seven articles concerning the continental shelf. The accompanying commentary illustrate that the draft show plainly that in its general approach the Commission sought to follow a middle way, sharing neither the view of M. Scelle nor of some others for radical innovations. It seems to have been moved by the feeling that, as a result of technological progress, a situation in fact existed which had to be dealt with, and that the best solution would be one which, while not going too far or too fast, would yet afford opportunity for future growth. These considerations appear specially noticeable in article 1, in which the Commission explored the sense in which it employed the term "continental

131 Id.
132 Id.
shelf ". The term continental shelf refers to the sea-bed and the subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial waters. 133

At the last of these sessions held in Geneva in July 1956, the commission completed its report submitted to the First United Nations Conference on the Law of the Sea 1958. The conference approved the term "continental shelf" as applying to the sea bed and subsoil of the submarine area adjacent to the coast, but outside the area of the territorial sea. 134

The position advanced in the Third United Nations Conference on the Law of the Sea of having one resources zone did not, however, alter the rights of the coastal state over the continental shelf as defined in the Geneva Convention. The advantage of this position was that it created one limit for all national jurisdiction resources zones. Unlike the situation of Geneva Convention of dual partition of marine territorial sea, the other situated beyond undefined territorial sea, where the coastal state exercised sovereign rights over the mineral resources without prejudice to the superjacent waters. 135

(ii) Scope of Sovereign Rights over the Continental Shelf:

The Truman Proclamation, which is motivated by the strategic and economic interests, spoke about a right of jurisdiction and control over the natural resources and not sovereign right. The same attitude was taken by the

133 Id.
134 Colombos, supra note 1, at 71.
135 Rembe, supra note 52, at 105.
international law commission. The essence of the commission's view as to the status of the continental shelf embraced with in its definition is stated in article 2 of its draft prepared in 1951 "the continental shelf is subjected to the exercise by coastal state of control and jurisdiction for the purpose of exploring its natural resources".

The Commission Pointed out that the jurisdiction recognized is solely for the purpose stated, and indicated that a power thus limited should not be placed on the same footing as the general power possessed by a state over its territory and territorial waters and commonly summed up in the word "sovereignty". Two further assumptions of importance underlie article 2 and noted in the Commission's comment. The first is that the right of jurisdiction is independent of any requirement of occupation. There is indeed departure from the traditional rules with respect to the acquisition of land territory, but the situations are quite dissimilar and the Commission would appear fully justified in its opinion that the requirement of occupation might lead to chaos. The second assumption is that the right of jurisdiction is not derived from any formal assertion of jurisdiction by the coastal state. On the approach of the Commission a formal assertion of rights within the limits envisaged by the draft articles would appear to be desirable but not essential. 136

Article 2 of the Continental Shelf Convention of Geneva 1958 confers sovereign rights to the coastal state over the continental shelf but only for the purpose of exploring and exploiting its natural resources. This article reads in full as follows:

136 Young, The International Law commission and the Continental Shelf, AJIL 123-25(1952).
(1) Coastal states exercise over the continental shelf sovereign rights for the purpose of its exploration and exploitation of its natural resources.

(2) The rights of the coastal state are exclusives in the sense that if that state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities or claim any rights over the continental shelf without express consent of the coastal state. 137

The sovereign rights of the coastal state over the continental shelf were given further recognition by the international Court of Justice in the *North Sea Continental Shelf Case*. The court decided that the inherent right of the coastal state over the natural prolongation of it landmass as existing *ipso facto* and *obinitio* by virtue of its sovereignty over land. These sovereign rights over the continental shelf are also recognized by the Law of the Sea Convention, 1982 in article 77.

(iii) **Breadth and Measurement of the Continental Shelf:**

The Trueman proclamation, referred to above, does not state the width of the sea over which the continental shelf area up to the hundred fathom line at extends. But this has been estimated at some points as extending up to two hundred and fifty miles. 138 Article 1 of the draft of the International Law Commission determines the breadth of the continental shelf by the exploitation criterion. The Commission comment observe that the formula here

137 *Colombos, supra* note 1, at 72.
138 *Id, at 66.*
given seems preferable, in view of continuing technical advance, to a limit fixed in terms either depth (e.g. 200 meters) or of distance from shore. The test of exploitability can be criticized on the ground that the exploitability itself requires further definition. In particular, question may arise as to the geography limits of exploitable area.\textsuperscript{139}

The First United Nations Conference defined the term "continental shelf" as applying to the sea-bed and subsoil of the submarine areas to a depth of 200 meters. The practical reason for adhering to this limit is obvious, as it usually marked on the nautical chart. There is a further advantage in adopting this limit since it is at this depth that the continental shelf, in the geological sense generally comes to an end and begins to fall steeply much greater depth. The conference accepted, however, an alternative extended limit -beyond 200 meters- where the depth of the superjacent waters admits of the exploitation of the natural resources of the said area. Both the precise extent of this limit and the kind of exploitation of these resources are left vague and undefined.\textsuperscript{140}

The purpose of the Third United Nation Conference on the Law of the Sea was not to restate the existing law, but to formulate a new legal order over ocean space and to fulfill the gaps left by the Geneva conventions. During the negotiations of this conference delegations took different positions as regards the breadth of the continental shelf. Some states supported the 200 miles breadth, while others supported the "natural prolongation" theory. This included mainly those countries with wide shelves exceeding 200 miles. Lesotho proposed " internationalization " rather than" nationalization " of the continental shelf, and proposed that all national jurisdiction should be limited to a twelve mile territorial sea, beyond which there would be established

\textsuperscript{139} Young, supra note 75, at 124.
\textsuperscript{140} Colombos, supra note 1, at 71 – 72.
"regional resources zone". This, it was argued, would eliminate the vague claims on the continental shelf based on conflicting principles, and at the same time accommodate the interests of land-locked states in respect of the resources of the region. There is direction in the delegations’ views toward subsuming the continental shelf into the exclusive economic zone, and adopting 200 miles outer limit for both the continental shelf and the exclusive economic zone. The opposing view advocated that the continental shelf doctrine is based upon the natural prolongation of the land mass of the coastal state. Accordingly the continental shelf must extend throughout the natural prolongation of its land territory where such prolongation extends beyond 200 miles.

The Law of the Sea Convention, 1982 in determining the breadth of the continental shelf, adopted an ideology, mixing the two above mentioned directions. Article 76 of the Convention states that the continental shelf extends beyond its territory through 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. In all circumstances the outer limit of the continental shelf shall not exceed, according to paragraph (6) of the same article, 350 nautical miles from the base lines from which the territorial sea is measured. Accordingly the breadth of the continental shelf follows the natural prolongation of the land mass, but if this prolongation ends before 200 nautical miles the coastal state has a right to a continental shelf up to 200 nautical miles, but if the prolongation extends beyond this width the continental shelf can be extended up to the outer edge of the land mass prolongation up to 350 nautical miles.
As regards the measurement of the continental shelf, it is true to say that the outer limits of the continental shelf where the outer edge of the continental edge does not exceed 200 nautical miles, would be a line every point of which is at a distance from the nearest point of the base lines equal to 200 nautical mile. Where the outer edge of the continental margin extends beyond 200 nautical miles the coastal state shall establish the outer edge of the continental margin by either, (a) a line delineated by reference to the outer most fixed points at each of which the thickness of the sedimentary rocks is at least 1 percent of the shortest distance from such point to the foot of the continental slope or (b) a line delineated by reference to the fixed points not more than 60 nautical miles from the foot of the continental slope. 141

The continental slope shall be determined as the point of maximum change in the gradient at its base. The outer limits drawn in accordance with either of these two cases shall not exceed 350 nautical miles from the base line or 100 nautical mile from the 2.500 meters isobaths, which is a line connecting the depth of 2.500 meters. In these two cases the coastal state shall delineate the outer limit of the continental shelf by straight base lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude.

Concerning delimitation of the continental shelf between opposite and adjacent states, the Truman proclamation declared that, where the continental shelf is shared with an adjacent state, the boundary is to be determined by the United States and the state concerned in accordance with equitable principles.142

141 Sea article 4 of the Law of the Sea Convention, 1982.
142 Colombos, supra note 1, at 66.
The draft articles of the International Law Commission applied the same rules mentioned in the declaration, stating in its 7th article that states contiguous to the same continental shelf should establish boundaries therein by agreement; in default of agreement, they are bound to resort to arbitration. The comment suggests that the boundary between states on opposite sides of an arm of the sea should be in general some median line between the two coasts, but no proposals are made for other situations. 143

Article 6 of Continental Shelf Convention of Geneva 1958 applies to the delimitation of a continental shelf which is contiguous to the territories of two or more states whose coasts are opposite to each other and declared that the boundary of the continental shelf appertaining to such states is in the absence of agreement between those states or unless another boundary line is justified by special circumstances, the median line every point which is equidistant from the nearest point of the base line from which the territorial sea of each country is measured. The methods of delimiting the continental shelf between two adjacent or opposite states under Geneva Convention, could be summarized into three methods, first, of all by agreement between the concerned states; secondly, any boundary line is justified by special circumstances; and finally, the median line method. Although the convention adopted these three methods, in fact it did not put a complete and satisfactory legal solution to the problem of delimiting the continental shelf between two contiguous or adjacent states when the problem advanced to the Third United Nations Conference on the Law of the Sea, a proposal submitted by Kenya and Tunisia to the conference to the extent that the delimitation should be based on the agreement between the concerned parties in accordance with an

143 Young, supra note 75, at 120.
equitable dividing line, the median or equidistant line not necessarily being the only method of delimiting. Special factors geological, geomorphologic, existence of islands or islets in the area to be delimited are also to be considered. This proposal was silent as regards the failure to reach an agreement. The conference accepted this proposal, which appeared in article 83 of the Law of the Sea Convention, 1982. This reads as follows:

1. The delimitation of the continental shelf between states with opposite and adjacent coasts shall be effected by agreement on the basis of international law, as referred to article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

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

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

4. Where there is an agreement in force between the states concerned, questions relation to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

From the provision of this article it is clear that the delimiting of the continental shelf between opposite or adjacent states is effected by agreement between the states concerned in accordance with equitable bases. If an agreement is reached the limits of the continental shelf is determined by the
term of this agreement, but if the parties concerned are not able to reach any agreement, the matter must be referred to the settlement of dispute procedure provided for in part XV of this convention.

(vi) **Status of Superjacent Waters:**

The legal status of the superjacent waters of the continental shelf will fall, according to the Law of the Sea Convention of 1982, under the regime of the exclusive economic zone. Therefore due notice shall be made to the rules applicable to this area. Special importance must be attached in considering the legal status of the superjacent waters relevant to the regime of shelves exceeding 200 nautical miles. The coastal state is entitled to construct and operate, on the continental shelf, installation and entitled also to establish safety zones around such installations which may extend to a distance of 500 meters. The coastal states activities may affect freedoms exercised in the superjacent waters, especially if these activities are carried within 200 nautical distances, in a way modifying the freedom of the high seas. For this reason both the Continental Shelf Convention of Geneva 1958 in article 5 (6) and the Law of the Sea Convention, 1982 in article 78 (2) provide that the coastal states activities must not result in any unjustifiable interference with the navigation and other freedoms of other states.

6. **Conclusion:**

In conclusion, it appears that, the Law of the Sea Convention determined five various zones over which the coastal state exercised its jurisdiction,
measured from a carefully defined baseline, as follows: firstly internal waters which cover all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate any use, and use any resource. Foreign vessels have no right of passage within internal waters. Secondly territorial waters, out to twelve nautical miles from the baseline, the coastal state is free to set laws related to certain matters, regulate any use, and use any resource. Vessels are given the right of "innocent passage" through any territorial waters, with strategic straits allowing the passage of military craft as "transit passage". "Innocent Passage" is defined by the convention as passing through waters in expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal state. Fishing, polluting, weapons practice, spying are not "innocent". The coastal state can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of its security. Thirdly beyond the twelve nautical mile limit, a further twelve nautical miles or twenty four nautical miles from the territorial sea baselines limit, is the contiguous zone. In this area a state could continue to enforce laws regarding activities such as smuggling or illegal immigration. The fourth zone over which the coastal state exercises its jurisdiction is the exclusive economic zone. It extends to 200 nautical miles from the baseline. Within this area, the coastal state has sole exploitation rights over all natural resources. Other states have the freedom of navigation and over flight, subject to the regulation of the coastal states, and may also lay submarine pipes and cables. The fifth and final zone is the continental Shelf. Continental shelf is defined as natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles from the coastal state's baseline, whichever is greater. A state’s continental shelf may exceed 200 nautical miles until the natural prolongation
ends, but it may never exceed 350 nautical miles, and 100 nautical miles beyond 2,500 meter isobaths, which is a line connecting the depth of 2,500 meters. States have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others.
Chapter Three

Ocean Space beyond National Jurisdiction

Two areas of the sea are to be examined here namely the high seas and the seabed and ocean floor beyond national jurisdiction, known as the Area under the Law of the Sea Convention, 1982.

1. High Seas:

   (i) Historical Background:

   In the first half of the middle ages, navigation on the seas was free to every body. Real claims to sovereignty over parts of the sea began to be made, however, in the second half of the middle ages. For example the two Papal Bulls issued in 1493 by Pope Alexander VI, divided the new world between Spain and Portugal. These bulls did not limit themselves to granting title to the new lands, but also prohibited all commerce by sea except under Spanish or Portuguese license. Another claim is the claim of the Italian states, which resulted in the lost of freedom of the sea in the Mediterranean, altogether between the eleventh and the sixteenth centuries. The sovereignty over the sea, during that period, took different shapes, such as asking for a permission to pass through these seas, or forcing the ships of other states to lower their flags when entering sea subjects to their sovereignty, or the demand for taking a license for fishing in those seas, and finally this sovereignty found

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2 Smith, Law and Custom of the Sea, 5 (1950).
expression in maritime ceremonials. A state which claimed sovereignty over a part of the high seas required foreign vessels navigating that part to honor its flag as a symbol of recognition of its sovereignty. But apart from maritime ceremonials, maritime sovereignty also found expression in levying tolls from foreign ships and in the control or even the prohibition of foreign navigation.  

After the issuance of the two bulls, the English kings, on their own side did not remain inactive, in 1496 Henry VIII issued letters patent to John Cabot and his sons, granting them "full and free authority, leave and power to sail all ports, countries and seas of the east, of the west and of the North, ...".  

Encouraged by the success of Cabot expedition, Henry VIII devoted his activities to the frustration of the monopoly granted by the papacy and his policy was brilliantly aided by the efforts of Queen Elizabeth I and the great English navigators of the sixteenth century. When Mendoza, the Spanish ambassador in London in 1580, protested to Queen Elizabeth against Drake's famous voyage to the pacific, Elizabeth answered that vessels of all nations could navigate on the pacific, since the use of the sea air is common to all, and that no title to the ocean can belong to any nation, since neither nature nor regard for the public use permits any possession of the ocean.  

It is now generally recognized that it is to Queen Elizabeth that we owe the first clear assertion in actual diplomacy of the principle which came to be known as "freedom of the seas ". She reaffirmed the same principle in the famous instructions she gave the English Ambassador accredited by her to Christian VI of Denmark in 1602, declaring that the navigation in the open sea

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3 Id., at 584.
4 Smith, supra note 2, at 46.
5 Id., at 47.
6 Oppenheimer, supra note 1, at 584.
7 Smith, supra note 2, at 46.
as well as the use of ports and coast of princes in amiability for traffic and the avoiding of the dangers from tempeasts was free”. 151

Not only did the British refuse to accept the Portuguese and Spanish authorities over the seas, during the 16th and 17th centuries, but also the Dutch refused to accept these authorities. This refusal appeared in the writers views of both countries during that period. Twenty nine years after the Queen Elizabeth answered to Mendosa there appeared in 1609, Grotius, short treatise, *Mare liberum*. He defended the Dutch right of navigation and commerce within the Indies, in spite of the Portuguese interdiction. Grotius in this work for the first time expounded the doctrine of the freedoms of seas. 152

Grotius was attacked by several authors of different nations. Such as Gentalis who defended the Spanish and English claims, William Wildwood who defended, in 1613, the English claim in his book *De dominio Maris*, notwithstanding the principles which had been proclaimed by Queen Elizabeth, and Selden who printed in 1635 his work *Mare Clausum* defending Maritime sovereignty by the command of king Charles I. 153

During the eighteenth century all writers, in spite of their opposition to the Grotuis work, discussed the freedom of the high seas. The leading author was Bynkershoek, whose standard work, *De Dominio Maris*, appeared in 1702, Vattel, G. F. de Martens, Azuni and other followed his lead. And although Great Britain upheld her claim to the salute due to her flag within the “British Seas” throughout the eighteenth and the beginning of the nineteenth century, the principle of the freedom of high seas became more and more strong with the growth of the navies of other states; it became universally recognized in

9 Bouches, *The Régime of Bays in the International Law*, 11(1964)
10 Colombos, *supra* note 8, at 48.
theory and practice. Great Britain silently dropped her claim to the salute and with her claim to maritime sovereignty and she became now champion of the freedom of the high seas.

By the beginning of the nineteenth century, claims to sovereignty were everywhere restricted. The fact was that, with expanding trade, the size of the world was now diminishing and it became no longer possible for any one state to exclude the growing navies and merchant fleets of the other nations from navigation over the seas. Those who made claims found themselves hampered in other directions. Fauchille has neatly summed up the correct doctrine "the high sea does not form part of the territory of any state. No state can have over it a right of ownership, sovereignty or jurisdiction. None can lawfully claim to dictate laws for the high seas". One word of caution and of limitation must be added to this statement on the freedom of the high seas, namely, that the doctrine applies in its fullness only in time of peace. In time of war, neutral rights of navigation and commerce have to yield to the legitimate demands of the belligerent states. 154

The principle of freedom of high seas has been laid down much more recently by two of the more important international legal bodies: the Institute of the International Law and the Association of the International Law. The former, after very learned discussions which took place at its Lausanne Conference in 1927 agreed on a declaration which restated the freedom of the seas. Also article 1 of the draft entitled "Laws of Maritime Jurisdiction in Time of Peace" adopted by the International Law Association at its Vienna Conference in 1926, enunciated the fullest use of the sea. All states and their subjects shall enjoy absolute liberty and equality of navigation, transport,

11 Colombos, supra note 8, at 56-57.
communications, industry and science in and on the seas". While Article 13 provided that "no state or group of states may claim any right of sovereignty, privilege or prerogative over any portion of the high seas or place any obstacle to the free and full use of the seas".

The twentieth century development in science and technology has had profound effect on the rules of the international law. When mankind is capable of extending its activities over such wide areas he will be required to develop rules governing such new activities in order to avoid international conflict. Indeed all the international conventions concluded during the 20\textsuperscript{th} century supported the principle of freedom of the high seas, namely, the Geneva Convention on the High Seas 1958, in Article 2, declared that seas are open to all ships of all nations. The same declarations made by the Law of the Sea Convention 1982, in article 87, which states that:

"The high seas are open to all states, whether coastal or land-locked".

(ii) \textbf{Freedom of the High Seas :}

The term freedom of the high seas indicates the rule of international law that the high sea is not and never can be, under the sovereignty of any state. Since the high seas is not the territory of the any state, no state has, as a rule, a right to exercise its legislation, administration, jurisdiction or police over parts of the open sea. Moreover no state has the right to acquire parts of the open sea through occupation, for as far as the acquisition of territory is concerned, the high seas is what Roman law calls \textit{res extra commercium}.\textsuperscript{155}

\textsuperscript{12} Oppenhiem, \textit{supra} note 1, at 589 -90.
Upon the essential issue the principle proclaimed by Queen Elizabeth and expounded by Grotius (freedom of high seas) has now finally prevailed. During the twentieth century the Institute of the International Law clearly summarized the modern legal position: "the principle of the freedom of the sea implies specially the following consequences:

(i) Freedom of navigation on the high seas, subject to the exclusive control, in the absence of a convention to the contrary; of the state whose flag is carried by the vessel;

(ii) Freedom of fisheries on the high seas, subject to the same control;

(iii) Freedom of aerial circulation over the high seas.

The freedoms of high seas according to article 87 of the Law of the Sea Convention, 1982 comprises inter alia both for coastal and land-locked states: freedom of navigation; freedom of over flight; freedom to lay submarines cables and pipe lines; freedom of fishing; and freedom of scientific research.

(a) Freedom of Navigation

This freedom is provided for in article 2(1) of the Geneva Convention on the High Seas and article 87(a) of the Law of the Sea Convention, 1982. Freedom of the high seas involves perfect freedom of navigation for vessels of all nations whatever, men-of-war, other public vessels, or merchantmen. It involves, further, absence of compulsory maritime ceremonials on the open sea. According to the international law no rights of salute whatever exist between vessels meeting on the high seas. All so-called maritime ceremonials on the high seas are a matter either of courtesy and usage, or of special conventions and municipal laws of those states under whose flags the vessels sail. In
particular, no state has the right to require a salute from foreign merchant men for its men-of-war.

The freedom of the high seas involves likewise freedom of harmless passage through the maritime belt for merchantmen of all nations, and also for men-of-war of all nations, in so far as the part of the maritime belt concerned forms a part of the high ways for international traffic. 156

Shipping and navigation is perhaps one of the oldest uses of the sea which is also increasingly growing in importance. Navigation is recognized as one of the freedom that cannot be confined to the high seas; the right of innocent passage in the territorial, transit over straits and archipelagic waters and freedom of navigation in the exclusive economic zone: all these are broad components, as well as safeguards of the freedom of navigation. Maritime transportation and commerce is increasingly becoming necessary to meet the growing interdependence of the world in trade and commerce. The sea as a medium of communication brings nations together and fosters global cooperation. 157

Under this freedom six different matters must be discussed in details namely. In the First place the nationality of ship. Every state has the right to enact regulations setting out conditions under which it will grant registration at its ports and its nationality to merchant ships. These conditions vary with different states. But it is sufficient in this respect that “for whatever reasons a state should accept the authority and responsibility which result from the ship’s nationality”. 158

13 Oppenhiem, supra note 1, at 591-92.
158 Colombos, supra note 8, at 265.
This principle was admirably expressed by the United States Supreme Court in the recent case of Lauritzen v. Larsen, as follows: "perhaps the most venerable and universal rule of maritime law is that which gives cardinal importance to the law of the flag. Each state under international law may be determining for itself the conditions on which it will grant its nationality to merchant ship, thereby accepting responsibility for it and acquiring authority over it". 159

In some states, either all or certain fixed proportion of the owners must be nationals of the state, and all or fixed proportion of the officers and crew must also be nationals. Where, as is very often the case, the ship is owned by a company it is not always easy to decide on its nationality. The single condition which is generally required in all states is the registration of the ship in the register kept at their ports by the recognized authorities and the delivery to the ship-owner of a certificate that the necessary formalities have been complied with. Thus some states may demand that all their ships shall be built in their own shipyards, or that all the officers and crews shall be their nationals. The flag which a ship flies is the evidence of her nationality. It is the simplest means of indicating by means of an external sign that the ship has a given nationality. 160

The flag is, however, only one of the evidence as of a ship's nationality; it does not absolutely prove it unless accompanied by the ship's papers showing the registration of the ship in one of the ports of her flag state. States may make it penal offence for their citizens to misuse the national flag and for

159 Id., at 265-66.
160 Id., at 266.
a vessel wrongly to assume the use of a flag to which she is not entitled except in time of war where false colors may be flown. 161

All states with a maritime flag are by the international law obliged to make private vessels sailing under their flags carry on board so-called ships papers which serve the purpose of identification on the open sea. But neither the number nor the kind of such papers is prescribed by international law, and the municipal laws of the different states differ much on this subject.

Since no state can exercise protection over vessels that do not sail under its flag, and since every vessel must, in the interest of order and safety of the high seas, sail under the flag of a state the question was discussed before the First World War whether or not only maritime states, but also states with no sea coasts, could claim a maritime flag. At the time no state without a sea coast actually had a maritime flag, and all vessels belonging to its subjects sailed under the flag of a maritime state.

At the Barcelona conference of 1921 a Declaration was signed, which has been ratified or acceded to by a number of states (including Great Britain), whereby the signatory and acceding state recognize the flag flown by vessels of any state having no sea coast which are registered at some one specific place situated in its territory such place serving as the part of registry of the vessels.

The second matter to be discussed is flag of convenience. The immobilization of some 200 ships flying the flags of Liberia, Panama, Honduras and Costa Rica by a boycott, organized by the international transport workers federation, to protest the use of "flags of convenience" emphasizes the significance of another topic of the conference. This problem

161 Id., at 267.
of flags of convenience was the principle issue at Geneva in connection with the nationality of ships. The situation is briefly described by Sorensen:

"International law has traditionally left each state free to determine under what conditions it will register and thereby confer its nationality upon a ship. This liberty is confirmed by article 5 of the Convention on the High Sea: "Each state shall fix the condition for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag ..."

This liberty has, however, been used by certain states, in particular Liberia and Panama and to a certain extent Honduras and Costa Rica as well, to enact "liberal" registration laws allowing for the registration even of ships owned and operated by foreigners. Owners of ships supported registration of their ships in those countries for various reasons such as that the taxation is very low. The International Law Commission suggested that there must be a genuine link between the state and the ship. The link theory was familiar in cases involving the nationality of international claims and was applied by the international court of justice in the important decision such as in the Nottebohm case. The International Law Commission proposal was approved by 33 to 13 with 6 abstentions in the second committee.

The same issue was discussed in the opening meeting of the new United Nations Inter-governmental Maritime Consultative Organization in London in January 1959. Article 91 of the Law of the Sea Convention requires that there must be genuine link between the state granting the nationality and the ship.

The third problem is the status of ship at high seas. The jurisdiction which a state may lawfully exercise over vessels flying its flag on the high seas is a jurisdiction over the persons and property of its citizens; it is not a territorial jurisdiction. The grounds

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20 Jussup, supra note 1, at 257.
on which this jurisdiction rests arise simply "from the fact they are property in place where no local jurisdiction exist". It is necessary for many purposes that jurisdiction over a vessel should be vested in specific state. It is natural to concede a right of jurisdiction to the owner of property until his claim as such is opposed by superior title on the part of someone else and "no right to jurisdiction over a vessel can, within the range of the purposes contemplated, be superior to that of the state owning her". It has been contended that ships are floating portion of the nation to which they belong and that they are therefore a continuation or prolongation of its territory.

In the **Lotus Case**, the doctrine of the territoriality of a ship has been advanced much more recently by the Permanent Court of International Justice, which was, however only reached by the casting vote of the president of the court. The majority of the judges would not have arrived at the conclusion on which their decisions was based had their minds not been affected by the theory of territoriality of merchant ship on high seas.

Further grounds are advanced for the territoriality of a ship. It is said that as the high seas are free from the sovereignty of any state, jurisdiction cannot be exercised there except over property by the state owning it, and that acts done there under the flag of a state are presumed to be done on the soil of the state. These statements are only partially true and apply to cases in which no other state than that to which the vessel belongs has an interest in exercising jurisdiction, *e.g.* they are true as regards acts relating to the civil status of the crew and passengers accruing on board a ship on the high seas, such as birth, marriages or deaths and deed executed therein, such as contracts conveyance.

As regards the warships on the high seas it is not subject to the jurisdiction of any state other than its flag state. As Hall states: "warships represent the sovereignty and independence of their state more fully than any thing else can represent state on the ocean; they can only be met by their equals, and equals cannot exercise jurisdiction over equals. The jurisdiction of their own state over them is therefore exclusive under all circumstances and any act of interference with them on the part of foreign state is an act of
war". Article 8 of the Geneva Convention of 1958 on the "High Seas" similarly states that "warships on the high seas have complete immunity from the jurisdiction of any state other than the flag state".

Fourthly, as regards the jurisdiction over conduct on the high seas, Article 11 of the Geneva High Seas Convention, 1958 probably settles the dispute which arose among maritime interests, since the decision of Permanent Court of International Justice in the Lotus Case, giving the jurisdiction on the high seas to the flag state. 165

There are various exceptions to the rule prohibiting boarding a merchant ship under a foreign flag at sea, except where there is reasonable ground for suspecting that the vessel is engaged in piracy and slave trade, or the ship is actually of the nationality of the boarding vessels even though it flies a foreign flag. But an over-all exception to the article renders the prohibition inapplicable when the acts of interference "derive from powers conferred by treaty". 166

There is a weighty opinion in favor of the rule that jurisdiction in respect of crime committed on board merchant vessels on the high seas is primarily vested in the courts of the flag-state of the vessels, but that such jurisdiction is not exclusive and that the state whose national is accused of crime on board a foreign ship is competent to try him when he is within its jurisdiction although such jurisdiction is not generally exercised. This view which appeared to be a correct one was summarized by Lord Finally in his dissenting judgment in the Lotus case, as follows:

Criminal jurisdiction for negligence causing collision is in the courts of the country of the flag, provided that if the offender is of a

21 Colombos, supra note 8, at 236.
165 P.C.I.J.(1927).
23 Jussup, supra note 14, at 258.
nationality different from that of his ship, the prosecution may alternatively be in the court of his own country\textsuperscript{167}

General conclusion may be reached from what has been said above, that the competence of courts to deal with question arising in merchant ships on the high seas, is the generally recognized rule that the flag state of the vessel is competent to deal with all matters civil and criminal, which originate from the ships. On this subject, however, the municipal legislation of various countries is not uniform. In a majority of states, domestic laws are based on the territorial principle of jurisdiction, with concurrent jurisdiction over offences committed by foreigners abroad, including foreign ships on the high seas, even against their own nationals.

The fifth point concerns duties of the flag state. According to Article 94 of the Law of the Sea Convention which came under the title duties of flag state, every state shall maintain register of ships containing names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulation on account of their small size; and assume jurisdiction under internal law over each ship flying its flag, and its master, officers and crew in respect of administrative, technical and social matters concerning ship; every state shall effectively exercise its jurisdiction and control in administrative technical and social matters over ships flying its flag; every state shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, \textit{inter alia} to the construction, equipment and sea worthiness of ships, manning of crews, taking into account the applicable international instrument, the use of signals, the maintenance of communications and prevention of collision. The master, officers and to the extent appropriate, the crew must be fully conversant with and required to

\textsuperscript{167} Colombos, \textit{supra} note\textsuperscript{8}, at 282.
observe the applicable international regulation concerning the safety of life at sea, the presentation of collisions, the prevention, reduction and control of marine pollution, and maintenance of communications by radio.

Sixthly and finally, reference should be made to safety of traffic on the high seas. Safety of navigation clearly involves common action on the part of the leading maritime states, for if, for instance, the vessels of one state followed one set of rules for the avoiding of collisions and the vessels of another state followed another different set of rules, the result would be chaos. This common action could be achieved by the enactment of unique maritime regulations. The practice of states is not uniform. Thus, for instance, France claims jurisdiction if the damaged ship is French. If the damaged ship is foreign or if both ships are foreign it may claim jurisdiction in special circumstances. Further, Italy claims jurisdiction, even if both ships are foreign, in case of collision in an Italian port. Great Britain goes farthest, for the Admiralty court claim jurisdiction provided the guilty ship is in a British port at the time the action for damages is brought even if the collision took place between two foreign ships on the high seas. The position of the United States is the same; the court justified this extended claim of jurisdiction by maintaining that collision is a matter *communis juris*, and can therefore be adjudicated upon by the courts of all maritime states.

In reality for many centuries professional tradition has imposed upon all mariners certain rules of navigation, but until recently these have rested mainly upon the written custom of the sea. Thus until 1910 no rules of international law existed for the purpose of preventing collisions, safety lives after collisions, and the like, but states possessing maritime flags had individually enacted laws concerning sailing, piloting, courses, collisions, and the like, which were applicable to the vessels sailing under their flags. As a
result of the disaster to the liner Titanic in 1912, an international convention for
the safety of life at sea was signed in London on January 20, 1914, and the
Merchant Shipping (Convention) Act, 1914 was passed to give effect to it. That
convention was replaced by a convention bearing the same name and signed
on May 31, 1929, which in turn was revised and considerably amplified by the
International Convention for the Safety of Life at Sea signed on June 10, 1948.

With regard to the consequences, in the sphere of criminal law, of
collisions on the high sea, a convention was signed in Brussels on May 10,
1952, the effect of which, if generally adopted, will be to discard the principle
acted upon by the Permanent Court of International Justice in the case of the
Lotus. The convention provides that in the event of a collision or any other
incident of navigation involving the penal or disciplinary responsibly of the
master or ay other person in the service of the ship, criminal or disciplinary
proceedings may be instituted only before the judicial or administrative
authorities of the state whose flag the ship was flying, and that no other state
may arrest or detain the vessel even for the purpose of interrogation. 168

(b) Freedom of Over-Flight:

The freedom of seas extends up-wards without limit, and it is beyond
dispute that in time of peace the air space is completely free for navigation by
the aircrafts of all nations on equal terms. Aircrafts, like ships must have a
nationality, and over the high seas they are subject only to the jurisdiction of
their parent state.

25 Oppenhiem, supra note 1, at 603.
The development of aerial navigation in the early years of the twentieth century gave rise to much speculation as to the juridical nature of the air space and the extent of rights in it. The air space over the open sea and over unoccupied territory is free and incapable of appropriation. This rule maybe taken as almost universally admitted. 169

The international aerial navigation is at present governed by
(i) Convention for the Regulation of Aerial Navigation of 1919, a number of amending protocols, and the Convention on International Civil Aviation of 1944 and a companying Agreements, (ii) other conventions either bilateral or multilateral, supplementing or reducing the conventions of 1919 and 1944, or (iii) customary international law.

As regards nationality of aircrafts, any aircraft must be registered in the state of which their owners are nationals, and in that state alone. Their nationality is that of the state which they are registered, and they must bear their nationality and registration marks, and the name and residence of their owner, when engaged in international navigation. 170

Article 2(4) of Geneva Convention on the High Seas indicates the freedom of flying over the high seas as one of the freedoms enjoyed by coastal and non-coastal states over the high seas. Article 87 of the Law of the Sea Convention, 1982 provides that the high seas are open to all states whether coastal or land-locked. Among the freedoms exercised on high seas provided in this article is the freedom of over flight.

26 Id., at 518.
27 Smith, supra note 2, at 65.
(c) **Freedom of Laying Submarine Cables and Pipelines:**

As consequence of freedom of the high seas, no state can prevent another from laying telegraph and telephone cables in any part of the high seas, whereas no state need allow this within its maritime territory. Thus one of the freedoms of the high seas exercised by both coastal and non-coastal states, provided in article 2(3) of the Geneva Convention on the High Seas, is the freedom of laying submarine cables and pipelines. Article 87 (c) of the Law of the Sea Convention, 1982 mentions also this freedom.

If the laying of the submarine cables and pipelines is within the exclusive economic zone which is an area regarded as high seas, the rules applicable to the exclusive economic zone must be taken into account. These rules require the consent of the coastal state according to Article 58 of this convention.

(d) **Freedom to Construct Artificial Islands and Installations Permitted under the International Law:**

This new freedom appeared for the first time in the Law of the Sea convention of 1982. It is true to say that the Geneva Convention on the High Seas 1958, did not indicate this freedom. We can explain that the need for such freedom is due to the discoveries of the petroleum and mineral resources in the sea bed and sub soil thereof.
(e) **Freedom of Fishing on the High Seas:**

From the freedom of the high seas it follows that the fisheries must be open to ships of all nations. Since ships remain under the jurisdiction of their flag states in the high seas, every state possessing a maritime flag can regulate fisheries by its own ships on the high seas through national regulations; and can by an international agreement renounce its fishing rights in any part of the high seas. Attention has been drawn to the right of fishing in the high seas, and a number of conventions have been concluded in this regard. One of the most important of these conventions is the North Sea Fisheries Convention 1882. Other conventions dealing with fisheries such as the Fishery Convention, 1901 regulate fisheries around the Faröe Islands and Iceland.

Notwithstanding the increase in the number of treaties, both multilateral and bilateral, regulating fisheries on the high seas, it is apparent that an international authority of an overriding power may be able to deal successfully with both the economic problem and the actual and potential cause of international friction. The improvement of fishing techniques and technology, culminating in the so-called factory ships, brought with it not only a threat of depletion to the fishery resources, but also the danger to deterioration of the fishing industries. 171 It was therefore necessary for the state to develop a system of fisheries management by international fisheries commissions, which have been established over the years since the international fisheries commission for the Pacific Halibut was first, formed in 1924. Since then, some

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26 Id., at 60-61.
22 commissions have been set up in almost every quarter of the world. Most of the fisheries commissions are limited to taking measures such as regulation, prescription of fishing season, establishing of total allowable catch species or introduced a system of national quotes \textit{i.e.} determine stock of fish and divide it up among the member states.

Most of the existing fisheries organizations failed to adopt and to enforce appropriate conservation programs when these were mostly needed. To substantiate this point it may suffice to note that in 1949 it was believed by a group of experts, that they only fish-stocks in need of protection were a few high priced species like plaice in north Sea, and Salmon and halibut in the North east Pacific. By 1968 about half of 80 stocks believed to be under-fisher were in need of protection from the threat of depletion. \textsuperscript{172}

Although commissions and other bodies have been set up for that purpose in various treaties, the recommendations of such bodies are not, as a rule, binding upon the parties. For this reason proposals for an obligatory international law of fisheries on a general or regional basis, far from being confined to coasted fishers, appear to be of general application. \textsuperscript{173}

These lead to the discussion of the fisheries matters in great details during the First United Nations Conference on the Law of the Sea, 1958. Two of the four conventions produced by the First United Nations Conference on the Law of the Sea deal with the fishery matters. The first is the High Seas Convention, 1958, which states in article 2 that the freedom of fishing, is to be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas. The second convention is the Convention on the Fishing and Conservation of the Living Resources of the

\textsuperscript{29} Dahmani, at 5.

\textsuperscript{30} Oppenhiem, \textit{supra note }1, at 618.
High Seas, 1958. This convention was adopted to ensure sufficient protection of the living resources of the high seas against abusive exploitation. States continued, however, to claim fishing zones, exclusively reserved for their nationals, in extensive adjacent maritime zones. As a result, the provisions of the convention lost all their usefulness and remained a dead letter. It is not surprising therefore, that it was ratified by only 35 states, of which only a few are major fishing nations. Nonetheless, it is perhaps useful from a historical point of view, to make passing reference to some of its main provisions.

It is true to say that the clashing interests of the so-called coastal and non-coastal states, and the highly developed states, resulted in the Geneva Conventions of 1958 failure to provide the needed protection of fish stocks in the high seas. At the same time the international commissions had no power to enforce their regulations. The effect of this was that most of the existing fisheries organizations failed to adopt and enforce appropriate conservation programs. All these problems led to debates during the Third United Nations Conference on the Law of the Sea. 174

It has been observed that the adoption of a 200 mile exclusive economic zone, which finds a great acceptance during the discussion of the Third United Nations Conference on the Law of the Sea, will place under national jurisdiction most of the productive areas of ocean in term of living resources. Outside the exclusive economic zone, however, a large area, though much less abundant in resources, will not be under the sovereign control of any state, except the rights that the coastal state will be granted in respect of the highly migratory species originating from their exclusive economic zones or internal waters. During the discussion of the Third United Nations Conference on the Law of the Sea, the developing countries, advocated the internationalism of the high seas resources as a common heritage of all mankind and contended strongly that outmoded ocean regimes, based on ancient political objectives, cannot logically form basis for a rational jurisdiction. Thus there are increasing demands for a new order which would be based upon social equity and biological rationality. Internationalization of the resources of the high seas could be set up, either under a regulatory system covering the resources of the sea bed and those of the superjacent waters as part of the proposed international sea

31 Jussup, supra note 14, at 259.
Authority, or alternatively, a newly established international fisheries commission, based on the same principle as the common heritage of mankind.

The resulting provisions within the composition text are apart from the principle of the common heritage of mankind, and almost renew the law as codified in the Geneva Convention. The same rules are applicable under the Law of the Sea Convention, 1982, which declares the freedom of fishing in the high seas as one of the freedoms enjoyed on the high seas by ships of all nations whether coastal or land-locked in article 87(e) of this convention.

(f) **Freedom of scientific research:**

This freedom will be examined in greater detail in another chapter. But at this stage it is sufficient to say that this freedom mentioned for the first time in the Law of the Sea Convention of 1982 in article 87 as one of the freedoms which can be exercised on the high seas.

(iv) **Exemptions from the Doctrine of Freedom of High Seas:**

There are three exceptions to the freedoms of the high seas namely Piracy, the Right of Hot Pursuit and the Right of Visit.

a) **Piracy:**
Piracy, in its original and strict meaning, is every unauthorized act of violence committed by a private vessel on the high seas against another vessel with the intent to plunder. 175

Piracy consists, according to article 15 of the Geneva Convention on the High Seas 1958, of any illegal act of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft either, on the high seas or in a place outside the jurisdiction of any state against ship, aircraft person or property, or any act of voluntary participation in the operation of ship or of an aircraft with knowledge of facts making it a private ship or aircraft, or any act of inciting or intentionally facilitating an act described above.

There are essential elements which must be found in any act to be considered as a piracy. Firstly, the act must be an illegal or unauthorized act of violence, detention or depredation, such as murder, destruction of goods thereon, detention of the ship or of any person on board the ship, robbery and kidnapping. In addition any participation in or facilitating of the mentioned acts is considered as piracy. 176 Secondly, the act must be made for a private ends, with the intention to plunder. Thirdly, the act must be committed on the high seas or in a place outside the jurisdiction of any state. Fourthly, the act must be directed against another ship or aircraft or person or property on board such ship or against a ship or aircraft, person or property. Fifthly, the act must be committed by a crew or passengers of a private ship or private aircraft. 177

As regards the jurisdiction over pirates, indeed piracy is a common crime against all mankind. Thus pirates captured within territorial limits should

32 Oppenhiem, supra note 1, at 608.
33 Id.
34 Id., 61.
normally be turned to shore authorities. Every maritime state has, by the customary international law, the right to punish pirates. And the vessels, or merchantmen, can chase, attack, and seize the pirate on the high seas, and bring him home for trial and punishment by the courts of their own country. 178

The question as to the property in the seized piratical vessels, and the goods thereon, has been the subject of much controversy. During the seventeenth century, the practice of several states conceded such vessels and goods to the captor. Nowadays it is generally agreed that the ship and goods must be restored to their owners and may be conceded to the captor only when their real ownership cannot be ascertained. 179

b) The Right of Hot Pursuit:

One of the most important exceptions from the general rule of the freedom of the high seas is the right of hot pursuit. It is a universally recognized customary rule that men-of-war of a littoral state can pursue into the high seas, seize, and bring back into a port for trial, any foreign merchant man that has violated the law whilst in the territorial waters of that state. But such pursuit into the high seas is permissible only if it commenced while the merchantman is still within those territorial waters or has only just escaped thence, and the pursuit must stop as soon as merchantman passes into maritime belt of another state. 180

The question has arisen whether the right of hot pursuit can be extended to cover the case of the pursuit which begins in the "contiguous zone". The right

35 Id 615.
36 Smith, supra note 2, at 52.
37 Oppenhiem, supra note 1, at 604.
of hot pursuit in such cases has been asserted by some American courts but it has not been admitted by Great Britain and the position is still not clear. Although it is not yet possible to speak with certainty, the trend of opinion seems to favor the American view, where an offence is committed within territorial waters for the reason that without this right the power of the shore state to protect its own interests would be largely notified. By analogy this principle seems to be applicable also to the contiguous zone. 181

Article 23 of the High Seas Convention emphasized the right of hot pursuit providing that the hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or contiguous zone if the pursuit has not been interrupted.

Similar rules are applied in article 111 of the Law of the Sea Convention, 1982 with a little expanded right of hot pursuit, which is extended to cover additional areas, namely, the exclusive economic zone, continental shelf, including the safety zones around the continental shelf installations.

c) The Right of Visit:

It is a universally recognized customary rule of international law that all nations, in order to maintain the safety of the high seas against piracy, have the power to require suspicious private vessels on the open sea to show their flag. But such vessels on the high seas may still be pirate although she shows

38Smith, supra note 2, at 55.
a flag. She may further be stopped and visited for the purposes of inspecting her papers and thereby verifying the flag. It is, however, quite obvious that this power enjoyed by men-of-war must not be abused, and that the home state is responsible in damages in case a man–of–war stops and visits a foreign merchant ship without sufficient ground for suspicion. Both article 22 of the Geneva High Seas Convention, 1958 and article 110 of the Law of the Sea Contention, 1982 admit this right and give war ships on the high seas the right of boarding any foreign ship if it has a reasonable ground for suspecting that the ship is engaged in piracy, slave trade or unauthorized broadcasting or that the ship is without nationality or though flying a foreign flag or refusing to show its flag the ship is in reality of the same nationality.

2. The Area:

(i) Historical Background:

The history of the area (sea bed and ocean floor beyond the national jurisdiction) can be dated to 1967, when the concept of the common heritage of mankind was first discussed by the General Assembly of the United Nation in the context of the question of preservation of the sea-bed and ocean floor exclusively for peaceful purposes. The common heritage concept was not a new one. It dates back to the 19th century and was referred to by the president of the First Law of the Sea Conference in his opening speech in 1958, but is it had never before been discussed in an international forum. 182

It is of a particular relevance to note that the discussion took place in the First Committee of the United Nations General Assembly, as the item was

perceived from the very beginning as being of primarily political significance, not limited to strictly legal or economic concern. The General Assembly established an Ad Hoc Committee to study the peaceful uses of the sea bed and the ocean floor beyond the limits of national jurisdiction, and subsequently created a standing committee, the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the National Jurisdiction (Sea-Bed Committee), for the purpose of shaping and refining the ideas and concept which were to form the basis of the international regime.

In 1970 the General Assembly adopted a declaration of principle (General Assembly Resolution 2749 (xxv)), following upon negotiation which took place in the Sea-Bed Committee. This resolution declared that "the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ... as well as the resources of the Area are the common heritage of mankind" and "shall not be subject to appropriation by any means by states or persons". In addition, it was declared that this area "shall be open exclusively for peaceful purpose by all states ... without discrimination". Thus the common heritage was formally spelled out.

The General Assembly at the same time adopted a related three part resolution, the preamble paragraphs of which restated the recognition of need for a reformed regime and mandated its consideration as a package, as follows:

Conscious that the problems of ocean space are closely international and need to be considered as a whole noting that the political and economic realities, scientific development and rapid technological advance of the last decade have accentuated the need for early and progressive

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development of the law of the sea in a framework of close international co-
operation; and having regard to the fact that many of the present states
members of the United Nation did not take part in the previous United
Nations conference on the law of the sea; \textsuperscript{184} calls upon the Sea-Bed
Committee to act as a preparatory committee for the future conference.

At the end of 1973, the United Nation Sea-Bed Committee had not
succeeded in producing document in the form of a set of draft treaty articles.
Instead, it submitted to the twenty-eighth session of the General Assembly of
the United Nations in 1973 a report in six volumes consisting of literally
hundred of individual proposals and draft articles by member states or groups
of states as well as a plethora of other documents and reports of the three
main committees. Notwithstanding this fact, the General Assembly Resolution
3067 (xxviii) of November 1973 confirmed the convening of the conference in
that year.

The conference in its a second session in Caracas revived the three sub-
committees of the sea-bed committee, among them the First Committee which
dealt with the sea-bed and ocean floor and the sub-soil thereof beyond the
limits of national jurisdiction.

After the adoption of the United Nations Declaration of Principles, the
United States and other countries realized the necessity of preparing draft
treaties to cover the issues. Consequently, after 1971 the First Sub-Committee
began to focus its efforts on the preparation of a uniform draft articles, based
upon various proposals which came to be submitted for consideration.

In 1973 a working group of the First Sub-Committee completed 21 draft
articles relating to the international regimes of the deep sea bed as well as 31

\textsuperscript{184} Id.
articles covering recommended implementation machinery. The draft did not represent a consensus among all committee members, and almost all articles were submitted with alternative drafts. Participating nations expressed numerous reservations, while lengthy footnotes gave further evidence of the lack of universal agreement to the articles which had been prepared. Yet, in spite of the preliminary nature of the draft articles, some countries were already beginning to suggest provisional application of deep sea bed regime. These nations were concerned that the lengthy delays in the negotiation, agreement, ratifications and ultimate acceptance of the treaty would neutralize its effectiveness.

In the United States, industrial demands for access to deep ocean mineral resources have been particularly strong. Vigorous lobbying even led to introduction of a bill in Congress calling for procedures which allow the immediate exploitation of these resources, irrespective of the status of international regulations. Such authority would be based upon understanding with other nations which also were becoming frustrated over the frequent delays in the negotiating process. The United States could not ignore this domestic demand, although it was fully aware of the necessity of good relations with other nations concerning the deep ocean regime. As a result, in 1973 the United States suggested the provisional implementation of a deep sea regime which would authorize mineral development prior to ratification of an international treaty. A number of countries responded favorably to the suggestion, but no formal or informal action was taken to set up a provisional authority to guide the exploitation of deep sea minerals. 185

During the second session of the Third United Nations Conference in Caracas July 1974 the First Committee dealt with the deep sea bed in seven informal meeting. There followed 18 informal meetings to discuss the 21 draft articles on the nature of the deep sea bed regime which had been prepared the provisions year. In this regard, three important issues required attention: (a) the method of exploration and exploitation (b) the conditions of exploration, (c) the economic implication of exploitation. The first and second issues were closely interrelated, and the first topic was familiar to the committee because since the earliest stage of the committee it had been discussed whether there should be licensing system of the direct exploitation by international machinery. The United States stressed that it would be more important to specify the conditions under which enterprise would participate in the exploitation than to labor the problem of who would actually exploit.

Concerning these conditions of exploitation, the group of seventy seven, the United States, the European Community nations and Japan all had introduced comprehensive draft proposals. On 21 August 1974 just prior to close of the conference, a negotiation group of 50 nations was established to propose actual methods and conditions of exploration and exploitation of the deep seabed. Deliberations began immediately but made virtually no progress in the remaining week.

Only six meetings of the First Committee (from 30 July to 20 August 1974) were devoted to economic implication of exploitation, and time was not sufficient to permit the committee even to attempt to define the universe of issues related to this problem. In the third session of the conference at Geneva March – May 1975 most of the substantive work of the First Committee came to be undertaken by the informed group of 50 nations which had been organized late in the Carcass session under the chairmanship of Christopher v. Pinto of
Srilanka. Some 20 meetings of the group reviewed the conditions of exploitation of the minerals of the deep seabed. They debated the four proposals which had been reviewed during the Carcass session and also considered a new Soviet proposal. The chairman of the informal group, on the basis of the informal meeting, was able to prepare an informed paper on basis and conditions for exploitation. These were finally formulated as Annex I to the proposed single text. In its final form this single text from the First Committee consists of 75 articles.

It is widely accepted that the mineral resources of the deep sea bed will be subject to international control, but the type of international body to be created and the methods of its operations, have not won such widespread approval. Actually, delegates to conference sought to table this difficult issue until the principles of the regime itself were defined. Nevertheless it is clear that some sort of international organization should be established and Jamaica has already been suggested as possible headquarter site.

The important issues of the methods and conditions of exploration and exploitation have so far been considered fewer than two different types of authority:

Firstly, a license system, where the license assumes the risk of loss and acquires the profits of success; secondly, the establishment of an international authority which assumes the risk of failure but which, in the event of its contractor state or enterprises being successful, would reap an appropriate percentage of the profits. Developed nations originally preferred the first approach, while developing nations favored direct exploitation to assure the widest international distribution of profits and to prevent monopolization of profits by enterprises. Industrial states support for this principle is so broad that only a few nations argued the licensing procedure at
the Caracas session. The group of seventy-seven proposed at the Caracas session that international machinery be given complete authority over scientific research, exploration, exploitation and even the processing and the state of the production. Following the Caracass session, it was clear that the licensing system had lost chance of approval and that this issue was being replaced by concern over the nature of the exploitation by the international machinery; and its relationship to contractors who would undertake the actual exploitation on behalf of the new organization. 186

In accordance with these proposals the Law of the Sea Convention, 1982 in Article 140 emphasized that activities in the area shall be carried out for the benefit of mankind as a whole, and established by article 156 the International Sea Bed Authority (the Authority). The Authority, according to article140 (2), must act for equitable sharing of financial and other economic benefits derived from activities in the area through any appropriate mechanism without discrimination.

(ii) Definition and Legal Status of the Area:

Article 1(1) (i) of the Law of the Sea Convention defines the Area as the sea – bed and ocean floor and sub soil thereof, beyond the limits of the national jurisdiction, i.e. beyond the sea bed and subsoil of the territorial sea and the continental shelf.

The legal status of the Area according to the old approach is regarded as capable of occupation for the same reasons, based on the principle that no obstacles should be made to the freedom of communication and trade on the

41 Id., at 165 -67.
high seas, do not apply. It would therefore be reasonable to withhold recognition of the right of a littoral state to derive mines or build tunnels in the subsoil, even when they extend considerably beyond the three mile limit of the territorial sea. 187

According to Oppenhiem there has been a tendency in the past to assume that the surface of the bed upon which the high seas rests must be likened in legal conditions to the open sea over them. But when regard is had to the arguments which brought about the abandonment of the former claims to occupy the waters of the open sea, namely, the argument- in the words of Grotius- that _occupatio precedes nisi in re terminata_, and the argument that the freedom of the waters of the open sea is essential to the freedom of intercourse between states, it must be conceded that these reasons do not apply to the surface of the sea bed or its subsoil. In fact there exist numerous cases in which states habitually explore through the activity of their nationals the resources of the surface of the sea bed. Although it is traditional to base some of these cases on the ground of prescription, it is not inconsistent with principle, and more in accord with practice, to recognize, that as a matter of law, a state may acquire for sedentary fisheries and for other purposes, sovereignty and property in the surface of the sea bed provided that in so doing it in no way interferes with freedom of navigation and with the breeding of free swimming fish. This is a case in which the requirement of effectiveness of occupation must be interpreted by reference to the reason of the thing and to the judicial and arbitral pronouncements in which such effectiveness is treated as a matter of degree determined by the nature of the area in question. In so far as the right of the state to the continental shelf appurtenant to its

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44 Colombos, supra note 8, at 64.
territory has come to be recognized by international law, such right extends both to subsoil of the sea and to its bed. The subsoil beneath the bed of the open sea requires special consideration on account of coal or other mines, tunnels, and the like as well as in relation to the right in the continental shelf. According to him, if the subsoil beneath the bed of the open sea stood in the same relation to the open sea as the subsoil beneath the territory of a state stands to that territory, all rules concerning the open sea would necessarily have to applied to the subsoil beneath its bed, and no part of this subsoil could ever come under the territorial supremacy of any state. However, it would not be rational to regard the subsoil beneath, the bed of the open sea, in the same way as the subsoil beneath the territorial land and water is an appurtenance of such territory. The relational of the open sea being free and for ever excluded from occupation on the part of any state is that it is an international highway which connects distant land, and thereby secure freedom of communication, and especially of commerce, between states separated by the sea. There is no reason whatever for extending this freedom of the open sea to the subsoil beneath its bed. On the country, there are practical reasons, having regard to the construction of mines, tunnels, and the like, which, apart from the wider issue involved in the now recognized claim to the continental shelf, compel recognition of the fact that this subsoil can be acquired through occupation. Thus the sea bed and subsoil of the high seas, is no man’s land and can be acquired by occupation. Smith supports this view. According to him if the view suggested earlier is correct, that all maritime territory really consists of land submerged under water, it follows that the land lying at the bottom of the high seas in a (no man’s) land what the Roman law

45 Oppenhiem, supra note 1, at 628-29.
calls a *res nullius*, rather than a *res communis*, something owned in common by all mankind. 189

When the question of establishing a separate regime for the seabed beyond the continental shelf arises, two options appeared in determining the legal status of this area. Either *res nullius* (no man's land) with grant of preferential right to the "first comer" this would favor technologically advanced nations or *res communis* "common heritage for all mankind", which will require an international regulation of the exploitation of the resources. This is supported by the developing countries.

Initiatives are taken by the institutions of the United Nations, for example the International Oceanographic Commission (IOC) created by the Unesco in 1960, the Committee on Fisheries of the FAO, which plays a very active role, as do the regional organs of the organization, the Unesco and the FAO have set up a joint advisory committee for research on the resources of the sea. 190

It is certainly since the United Nations began to deal with the problem of the seabed that the common heritage of mankind has come to the being, as much to affirm the principle of purely peaceful use of the seabed and its substratum as to distribute the resources common to all people having particular regard for the developing nations. The application of the notion of common heritage in the maritime setting appears to offer more immediate possibilities of economic exploitation than does a spatial approach. To Mr. Pardo father of the idea of common heritage "it is impossible to reduce the principle of inequalities that exist between nations in the contemporary world without creating profound changes in the existing international order". 191 The concept

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46 Smith, supra note 2, at 42.
47 Id., at 128.
48 Id.
of the common heritage is proclaimed by the Declaration of Principle of the General Assembly of the United Nations of December 17, 1976 and supported by the Law of the Sea Convention 1982. Thus article 136 of this convention declares that "the Area and its resources are the common heritage of all mankind". Concerning the legal status of the Area and its resources article 137 of this convention states that:

"No state shall claim or exercise sovereignty or sovereign rights over any part of the area or its resources, nor shall any state or natural or juridical person appropriate any part thereof".

(iii) Matters Related to the Area

(a) Development of the Area Resources:

The Declaration of Principles of December 17, 1970, like other resolutions of the General Assembly, the majority of proposals to the Third United Nations Conference on the Law of the Sea and the Law of the Sea Convention, 1982, later on, affirm that the exploration of the international zone of the seabed and the exploitation of its resources should be carried out for the benefit of all humanity, independent of the geographic positions of states, taking particular account of the interests and needs of the developing nations.192

The development of the common heritage was influenced by two principles, the accumulation of natural resources and the globalization of development exploitation of the sea bed. The greatest earth resources nodules exist in the deep sea bed appears from the remarkable figures advanced by the United States on several occasions. Moreover important reserves of hydrocarbons

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192 Id., at 25.
are known to exist in certain oceanic basis. The different studies made by the United Nations lead us to expect the possibilities of exploitation in the foreseeable future. 193

The members of the international community have an obligation to participate fully in the exploration and exploitation of the deep sea resources. These contributions to development should come through an international organization. "The acquisition of the natural resources by the world organization resulting from the role that it could be directed to play in the exploitation of the resources of the sea bed would have incapable consequence the autonomy which would result for the system of United Nations and the new élan which would be given to its activities would once again change its character". 194 This observation by Michel Vitally illustrates the new significance of development undertaken on the basis of the common heritage: it will no longer depend on grants but will result from the allocation of property of humanity to the less-fortunate countries. Participation in the development by the wealthy nations at present is based on a moral duty rather than a juridical obligation. The recommendations of the different organs of the United Nations determine the goals and proposals for aid to be accorded by the industrialized states, but the absence of any means of enforcement seriously limits the establishment of what was conceived, in the French terminology as a public service fed by autonomous resources. 195

During the discussion of the third United Nations conference on the law of the sea various national proposals were made regarding the mechanism of the exploitation of the Area resources. These proposals show the opposition from

50Id., at 27.
51 Id.
52 Id.
the developing countries. Most of them favored the direct exploitation by the mechanism, and the industrial countries, notably France and Soviet Union, favored the non operational mechanism. The proposal of the 13 developing countries is based on the following reasoning "the international community being the owner of the zone and its resources has the right to participate directly in their development until it acquire the technical and financial means to exploit them itself on its account. Nothing can justify the system of exploration which attributes the role to legitimate owner". 196

Thus an international authority which manages the activities in the area and would gather and sell its resources, or accord concession either directly to the enterprises which will make a proportional or contractual payments to it or to states, on condition that apportion the profit which the enterprises pay them will be returned to the mechanism. Or the investment being deducted by the international authority for development is proposed by the governmental projects; outline the main institutional model possible. 197

According to article 157(1) of the Law of the Sea Convention, 1982 the Authority has the right of developing the resources of the Area and conducting the activities therein. This article states that:

"The Authority is the organization through which states parties shall in accordance with this part, organize and control activities in the area, particularly with a view to administering the resources of the Area".

The activities in the Area shall be carried out according to article 150 of the same convention in such a manner as to foster healthy development of the world economy and to balance growth of international co-operation for all countries especially developing countries with the view to insuring the

196 Id., at 32.
197 Id., at 32.
development of the resources of the Area; orderly, safe and rational management of the Area including efficient conduct of activities in the Area; participating in revenue by Authority and transfer of technology to the Enterprise and developing states; increase availability of minerals derived from the Area as needed in conjunction with minerals derived from another sources, to insure supplies to consumers of such minerals derived both from the Area or other sources, and promotion of long term equilibrium between supply and demand; the enhancement of opportunities for all states parties irrespective of their social and economic system or geographical location, to participate in the development of the resources of the Area.

The second principle applied to the development of the Area resources is the globalization of the development, in other words the common heritage of mankind should be developed through integrate and perfect inter-state aid pursue long-term objections in the interests of all humanity. It involves all nations, poor or rich, in spite of their economic or social divergences, to participate in a developmental work that is of concern to all. The global pursuit of development requires rational economic management, not only at the level of the world economy. The United States delegate to the Committee on the Sea-bed recalled in this regard that the international requirements "aim at protecting not only the interests of the developing countries but also those of the developed countries, by creating a climate of security for financial and technological investment". 198

This global development satisfied perfectly the preamble of the declaration of 1970, which advocates the regulation of production, commercialization and distribution of resources extracted from the sea bed in such away "as to

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198 Id., at 35.
promote the health development of the world trade and growth of world trade and reduce to a minimum all unfavorable economic consequences of flections in the price of primary products". \(^{199}\) The same rules declared by article 150 of the Law of the Sea Convention, 1982.

(b) **The Peaceful Uses of the Area:**

The peaceful uses of the Area are among the most important problems related to the sea bed to which the United Nations has been directing its attention over the past years. Due to arms race by the greatest powers during the last period and the technology advancement in the nuclear arms achieved, it is known that the greatest powers have already undertake considerable research to the question of military insulation of the seabed. The legal regime governing the seabed, concerning the military use of the area, can give rise to two contrary trends, firstly, the traditional concept according to which the sea bed legal status the same as that of the high sea. In other words all consequences following from the freedom or brought to bear on the bed of the high seas, and the military use thereof is free in peace as in war. But international convention may prohibit certain practices, for example, the one forbidding nuclear tests. This trend supported by Gedil and Lautherpaht. The second trend prevents the automatic descent of the regime for the high seas to the seabed. In reality the rule of the freedom of the high seas is of a customary origin; no international practice has developed regarding the sea bed and the law relating to the continental shelf developed in customary fusion as

\(^{199}\) Id.
technological progress permitted its utilization. In truth that is no obligation on coastal states to restrict themselves to the peaceful uses of their continental shelf was examined at Geneva Conference in 1958. The socialist countries demanded the insertion of a prohibitive provision in the convention. The debate made it clear that the general opinion is that such installations are contrary to international law. It is argued that article 5 of the convention which authorizes only installations for the exploration and exploitation of the natural resources by implication excludes military uses.

In any case, a declaration of peaceful uses of the sea bed would be a system of control. It would be difficult to set up a mechanism to control the entire seabed except on a regional bases but this would run the risk of being insufficient. It is conceivable that the assistance of the existing institutions could be requested, in particular that of the IAEA (International Atomic Energy Agency). The agency has at its disposal a system of guarantees. But in order that the system of guarantees comes into force in a country, it is necessary that the country in question concludes an agreement with the agency. Thus the agency cannot take the initiative in exercising the control. Therefore the agency control is not sufficient to govern the exclusive peaceful use of the sea bed.

In December 18, 1967, the United Nations issued Resolution 2340 (XXII) creating a special committee composed of 35 members and gave the following mandate: to study "the question of the reservation for exclusively peaceful purposes of the bed and subsoil of the sea and ocean floor on the high seas beyond the limits of present national jurisdiction and the exploitation of their resources in the interests of humanity". On December 21, 1968 the committee was increased from 35 to 42 members and became permanent committee by virtue of resolution 2467 A, known as the Committee of Peaceful Uses of the
Seabed beyond the Limits of the National Jurisdiction. Although it is required to study aspects of exploration and exploitation of the seabed, it is the principle of peaceful uses which dominates and provides inspiration for the work of the committee in general. During the committee debates in 1968 the Indian government lodged a declaration proclaiming the seabed common property of humanity for exclusively peaceful ends. Similarly the United States lodged to the committee a proposed resolution containing an enunciation of the principles concerning the seabed.

In the face of the complicity the problem of the seabed and the risk that the time lost may promote an arms race, the United Nations issued the Declaration of Principle 2749 (XXV) which proclaimed that the area shall be reserved exclusively for peaceful purposes. One or more international agreements shall be concluded as a soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea bed and ocean floor and subsoil thereof from the arm race. 200

(v) **The Authority:**

The International Seabed Authority is an intergovernmental body based in Jamaica. It was established to organize and control all mineral-related activities in the international seabed area beyond the limits of national jurisdiction, an area underlying most of the world’s oceans. It is an independent organization having a relationship agreement with the United Nations.

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57 Id., at 110 – 12.
(a) **Establishment of the Authority:**

The humanity concept of the common heritage proclaimed by the Declaration of Principle of 1970 requires that a regulatory power be given to an international mechanism. According to paragraph 9 of this declaration international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The main function of the proposed machinery is to regulate activities conducted in the area, and to provide a system of management of its resources. The jurisdiction of the proposed seabed authority would cover the whole seabed, including all activities undertaken within the area. 201

During the negotiations of the Third United Nations Conference on the Law of the Sea there were substantial divergences in the views between the developed and the developing countries about the international régime and the jurisdiction of the international Authority. The developed countries envisaged a weak régime under which the role of the international Seabed Authority would almost be reduced to a licensing and registry office. While they in principle did not oppose the establishment of an authority, they insisted on the freedom of access and a weak régime which would favor the exploitation of the resources by private enterprises. The developing countries favored the establishment of a strong authority vested with sufficient and effective powers.202 In conformity with the developing countries view, article 156 established an international seabed authority vested with the task of organizing and controlling all the activities in the area.

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59 Id., at 60.
Later on a preparatory commission for the international seabed Authority was established by the Third United Nations Conference on 3 December 1982. An extensive function has been entrusted to the preparatory commission, including the administration of the scheme governing preparatory investment in pioneer activities relating to polymeric nodules. The Secretary General of the United Nations is authorized by the conference to convene the preparatory commission with the services required to enable it to perform its functions effectively and expeditiously. The finance of the expenses of the preparatory commission is taken from the regular budget of the United Nations.

(b) **Organs of the Authority:**

The International Authority performs its function through various organs mainly a plenary organ or Assembly, an executive organ or the Council, an operational organ or the Enterprise, an administrative organ or the Secretariat, and the dispute settlement mechanism the Tribunal.

The Assembly, as the plenary organ, is composed of all the members of the Authority on the principle of sovereign equality of states. Among the functions of the Assembly is the formulation of policy guidelines in any matter or question within the competence of the authority, including the budgetary and financial control of the other organs. In other words, the Assembly is conceived of as the supreme organ of the Authority on all questions. 203

The Council is the executive organ of the Authority but hierarchically under the Assembly and performing the functions assigned to it by the Assembly. The Council consists according to article 161 of the United Nations Convention

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on the Law of the Sea 1982 of 36 members of the Authority elected by the Assembly on the basis of ensuring the equitable geographical distribution in addition to other considerations such as the states which have consumed more than 2 percent of the total consumptions or which have had net import more than 2 percent of the total world imports of the commodities produced from the commodities produced from the minerals of the Area or the states which have the largest investments of the activities on the Area. And finally attention must be paid to the developing countries. The organs of the Council include inter alia, the Economic Planning Commission and the Legal and Technical Commission of advisory function on economic, scientific and technical matters. 204

The Secretariat is composed of the Secretary General elected for four years by the Assembly and such staff of qualified scientific and technical and other personnel as may be required to fulfill the administrative functions of the Authority.

The Enterprise is the organ of the Authority which carries out the activities directly in the Area as well as transporting, possessing and marketing of minerals recovered from the Area. It shall act in accordance with the general policies established by the Assembly, subject to the direction and control of the council.

Other organs of the Authority include the Tribunal and other commissions dealing with various technical matters like scientific research, pollution, rules and standards, and price stabilization.

The Authority, in existence since 1994, was established and its tasks were defined by the 1982 United Nations Convention on the Law of the Sea, as

defined by the 1994 Agreement relating to the Implementation of Part XI (seabed provisions) of the Convention. The Authority has 152 member states, its membership consisting of all parties to the Law of the Sea Convention. It holds one annual session; usually of two weeks’ duration. Its eleventh session was held in Kingston in August 2005. It operates by contracting with private and public corporations and other entities authorizing them to explore, and eventually exploit, specified areas on the deep seabed for mineral resources. In addition to its legislative work, the Authority organizes annual workshops on various aspects of seabed exploration, with emphasis on measures to protect the marine environment from any harmful consequences. It disseminates the results of these meetings through publications. The Authority adopted in 2000 a regulations governing exploration for polymetallic nodules. During the first half of 2001, it signed exploration contracts with seven entities, giving them exclusive rights to explore for nodules in specific areas. It began work in August 2002 on another set of regulations, covering minerals such as copper, iron, zinc, silver and gold, as well as cobalt.

The Authority has a budget of slightly more than $5 million a year and a staff of nearly 40 people. Contrary to early hopes that seabed mining would generate extensive revenues for both the exploiting countries and the Authority, no technology has been developed for gathering deep-sea minerals at costs that can compete with land-based mines. The general conscious is that economic mining of the ocean depths is decades away. In addition, the United States, with some of the most advanced ocean technology in the world, has not yet ratified the Law of the Sea Convention and is thus not a member of the Authority.²⁰⁵
2. Conclusion:

There are two areas of the sea which fall beyond the national jurisdiction of any state, firstly the high seas over which all states whether coastal or land-locked states enjoy five freedoms namely, freedoms of navigation, over flight, fishing, laying of cables and pipelines and scientific research. Ships whether merchant or war ships in the high seas are subject only to jurisdiction of its flag state, and can not be boarded by ships of other states except in certain circumstances for example if it was pursued after it committed a violation of the coastal state law and regulations in the internal waters or the territorial sea or the contiguous zone or if the ship was engaged in piracy, slave trade, unauthorized broadcasting or that the ship is without nationality or though it is flying a foreign flag it is in reality from the same nationality. This right must not be abused and the home state is responsible for any damages caused to a foreign ship without sufficient ground.

The second zone is the new established zone which is known under the Law of the Sea Convention, 1982 as the seabed and subsoil beyond the national jurisdiction or the Area. All the activities in the Area are conducted by the authority. Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority.

Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states.
Chapter Four

New issues Discussed under the Convention

1. Preservation and Protection Of Marine Environment

(i) Historical Background

Protection and preservation of the marine environment is deemed to be one of the key problems of the law of the sea, which received recently the international concern. Under the traditional law of the sea, indeed, little attention was paid to the protection and preservation of the marine environment. Thus the freedom of high seas, since the days of the famous Dutchman Grotius (1583-1645), has been considered as one of the fundamentals of the international law. Accordingly states enjoyed maximum rights and freedoms without undertaking, or at least neglecting their corresponding duties and obligations. Under the freedom of the high seas, the sea was fallaciously viewed as an "in exhaustible reservoir", of renewable resources, as well as an "infinite sink" capable of sustaining "self-cleaning".

In fact, under the traditional law of the sea the protection and preservation of the marine environment did not pose a problem; dumping of industrial and toxic waste was viewed as permissible without major consequences to the environment or its resources. But over the past years there have been a series of limitations of the principles of the freedom of high seas, either due to the projections of sovereignty of the riparian state (extension of the territorial sea,

1Rembe, Africa and the international law of the sea, 130 (1982).
instituting exclusive economic zone) or due to granting riparian states certain powers over the seas themselves (contiguous zone, continental shelf), special interest of the coastal state in the conservation of the biological resources of the sea. It must also be noted that the protection and preservation of the marine environment has resulted in interference with the freedom of the high sea. It is thus in opposition to one of the principles deemed to be of the most stable traditional international law. 207

The lack of general international rules results in actual problems. Its effect is that an international law has had a relatively little time to develop general principles. These general principles usually were enunciated to meet specific problems submitted to international tribunals. 208 Among those general principles related to our topic, the protection and preservation of the marine environment, is the principle which places states under certain duties to regulate activities under their control in order not to cause harm to other states, i.e. "use your own so as not to harm others". Thus in Trail Smelter Arbitration between United States and Canada, in 1935 the tribunal declared that:

"Under the principles of international law, as well as the law of the United States, no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the property or persons therein, when the case is of serious consequences and the injury is established by a clear and convincing evidence"


Some writers have concluded from this statement that states must take reasonable precautions to prevent persons who are under their territorial jurisdiction as well as ships from polluting other state’s jurisdictional waters. They are finally bound to impose sanctions upon persons who have done so.209

It is true to say that, there is no branch of the international law which has progressed at faster rate than that related to the protection of the marine environment and prevention of pollution. Though this problem is of a relatively recent origin, as has been said above, the municipal legislation to control it date back to at least the 1920s and that a draft convention on the subject was drawn up in 1926 and 1936, it is developed faster during he second half of the twentieth century. Hence it is not surprising that pollution is not adequately regulated by the international customary law but most entirely dealt with by a growing series of treaties, the first of which was concluded in 1954, 210 namely the International Convention for the Prevention of Oil Pollution of the Sea by Oil, amended extensively in 1962 and in 1969. It is only, and due to the massive oil pollution over the marine environment and living resources that the international concern began to increase. The international law was concerned at the beginning with the oil pollution, but later on covers other new types of pollutions which emerged from the advancement of technology namely chemical, biological and noxious pollution.

The marine pollution received little attention in the Geneva conventions. It was left to individual states to adopt measures to deal with pollution, which were restricted to dumping of radioactive waste.

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4 Id., at 13.
5 Brown, The Legal Régime of Hydrospace,130 (1971).
Article 24 of the Convention on the High seas, 1958 which mentions the duty to make preventive regulations to prevent pollution provides the pre-existing obligation in the 1954 convention. It provides that:

"Every state shall draw up regulations to prevent pollution of the sea by discharge of oil from ships".

In 1962, a new conference under the Inter-Governmental Maritime Consultative Organization (IMCO) auspices improved on the 1954 convention and further far-reaching amendments were approved by the IMCO assembly in October 1969.

The Declaration of Principles, adopted on December 17, 1970 by the United Nations Sea Bed Commission in paragraph 11 required states, to take appropriate measures for and shall cooperate in the adoption and implementation of international standards and procedure, with respect to activities in the area, for inter alia; protection and conservation of natural resources and prevention of pollution.

At the 1972 Stockholm Conference on the Human Environment the protection of the marine environment obtained a considerable advance.

During the law of the Sea Conference the marine pollution was placed as an important aspect of the exclusive economic zone, over which the coastal state has competence to take necessary measures for prevention, regulation and enforcement of pollution standard and rules. Moreover, the conference discussed the pollution beyond the national jurisdiction and that resulting from the sea bed activities.

The preservation of the marine environment and control of pollution fell under the competence of the Third Committee of the Third United Nations Conference on the Law of the Sea. The marine pollution during the discussion of the committee remained divisive issue between developed and developing
countries, over such important areas as: areas to be covered by such regulations, the legal unity between the high seas regime the exclusive economic zone and the sea bed. Such divergent approaches showed little signs of healing during the law of the sea conference. 211

The Convention on the Law of the Sea, 1982, grants coastal state jurisdiction regarding the protection and preservation of the marine environment in its exclusive economic zone in article 56(1) (b) (iii) of this Convention. A separate part of the Convention (part XII) deals with this topic in details, and contains important new rules in the subject. Generally speaking the convention imposes an obligation over states to protect and preserve the marine environment and encourages the global and regional co-operation for the protection and preservation of the marine environment.

(ii) Types of Pollution:

Marine pollution may be classified into four principal types. Firstly, oil pollution, which is a rises from the discharge of oil by ship to the sea either voluntarily or accidentally as a result of collision, and from the exploitation of the continental shelf. The second type of pollution is the nuclear pollution. A third type of pollution of the sea is the discharge of industrial and sewage waste in the sea and finally, the chemical and pesticide pollution. These four types here will be examined.

a) Oil Pollution:

6 Rembe, supra note 1, at 176.
In fact oil pollution from ships was one of the earliest types of pollution requiring an international solution. Unlike most other pollutants, oil is visible even to the uninstructed eye and attracts immediate and constant attention. There is no doubt that the discharge of oil to the sea can materially affect fish stocks, bird life, tourism and economic interests of coastal states who face the task of cleaning their beaches, estuaries and ports of this waste product.

Rules of international law on oil pollution fall under two main heading: the prevention of oil pollution and liability for oil pollution. Indeed oil pollution may be caused voluntarily, as when tank washings are discharged into the sea, or involuntarily, for example, as a result of the collision of tankers or as a result of the exploration and exploitation of the continental shelf. Generally speaking, the international law provides rules to limit voluntary discharge, to authorize the coastal state to interfere with the involuntary discharge and to regulate the exploration and exploitation of the continental shelf.

Attempts to deal with the problem of oil pollution on the international level had failed in 1926 and 1936, and the International Convention for Prevention of Oil Pollution of the Sea by Oil of 1954 remained an incomplete answer to the problem in so far as only 16 states had ratified it by the end of 1962. The 1954 Convention applied to all pre-existing, rules of the 1954.

However, in 1962, a new conference under the IMCO auspices improved on the earlier convention by extending the area of the prohibited zone, extending the convention to cover all tankers over 150 tons gross tonnage, and, finally,

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7 Report of the Conference of the Water Pollution as a World Problem held in University College of Wales 1971, at 53.
9 Brown, supra note 5, at 130.
by securing general acceptance of the principle that persistent oil should never be discharged into the sea (unless reception facilities are unavailable at either end of the voyage), and reception facilities ashore should be extended. Further far-reaching amendments were approved by the IMCO assembly in 1969. There is special risk of oil pollution which arises from the exploitation of the continental shelf. It may be recalled that article 5(7) of the Continental Shelf Convention of 1958 obliges the state to take appropriate measures for the protection of the living resources of the sea from harmful agents.

The public concern rose toward oil pollution hazards a consequence of the massive oil pollution by a number of disasters, but specially by the Torrey Canyon Incident, which in 1967 ran aground on the seven stones reef, a well known navigational hazard in the high seas. An estimated 60,000 tons of oil was released into the sea causing considerable pollution to both British and French coasts. The public concern was reflected in the speed with which a large number of international institutions turned their attention to the problems which the accident raised. The question was first taken up by the IMCO Council in May 1967, at an extra ordinary session on the initiative of the United Kingdom Government.

The disaster raised a large number of questions both technical and legal. In considering how best to deal with the legal questions, the IMCO council came to the conclusion that it was desirable to establish machinery within the IMCO for consideration of legal questions. As a result an Ad Hoc Legal Committee was set up.
The eventual outcome of the IMCO's work on this question was the adoption on 1969 of the International Convention Relating to Intervention on the High Seas in Cases of Oil pollution causalities. 215

During the Third United Nations Conference on the Law of the Sea discussions the question of oil pollution was posed by the developing countries, but the developed states objected to the coastal state jurisdiction and asked for the "flag state" jurisdiction and application of the international standard and regulations prescribed by the IMCO.

The general duty of article 192 of the Law of the Sea Convention 1982 to protect and preserve the marine environment included oil pollution. In so far as standards of duties in relation to the prevention and control of pollution from ships is concerned it is important to realize that the detailed provisions specifically relating to the nature of the duty contain no such qualification.

Articles 194 (3) (6) and 211 are universal and make no discrimination. Article 211 is of a particular importance, because it does not only preserve the notion that the duties are on states, but it confirms, strengthens and considerably develops the theme that these duties are to be worked out in practice by multilateral treaties. It must therefore be concluded that whatever measures are adopted for the preservation of pollution there must be civil liability for the damage caused by the escape or discharge of the oil from ships and there must be a responsibility of the coastal state for pollution damages caused by oil released by the exploration of the continental shelf or the exploitation of its natural resources. 216

b) Nuclear Pollution:

10 Id., at 139 - 40.
11 Id., at 163.
One of the more recent types of pollution of the seas is the nuclear pollution. Indeed there are numerous sources for the nuclear pollution of the seas namely, the using of the high seas for dumping of nuclear waste derived from shore establishments, nuclear-powered vessels may discharge low level effluents, or, following collision, release high level radiation. Vessels carrying cargoes of nuclear materials may suffer similar collisions or be wrecked, nuclear testing may occur on or over high seas, and, in the future, the sea-bed may be used as the site for nuclear power plants. Waste may also be discharged directly or indirectly into coastal or territorial waters of a state, usually by pipe lines, but thereafter be carried either by the current or tide or even living organisms into the coastal or territorial waters of other states. Also waste discharged into national rivers may eventually reach the sea, and, obviously, waste discharged into international rivers, or into any shared water like the great lakes, may affect other riparian states. Finally, gaseous wastes released into the atmosphere or fall out from nuclear testing may affect either the high seas or other states. 217

Prior to the 1958 conference at Geneva, there was no international regulation regulating the problem of the nuclear pollution or the disposal of the radioactive waste.

At the national level, few states like United Kingdom and United States of America possessed legal and administrative control over all nuclear activities, including waste disposal. However, once the problem have an international implication, it became clear that regulation by national legislations will not

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12 Bowett, supra note 8, at 47.
suffice and that there must by some form of international regulation and control to solve the problem.

In fact, however, regulation and control at the international level is minimal. There exists only the broadest and vaguest obligation in article 25 of the 1958 High Seas Convention.

1- Every state shall take measures to prevent pollution of the sea from dumping of radioactive waste taking into account any standards and regulations which may be formulated by the competent international organization.

There is, of course, the 1963 Test Ban Treaty, which is important because, to date, nuclear tests have been the largest cause of radioactivity in the seas. But China and France are not parties to this treaty. Nor is the joint USA and USSR draft treaty for the prohibition of the emplacement of nuclear weapons on the sea-bed, submitted to the General Conference of the Committee on Disarmament, likely to achieve universal acceptance. 218

The International Atomic Energy Agency (IAEA) in fact established a panel on the legal implications of the disposal of radioactive waste into the sea, which met in January, 1961, and its own codes of procedure cover waste disposal. But it constitutes a code for the guidance of national legislation not in itself binding, and binds only to state accepting fissionable material from the IAEA. This body of international regulation is clearly inadequate to solve the problem. 219

As regards the pollution by radioactive substance or nuclear substance by accidental release of these substances from nuclear vessels due to collision at sea it has been the practice of states anticipating a visit from United States

14 Bowett, supra note 8, at 47.
nuclear warships to secure an indemnity against damage in advance to their visit. Moreover, the 1962 Brussels convention on the liability of operators of nuclear ships recognized the problem to the extent of providing for civil liability, before municipal court, in respect of any nuclear accident. But the convention did not concern itself with questions of state responsibility under the international law.

The problem of the nuclear pollution under the umbrella of the Law of the Sea Convention, 1982 have been attempted to solve in two distinct areas. Firstly, under the articles related to the innocent passage in the territorial sea. Thus in article 22, of the convention, the coastal state may design sea lanes in its territorial sea for the passage of foreign ships in particular, tankers, nuclear, powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials. Article 23 of this convention requires that foreign nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreement. Secondly, article 194 speaks generally about the obligation to take all measures necessary to prevent, reduce and control pollution of the marine environment from:

The release of toxic, harmful or noxious substance, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping.

**Industrial Waste Pollution and Sewage:**
Pollution by sewage i.e. domestic waste is a problem which has continued for a long time, while industrial waste is on the other hand more recent. Disposal of domestic sewage did not cause great problems while populations remained scattered or reasonably small. It was only with the growth of the population that the domestic sewage disposal became an international or even a national problem.

Industrial waste, however, because of the greater toxicity of some of the material produced, rose to international problem status more rapidly, but still only in very confined areas of the sea. 220

Since the industrial waste and sewage pollution often affected the land or rivers environment and do not extend to the marine environment except in confined areas, as has been said above, the jurisdiction and control of this type of pollution is usually left to the local authorities. This can be realized from the fact that no international convention speak expressly or impliedly about this type of pollution.

c) Chemical and Pesticide Pollution:

Administratively it is not easy to consider chemical and pesticide pollution separately from pollution by industrial waste and sewage. It is true that the history of pesticide use is not a happy one from the outset. The chemical and pesticide pollution comes from many sources such as fixed wing aircraft especially in the United States, which led to localized pollution at relatively high concentration, disposal of effluents by the pesticide manufacturers was also less than satisfactory and accidental spillages such as occurred in the

\[15\] The Report, supra note7, at 143.
Rhine are almost impossible to prevent by co-operation and liaison with those people concerned, especially in the encouragement of good practice and the responsible disposal of unused spray and empty containers.

The long-term effects of persistent pesticides cause widespread concern. This concern arises out of the bio-concentration of some pesticides, such as DDT, along the food chain, which has led to species of wild life becoming sterile, and in some instance to death itself. As regard the chemical pollution, mention should be made of the potential danger from organic chemicals manufactured which can turn out to have undesirable biological side-effects.

The situation of the laws and regulations governed the chemical and pesticide pollution identical to that of the pollution by industrial waste and swage. So we should say that this type of pollution is only confine to the land territory or rivers or may extent to the coastal waters thus the control of such type of pollution is left to the local authorities and nothing has been said in the international conventions.

(iii) Sources of Pollution:

Pollutants reach the sea from many sources: land-based sources, the atmosphere, ships and the sea-bed activities.

a) Land-based Sources:

The land-based sources pollutants include according to article 207 of the Law of the Sea Convention 1982 rivers, estuaries, and pipeline and outfall structures. Of course, the most important source of the above mentioned land
based sources is the pollution from rivers. The pollution is serious in fifteen rivers, including the Don and the Volga, and it has been accompanied by what is described as "the mass slaughter of fish". 221

In fact the main reasons for the rivers pollution is the discharge of the industrial, chemical, pesticide and sewage waste. All of these can cause serious problems in the fresh water environment and can affect the marine environment if the river flows into the open sea. It was recently reported that the Venetian Canals, carrying sewage flushed twice a day by the tide, were full of dead fish and decaying sea weed. The problem of disposal of sewage in the Black Country has been described by the River Trent authority as appalling. The Trent itself pollutes. While the Tam which flows into it is said to be the most heavily contaminated river in Britain.

According to the annual report of the Association of Public Analysis:

Indiscriminate discharges have converted many rivers of northern England and the lower reaches of the Thames into biological deserts. The sea into which they flow are in danger of falling into the same state unless rapid and firm action is taken. 222

The same can be said with regard to off-shores and estuaries pollution which is usually caused by pesticide residues, industrial waste and sewage.

b) Pollution from Atmosphere:

The pollution of the sea from the atmosphere can occur by different ways, for example, the gaseous wastes released into the atmosphere from the

\[ \text{Id., at 3.} \]

\[ \text{Id.} \]
nuclear testing or explosions over the high seas. Another example is the Norwegian complaint that the pollutants carried by wind from the Ruhr turns their snow black and, in due course, the snow melts run into rivers and lakes.²²³

According to article 212 of the Law of the Sea Convention 1982 states are required to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere. Their law and regulations are applicable to the airspace under their sovereignty and to vessels flying their fly or vessels or aircraft of their registry.

c) **Pollution from Ships:**

We will not speak in detail about the pollution from ships, because the matter has been discussed in detail under the oil pollution. It is sufficient to indicate the articles which speak about the pollution from vessels under the Law of the Sea Convention, 1982. First article 194(3) (b) requires states to take measures either individually or jointly to prevent, reduce and control pollution from vessels, in particular, measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing international and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels.

Secondly article 211 of this convention requires states to act through the competent international organization or general diplomatic conference, in order to establish international rules and standards to prevent reduce and control pollution of the marine environment from vessels.

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²²³ Id., at 2.
States also are required to adopt laws and regulations having the same effect of the generally accepted rules and standard mentioned above and shall establish particular requirement as condition for entry of foreign vessels into their ports or internal waters for the purpose of prevention, reduction and control pollution of marine environment. Moreover, they may in the exercise of their sovereignty within their territorial sea, adopt laws and regulation for the same purpose. Similar laws and regulations may be adopted in respect of their exclusive economic zones.

d) **Pollution from the Activities in the Sea Bed:**

The risks of pollution resulting from the exploitation and exploration of the sea bed and sub soil are considerable. The production of sub marine petroleum, which already form 20 percent of the production of the western world, constitutes a serious danger to the sea environment and natural resources by the mere fact of the drilling which entails throwing up of mud, by explosion of charges, not to speak of possible explosion of shafts resulting in an evacuation of petroleum which it is difficult to restrain. An example of this is North Sea accident in January 1968 which caused an escape of gas into the North Sea.\(^{224}\)

Rules designed to prevent or minimize pollution arising from exploration of the continental self or the exploitation of the natural resources are provided in both Geneva Convention on the High Seas and the Continental Shelf Convention. As regards the High Seas Convention article 24 requires states to draw up regulations to prevent pollution resulting from the exploitation and

exploration of the sea-bed and its subsoil. In the Geneva Convention on the
Continental Shelf 1958 article 5 contains a number of relevant rules. Firstly,
paragraph 1 provides that the exploration and exploitation must not result in
any unjustifiable interference with the conservation of the natural resources.
Secondly, paragraph 7 requires states to take in 500 meter safety zone around
installations ... appropriate measures for protection of the living resources.
Impliedly, we can see a sort of obligation over states to pay attention to the
natural resources during its activities of the exploration and exploitation of
their continental shelves.

On the other hand the Law of the Sea Convention expressly requires states
to take appropriate measures to prevent, reduce and control pollution of the
marine environment from installations and devices used in exploration or
exploitation of the natural resources of the sea-bed and subsoil in article 194
(3) (c). Moreover article 208 of this convention requires the state to adopt laws
and regulations in order to prevent, reduce and control pollution of the marine
environment arising from or in connection with sea-bed activities subject to
their jurisdiction, while article 209 which speaks about the activities in the
area, requires an international rules, regulations and procedures be
established in order to prevent, reduce and control pollution of the marine
environment in the area.

(iv) The Obligation to Protect the Marine Environment:

It is obvious that the sea is a fragile unstable environment that we must
protect. Though the freedom of the high seas has been considered as one of
the fundamental principles of the international law, it must be admitted that the
need for the protection of the sea environment, taking into consideration the interests of the international community, requires interference with the freedom of the sea. This interference is unanimously agreed upon by all political systems as a basic right of humanity. Thus China stated on 10 June 1972 Conference on the Human Environment at Stockholm:

Energetic measures must be taken to put an end to dumping, in the open seas, of dangerous products which pollute the sea water, are harmful to marine resources and threaten navigation and the safety of riparian states. 225

As has been said before the problem of the pollution and protection of the marine environment is of a recent origin and it was not adequately regulated by the international customary law but mostly dealt with by a growing series of treaties. And due to increase in pollution, emerged the need to impose an obligation to protect the marine environment. This obligation can be derived from the general principle applied under the international customary law not to cause harm to other states.

This obligation is provided for the first time in article 24 of the High Seas Convention of Geneva 1958, and in article 192 of the Law the Sea Convention 1982:

States have the obligation to protect and preserve the marine environment.

This obligation includes all sources and types of pollution. And in the exercise of this obligation states shall take measures to prevent, reduce and control pollution of the marine environment, and ensure that the activities under their jurisdiction and control are so conducted as not to cause damage

20 Du Pontavice, supra note 2, at 132.
by pollution to other states, and their environment. Moreover, they shall refrain from unjustifiable interference with activities carried out by other states.

Article 195 of this convention impose a duty over states not to transfer directly or indirectly damage or hazards from one area to another and not to transform any type of pollution into another.

(v) Regional and Global Co-operation for the Protection and Preservation of the Marine Environment:

Pollution of seas is a hazard which endangers the whole world without exemption. This pollution problem cannot be solved by unilateral action. An effective action to stop this hazard needs an international co-operation whether in a regional or a global level. Some of the proposals submitted to Third United Nations Conference on the law of the sea on the preservation and protection of the marine environment suggested the "Zonal approach" to eliminate pollution. This approach stressed pollution as a part of the management of the resources of the exclusive economic zone and naturally received a considerable support among the developing countries and other states concerned with environment vulnerable areas, such as those bordering ice covered areas, semi-enclosed seas, archipelagos and straits. Other proposals like the Kenyan proposal required establishment of an international authority, empowered to deal with pollution resulting from the sea bed activities as well as setting up standards to control pollution of water column. The authority, on its own or in co-operation with international regional organization, has the power to enact rules and regulations for the preservation
of the environment and protection of pollution from high seas, its air space and sea bed. 226

The statements made by the various delegations to the Third Committee strongly called for adoption of more effective measures to prevent and control marine pollution. In accordance to this views the Law of the Sea Convention, 1982 provides in article 197:

States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standard and recommended practices and procedures consistent with this convention, for the protection and preservation of the marine environment.

This co-operation includes also promoting studies, undertaking programs of scientific research and encouraging the exchange of information and data required about pollution of the marine environment. Moreover scientific and technical assistance must be rendered to the developing state in order to help them to protect and preserve their marine environment, or to minimize the effect of major incidents which may cause serious pollution of the marine environment.

Thus the co-operation between states for the protection against pollution falls basically in two kinds. Firstly, preparatory actions before the causality and secondly the co-operations following the causality. As regards the former this is represented in exchange of information about pollution, undertaking programs and scientific researches about the marine environment and about the new ways to avoid effectively pollution. The latter which deals with the co-

21 Rembe, supra note 1, at 176 -77.
operation after the causality falls under two heads, firstly, speedy information to the extent that the effective action for preventing pollution depend on the speedily information of the imminent or actual damage to other states and competent international organizations, \(^{227}\) secondly action of zonal authority to take steps or to deal with the pollution in order to prevent or to minimize the pollution.

**(vi) Liability and Enforcement With Respect to Pollution:**

*a) Liability With Respect the Pollution:*

It would be unrealistic to impose an obligation without any responsibility for the breach of this obligation. As we know, the Law of the Sea Convention, 1982 impose general obligation on states to protect and preserve the marine environment and to prevent all sources and types of pollution. The question posed in this concern, what would be the situation if any state breach voluntary or accidentally this obligation? If we refer to this convention we will find nothing about the liability with respect to pollution. The convention left the problem to the states to put through specialized international organizations international standards, rules and regulation (see article 197) to determine the practice and procedure for the protection of the marine environment through international conventions.

If we refer to the existing conventions related to the matter we will find that the IMCO Council binds the owner or operator of ship or the owner of the cargo (jointly or severally), to compensate government or injured parties for

\(^{22}\) Article 198 of the Law of the Sea Convention, 1982.
the damage caused by accidents involving discharge of persistent oil or other noxious hazards substance, and costs incurred in fighting pollution in the sea and cleaning polluted property. 228

The International Convention on Civil Liability for Oil Pollution Damage opened for signature in 1969 provides for payment of adequate compensation to persons who suffer damage caused by the escape of discharge of oil from ships. That is all what can be said in this concern.

As regards the enforcement of the international standards, rules and regulations in respect of pollution, in fact, machinery exists on a world wide level or on a regional level both for the scientific and supervision co-operation against pollution. As regards the former at the world level, resolution 13, adopted by the International Conference of 1962 Organized by the IMCO on the prevention of pollution of sea water by hydrocarbons. This resolution decided that the contracting governments must furnish IMCO with the information relating to the research they undertake, in order to determine the means for avoiding pollution by hydrocarbons. At the regional level, for example Western Europe Group COST, Article 43 of this group provides that within the framework of European technological and scientific collaboration, it is envisaged to have a system of supervision in the North Sea and perhaps in the Mediterranean. 229

As regards the supervision mechanism, at the world wide level there exists the Intergovernmental Oceanographic Commission (IOC), under the auspices of UNESCO. The Commission has undertaken an overall program and the establishing network of continuous supervision of the ocean, in particular as regards pollution. Other groups for a world wide supervision against pollution

23 Brown, supra note 5, at 163.
24 Du Pontavice, supra note, at 137.
are established such as the group composed by the FAO during the Technical Conference on Pollution which was devoted exclusively to organizing a worldwide system of supervision, and the working group on the global monitoring of the environment created during the Stockholm Conference of 1972 on the human environment. At the regional level we can mention the agreement between Britain and France as regards the risks of navigation in the channel.

b) Enforcement With Respect to Pollution:

Indeed accidents which cause pollution may occur within the land territory causing pollution to the territorial sea, the territorial sea and causing pollution in the territorial sea of the same state or another state or in the high seas, the high seas and causing pollution to the near state or another state or in the high seas, the Area or from or through the atmosphere. 231

States are authorized by the Law of the Sea Convention 1982 to enforce their laws and regulations relating to the prevention, reduction and control of pollution of the marine environment coming from land-based sources arising from or in connection with sea-bed activities, and from or through the atmosphere. If the pollution comes from the activities in the Area the enforcement is governed by the Authority.

Enforcement of laws and regulations may be by flag state, coastal state, port state or by International organization. Firstly enforcement by flag state, although there is an international agreement over pollution as a global problem, the competence to enact and enforce laws and regulations with respect to pollution remains a divisive issue between the developing and developed states. During the Law of the Sea Conference, the developed states particularly objected to "coastal states regulation" and insisted on

25 Id., at 139.
26 Articles 213 -214 -222 of the Law Of the Sea Convention, 1982
"flag state" jurisdiction and application of the international standards and regulations prescribed by the IMCO. The coastal state will be involved only where the flag state failed to take appropriate action. The advocates of strong coastal state regulation and enforcement of pollution measures, have argued that international standards are inadequate or nonexistent; even where they exist, the "flag state" approach has been responsible for noncompliance, and often the flag state liability vanishes when damages are occasioned. Coastal states therefore should not stand idly by; they should take action at the national level to protect and enhance environment.

The Law of the Sea Convention, 1982 prescribes the cases when flag and coastal state are authorized to exercise their enforcement jurisdiction. The flag state is authorized to enforce its laws and regulations in many circumstances. Firstly, with respect to pollution by dumping by vessels flying its flag or vessels or aircrafts of its registry, and secondly to ensure compliance of vessels flying their flag, or of their registry with their laws and the international standard related to pollution, and in the case of violation of their laws and standards, the flag state can provide for an investigation and institute proceedings in respect of the violation irrespective of where the violation occurred. It may request the assistance of other states and promptly inform the requesting state and the international organization of the action taken. The penalties applied to the vessel committed the violation must be adequate so to discourage violations.

Secondly enforcement by coastal state, by the reason that the coastal state is the directly injured party in the accidents of the pollution, if the pollution occurred along their coasts, in the territorial seas or neighboring high seas. Indeed it is necessary to have a right to take action to prevent, reduce or control pollution and to have a right to enforce its laws and regulations, not against the accidents of pollution only, but against any threat or imminent danger of pollution.

27 Articles 216.
28 Article 217(4).
According to the Law of the Sea Convention, 1982 the coastal state is authorized to enforce its laws and regulations related to pollution with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf, and when a vessel voluntarily within a part or at an off-shore terminal of a state, violates its laws and regulations relating to the pollution, when the violation occurred within the territorial sea, exclusive economic zone or if there is a clear ground for believing such violation occurs within the territorial sea or the exclusive economic zone. If the coastal state has a clear ground for believing that such violation is occurred or that there is threat of significant pollution it may inspect the subjected vessel and it may institute proceeding including detention of the vessel. 234

Thirdly enforcement by port state, when a vessel is voluntarily within a port or at an off-shore terminal of state, that state may undertake investigation and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that state in violation of applicable international rules and standards established through the competent international organization, or if the discharge occurred in the internal water, territorial sea or exclusive economic zone of another state with its request. 235

Fourthly enforcement by international organizations, if the pollution came from activities in the Area, the enforcement of the international rules and standards will be by the authorized organization, i.e. the International Authority of the Area. 236

29 Article 210.
30 Article 218.
31 Article 215.
Finally any state is authorized to enforce its laws and regulations relating to pollution with regard to acts of loading of wastes or other matters occurring within its territory or its off-shore terminate. 237

2. Marine Scientific research

Due to the development in the field of science every state is interested in the new scientific discoveries, therefore required to have minimal interference with the scientific research and co-operation with other states and international organizations. The scientific research is not free from the political consideration and it can be instrument to hostility ends. The status of the scientific research in the Geneva Conventions 1958 is not clear. Under the Continental Shelf Convention, the consent of the coastal is required in respect of any research concerning the continental shelf. The consent of the coastal state is not required in respect of the superjacent waters of the shelf, which are regarded as high seas. It has been argued that the freedom of scientific research is one of the other freedoms mentioned in the High Sea Convention. The Declaration of Principles 1970 stressed the international co-operation in the conduct of scientific research. With the extension of the territorial sea to 12 miles and the establishment of the new 200-mile exclusive economic zone, the area open to unrestricted scientific research was circumscribed. During the negotiations of the third United Nation Conference on the Law of the Sea, it has been argued that proposed convention had to balance the concerns of major research States, mostly developed countries, which saw any coastal-state limitation on research as a

32 Article 216(1) (c).
restriction of a traditional freedom that would not only adversely affect the advancement of science but also deny its potential benefits to all nations in fields such as weather forecasting and the study of effects of ocean currents and the natural forces at work on the ocean floor. And on the other side, many developing countries with less knowledge and technology had become extremely wary of the possibility of scientific expeditions being used as a cover for intelligence gathering or economic gain, particularly in relatively uncharted areas; scientific research was yielding knowledge of potential economic significance. The developing countries demanded "prior consent" of a coastal State to all scientific research on the continental shelf and within the exclusive economic zone. The developed countries offered to give coastal States "prior notification" of research projects to be carried out on the continental shelf and within the exclusive economic zone, and to share any data pertinent to offshore resources.

The final provisions of the Convention represent a concession on the part of developed States. In addition to the declaration that the scientific research is among those freedoms of the high seas provided in article 87 of the Convention, they provide that the Coastal State jurisdiction within its territorial sea remains absolute. Within the exclusive economic zone and in cases involving research on the continental shelf, the coastal State must give its prior consent. However, such consent for research for peaceful purposes is to be granted "in normal circumstances" and "shall not be delayed or denied unreasonably", except under certain specific circumstances identified in the Convention. In case the consent of the coastal State is requested and such State does not reply within six months of the date of the request, the coastal State is deemed to have implicitly given its consent. These last provisions were intended to circumvent the
long bureaucratic delays and frequent burdensome differences in coastal State regulations. The rules governing the scientific research in the law of the sea convention could be summarized under the following headings:

(i) **The Right to Conduct Marine Scientific Research:**

   Article 238 of the law of the sea convention, 1982 declares that: "All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention".

(ii) **Principles for Conducting Scientific Research:**

   There are four general principles which must be followed in conducting of any marine scientific research specified in article 240 of the Law of the Sea Convention, 1982:

   (a) marine scientific research shall be conducted exclusively for peaceful purposes;

   (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;

   (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;

   (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention.
including those for the protection and preservation of the marine environment.

(iii) **International Co-operation in Conducting Marine Scientific Research:**

States and competent international organizations shall, on the basis of mutual benefit, promote international co-operation in marine scientific research for peaceful purposes. This co-operation shall be in the following spheres:

a) Providing, as appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and to the marine environment.

b) Creating favorable conditions, through the conclusion of bilateral and multilateral agreements, for the conduct of marine scientific research in the marine environment and integrating the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

c) States and competent international organizations shall establish general criteria and guidelines in order to assist states in ascertaining the nature and implications of marine scientific research.

(iv) **Publication of Information and Knowledge:**
States and competent international organizations shall make available by publication and dissemination through appropriate channels information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research.

For this purpose, States, both individually and in co-operation with other States and with competent international organizations, shall actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as the strengthening of the autonomous marine scientific research capabilities of developing States through, inter alia, programmes to provide adequate education and training of their technical and scientific personnel.

(v) **Marine Scientific Research in the Territorial Sea:**

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State. This rules apply to scientific research during transit passage through international straight and through archipelagic sea lanes.

(vi) **Marine Scientific Research in the Exclusive Economic Zone and the Continental Shelf:**

Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf. Marine scientific research in the
exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State. And the coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone 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. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably. The coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project: is of direct significance for the exploration and exploitation of natural resources, whether living or non-living; or involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment; or involves the construction, operation or use of artificial islands, installations and structures.

States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:

Firstly the nature and objectives of the project; secondly the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment; thirdly the precise geographical areas in which the project is to be conducted; fourthly the expected date of first appearance and final departure of the research vessels, or deployment of the
equipment and its removal, as appropriate; fifthly the name of the sponsoring institution, its director, and the person in charge of the project; and sixthly the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;

b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;

c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;

d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;

e) ensure that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

f) inform the coastal State immediately of any major change in the research program;

g) Unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.
The coastal state may be assumed to have given its implied consent and the States or competent international organizations may proceed with a marine scientific research project six months after the date upon which the information required was provided to the coastal State unless within four months of the receipt of the communication containing such information the coastal State has informed the State or organization conducting the research that: it has withheld its consent; or the information given by that State or competent international organization regarding the nature or objectives of the project does not conform to the manifestly evident facts; or it requires supplementary information relevant to conditions and the information; or outstanding obligations exist with respect to a previous marine scientific research project carried out by that State or organization.

Moreover the coastal State has 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: the research activities are not being conducted in accordance with the information communicated upon which the consent of the coastal State was based; or the State or competent international organization conducting the research activities fails to comply with the provisions concerning the rights of the coastal State with respect to the marine scientific research project. The coastal state is under a duty to facilitate marine scientific research in its exclusive economic zone or on its continental shelf and to assist research vessels.

(vii) Marine Scientific Research in the Area:
All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research in the Area.

**(viii) Marine scientific Research Installations:**

All states in exercising their rights for conducting marine scientific research have the right to construct scientific research installations. The constructing and use of any type of scientific research installations or equipment in any area of the marine environment shall be subject to the same conditions as are prescribed in the Law of the Sea Convention for the conduct of marine scientific research in any such area.

They have the right also to create safety zones of a reasonable breadth not exceeding a distance of 500 meters around marine scientific research installations. All States shall ensure that such safety zones are respected by their vessels.

As regards the legal status of the marine scientific research installations these installations or equipment do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

States in constructing Marine Scientific Installations are bound by the following duties
Firstly: The deployment and use of any type of scientific research installations or equipment shall not constitute an obstacle to established international shipping routes.

Secondly: the foresaid installations or equipment shall bear identification markings indicating the State of registry or the international organization to which they belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account rules and standards established by competent international organizations.

(ix) **Responsibility and Liability for Damages Resulting from Conducting of Marine Scientific Research**

States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this Convention. And shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures. Moreover they shall be responsible and liable for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

2. **Conclusion:**
In addition the Law of the Sea Convention 1982 reviewed and revised the existing law of the sea. It discuss in detail new matters which were not discussed before under the previous conventions or may be discussed from a narrow angle, such as the problem of pollution and the scientific research.

As regards the problem of pollution and the preservation and protection of the marine environment it is true to say that the international concern happened recently due to the increase in the marine pollution hazards. It received little attention in the Geneva Conventions. During the Third United Nations Conference on the Law of the Sea the problem of pollution was put among the subjects of the Agenda. Part XII of the Law of the Sea Convention 1982 discusses this problem in detail.

As regards the marine scientific research it is discussed for the first time under the Law of the Sea Convention 1982 in Part XIII. The scientific research in the territorial sea according to the rules of the convention is absolutely under the control of the coastal state and conditional on its consent if it is conducted in the exclusive economic zone or the continental shelf. In the high seas all states whether coastal or land-locked states enjoy the freedom of the scientific research, while in the Area scientific research is conducted by the Authority or under its consent.

Chapter Five

Waters under the Sudanese National Jurisdiction

The Sudanese waters are confined to the Nile and its tributaries and the coastline along the Red Sea. Two matters will be considered in this connection. The first is the legal classification of the Sudanese waters, secondly the geographical description of the Sudanese waters. The discussion
will be confined to the legal classification under the Sudanese legislations and its evaluation in the light of international law will be dealt with in chapter six.

1- The Legal Classification of the Sudanese Waters:

In considering the legal classification of the Sudanese waters special importance must be given to the provisions of the Sudan Territorial Waters and Continental Shelf Act, 1970 since it is the only Sudanese national law focusing on the maritime areas over which the Sudan exercises its jurisdiction and the rights and duties over these areas. In addition the other maritime laws deal with the maritime issues either from commercial or administrative point of view.

The Territorial Waters and Continental Shelf Act, 1970 covers five maritime zones; internal waters, territorial waters, the contiguous zone, the continental shelf and the high seas.

(i) Internal Waters:

The phrase "internal waters" is defined in section 4 of the Territorial Waters and Continental Shelf Act, 1970 as the internal waters within the boundaries of the Sudan and include the ports, wharfs and anchorages; waters of bay the coasts of which belong to the Sudan; waters on the landward side of any shoal not more than twelve nautical miles from the main land; or from a Sudanese island; waters between the mainland and any Sudanese island not more than twelve nautical miles from the main land; and waters between the Sudanese island not further apart than twelve nautical miles.
(ii) **Territorial Sea:**

The Sudanese territorial waters extends according to section 5 of the Territorial Waters and Continental Shelf Act, 1970 seaward to a distance of twelve nautical miles and is measured from the straight base line as marked from the large scale maps recognized by the Sudan. Section 6 clarifies the methods of measuring the Sudanese territorial sea. Several possible base-lines are specified in section 6. First, where the coast of the mainland or an island is wholly exposed to the open sea, the base-line is the lowest low water line as marked on large scale charts officially recognized by the Sudan. Secondly, the base-line may be a line drawn from headland to headland across the mouth of a bay and section 2 (b) defines a bay as any extension, inclination, inlet, lagoon, bend, gulf or other arm of the sea. Thirdly, where a shoal is situated not more than twelve nautical miles from the mainland or from a Sudanese island, the lowest low water line is the base-line. As defined in section 2 (g) of the Act a shoal is an area covered by shallow water, a part of which is not submerged at the lowest low tide. Fourthly, where a port or harbour faces the open sea the base-line is a line drawn along the seaward side of the outermost works of the port or harbour. Fifthly, where an island is not more than twelve nautical miles from the mainland, the base-line consists of appropriate lines drawn from the main land and along the outer shores of the islands. Sixthly, where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to mainland is not more than twelve nautical miles from the mainland, and the base-line consists of appropriate lines drawn from the mainland and along
outer shores of all islands of the group if the island form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain. Finally where there is an island group which may be connected by lines not more than twelve nautical miles from the mainland, the base line consists of lines drawn along the outer shores of all the islands of the group of islands which form a chain, or along the outer shores of the outermost islands of the group of islands if the islands do not form a chain.\textsuperscript{238}

If the delimitation of the territorial sea in accordance with the above method results in any portion of the high seas being wholly surrounded by territorial waters and such a portion does not extend more than twelve nautical miles in any direction, such portion shall according to section 6(2) form part of the territorial sea.

If the Sudanese internal waters or the territorial sea, according to section 6(3) of the Act overlap the internal waters or territorial sea of another state, the delimitation of the internal waters or the territorial sea as the case may be, shall be determined by an agreement between the Sudan and the other state, in accordance with principles of the international law.

The rights of the Sudan over its territorial sea are provided for in section 7, that is, the right to take the necessary action to protect itself against any act prejudicial to its security, safety or interests, the right to prevent ships proceeding to internal waters from committing any breach of the conditions to which admission of ships to those waters is subject, and the right to prohibit, after due publication, in specified areas of the territorial sea the passage of the foreign ships if such prohibition is necessary for its security.

The right of the Sudan over its territorial sea is subject according to section 8 of the act to the right of innocent passage of foreign ships. Passage means, according to section 2(h) navigation through the territorial waters; while the innocent passage means the passage of the ship through the territorial sea so long as it is not prejudicial to the peace, good order and security of the Sudan and so long as it is not inconsistent with rules of international law and it includes stopping and anchoring in the territorial sea but only in so far as the same are incidental to ordinary navigation or rendered necessary by force majeure or by distress. Foreign ships passing through the territorial sea must comply with the Sudanese laws and agreements and in particular those relating to carriage and navigation. The passage of foreign military ships in the Sudanese territorial sea is conditional according to section 8(3) upon the prior permission of the Sudanese government, and a submarine must navigate on the surface and must show the flag of the state to which it belongs.

(iii) **Contiguous Zone:**

Section 9 of the Act speaks about an area of the high seas contiguous to its territorial waters over which the government of the Sudan can exercise the necessary control up to a distance of six nautical miles measured from the limits of the Sudanese territorial waters to prevent and punish infringement of its customs, taxation, immigration, sanitary or security laws within its territory or territorial waters.

(iv) **The Sudanese Continental Shelf:**
In the first place section 2(k) of the Sudan Territorial Waters and Continental Shelf Act, 1970 defines the Sudanese continental shelf as the sea bed and subsoil of the submarine areas outside the territorial Sudanese waters to the depth of two hundred meters or beyond that limit to where the depth admits of the exploitation of the natural resources of the said areas. In addition Part III of the Act deals with the continental shelf. Section 10 declares the Sudanese sovereignty rights over its continental shelf for the purpose of exploring and exploiting its natural resources, which consists of, according to section 13, the mineral and other non-living recourses together with the living organism belonging to sedentary species, that is to say, organism which, at the harvestable stage, either are immobile on or under the sea bed or are unable to move except in constant physical contact with the sea-bed or the subsoil. No one shall explore or exploit or make a claim to the continental shelf, without the express approval of the Sudan. These rights and their exercise shall not depend on actual or symbolic occupation or any declaration.

Section 11 of the Act confers on the Sudanese government the right to construct and maintain in the continental shelf installation and other devices necessary for the exploration of the continental shelf and the exploitation of its natural resources, the right to establish safety zones around these installations and other devices and the power to take the necessary measures for their protection. These safety zones may extend to a distance of 500 meters around the installation and other devices measured from each point of their outer edge.

Finally section 12 of the Act declares that the rights in the continental shelf do not affect the legal status of the superjacent waters as high seas or the air space above those waters.
(V) **High Seas:**

Section 2(a) of the Sudan Territorial Waters and Continental Shelf Act, 1970 defines the high seas as all parts of the sea that are not included in the territorial or internal waters of the Sudan.

(i) **Scientific Research:**

Scientific research in the Red Sea started in the eighteenth century when the King Fredrik the fifth of Denmark launched the first modern scientific expedition in the region. Five of the six members of this expedition lost their lives, among them Peter Forsskal, who recorded the first scientific account of the Red Sea fauna. Many species of the Red Sea fish, shells, and corals still bear the name ‘forsskali’ in his honor. Other expeditions were sent to the area up to the end of the 19th century.239

In recent years several research institutions have been established by the Sudan, notably in Port Sudan and Suakin. The initiative in formulating a cooperation regional program for "Environmental Studies of the Red Sea" was taken by the Arab League Educational, Cultural and Scientific Organization (ALECSO), which asked for scientific advice from UNESCO’s Division of Marine Studies. As a result a workshop on a "Marine Scientific Program for the Red Sea" was held in 1974 in Bermerhaven, which formulated several recommendations. Thereafter in December 1974 a conference was held in Jeddah under the auspices of ALECSO and the United Nations Environment Program. Another conference was held in 1976 to which all the littoral states

were invited except Israel a boycotted country and Djibouti, which was still under the French rule at that time. The conference adopted a "Program for Environmental Studies on the Red Sea and the Gulf of Aden". Finally the need for co-operation in the matter of marine scientific research was further emphasized by the Meeting of Legal and Environmental Experts, Jeddah, 10-14 January 1981, in coastal areas in the Red Sea and Gulf of Aden. No national law or regulation dealt with the matter of marine scientific research in the Sudanese waters including the Territorial Waters and Continental Shelf Act 1970.  

(ii) Problem of Pollution:

The Red Sea is relatively a clean area because industrial waste and domestic sewage are still limited due to lack of intensive urbanization along the coast. The great danger of pollution of this sea came from the oil tankers passing through this sea. Some of the physical features of the Red Sea help to overcome the pollution problem, for winds and current flush the sea, push the oil southward to the Indian Ocean. In addition, the high evaporation rate of about 40 millimeter per a day helps a speedy disintegration of the floating oils.

The Red Sea is of course subject to the general convention against pollution as far as they are binding upon the flag states and coastal states. Moreover, due to the considerable danger of pollution in the Red Sea, the area has been declared as "Special Area" for the purpose of preventing pollution by oil as well as pollution by garbage from ships in accordance with the 1973 International Convention for the Prevention of Pollution from Ships. Before
this convention entered into force the littoral states began to act on a regional basis in order to protect the environment of the red Sea. The Jeddah conferences of 1974 and 1976 had dealt not only with the scientific research but also with the problem of pollution. It was agreed to set up a program for pollution research and monitoring, and a draft convention on the protection of the Red Sea and Gulf of Aden. The convention was signed in February 1982 under the title Regional Convention for the Conservation of the Red Sea and the Gulf of Aden Environment between Sudan, Jordan, Saudi Arabia, Somalia, Yemen, and the Palestinian Liberation Organization to protect environment of Red Sea and Gulf of Aden. Egypt is conspicuously missing from the list probably because of its peace agreement with Israel.

In the field of protection of the marine environment there is no any Sudanese national law regulating the matter directly, although there are numerous dangers to the Sudanese waters from the entry of the oil tankers to its waters and ports; or the discharge of oil during the operation of ships; or when tank washings are discharged into the sea, or involuntarily, for example, as a result of the collision of tankers.\textsuperscript{241} However if we throw light over these laws, one can find that, in the first place the Environmental Health Act of 1975 \textsuperscript{242} has dealt generally with waters pollution in Part III. Section 8 of this Act prevents any throwing or attempt to do so in a river course or sea any substance in a manner likely to be harmful to human or animal health. Section 12 of the same Act makes the disposal of sewage waters and industrial refuse conditional upon the consent of the health authorities.

\textsuperscript{242} Laws of the Sudan Vol. 9 (5th ed.), at 273-84.
Secondly, the Marine Fisheries Act 1975 (amended in 1983) section 9 necessitates the protection of the marine environment and the natural resources during planning or administration of any proposed project related to navigation, mining, petroleum exploration or exploitation and discharge of sewage. Finally, the Criminal Act of 1991 in section 71(2) punishes any act of pollution in the Sudanese territorial sea or the contiguous zone.

2. The Geographical Description of the Sudanese Waters:

(i) Rivers and Lakes:

The Nile River is the longest river in the world, stretching for 4,187 miles. The Nile flows from south to north, flowing through Egypt and Sudan, which has its sources in Ethiopia, Uganda, Kenya, Tanzania, and Burundi. Origin of the river is Africa, and the mouth in the Mediterranean. The basin countries are Sudan, Ethiopia, Uganda, Kenya, Tanzania, Congo, Burundi and Egypt. The longest stretch of the Nile comes with the start of Kyaka River in Burundi, close to large Lake Tanganyika. This passage goes through Lake Victoria, then Victoria Nile, Lake Albert, Albert Nile, which across the Sudan border is called Mountain Nile. Mountain Nile joins other rivers of Sudan such as Arab River, Jur River, Gilo River and Baro River to form the White Nile. The Blue Nile joins the White Nile, near Khartoum in Sudan. The last notable contributor is the Atbara River, which joins the main course of the Nile 300 km north of Khartoum. Atbara River runs dry at times of the year. The largest part of the river course runs through the Sudanese territory.\textsuperscript{243}

\textsuperscript{243} http://www.statcounter.com/.
Lake Nasser is a man-made lake created by the construction of the Aswan High Dam opened in 1971. The only lake in the Sudan in the north distributed between the Sudan and Egypt, Lake Nasser stretches over a distance of 312 miles. See Map 1.

Map 1

The Nile

(ii) Sudanese Waters in the Red Sea:

244 Id.
In order to understand the status of Sudanese waters in the Red Sea it is necessary to examine briefly the position and characteristic of the Red Sea since the Sudanese coastline constitutes a part of it. Red Sea is of a unique position from the point of view of its nature as well as its history. It is one of the first large bodies of water mentioned in recorded history, and today it is a major route, serving on the one hand as an outlet to the ocean for its littoral states and on the other hand links the Mediterranean to the Indian Ocean thus serving as an important water way for the international traffic. In the twentieth century it reached the maximum of its importance due to the discovery of the oil in the Arab Gulf states, which necessitates oil tankers passage through the Red Sea and the Suez Canal. It is regarded as the shortest line which links the east with the west.

The Red Sea is an inlet of the Indian Ocean between Africa and Asia. The connection to the ocean is in the south through the Bab el Mandeb and the Gulf of Aden. In the north are the Sinai Peninsula, the Gulf of Aqaba or the Gulf of Eilat and the Gulf of Suez (leading to the Suez Canal). The Red Sea Length is 1900 km. Its shore to shore width increases from north to south, and the maximum width reaching about 360 km (about 197 nautical miles) at Massawa (Eritrea). Minimum width is 26 – 29 km at Strait Bab al Mandeb (Yemen). Average depth is about 490 meters and the greatest depth so far recorded are over 2500 meters between 22° and 19°N, northeast of Port Sudan. The Red Sea is remarkable for its great depth in proportion to its breadth; its trough has apparently been formed by complex phases of land movement, estimated as a change from .59-.62 inches a year. The Red Sea extends between 39° N in its northern edge and 12° N in its extreme south edge. Four African states are bordering the west coast of the Red Sea Egypt, Sudan, Eritrea and Djibouti and
four Asian countries which is El Yemen, Saudi Arabia, Jordan and Palestine. The length of the Red Sea coast is 3095 miles distributed between the bordering states according to schedule 1. See Map 2.

### Schedule 1

<table>
<thead>
<tr>
<th>state</th>
<th>Length of its Red Sea coasts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saudi Arabia</td>
<td>1125 miles</td>
</tr>
<tr>
<td>Egypt</td>
<td>870 miles</td>
</tr>
<tr>
<td>Eritrea</td>
<td>425 miles</td>
</tr>
<tr>
<td>Sudan</td>
<td>387 miles</td>
</tr>
<tr>
<td>El Yemen</td>
<td>275 miles</td>
</tr>
<tr>
<td>Philistine</td>
<td>7 miles</td>
</tr>
<tr>
<td>Jordon</td>
<td>5 miles</td>
</tr>
<tr>
<td>Djibouti</td>
<td>1 miles</td>
</tr>
</tbody>
</table>

### Map 2

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245 M. A. Ibrahieam, _Al- Ahemya Al- Stratigiyah Le Al- Bahr Al- Ahmr Atharaha ala Al- Etigah Al- Shargy Le Gamehorate Al- Sudan Al- Democratia_, 3(1982).


The Sudan is bordering the Red Sea from the western direction; the importance of this sea to the Sudan comes from the following:

Firstly, the Red Sea is the unique outlet of the Sudan to the open ocean.

Secondly, the Red Sea is greater than the world average salinity, approximately 4 percent. This is due to several factors namely; high rate of evaporation and very little precipitation; a lack of major source of fresh water such as rivers or streams draining into the sea, except Khore Baraka in the Sudan; limited connection with the Indian Ocean (and its lower water salinity); and the scarcity of rainfall to the Red Sea. There for it is an important source of the salt in the Sudan. ²⁴⁸
Thirdly Red Sea has a beautiful nature. One of the most wonderful features of the Red Sea, is its beautiful coral reefs and colored fish. Corals, or more precisely, their skeletons, are the main components of which reefs are built. In addition to short tide ranges and weak currents, tidal current temporal and spatial currents variation is low. Thus the surface of the sea is very quite and the reefs and colored fish in the sea water could be seen. The Red Sea coast of Sudan contains some of the best and most unspoiled coral reefs in the world. In fact, presently, it is Sudan’s biggest attraction to tourists, especially sea lovers, and has gained an excellent reputation throughout the world. Thus this area consists of a suitable tourism area to which the Sudanese government paid its attention in the last years. There are known tourism areas such as Dungonab Bay, Sanganeb Atoll Marine National Parks, Mukkawar Island Marine Protected Area, Abington, Angarosh, Arows and Shaab Rumi.

Fourthly, Red Sea holds one of the most spectacular coastal and marine environments of the world and has a rich biodiversity. The sea is known for its biological characteristics including its rich fauna and flora, particularly coral reefs and numerous fish species has a number of unique marine habitats, including sea-grass beds, salt-pans, mangroves, coral reefs and salt marshes. In addition it is rich with fish stocks and other living resources. There are no less than 150 species of fishes in the Sudanese territorial waters.²⁴⁹

Fifthly, the Red Sea is rich with mineral resources such as quartz, mica, gold potassium and the oil and natural gas.²⁵⁰

Finally, the Red Sea has a strategic situation in the center of the world. This leads the develop states to try to extended its control over it.

²⁴⁹ Reed, Red Sea Fisheries of Sudan, 2 (1964).
²⁵⁰ http://en.wikipedia.org/wiki/Red_Sea
The Sudanese Coastline extending for about 853 km (387 miles),\textsuperscript{251} between 22° 52 N at Beer Shalatain in the north and 18° N at Ras Kassar in the South. The farthest point of the Sudanese coast at Ras Kassar at (18° N: 38° 19 13 E). It lies between the Egyptian and Eritrean coasts. The maximum width of the Red Sea between Sudan and Saudi Arabia reach about 306 km or about 165 nautical miles at the area between Gonfuza in Saudi Arabia and the area south of Port Sudan, while its minimum width at the area between Jeddah in the Arabia coast and Ras Shagra in the Sudanese coast. The Sudanese coast is at once opposite to Saudi Arabia and adjacent to Egypt and Eritrea as can be seen from the attached Map 3.\textsuperscript{252}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{map3.png}
\caption{Map 3}
\end{figure}

\textsuperscript{251} Egypt asserts its claim to the "Hala'ib Triangle," a barren area of 20,580 sq km under partial Sudanese administration that is defined by an administrative boundary which supersedes the treaty boundary of 1899. Thus according to the Egyptian claim the Sudanese coast line will diminish to 832,420 km (360nm).

\textsuperscript{252} \url{http://www.sudanair.com/tourism.html}, Sudan Navy, Port Sudan.
The Sudanese Coast

a) **Ports, wharfs and anchorage:**

There are four Sudanese ports, two of which are mentioned in section 30 of the Sea Ports Corporation Act 253 namely the main port of the Sudan, Port Sudan, and Suakin, in addition to two other newly established minor ports, namely, Osafe and Bashaer ports. All of these ports are small bays prepared in such a way so as to receive ships. The wharfs and anchorages are tongs of the sea penetration in the land; usually the state enlarged its width and depth in order to receive small ships and fishing boats. In other words they are small ports. Actually there are great numbers of wharfs and anchorages in the Sudanese coast due to rainwater flow from the Red Sea Chain Hells to the sea. The most important are Halaib, Abu Assal and Arows wharfs. Those wharfs are different from roadstead which are provided for in article 12 of the Law of the Sea Convention, 1982, which are artificial structures used for loading or unloading and anchorages of ships, usually situated in the open sea and maybe situated wholly or partially outside the internal waters or the territorial sea, though the Arabic terminologies of the both Sudanese Act and the convention are identical.254

b) **Bays:**

253 Laws of the Sudan Vol. 7, 5-33(fifth ed. 19).
254 Ruth La Pidoth, supra note 2, at 131.
There are three bays in the Sudanese coast which satisfy the international conditions required in the bay, namely Donganob Bay (the largest Sudanese bay), the width of its entrance is about 6 nautical mile, Aquiqu Bay the breadth of its entrance about 11.40 nautical mile and Nawarat Bay which is known as Khore Nawarat, the breadth of its entrance, which is closed totally by a group of islands and rocks, is approximately about 4.20 nautical miles.  

**c) Reefs:**

In the Red Sea there is a large area of vigorously growing reefs extending between 30° N to 30° S, with its three basic kinds of coral reefs fringing reefs, barrier reefs and atolls. Fringing reefs are coral reefs that grow in shallow waters and border the coast closely or are separated from it by a narrow stretch of water. Barrier reefs are reefs that are separated from land by a lagoon. These reefs grow parallel to the coast and are large and continuous. The third type of coral reefs is atolls. Atolls are annular reefs that develop at or near the surface of the sea when islands that are surrounded by reefs subside. Atolls separate a central lagoon and are circular or sub-circular. As regards the Sudanese coasts, the fringing reefs develop along the shoreline and grows towards the sea for sometimes three kilometers or for few meters, there are groups of reefs adjacent to the coast, such as Winget Reefs, Twarteet Reefs which are situated adjacent to the entrance of Port Sudan, at a distance of six and half nautical miles. For this reason it is used as an anchorage for ships entering Port Sudan when the marine traffic is heavy. El Subok Reefs extend about 17 miles. These reefs have narrow channels through them, and their

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255 Id., at 133.
south part above the sea level, while the north one is under the sea level. Furthermore other groups of reefs exist along the Sudanese shores.\textsuperscript{256}

\textbf{d) Islands:}

The Red Sea is known by its large number of islands, about 380 islands.\textsuperscript{257} The Sudanese coast is generally continuous and there are off-shore islands such as Mocquar Island, the largest Sudanese island, at a distance of four and half nautical miles from the Sudanese coast. Senganeep, a tourism island, is of a distance of eight nautical miles from the coast. Tala Tala Kabeer, which consists of a three rocks, it is of a distance of 42 nautical miles from the coast. Tala Tala Sageer is of a distance of 29 nautical miles from the coast. One of the most important phenomena in the Sudanese coast is Suakin Group which is known as Suakin Archipelago which consists of a group of islands, rocks and reefs near Suakin Port. Its length is 29 miles. Its internal edge does not exceed 10 nautical miles from the coast. This group has disappeared totally from the coast and is submerged into the sea. It is a serious danger to the navigation.\textsuperscript{258} See Map 4 below.\textsuperscript{259}

\textsuperscript{256} Id., at 139.\textsuperscript{257}\textsuperscript{ }Abdel Karim S. Ali & Babiker P. Mohammed, \textit{The Ecology of the Red Sea Coast in the Sudan Environment and Vegetation}, 4 (1991).\textsuperscript{258}\textsuperscript{ }Ruth La Pidoth, \textit{supra} note 2, at 138 – 39.\textsuperscript{259}\textsuperscript{ }Sudan Navy, Port Sudan.
Map (4) Geographical features of the Sudanese coast
(III) **The Sudanese Territorial Waters and its Contiguous Zone:**

The general rule which is followed in the measurement of the Sudanese territorial sea and consequently the contiguous zone, the exclusive economic zone and the continental shelf is that it is measured from the last dry spot toward the sea whether it is an island or a rock or a reef, and the system which is used is the straight baseline system starting from Beer Shalatain in the north to Ras Kassar in the south crossing through twenty three points.

The nearest point in the baseline exists two nautical miles from the sea and the farthest point exists at a distance of 48 nautical miles from the Sudanese coasts. The waters closed by this line are considered as internal water.

As regards the outer edge of the territorial sea it is a line every point of which is at a distance of 12 nautical miles from the nearest point of the base line from which the territorial sea is measured. Indeed the contiguous zone is measured from the outer edge line of the territorial sea and not from the base line according to the provisions of the Sudan Territorial Waters and Continental Shelf Act of 1970.\(^{260}\)

The breadth of the contiguous zone is six miles measured from the end of the territorial sea. In other words it extends to 18 nautical miles from the Sudanese coast. See (Map 5) and Schedule 2.\(^{261}\)

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\(^{260}\) Section 9 of the Sudan Territorial Waters and Continental Shelf Act of 1970.

\(^{261}\) Sudan Navy, Port Sudan.
## Measurement of the Sudanese Territorial Sea and its Contiguous Zone

**Schedule (2)**

<table>
<thead>
<tr>
<th>Ser. number</th>
<th>Name</th>
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<td>3</td>
<td>Rowel Reefs</td>
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<tr>
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<td>El Deeba Islands</td>
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<td>Drses</td>
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<td>Sanganeb Island</td>
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<td>Meyom</td>
<td>18° 39 45</td>
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The Sudanese Exclusive Economic Zone:

Sudan, the largest African state, has only 27 thousand square miles as an exclusive economic zone. Due to the narrowness of the Red Sea, each Sudan and Saudi Arabia cannot determine their exclusive economic zones by 200 nautical miles. Thus, they must determine their exclusive economic zones in accordance with the rules of international law by agreement.

The Sudanese Continental Shelf:

The Red Sea continental shelf is generally a narrow and break shelf, marked by coral reefs. The continental slope has an irregular profile (series of steps down to 500 m). And its average depth is 490 m, maximum depth is 2850 m, and approximately 40% of the Red Sea is quite shallow (less than 100 m), whereas about 25% of the Red Sea is less than 50 m deep. About 15% of the Red Sea is over 1000 m depth that forms the deep axial trough. As a matter of fact, the geographical description of the Sudanese shelf is quite similar to that of the Red Sea since it is a portion of it.

Exploration activity began at the end of the 1950s in the coastal waters of the Red Sea and Sudanese continental shelf. Internal political unrest caused many companies to withdraw from Sudan, and the deterioration in security conditions on the oil fields caused the oil companies to suspend all operations in 1984. Since the early 1990s, however, foreign oil companies began to return.

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262 Rembe, at 144.
263 http://en.wikipedia.org/wiki/Red_Sea
In November 1997 the United States imposed sanctions against Sudan on the basis that profits from oil were being used to fuel the civil war. The pressure of sanctions has kept American firms out of Sudan, although there are companies still operating in the Sudan.264

3. Conclusion:

The waters under the Sudanese national jurisdiction legally classified by the Sudan Territorial Waters and Continental Shelf Act, 1970 into four distinct zones namely the internal waters, the territorial sea, the contiguous zone and the continental shelf. The internal waters according to the provisions of this Act include the ports, wharfs and anchorages; waters of bay the coasts of which belong to the Sudan; waters on the landward side of any shoal not more than twelve nautical miles from the main land; or from a Sudanese island; waters between the mainland and any Sudanese island not more than twelve nautical miles from the main land; and waters between the Sudanese island not further apart than twelve nautical miles.

The territorial sea extends to twelve nautical miles from a straight baseline as marked in the large scale maps recognized by the Sudan to a distance of twelve nautical miles. The Sudanese contiguous zone extends to a distance of six nautical miles measured from the limits of the territorial sea. The Sudan exercises sovereignty rights over its continental shelf for the purpose of exploring and exploiting its natural recourses to the depth of two hundred meters or beyond that limit to where the depth admits the exploitation of the natural resources. All parts of the sea not include in the internal waters or the territorial sea are regarded as high seas according to section 2(a) of the Act. Nothing is said in the Sudan Territorial Waters and Continental Shelf Act, 1970 about the marine pollution or the marine scientific research in the Sudanese waters. The marine pollution is mentioned in some other national Sudanese law such as the Environmental Health Act of 1975, whereas the marine

264 http://www.nowmco.com/otheroperations.html/
scientific research is never mentioned in any national law or regulation. These two matters need to be regulated by national law in detail.
Chapter Six

Evaluation of the Sudan Territorial Waters and Continental Shelf Act, 1970 and Recommendations for Amendment

1. Evaluation of the Act:

(i) General Features of the Act:

In reality the Sudan Territorial Waters and Continental Shelf Act, 1970 is the sole Act which deals directly with the different Sudanese waters. It is very important here to mention the active participation of the Sudan in the Third United Nations Conference on the Law of the Sea (1970-1982), through its Permanent Mission in all sessions of the conference. Moreover the Sudan signed the Convention adopted by this conference on 10 December, 1982 and ratified it in 20 December, 1984. It actually became a party to the convention on 23 January 1985, after the submission of its ratification document to the Secretary General of the United Nation. Upon the entry of the Convention into force on 16 November 1994, after the submission of the sixtieth ratification, the Sudan became legally bound by its provisions. Therefore it should not proceed in a manner contrary to its provisions, and ought to amend any national laws or regulations inconsistent with this Convention. Amongst those laws which must be amended is the Sudan Territorial Waters and Continental Shelf Act, 1970, on one hand so as to be in accordance with the rules of the Convention.
and on the other hand to incorporate the new areas of waters created by this Convention and the new developments in the rules of the international law.

(ii) **Whether "Sudan Territorial Waters and Continental Shelf Act, 1970" is Appropriate Title:**

It is true to say that the title the "Sudan Territorial Waters and Continental Shelf Act, 1970" is not comprehensive title which indicates all classes of waters subject to the national jurisdiction under the rules of the international law, but refers only to two zones of the sea over which the Sudan exercises a sort of jurisdiction, namely the territorial waters and the continental shelf. Therefore this title must be amended so as to include all the areas of waters whether subject to the national jurisdiction or adjacent to those waters.

(iii) **Sovereignty of the Act over Other National Laws:**

Section 3 of the Act, provides that:

"The provision of this Act shall prevail notwithstanding any provision inconsistent therewith in any other law".

From the provision of this section we understand that, this law prevails over all other national laws and regulations. Thus if there is a contradiction between this Act and any national law or regulation the former must prevail over the latter. This section seems to be logical, because as we have mentioned before the Sudan Territorial Waters and Continental Shelf Act, 1970 is the only specialized Act focusing on the maritime areas over which the
Sudan exercises its jurisdiction and determining the rights and duties over these areas.

(iv) **Shortcomings in the Act:**

At this part of the research we will try to analysis the provisions of the Sudan Territorial Waters and Continental Shelf Act, 1970 in order to explain whether it is in conformity with the general rules of the international conventions especially the Law of the Sea Convention, 1982.

a) **Sections Related to Internal Waters:**

Section 4 of Act enumerates several types of the Sudanese internal waters without giving any definition to the expression "internal waters" or determining its legal status or even determining the rights and duties of the Sudan over those waters. In fact from the seven classes of the internal waters acknowledged by the international law three classes only are mentioned in this section, namely; waters of ports; waters of a bay the coast of which belongs to the Sudan waters on the landward side of any shoal not more than twelve nautical miles from the mainland or from a Sudanese island; waters between the mainland and any Sudanese island not more than twelve nautical miles from the mainland; waters between the Sudanese islands not further apart than twelve nautical miles.

Although in the territory of the Sudan runs the greater part of the longest river in the world *i.e.* the Nile, this section does not mention the waters of rivers or lakes as a part of the internal waters, or the waters enclosed by the baselines from which the territorial sea is measured, or the archipelagic waters.
despite the fact that in the practical measurement of the territorial sea Suakin Archipelago is taken into account.

In this connection an observation with some value should be made to the definitions of both bay in section 2(b) of the Act and island in paragraph (c) of the same section. The former is defined as "any extension, inclination, inlet, lagoon, bend, gulf or other arm of the sea". In the Territorial Sea and Contiguous Zone Geneva Convention, 1958 and the Law of The Sea Convention, 1982 is defined as "a well marked indentation whose penetration is in such proportion to the width of its mouth as to contain land locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of that indentation". The latter was defined in the act "as a part of the land, reef, rock, barrier or permanent artificial structure not submerged at lowest low tides". But it is defined in the Territorial Sea and Contiguous Zone Geneva Convention, 1958 and the Law of the Sea Convention, 1982 as "naturally formed area of land, surrounded by water, which is above water at the high tide". It should be noted that the Sudanese definitions of bay and island differ widely from those of the two conventions. As regards a bay, in the international definition must satisfy certain conditions in order to be regarded as a legal bay. Those conditions are ignored in the Sudanese definition which regards any extension, inclination, inlet, lagoon, bend, gulf or other arm of the sea as a bay, a matter which is inconsistent with the international definition of

265 Article 7(2) of the Territorial Sea and Contiguous Zone Geneva Convention, 1958 and article 10(2) of the Law of The Sea Convention, 1982.

266 Article 10(1) of the Territorial Sea and Contiguous Zone Geneva Convention, 1958 and article 121(1) of the Law of the Sea Convention, 1982.
a bay. As regards the island the international definition stipulates that the island must be naturally made while the Sudanese definition regards an artificial structure as an island if it is not submerged at lowest low tide. Moreover Sudanese definition regards any reef or rock as an island if it is not submerged at lowest low tide although the reefs and rocks are different legal situations in the international conventions. For this reason the American Memorandum, which was submitted by the American Ambassador to the Sudanese Ministry of Foreign Affairs, protested against the definitions of both the bay and island and the rules governing the measurement of the territorial sea where any of them exists.

Furthermore two areas of the waters incorporated in the internal waters of the Sudan by section 2 (d) and (e) are not regarded as such according to the rules of the international conventions namely; waters between the mainland and any Sudanese island not more than twelve nautical miles from the mainland and waters between the Sudanese islands not further apart than twelve nautical miles. Certainly any island has a right according to article 10(2) of the Territorial Sea and Contiguous Zone Geneva Convention, 1958 and article 121(2) of the Law of The Sea Convention, 1982 to its own territorial sea, and the waters between the island and the mainland, specifically is regarded as territorial waters not internal waters as the situation with the Sudanese Act.

b) **Sections Relating to Territorial Sea:**

It seems that the ancient debate around the true nature of the right over the territorial sea which leads to the huge number of different definitions of the territorial sea resulted in the ignorance of the Sudanese legislator to the
definition of the Sudanese territorial sea in the Act, although it defines another maritime areas such as high seas and continental shelf. Moreover the expression "territorial waters" used in the Act is an old expression. It has disappeared recently from the international conventions and replaced by the expression "territorial sea".

Furthermore the Sudanese legislator does not explain the nature of the right of the Sudan over its territorial sea, the air space above the territorial sea and the seabed and subsoil thereof in this Act. Nevertheless the nature of these rights may be concluded as sovereign rights from the Unsigned Presidential Declaration of 1963, which was issued during the period of President Ibrahim Aboud, but it was not signed. In fact this declaration did not explain whether this sovereignty is an absolute or limited one.

Two matters are dealt with in section 5 of the Act the breadth and measurement of the territorial sea. Firstly the twelve nautical miles rule which the Sudanese legislator uses in determining the breadth of the Sudanese territorial sea is now the generally accepted rule under the Law of the Sea Convention, 1982 as the farthest breadth of the territorial sea. Moreover the current international trend in determining the breadth of the territorial sea is directed towards the twelve nautical miles rule. Secondly although the Sudanese legislator provides that the territorial sea is measured from a straight baseline as marked on large scale maps; and defines in section 2 (d) the base line as the imaginary line or lines for measuring the breadth of the territorial waters, it specifies and determines in section 6 several possible base-lines namely; normal base lines, straight base lines and those lines closing the mouths of bays, those lines connecting the outermost permanent harbor works with the ports and the base lines of the Sudanese islands. Hence the baseline from which the territorial sea is measured according to the rules
of the Act is a normal base line following the low-water line along the coast if
the coast is wholly exposed to the open sea and there is no geographical
feature requiring otherwise, such as a bay, a rock, an island, reefs, or a port. In
this connection the Act is in compliance with the rules Territorial Sea and
Contiguous Zone Convention of Geneva, 1958 (article 3) and the Law of the
Sea Convention, 1982 (article 5). In the real practice, as we will see
subsequently, the normal baselines, those lines closing the mouths of bays
and those lines connecting the outermost permanent harbor works with the
ports never used in the measurement of the Sudanese territorial sea for the
Sudanese coasts are rarely be exposed to the open sea and usually are
enclosed from the open sea either by reefs, rocks or islands. It is truly
measured from the last dry spot toward the sea whether it is an island or a
rock or a reef, and the system used is the straight baseline system. Such a
measurement clearly contradicts with the rules of the Law of the Sea
Convention, 1982.

An analysis of the rules governing the measurement of the territorial sea
provided in section 6 of the Act points to the distinctions with the provisions
of the law of the Sea Convention, 1982. This section does, however, provide
the following:

(b) where a bay belongs to the Democratic Republic of the Sudan,
a line drawn from headland to headland across the mouth of the of
the bay;

(c) where a shoal is situated not more than twelve nautical miles
from the mainland or from a Sudanese island, the lowest low-water
line on that shoal;
(d) where a port or harbour faces the open sea, a line drawn along the seaward side of the outermost of the port or harbour and between such works.

(e) Where an island is not more than twelve nautical miles from the mainland, appropriate lines drawn from the mainland, and along the outer shores of the island;

(f) where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to the mainland is not more than twelve nautical miles from the mainland, appropriate lines drawn from the mainland and along the outer shores of all islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain;

(g) where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to the mainland is more than twelve nautical miles from the mainland, lines drawn along the outer shores of all islands of the group of the islands which form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain,

Recalling in this regard the provisions dealing with the measurement of the territorial sea in the Law of the Sea Convention 1982 we will find that as regards the measurement of the territorial sea where there is a bay, an observation should be made that the convention stipulates a requirement which must be satisfied in order to regard any bay as a legal bay namely; that it must constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or
larger than, that of a semi-circle whose diameter is a line drawn across the mouth of that indentation. It should be noted that in addition to the omission of the Sudan Territorial Waters and Continental Shelf Act, 1970 to these conditions any extension, inclination, inlet, lagoon, bend, gulf or other arm of the sea is regarded as a bay.

The rules governing the measurement of the territorial sea if there is a shoal or a port or harbour in the Sudan Territorial Waters and Continental Shelf Act, 1970 are identical with those of the Law of the Sea Convention, 1982. A remarkable comment should be made that the expression "shoal" is not used in the convention. Instead article 13 speaks about the "low – tide elevations" which is defined as a naturally formed area of land which is surrounded by and above water at low- tide but submerged at high tide, if the low – tide elevations is situated at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low- water line on that elevation may be used as a baseline for measuring the territorial sea, but if it is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

As already explained the rules governing the measurement of the territorial sea where there is an island in the Sudan Territorial Waters and Continental Shelf Act, 1970 are completely contradicted with those of both the Geneva Territorial and Contiguous Zone Convention, 1958 and of the Law of the Sea Convention, 1982. In the first place one can assert that the Sudanese definition of the island embraces other areas not so regarded according to the international definition such as artificial structures, reefs and rocks. Secondly the Sudanese rules permit the use of the low – water mark of the island in measuring the territorial sea if the island is not more than twelve nautical miles from the mainland, in contrast to the international rules which give the
island the right in its own territorial sea. This would necessarily result in the overlap of the territorial seas of both the mainland and the island but the water between the island and the mainland can still be considered as territorial waters, although according to the Sudanese situation these waters are considered as internal waters. Thirdly the rules provided in paragraph (f) and (g) of section 6 of the Act relating to the presence of a group of islands are unnecessary detail and are never mentioned in the international conventions.

Two problems are dealt with in sections 2 and 3 of the Act. Firstly if the delimitation of the territorial sea results in any portion of the high seas being wholly surrounded by territorial waters and such portion does not extend more than twelve nautical miles in any direction, such portion shall form part of the territorial sea, i.e. considered as a territorial sea. There is no equivalent provision in the Law of the Sea Convention, 1982 or even the Territorial Sea and the Contiguous Zone Geneva Convention, 1958, which the Act reproduces. Secondly, if the Sudanese internal or territorial waters overlap with the internal or territorial waters of another state, an agreement may be made between the two states in order to determine the delimitation of the internal or, as the case may be the territorial waters. Failing such agreement the delimitation shall be made in accordance with the principles of international law. It is recognized that the Sudanese legislator refers the matter to the general rules of the international law without giving explanation to the provision of these rules. By reference to the international conventions we find that the boundary line is the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of the two states is measured unless it is necessary by reason of
historic title or other special circumstances to delimit them in a way which is at variance therewith. 267

The rights of the Sudan in its territorial sea mentioned in the Act do not exceed three rights; firstly the legislative right which is confined in certain matters stated in section 8(1) of the Act namely; the transportation and navigation. Secondly the right to execute its security laws and finally the right to establish safety zones. Indeed the international conventions specially the Law of the Sea Convention 1982 mention other rights which may be exercised by the coastal state in its territorial sea such as the right in the natural resources of the territorial sea or its sea bed and subsoil and the absolute right of sovereignty over the air space above the territorial sea. Moreover it extends the legislative right of the coastal state over its territorial sea to cover wide spheres namely matters relating to custom immigration, sanitary, prevention of pollution, protection of cables and pipelines and the artificial structures established on the sea bed, regulation of navigation and fishing, preventing the marine collision and safety at the sea and regulation of the marine scientific research. The coastal state also has the right to execute and adjudicate foreign ships if they committed any infringements of the aforementioned laws. The coastal state may exercise its executive and judicial rights over foreign ships which violate its internal laws and regulations during their passage, if the captain or any diplomatic consul requires assistance of the local authorities, if the crime committed on board a foreign ship is extended to the state, if it is of the kind which affects the safety of the coastal state or if a ship engages in piracy or drugs crimes.

The only restriction over the right of the Sudan in its territorial sea mentioned in the Act is the right of innocent passage through the Territorial Sea for the foreign ships. The provisions relating to the definition of passage and innocent passage are identical with those of the international conventions, and need not be amended. As regards the exercise of this right nothing has been said about right of either commercial or even war ships. Indeed this point needs some discussion. Section 8(3) of the Act requires the consent of the Sudanese government for the passage of the warships. This consent is not required in the Law of the Sea Convention 1982. Some states parties to this convention ratified the convention with the reservation regarding this condition such as Algeria, Egypt and Malta. The Sudan is not among those states. Thus this condition must be excluded from the Act.

The Law of the Sea Convention, 1982 enumerates in article 21 (1) the matters at which coastal state could exercise its jurisdiction, theses matters include *inter alia*: safety of navigation and regulation of marine traffic, conservation of living resources, health and customs matters, preservation of immigration and scientific research, prevention of pollution and finally, protection of cables and pipeline in the territorial sea, while section 7(a) of the Act gives the Sudan the power to take the necessary action in its territorial sea to protect itself against any prejudicial act to its security, safety or interests according to the Sudanese law and international laws. We recognize that the Sudanese section adds acts against its security and safety over which the Sudan has the power to take action in its territorial sea, while the Law of the Sea Convention does not include the security matters among those matters at which coastal state could exercise its jurisdiction. The Sudan declared upon ratification of the Law of the Sea Convention on 10 December 1982 that:
The Sudan wishes to reiterate the statement of the president of the conference in the plenary meeting during the third United Nations conference on the law of the sea on 26 April 1982 concerning article 21, which deals with the laws and regulations of the coastal state relating to innocent passage; namely, that the withdrawal of the amendment submitted at the line by a number of states does not prejudice the right to take necessary measures, particularly in order to protect their security, in accordance with article 19 on the meaning of innocent passage and article 25 on the right of protection of the coastal state.

Accordingly the Sudan is not bound by the rules of the Convention in this concern.

(i) **Sections Relating to Contiguous Zone:**

Generally no much has been said about the contiguous zone in the Act or even in the international convention for it is only an area over which the coastal state exercises certain jurisdictions as extension to its sovereignty right over its territorial sea. It is in reality considered as a part of the exclusive economic zone and has the same legal status in addition to the right to exercise the necessary control to prevent and punish the infringements of its customary, sanitary, immigration and taxation laws.

In fact the sole section in the act which deals with the contiguous zone (section 9) does not define the contiguous zone nor explain its legal status but speaks directly about a right of the Sudanese government to exercise the necessary control to prevent and punish the infringements of its customs,
sanitary, immigration taxation and security laws. The security laws are not mentioned in the international convention among those laws which the coastal state has jurisdiction to apply in its contiguous zone. The breadth of the Sudanese contiguous zone is six miles measured from the outer limit of the territorial sea i.e. 18 nautical miles measured from the base lines from which the territorial sea is measured, while the suggested maximum breadth of the zone as providing in article 83 (2) of the Law of the Sea Convention, 1982 may not exceed 24 nautical miles from the base line from which the breadth of the territorial sea is measured and the maximum breadth in the Territorial Sea and Contiguous Zone Geneva Convention, 1958 is 12 measured from the baseline.

(ii) **Articles Relating to High Seas:**

The Act only defines the high seas in section 2(a) as all parts of the sea that are not included in the territorial or internal waters of the Sudan only. This definition must be altered to include all parts of the sea that are not included in the territorial or internal waters or the exclusive economic zone of any state. Again the freedom of the high seas mentioned in article 87 of the Law of the Sea Convention, 1982 or the restrictions over these freedoms are not embodied in the Act.

(iii) **Sections Relating to Continental Shelf:**

The definition of the continental shelf in section 2(k) of the Act provides two possible outer limits for the continental shelf: extending to a depth of 200 meters and secondly, beyond that limit where the depth of the superjacent
waters admits of the exploitation of the natural resources. This rule is obviously derived from article 1 of the Convention on the Continental Shelf 1958. As has been said before the Law of the Sea Convention, 1982 in determining the breadth of the continental shelf, adopts an ideology of mixing the two aforementioned directions in article 76(1) of the Convention which declares that the continental shelf extends beyond its territory through 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. In all circumstances the outer limit of the continental shelf shall not exceed, according to paragraph (6) of the same article, 350 nautical miles from the base lines from which the territorial sea is measured. Accordingly the breadth of the continental shelf follow the natural prolongation of the land mass, but if this prolongation ends before 200 nautical miles the coastal state has a right to a continental shelf up to 200 nautical miles, but if the prolongation extends beyond this width the continental shelf can be extended up to the outer edge of the land mass prolongation up to 350 nautical miles.

As a matter of fact there is no genuine difference between section 10 of the Act which deals with the legal nature of the rights over the continental shelf and the rules affirmed by article 2 of the Convention on the Continental Shelf 1958 and article 77 of the Law of the Sea Convention, 1982 which could be summarized as that coastal state exercises over its continental shelf sovereign rights for the purpose of its exploration and exploitation of its natural resources, and that the rights of the coastal state are exclusive in the sense that if that state does not explore the continental shelf or exploit its natural
resources, no one may undertake these activities or claim any rights over the continental shelf without express consent of the coastal state.

In a study on this topic, Akolda M. Tier has summed up the position as follows: "as a necessary consequence of the right of exploration and exploitation of the natural resources, section 11 empowers the Sudan to operate maritime installations on the continental shelf, to establish safety zones around them and take within their precincts measures necessary for their protection. These safety zones may extend to a distance of 500 meters around installations measured from each point of their outer edge. Essentially this section reproduces paragraphs (2) and (3) of article 5 of the Convention of the Continental shelf 1958, except that it does expressly require that the installations must not interfere with navigation fishing or conservation of the living resources". 268

"Once more, the act shows the legislator's awareness for the need to accommodate the different uses of the sea. By defining the continental shelf with reference to the seabed and subsoil, the act leaves open the nature of the régime over the superjacent waters. The Act, like article 3of the Convention, then goes on to provide in section 12 that the right of sovereignty over the continental shelf thus defined do not affect the legal status of the superjacent waters as high seas or that of the air space above those waters. Likewise the expression "natural resources" is defined in such a way as to exclude fish". 269

According to him "It is apparent that most of the provisions of the Territorial Waters and Continental Shelf Act 1970 have their ancestral roots in the conventional rules of the two Geneva conventions of 1958 the Geneva

268 A.M. Tier, Sudanese National Legislation on the Territorial sea and Continental Shelf -Thesaurus


269 Id.
Territorial and Contiguous Zone Convention, and the Convention on the Continental Shelf even though the Sudan is not a party to any of them. In particular, the Act treats such questions as the kinds of zones and the nature of the legal régime over each, the baselines from which the zones are measured, and the breadth of each zone, in much the same way as do the Conventions. But few differences can be noted. First the breadth of the territorial sea is provided for under the Act but not under the 1958 Convention. Second the breadth of the contiguous zone, is wider under the Act but not under the Convention. Finally, there are gaps and uncertainties and this is not supervising since in terms of their number, the statutory provisions are fewer than the rules of the convention. In particular there is no provision in the Act corresponding to article 12 of the Convention on the Territorial Sea and Contiguous Zone, and article 6 of the Convention on the Continental Shelf, both of which deal with the delimitation of the continental shelf between two opposite or adjacent states. Again the safeguards on the rights to freedom of seas, so prominent in articles 4 and 5 of the Convention on the Continental Shelf 1958 are not embodied in the act. Problems of access to sea, pollution and conservation of the living resources are not dealt with".270

Moreover, the international law has not remained static since 1958. Two international conferences have been held later on. The most important of them is Third United Nations Conference on the Law of the Sea, 1970 which produces the Law of the Sea Convention to which the Sudan is a party as has been mentioned before and thus bound by its provisions. The differences between the Act and the Law of the Sea Convention 1982 could be summarized in the following: firstly, from the seven classifications of the internal waters acknowledged by the convention three classes only are mentioned in the Act namely; waters of ports, wharfs and anchorages; secondly the Sudanese definitions of bay and island and the way of measurement of the territorial sea where any of them exists in the Sudanese waters varies widely with those of the convention; thirdly the Sudanese legislator ignores the definition of the Sudanese territorial sea; and does not explain the nature of the rights of the Sudan over its territorial sea, the air space above the territorial sea and the seabed and subsoil

270 Id.
thereof in this Act; fourthly, there is no equivalent provision in Convention, to section 2 of the Act which provides that if delimitation of the territorial sea results in any portion of the high seas being wholly surrounded by territorial waters and such portion does not extend more than twelve nautical miles in any direction, such portion shall form part of the territorial sea; fifthly, the rights of the Sudan in its territorial sea mentioned in the Act do not exceed three rights, namely; the legislative right which is confined to transportation and navigation matters, the right to execute its security laws and the right to establish safety zones, while the Convention mentions other rights and extends the legislative right to cover wide spheres; sixthly, the only restriction over the right of the Sudan in its territorial sea mentioned in the Act is the right of innocent passage through the territorial sea for the foreign ships; Seventhly, the passage of the warships under the Act requires the consent of the Sudanese government while this consent is not required under the convention; eighthly, the security laws mentioned in the Act are not mentioned in the convention among those laws the coastal state applies in its contiguous zone; finally, the Act determines the breadth of the Sudanese contiguous zone by six miles measured from the outer limit of the territorial sea i.e. 18 nautical miles measured from the base lines from which the territorial sea is measured.

Above all, due to the advancement of technology, new matters appear in the convention which are not incorporated in the Act such as the new zone created by article 57 that is to say the exclusive economic zone, the prevention of pollution and the scientific research.

2. **Recommendation and Proposal for Amendment:**

As already explained the Territorial Waters and Continental Shelf Act 1970 is an inadequate title in view of the fact that it does not indicate all classes of waters over which coastal state has jurisdiction under the rules of the international law, but points to only to two zones of the sea over which the Sudan exercises a sort of jurisdiction, namely the territorial waters and the continental shelf. Hence it must be amended in such a manner so as to include all zones mentioned under the international conventions, whether subject to the Sudanese jurisdiction or adjacent to those waters. Since there is another Act entitled the Maritime Act which deals with the commercial maritime
matters this expression must be excluded. Other titles may be suggested such as the Sudan Law of the Sea or the Sudan Marine Law.

Section 3 of the Act, which provides that the provisions of the Act shall prevail notwithstanding any provision inconsistent therewith in any other law, seems to be logical, for the reason that it is the only specialized Act focusing on the maritime zones over which the Sudan exercises its jurisdiction and determines the rights and duties over these zones. In our opinion this section may be kept and there is no need to amend or exclude it.

It is suggested that four zones of waters subject to the national jurisdiction, namely internal waters, territorial sea, contiguous zone, exclusive economic zone and two other zones of the sea lie out the jurisdiction of any state, namely, high seas and the Area must be incorporated in the proposed Act. As regards the above mentioned four zones subject to the Sudanese national jurisdiction certain matters must be dealt with in the suggested Act. Firstly a precise definition must be given to any zone and in the case of the internal waters to each class of the internal waters. Secondly the legal régime of each zone must be specified. Thirdly the breadth of each zone and the methods of measurement must be determined taking into account that each zone is measured from one and the same line, that is to say, the base line from which the territorial sea is measured. Since this line is important then the rules governing the determination of this line must be in accordance with the Law of the Sea Convention 1982. Fourthly the rights over these zones and the restrictions over these rights must be fixed obviously.

A matter of some value ought to be noted in this connection. By reason of the narrowness of the Red Sea - the maximum width between the Sudan and Saudi Arabia reaching about 360 km (about 197 nautical miles) - the exclusive economic zones and continental shelves of both states will overlap. Hence
according to articles 74 and 83 of the Law of the Sea Convention, 1982 the exclusive economic zones and continental shelves of both states must be determined by agreement. In this regards it is important to mention the agreement between the Sudan and the Saudi Arabia relating to Joint Exploitation of the Natural Resources of the Seabed and Subsoil of the Red Sea in the Common Zone signed at Khartoum on 16 May 1974, which established a "Common Zone" in areas of the seabed and subsoil beyond the 1000-metre depth lines in the Red Sea, at which both the Sudan and the Saudi Arabia must jointly develop and manage its resources.

Concerning the two zones which fall out the jurisdiction of any state, i.e. the high seas and the Area, there in no actual existence of either of them in the Red Sea, since all the area of sea between the Sudan and Saudi Arabia is either exclusive economic zone which has its own legal régime different to some extent from that of the high seas or continental shelf. Thus there is no provision in the Act safeguarding the freedoms of the high seas and in the Area.

From all what has been said above, and for the purpose of amending the Sudan Territorial Waters and Continental Shelf Act 1970, the following provisions are proposed. It should be stated that, these provisions are based on the Law of the Sea Convention, 1982.

(i) Internal Waters:

a) Definition and Legal Régime:
The Sudanese internal waters are waters within the Sudanese boundaries and are subject to its absolute sovereignty.

b) Classes of the Sudanese Internal Waters:

The following waters form part of the internal waters of the Sudan; waters on the landward side of the baseline of the territorial sea or from a Sudanese island; waters of Sudanese ports, waters of bay the coasts of which belong to the Sudan; waters of rivers and lakes within the land territory of the Sudan; the Sudanese archipelagoes waters.

A port is a place specified for landing, loading and unloading of ships and for providing all services needed for navigation.

A bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

A lake is fresh waters surrounded by land.

Archipelago means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.  

(ii) Territorial Sea:

271 Article 8, 10, 46 of the Law of the Sea Convention, 1982.
a) Definition Legal Régime and Breadth:

The sovereignty of the Sudan extends, beyond its land territory and internal waters and its archipelagic waters, to an adjacent belt of sea, described as the territorial sea, up to a distance of twelve nautical miles measured from the baseline. This sovereignty extends to the air space over the territorial sea as well as to its sea-bed and subsoil. The sovereignty over the territorial sea is exercised subject to the provision of this Act.272

b) Measurement of the Territorial Sea:

The baseline for the purpose of measuring the territorial sea shall be as follows: Firstly, where the coast of the mainland or an island is wholly exposed to the open sea, the base-line is the lowest low water line as marked on large scale charts officially recognized by the Sudan. Secondly, where a bay belongs to the Sudan the base line is a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semicircle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation. Thirdly, for the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore

installations and artificial islands shall not be considered as permanent harbour works. Fourthly, where a shoal is situated not more than twelve nautical miles from the mainland or from a Sudanese island, the lowest low water line is the base-line; fifthly, in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters; sixthly, in the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.273

The following definitions may be taken into consideration: An island is a naturally formed area of land, surrounded by water, which is above water at high tide. An island has the right of its own territorial sea, contiguous zone, exclusive economic zone and continental shelf. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

A shoal is an area covered by shallow water, a part of which is not submerged at the lowest low tide. Where a shoal is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that shoal may be used as the baseline for

measuring the breadth of the territorial sea. A baseline is the imaginary line or lines for measuring the territorial waters. Nautical mile means one thousand eight hundred and fifty two meters.

c) Outer Limit of the Territorial Sea:

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.274

d) Delimitation of Internal Waters or the Territorial Sea with Opposite or Adjacent States:

Where the internal waters or the territorial sea of the Sudan overlap with the internal waters or the territorial sea of another state neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith.275

e) The Rights of the Sudan over its Territorial Sea:

In this concern five different matters must be discussed, namely, in the first place the criminal jurisdiction on board a foreign ship. The criminal jurisdiction of the Sudan should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases; if the consequences of the crime extend to the Sudan; if the crime is of a kind to disturb the peace of the Sudan or the good order of the territorial sea; if the assistance of the Sudanese authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

This does not affect the right of the Sudan to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

The second matter is the civil jurisdiction over foreign ships. Sudan may levy execution against or arrest a foreign ship for the purpose of any civil proceedings in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through its waters, and may in accordance with its laws, levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

The third problem is the right of protection of the coastal state. Sudan may take the necessary steps in its territorial sea to prevent passage which is not innocent. In
the case of ships proceeding to internal waters or a call at a port facility outside internal waters, it also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject. The Sudan may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

Fourthly, as regards the laws and regulations relating to innocent passage, Sudan may adopt laws and regulations, in conformity with the provisions of the international conventions and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following: the safety of navigation and the regulation of maritime traffic; the protection of navigational aids and facilities and other facilities or installations; the protection of cables and pipelines; the conservation of the living resources of the sea; the prevention of infringement of the fisheries laws and regulations of the Sudan; the preservation of the environment of the Sudan and the prevention, reduction and control of pollution thereof; marine scientific research and hydrographic surveys; the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the Sudan. The Sudan shall give due publicity to all such laws and regulations. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

The fifth point concerns right to prescribe sea lanes and traffic separation schemes in the territorial sea. The Sudan may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation
schemes as it may designate or prescribe for the regulation of the passage of ships. In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.

In the designation of sea lanes and the prescription of traffic separation schemes the Sudan shall take into account: the recommendations of the competent international organization; any channels customarily used for international navigation; the special characteristics of particular ships and channels; and the density of traffic. The Sudan shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given.276

f) Duties over the Territorial Sea:

The international conventions on the law of the sea recognize two restrictions over the rights of the coastal states in their territorial seas, the right of innocent passage and the duty not to levy any charges upon foreign ships. As regards the right of innocent passage, no State shall hamper the innocent passage of foreign ships through the territorial sea and shall not impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage, or discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State. States shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

Passage means navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters, or proceeding to or from internal waters or a call at such roadstead or port facility.

Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with the Law of the Sea Convention, 1982 and with other rules of international law.

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; any exercise or practice with weapons of any kind; any act aimed at collecting information to the prejudice of the defence or security of the coastal State; any act of propaganda aimed at affecting the defence or security of the coastal State; the launching, landing or taking on board of any aircraft; the launching, landing or taking on board of any military device; the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; any act of willful and serious pollution contrary to the Law of the Sea Convention, 1982; any fishing activities; the
carrying out of research or survey activities; any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; any other activity not having a direct bearing on passage.277

Secondly no charge may be levied upon foreign ships by reason only of their passage through the territorial sea. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.278

(iii) **Zone Contiguous to the Sudanese Territorial Sea:**

The Sudan may, in a zone contiguous to its territorial sea, described as the contiguous zone, exercise the control necessary to: prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; punish infringement of the above laws and regulations committed within its territory or territorial sea. The contiguous zone extends 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.279

(iv) **The Exclusive Economic Zone:**

a) **Definition and Breadth:**

277 Section 3 of the Law of the Sea Convention, 1982.
The exclusive economic zone is an area of the high seas beyond and adjacent to the territorial sea, subject to the specific legal regime, not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.\textsuperscript{280}

b) Rights, Jurisdiction and Duties of the Sudan in the Exclusive Economic Zone:

In the exclusive economic zone, the Sudan has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; jurisdiction with regard to the establishment and use of artificial islands, installations and structures; marine scientific research; the protection and preservation of the marine environment.\textsuperscript{281}

c) Rights and Duties of Other States in the Exclusive Economic Zone:

\textsuperscript{280} Article 55 of the Law of the Sea Convention, 1982.  
\textsuperscript{281} Article 56 of the Law of the Sea Convention, 1982.
In the exclusive economic zone all States, whether coastal or land-locked, enjoy, subject to the freedoms of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea relating 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 the Law of the Sea Convention, 1982 Convention.

In exercising their rights and performing their duties in the exclusive economic zone, States shall have due regard to the rights and duties of the Sudan and shall comply with the laws and regulations adopted by the Sudan in accordance with the provisions of the Law of the Sea Conventions and other rules of international law.282

d) Delimitation of the Exclusive Economic Zone with Opposite or Adjacent States:

The delimitation of the exclusive economic zone with opposite or adjacent States shall be effected by agreement on the basis of international law in order to achieve an equitable solution.283

(ii) Continental Shelf:

a) **Definition and Breadth:**

Continental shelf is 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 beyond the territorial sea, 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.\(^{284}\)

b) **Rights of the Sudan over the Continental Shelf:**

The Sudan exercises over its continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. These rights are exclusive in the sense that if the State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. The rights over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

The natural resources consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.\(^{285}\)

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\(^{284}\) Article 76 of the Law of the Sea Convention, 1982.

c) **Legal Status of the Superjacent Waters and Air Space and the Rights and Freedoms of Other States:**

The rights over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters. The exercise of these rights over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in the Law of the Sea Convention.286

d) **Rights of Other State in the Continental Shelf:**

All States are entitled to lay submarine cables and pipelines on the Sudanese continental shelf; the delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the Sudan.

The Sudan may establishes conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.287

e) **Delimitation of the Continental Shelf with Opposite or Adjacent States:**

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution.\(^\text{288}\)

(iii) **High seas:**

a) **Definition of High Seas:**

High seas are all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.\(^\text{289}\)

b) **Freedom of the High Seas:**

The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas comprises, *inter alia*, both for coastal and land-locked States: freedom of navigation; freedom of over flight; freedom to lay submarine cables and pipelines; freedom to construct artificial islands and

\(^{288}\) Article 83 of the Law of the Sea Convention, 1982.

\(^{289}\) Article 86 of the Law of the Sea Convention, 1982.
other installations permitted under international law; freedom of fishing; freedom of scientific research

These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard to activities in the Area. The high seas shall be reserved for peaceful purposes, and no State may validly purport to subject any part of the high seas to its sovereignty.290

c) Exemptions from the Doctrine of Freedom of High Seas:

The doctrine of freedom of high sea is subject to the following exemptions. Firstly piracy which consists of any of the following acts: any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; any act of inciting or of intentional facilitating any of the fore mentioned acts.291

Secondly unauthorized broadcasting from the high seas, all states shall co-operate in the suppression of unauthorized broadcasting from the high seas. Unauthorized broadcasting means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.\footnote{Article 109 of the Law of the Sea Convention, 1982.}

Thirdly right of visit, a warship is not justified in boarding foreign ship unless there is reasonable ground for suspecting that the ship is engaged in piracy; the ship is engaged in the slave trade; the ship is engaged in unauthorized broadcasting; the ship is without nationality; or though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

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

If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained. These rules apply mutatis mutandis to military aircraft. These rules also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.\footnote{Article 110 of the Law of the Sea Convention, 1982.}

Fourthly: Right of Hot Pursuit: The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good
reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone.294

(iv) **The Area:**

The Area is the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. The Area and its resources are the common heritage of mankind. From this legal status, it follows that no State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.295

All rights in the resources of the Area are vested in mankind as a whole on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in the rules, regulations and procedures of the Authority.

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No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with Part XI of the Law of the Sea Convention, 1982. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination.296

Additionally two new key issues must be provided for in the proposed amendment of the Sudan Territorial Waters and Continental Shelf Act, 1970, namely; the marine scientific research and the protection of the marine environment

a) **Marine Scientific Research**

All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States.

The Sudan has the exclusive right to regulate, authorize and conduct marine scientific research in its territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the Sudan. These rules apply to scientific research during transit passage through archipelagic sea lanes.

The Sudan has the right to regulate, authorize and conduct marine scientific research in its exclusive economic zone or in its continental shelf. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the Sudan.

Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. Sudan may carry out marine scientific research in the Area. Sudan shall promote international co-operation in marine scientific research in the Area.\textsuperscript{297}

b) **Protection of the Marine Environment:**

Pollution of the marine environment means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

States have the obligation to protect and preserve the marine environment. This obligation includes all sources and types of pollution. And in the exercise of this obligation states shall take measures to prevent, reduce and control pollution of the marine environment, and ensure that the activities under their jurisdiction and control are so conduct as not to cause damage by pollution to other state, and their environment. Moreover, they shall refrain from unjustifiable interference with activities carried out by other states. And have a duty not to transfer directly or in directly damage or hazards from one area to another one or not to transform any type of pollution into another.\textsuperscript{298}

\textsuperscript{297} Part XIII of the Law of the Sea Convention, 1982.

\textsuperscript{298} Article 192, 193, 195 of the Law of the Sea Convention, 1982.
1 Conclusion:

In brief, the existing sections of the Territorial Waters and Continental Shelf Act 1970 need several amendments. In addition new sections must be added to this Act in order to incorporate the new developments in the law of the sea. Four suggested zones of waters subject to the national jurisdiction, namely internal waters, territorial sea, contiguous zone, exclusive economic zone and two other zones of the sea lie out the jurisdiction of any state, namely, high seas and the Area must be incorporated in the proposed Act. A matter of some value ought to be noted in this connection that the matter of pollution and the scientific research must be discussed in the proposed Act in detail.
Chapter Seven

Conclusion and Recommendations

The Law of the Sea Convention 1982 resulting from the Third United Nations Convention on Law of the Sea is the most recent major development in international law governing the law of the sea. The Convention provided new universal legal controls for the management of marine natural resources and the control of pollution.

This Convention was needed owing to the weakness of the older "freedom of the seas" concept, dating from the 17th century. National rights were limited to a specified belt of water extending from coastlines, usually three nautical miles, according to the "cannon shot" rule developed by the Dutch jurist Bynkershoek. All water beyond national boundaries was considered international waters - free to all nations, but belonging to none of them (the *mare liberum* principle promulgated by Grotius).

By the end of the nineteenth century and the beginning of the twentieth century a new period in the codification of the law of the sea began. At this period appeared serious attempts to codify the law of the sea, such as the attempt of the Congress of Paris in 1858, the Hague Peace First Conference of 1899, and the Second at 1907 which codified part of the law of the sea.

In the 20th century many nations expressed a need to extend national claims, in order to include mineral resources, to protect fish stocks, and to have the means to enforce pollution controls. This was recognized by the League of Nations, and a conference was held in 1930 at The Hague, but did not result in any agreement.
In 1958, the United Nations held its first Conference on the Law of the Sea at Geneva, Switzerland. This conference resulted in four conventions concluded in 1958, namely, the Territorial Sea and Contiguous Zone Convention, the High Seas Convention, the Continental Shelf Convention and Fishing and Conservation of the Living Resources of the High Seas Convention. Although the First Conference on the Law of the Sea was considered a success, it left open the important issue of breadth of territorial waters.

The United Nations followed this in 1960 with its second Conference on the Law of the Sea which did not result in any international agreement. During the six-week conference at Geneva, the conference did not achieve much. Generally speaking there was no voice for countries of the third world or the developing nations.

The United Nations created a committee known as the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction (The Sea-bed Committee), to which the codification of the law of the sea is entrusted. In 1970 the Third United Nations Conference on the Law of the Sea was held. The conference was conducted under a process of consensus rather than majority vote in an attempt to reduce the possibility of groups of nation-states dominating the negotiations. The conference lasted until 1982 and over 160 nations participated. In 1982 the conference produced the Law of the Sea Convention which was opened for signature in December 1982 in Montague Bay, Jamaica. The convention came into force on November 16, 1994, after the sixtieth state, Guyana, ratified it.

The convention introduced a number of provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones, continental shelf jurisdiction, deep
seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

It is apparent that, the Law of the Sea Convention, 1982 determined five various zones over which the coastal state exercises its jurisdiction, measured from a carefully defined baseline, as follows: firstly internal waters which cover all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate any use, and use any resource in its internal waters. Foreign vessels have no right of passage within internal waters. Secondly territorial waters, out to twelve nautical miles from the baseline, the coastal state is free to set laws, regulate any use, and use any resource. Vessels are given the right of "innocent passage" through any territorial waters, with strategic straits allowing the passage of military craft as "transit passage". "Innocent Passage" is defined by the convention as passing through waters in expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal State. Fishing, polluting, weapons practice, spying are not "innocent". The coastal State can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of its security. Thirdly contiguous zone, beyond the twelve nautical mile limit. There is a further twelve nautical miles or twenty four nautical miles from the territorial sea baselines limit, the contiguous zone, in which area a state could continue to enforce laws regarding activities such as smuggling or illegal immigration. The fourth zone over which the coastal State exercises its jurisdiction is the exclusive economic zone, which extends to 200 nautical miles from the baseline. Within this area, the coastal State has sole exploitation rights over all natural resources. The exclusive economic zone was introduced to terminate the increasing conflicts over fishing rights, although oil was also becoming
important. Other States have the freedom of navigation and over flight, subject to the regulations of the coastal State, and may also lay submarine pipes and cables. The fifth and final zone is the continental shelf. Continental shelf is defined as natural prolongation of the land territory to the continental margin’s outer edge, or 200 nautical miles from the coastal State’s baseline, whichever is greater. State’s continental shelf may exceed 200 nautical miles until the natural prolongation ends, but it may never exceed 350 nautical miles, and 100 nautical miles beyond 2,500 meter isobaths, which is a line connecting the depth of 2,500 meters. States have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others.

There are two areas of the sea which fall beyond the national jurisdiction of any State. Firstly the high seas over which all States whether coastal or land-locked States enjoy five freedoms namely, freedoms of navigation, over flight, fishing, laying of cables and pipelines and scientific research. A ship whether merchant or war ship in the high seas is subject only to jurisdiction of its flag state, and cannot be boarded by ships of other States except in certain circumstances such as if it is pursued after it committed a violation of the coastal State law and regulations in the internal waters or the territorial sea or the contiguous zone or if it was engaged in piracy, slave trade, unauthorized broadcasting or that the ship without nationality or though it is flying a foreign flag it is in reality from the same nationality. This right must not be abused and the home State is responsible for any damage caused to a foreign ship without sufficient ground.

The second zone is the newly established zone which is known under the Law of the Sea Convention, 1982 as the seabed and subsoil beyond the national jurisdiction or the Area. All the activities in the Area are conducted by the Authority. Aside from its provisions defining ocean boundaries, the
convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority.

Landlocked States are given a right of access to and from the sea, without taxation of traffic through transit States.

In addition the Law of the Sea Convention, 1982 reviewed and revised the existing law of the sea. It discusses in detail new matters not discussed before under the previous conventions or discussed from a narrow angle, such as the problem of pollution and the scientific research.

There are six main sources of ocean pollution addressed in the Convention, namely, land-based and coastal activities, continental-shelf drilling, potential seabed mining, ocean dumping, vessel-source pollution, and pollution from or through the atmosphere.

As regards the problem of pollution and the preservation and protection of the marine environment, it is true to say that the international concern started recently due to the increase the marine pollution hazards. It received little attention in the Geneva Conventions. During the Third United Nations Conference on the Law of the Sea the problem of pollution was put among the subjects of the Agenda. Part XII of the Law of the Sea Convention, 1982 discusses this problem in detail.

The Convention lays down the fundamental obligation of all States to protect and preserve the marine environment. It further urges all States to cooperate on a global and regional basis in formulating rules and standards and otherwise take measures for the same purpose.

Coastal States are empowered to enforce their national standards and anti-pollution measures within their territorial seas. Every coastal State is granted jurisdiction for the protection and preservation of the marine environment of its exclusive economic zone. Such jurisdiction allows
coastal States to control, prevent and reduce marine pollution from dumping, land-based sources or seabed activities subject to national jurisdiction, or from or through the atmosphere. With regard to marine pollution from foreign vessels, coastal States can exercise jurisdiction only for the enforcement of laws and regulations adopted in accordance with the Convention or for "generally accepted international rules and standards". Such rules and standards, many of which are already in place, are adopted through the competent international organizations, namely the International Maritime Organization (IMO).

On the other hand, it is the duty of the "flag State", the State where a ship is registered and whose flag it flies, to enforce the rules adopted for the control of marine pollution from vessels, irrespective of where a violation occurs. This serves as a safeguard for the enforcement of international rules, particularly in waters beyond the national jurisdiction of the coastal State, i.e., on the high seas.

Furthermore, the Convention gives enforcement powers to the "port State", or the State where a ship is destined. In doing so it has incorporated a method developed in other Conventions for the enforcement of treaty obligations dealing with shipping standards, marine safety and pollution prevention. The port State can enforce any type of international rule or national regulations adopted in accordance with the Convention or applicable international rules as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals. This has already become a significant factor in the strengthening of international standards.

Finally, as far as the international seabed area is concerned, the International Seabed Authority, through its Council, is given powers to
assess the potential environmental accidents of deep seabed mining operation, recommend changes, formulate rules and regulations, establish a supervising program and recommend issuance of emergency orders by the Council to prevent serious environmental damage. States are to be held liable for any damage caused by either their own enterprise or contractors under their jurisdiction.

As regards the marine scientific research it is discussed for the first time under the Law of the Sea Convention, 1982 in Part XIII. With the extension of the territorial sea to 12 miles and the establishment of the new 200 miles exclusive economic zone, the area open to unrestricted scientific research was circumscribed. The Convention thus had to balance the concerns of major research States, mostly developed countries, which saw any coastal-State limitation on research as a restriction of a traditional freedom that would not only adversely affect the advancement of science but also deny its potential benefits to all nations in fields such as weather forecasting and the study of effects of ocean currents and the natural forces at work on the ocean floor.

On the other side, many developing countries had become extremely wary of the possibility of scientific expeditions being used as a cover for intelligence gathering or economic gain, particularly in relatively uncharted areas; scientific research was yielding knowledge of potential economic significance. The developing countries demanded "prior consent" of a coastal State to all scientific research on the continental shelf and within the exclusive economic zone. The developed countries offered to give coastal States "prior notification" of research projects to be carried out on the continental shelf and within the exclusive economic zone, and to share any data pertinent to offshore resources.
The final provisions of the Convention represent a concession on the part of developed States. Coastal State jurisdiction within its territorial sea remains absolute. Within the exclusive economic zone and in cases involving research on the continental shelf, the coastal State must give its prior consent. However, such consent for research for peaceful purposes is to be granted "in normal circumstances" and "shall not be delayed or denied unreasonably", except under certain specific circumstances identified in the Convention. In case the consent of the coastal State is requested and such State does not reply within six months of the date of the request, the coastal State is deemed to have implicitly given its consent. These last provisions were intended to circumvent the long bureaucratic delays and frequent burdensome differences in coastal State regulations.

The waters under the Sudanese national jurisdiction are legally classified by the Sudan Territorial Waters and Continental Shelf Act, 1970 into four distinct zones, namely, the internal waters, the territorial sea, the contiguous zone and the continental shelf.

The internal waters according to the provisions of this Act include the ports, wharves and anchorages; waters of bay the coasts of which belong to the Sudan; waters on the landward side of any shoal not more than twelve nautical miles from the main land; or from a Sudanese island; waters between the mainland and any Sudanese island not more than twelve nautical miles from the main land and waters between the Sudanese island not further apart than twelve nautical miles.

The territorial sea extends to twelve nautical miles from a straight baseline as marked in the large scale maps recognized by the Sudan to a distance of twelve nautical miles. The Sudanese contiguous zone extends to a distance of six nautical miles measured from the limits of the territorial sea.

The Sudan exercises sovereignty rights over its continental shelf for the purpose of exploring and exploiting its natural recourses to the depth of two hundred meters or beyond that limit to where the depth admits the exploitation of the natural resources. All parts of the sea not included in the internal waters
or the territorial sea are regarded as high seas according to section 2(a) of the Act.

As regards marine pollution and marine scientific research they ought to be regulated by a national regulation in detail. In fact the marine pollution is not mentioned in the Sudan Territorial Waters and Continental Shelf Act, 1970 although there are numerous dangers threatening the Sudanese waters. It is only mentioned in some other national Sudanese laws such as the Environmental Health Act, 1975 from a narrow angle, while the marine scientific research is never mentioned in any national law or regulation despite the fact that scientific research in the Red Sea started in the eighteenth century and that in recent years several research institutions have been established by the Sudan, notably in Port Sudan and Suakin and that many conferences have been held in recent years such as the conference which was held in 1976 and adopted a "Program for Environmental Studies on the Red Sea and the Gulf of Aden".

According to the forgoing conclusions it is recommended that:

1- The existing sections of the Territorial Waters and Continental Shelf Act, 1970 need several amendments. In addition new sections must be added to this Act in order to incorporate the new developments in the law of the sea.

2- Four suggested zones of waters subject to the national jurisdiction, namely internal waters, territorial sea, contiguous zone, exclusive economic zone and two other zones of the sea beyond the jurisdiction of any State, namely, high seas and the Area must be incorporated in the proposed Act. In this regard the following matters must be observed:
i- A precise definition must be given to any zone and in the case of the internal waters to each class of the internal waters.

ii- The legal régime of each zone must be specified.

iii- The breadth of each zone and the methods of measurement must be determined taking into account that each zone is measured from one and the same line, that is to say, the base line from which the territorial sea is measured. Since this line is important then the rules governing the determination of this line must be in accordance with the Law of the Sea Convention, 1982.

iv- The rights over these zones and the restrictions over these rights must be fixed obviously.

3- A matter of some value ought to be noted in this connection that pollution and scientific research must be discussed in the proposed Act in details.

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